



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**

**LEGAL REVIEW OF THE RESOLUTION OF THE COUNCIL OF MINISTERS OF
THE REPUBLIC OF BELARUS OF 2 OCTOBER 2020, No. 578**

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Executive summary

This Review examines Resolution No. 578 of the Council of Ministers of the Republic of Belarus, adopted on 2 October 2020, to govern accreditation rules and procedures for foreign journalists in the State. This regulation replaced the previously effective Resolution No. 2015 of the Council of Ministers of the Republic of Belarus of 25 December 2008.

The Resolution provides a shorter time-frame to consider applications for accreditation. However, it mainly retains the vision of accreditation as a work permit granted or withdrawn by the Ministry of Foreign Affairs. The Resolution mostly fails to provide privileges to accredited journalists. It also keeps old provisions allowing the use of accreditation as a tool to exercise control over journalistic publications and introduces new provisions for that purpose. Additionally, the Resolution still permits a “symmetrical response” policy that implies withdrawals of accreditation of foreign journalists who work in States practicing restrictions towards Belarusian journalists.

Summary of main recommendations

- It is recommended to revise the Resolution to exclude the misuse of accreditation as a work permit. The accreditation framework should explicitly guarantee the receipt of accreditation and establish a legal mechanism to ensure this receipt by any individual engaged in journalism, regardless of his/her employment with a particular media organization. It is necessary to ensure accreditation of freelancers as well as journalists from those countries with no registration procedure for mass media outlets.
- Any limitations to accreditation must be compatible with the requirements of an international legal three-tier test used to assess the admissibility of restrictions on freedom of expression. All excessive and unclear requirements, particularly concerning the need to provide earlier journalistic publications and CVs, should be abolished. It is also suggested to remove provisions authorizing to request journalists undergo additional accreditation procedures.
- It is strongly suggested to specify concrete privileges that accreditation gives to foreign journalists, including on visa receipts, access to information as well as safe work, travel and stay in the country.
- The framework for governing permanent accreditation should guarantee its permanent validity throughout the entire journalistic professional activity. It is recommended to abolish provisions on temporary accreditation.

- An independent body should oversee decisions on accreditation.
- Refusals and withdrawals should be seen as extreme measures. The provisions governing the grounds on which to grant accreditation should be revised to make refusals and withdrawals justifiable and compliant with the international legal three-tier test, to avoid their misuse as forms of punishment or tools to control journalistic publications. It is necessary to repeal provisions permitting the misuse of refusals and withdrawals for a “symmetrical response.”
- It is suggested to oblige the accrediting body to provide sufficient justifications for accreditation refusals or withdrawals.
- It is highly recommended to establish a legal mechanism for appeals, which an independent body should then consider.

Introduction

Dr. Elena Sherstoboeva, an Assistant Professor of the School of Creative Media and School of Law, City University of Hong Kong, prepared this review at the request of the Office of the OSCE Representative on Freedom of the Media.

This Review examines Resolution No. 578 of the Council of Ministers of the Republic of Belarus of 2 October 2020 (hereinafter, the “Resolution”) in light of international standards on the issue. The Resolution is the only legal act to govern accreditation rules and procedures for foreign journalists in the State. It replaced the previously effective Resolution No. 2015 of the Council of Ministers of the Republic of Belarus of 25 December 2008 (hereinafter, “the 2008 Resolution”).

Accreditation of foreign journalists is a central element of the “third basket” of the Helsinki Final Act and other media freedom principles to which OSCE participating States have declared their commitments. In June 2016, Dunja Mijatović, then OSCE Representative on Freedom of the Media, issued a Communiqué on the Accreditation of Foreign Journalists for Implementing the Right to Freedom of Information.¹ She expressed grave concerns about the fact that abuses of accreditation practices for foreign journalists have become much more frequent.² She provided several recommendations to participating States on how to avoid such abuses in their national frameworks for accreditation of foreign journalists. Her recommendations were based on a special report, “Accreditation of Foreign Journalists in the OSCE Region”³ (hereinafter the “2016 Report”). The 2016 Report examined international standards and scholarly approaches to the legal nature of accreditation and studied accreditation frameworks for foreign journalists in the OSCE region.

The 2016 Report raised concerns about several provisions of the 2008 Resolution, assuming that they might negatively affect media freedom and curtail the right of foreign journalists as well as the public’s right to information in the Republic of Belarus. Notably, the 2016 Report criticized the 2008 Resolution’s approach regarding the misuse of accreditation as a work permit and the lack of privileges for accredited foreign journalists in the 2008 Resolution. The 2016 Report’s criticism also concerned several excessive requirements authorising control over journalistic publications, such as the need to provide journalistic CVs and information about their media organizations. The Report also expressed concerns over the provisions permitted to

¹ Communiqué on the accreditation of foreign journalists for implementing the right to freedom of information. The OSCE Representative on Freedom of the Media, 2016. <https://www.osce.org/fom/245466>

² Ibid.

³ Report “Accreditation of Foreign Journalists in the OSCE region.” Published on 7 June 2016. <https://www.osce.org/fom/245146>

misuse refusals in journalistic accreditation as a “countermeasure” against countries applying restrictions to Belarusian journalists.

This Review provides a detailed analysis of the new Resolution and traces the major regulatory changes on the issue to show the progress towards the international standards on freedom of information and media freedom. The Review aims to provide several recommendations and further assistance of the Office to the Belarus authorities.

The structure of the Review is guided by the tasks framed by the Office of the OSCE Representative on Freedom of the Media. These tasks include studying the Resolution by comparing its provisions vis-à-vis international standards and OSCE commitments on freedom of expression, media freedom and journalistic accreditation; identifying the Resolution’s provisions that may be non-compliant with the international principles; and providing possible recommendations on how to make the Resolution consistent with international standards.

Part I. International and national legal standards on freedom of expression and information as well as media freedom

General standards

The basis for this Review is the provision of assistance of the OSCE to its participating States to enable free and wide transboundary dissemination of information as well as ideas, and to promote freedom of expression. This fundamental human right is valuable *per se* and also as a precondition for other human rights, democracy, and peace. It is guaranteed to everyone in all main international and regional human rights instruments, starting with the Universal Declaration of Human Rights (UDHR) to which OSCE participating States have affirmed their commitments. As its Article 19 states,

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁴

Similar wordings are used in the International Covenant on Civil and Political Rights (ICCPR), a legally binding human rights treaty adopted by the Resolution of the United Nations (UN) General Assembly’s 2200A (XXI) on 16 December 1966. Its Article 19 Parts 1-2 guarantee that

*“1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁵*

The ICCPR was ratified by Belarus on 5 October 1973,⁶ and it has been effective since 3 January 1976.

⁴ Universal Declaration of Human Rights 1948, GA Res 217A (III), A/810 at 71 (1948).

<https://www.un.org/en/universal-declaration-human-rights/>

⁵ International Covenant on Civil and Political Rights 1966, 999 UNTS 171.

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶ Decree of the Presidium of the Supreme Council of the Republic of Belarus of 5 October 1973 “On ratification of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.”

https://belzakon.net/%D0%97%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B4%D0%B0%D1%82%D0%B5%D0%BB%D1%8C%D1%81%D1%82%D0%B2%D0%BE/%D0%A3%D0%BA%D0%B0%D0%B7_%D0%9F%D1%80%D0%B5%D0%B7%D0%B8%D0%B4%D0%B8%D1%83%D0%BC%D0%B0_%D0%92%D0%A1%D0%A0%D0%91/1994/6909

The Constitution of the Republic of Belarus in Article 8 establishes the priority of international human rights treaties over national legislation. Its Article 33 specifically protects freedom of expression by saying that

*“Everyone is guaranteed freedom of thoughts and beliefs as well as their free expression. No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted.”*⁷

The Statute “On Mass Media” of the Republic of Belarus No. 427-Z13⁸ (hereinafter – the Mass Media Statute) in Article 2 reaffirms the principle of the priority of international treaties over national law.

Belarus has been a full participating State of the OSCE since 30 January 1992, and it is bound by the key OSCE standards protecting freedom of expression, including the 1975 Helsinki Final Act,⁹ the 1989 Concluding Document of the Vienna Meeting,¹⁰ the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,¹¹ the 1990 Charter of Paris for a New Europe,¹² and the 1999 Istanbul Document.¹³

The Helsinki Final Act states that the participating States,

“Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State.”

Similarly, the 1989 Concluding Document of the Vienna Meeting provides that OSCE participating States undertake commitments to

⁷ Constitution of the Republic of Belarus of 1994. <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>

⁸ The Statute “On Mass Media” of the Republic of Belarus No. 427-Z13. <https://pravo.by/document/?guid=3871&p0=h10800427>

⁹ Final Act of the Conference on Security and Co-operation in Europe. Adopted on 1 August 1975, Helsinki. In, Commitments: Freedom of the Media, Freedom of Expression, Free Flow of Information. CSCE and OSCE. 1975-2002. Second edition. The OSCE Representative on Freedom of the Media Organization, 2013. <http://www.osce.org/fom/99565>

¹⁰ Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference). Adopted on 15 January 1989, Vienna. In, Commitments: Freedom of the Media, Freedom of Expression, Free Flow of Information. CSCE and OSCE. 1975-2002. Second edition. The OSCE Representative on Freedom of the Media Organization, 2013. <http://www.osce.org/fom/99565>

¹¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990. <https://www.osce.org/odihr/elections/14304>

¹² Charter of Paris for a New Europe, 21 November 1990. <https://www.osce.org/mc/39516>

¹³ Istanbul Document, 19 November 1999. <https://www.osce.org/mc/39569>

“make further efforts to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and to improve the working conditions of journalists.”

Freedom of information was proclaimed a fundamental human right and “a touchstone of all the freedoms to which the United Nations is consecrated” by UN General Assembly in Resolution 59(I) adopted in the course of its first session in 1946.¹⁴ The Resolution as well as other UN instruments understood freedom of information as “the right to gather, transmit and publish news anywhere and everywhere without fetters.”¹⁵

In 2011, the UN Human Rights Committee issued General Comment No. 34, its authoritative interpretation of the ICCPR’s provisions on freedoms of expression that is applicable to Belarus. In paragraph 13, the committee reminded of governments’ commitments on media freedom:

“A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”¹⁶

Similarly, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression noted that independent and diverse media plays a crucial role in ensuring free flow of information and ideas to the public to support “the functioning of democratic societies, an informed citizenry, the rule of law, participation in public affairs and accountability of public institutions.”¹⁷ They also stated that “free media are critical to ensure “free

¹⁴ Resolution A/RES/59 (I) of the General Assembly of the UN. Adopted on 14 December 1946. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

¹⁵ Ibid.

¹⁶ General Comment No. 34 to the ICCPR. Human Rights Committee 102nd session, Geneva, 11-29 July 2011, para. 46. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹⁷ The Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information on Media Independence and Diversity in

and fair elections, including referenda, in particular by informing the public about parties and candidates and their platforms.”¹⁸

International law repeatedly views the press as a “public watchdog” and provides journalism a specific protection that “exists distinctly from broader free-expression and media-freedom rights” in the UN Human Rights Committee’s interpretation of Article 19 of the ICCPR.¹⁹ In other words, international law obliges governments to respect journalistic rights irrespective of whether journalists are employed by particular media organizations because they perform services for society, rather than for these organizations. Journalism covers all individuals who are engaged in it, including freelancers, independent fact-checkers and bloggers.

The importance of journalism has increased in the digital era, when internet users have broad access to various information, including of the unverified and manipulative type. Despite the advances in information and communication technologies, foreign journalists still encounter frequent and significant difficulties when working outside their home countries. In the 2018 Joint Declaration on Media Independence and Diversity in the Digital Age, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information paid attention to several positive obligations that participating States still have in the digital era. These concern “enabling a safe working environment for journalists” and “respecting freedom of movement, including for both local and foreign journalists.” The declaration also reminds the States to respect media independence, which includes “ensuring the independence of bodies which exercise regulatory powers over the media” and “refraining from engaging in indirect forms of censorship.”²⁰

The Constitution of the Republic of Belarus in Article 34 also guarantees

“the right to receive, store and disseminate complete, reliable and timely information on the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment.”

Accordingly, the Mass Media Statute of the Republic of Belarus guarantees the freedom of thought and belief and their free expression in Article 5.

the Digital Age. Adopted on 2 May 2018.

https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration2May2018_EN.pdf

¹⁸ Ibid.

¹⁹ Carter, Edward L, & Westenskow, Rosalie. (2020). Freedom of Journalism in International Human Rights Law. *Communication Law and Policy*, 25(2), 113–143. <https://doi.org/10.1080/10811680.2020.1735188>

²⁰ Joint Declaration on Media Independence and Diversity in the Digital Age.

International legal standards on limitations to freedom of expression

Although freedom of expression is not an absolute right, governments have a commitment to refrain from undue interference with this freedom.²¹ Article 19(3) of the ICCPR²² as well as Article 10(2) of the European Convention on Human Rights²³ provides a three-tier (or three-part) test to examine the admissibility of limitations to freedom of expression. According to the test, each limitation must (1) be provided by law, (2) pursue a legitimate aim, and (3) be necessary in a democratic society. Any restrictions to media freedom must also comply with the test. This is also required during election periods.²⁴

The first criterion means that legal provisions limiting freedom of expressions must be clear and foreseeable, i.e., formulated with sufficient precision to enable individuals to foresee how the law will be applied and to regulate their conduct accordingly.²⁵ The international treaties provide an exhaustive list of aims for which protection may justify State interference with freedom of expression. According to the ICCPR's Article 19(3), these aims are the following:

- “(a) For respect of the rights or reputations of others;*
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.”*

In line with the test, each limitation to freedom of expression must be proportionate,

²¹ Organization for Security and Cooperation in Europe (OSCE). (2014, May 6). Joint Declaration on Universality and the Right to Freedom of Expression. <http://www.osce.org/fom/118298>

²² ICCPR in Article 19 of Part 3 says,

“The exercise of the rights provided for in Paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”

²³ ECHR in Article 10 Part 2 states,

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

²⁴ The Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression on Freedom of Expression and Elections in the Digital Age. Adopted on 30 April 2020. <https://www.osce.org/representative-on-freedom-of-media/451150>

²⁵ ECtHR, *The Sunday Times v. the United Kingdom* (no. 1) (Application No. 6538/74, Judgment of 26 April 1979); *Shvydka v. Ukraine* (Application No. 17888/12, Judgment of 30 October 2014). See also the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information on Freedom of Expression and Countering Violent Extremism. Adopted on 3 May 2016. <https://www.osce.org/fom/237966>

adequate, and strictly necessary to protect such aim.²⁶ Specifically, governments must ensure that they have applied the least restrictive strategy.

From an international legal perspective, some restrictions can hardly be justifiable if they limit statements concerning a legitimate public concern or political issues.²⁷ Because journalists have a mission and duty to inform society about such issues, their expressions receive stronger protection in international legal standards. The European Court of Human Rights (ECtHR) rules that although the press

*“must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”*²⁸

The ECtHR also stated that that it is “incumbent on the press to convey information and ideas on political issues, even divisive ones.”²⁹ That is because freedom of expression

*“is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”*³⁰

The criteria of the Constitution of the Republic of Belarus to assess the limits to freedom of expression are mostly similar to those ones of the three-tier test. Its Article 23 permits restriction of personal rights and freedoms

“only in the instances specified by law, in the interests of national security, public order, protection of the morals and health of the population as well as rights and freedoms of other persons.”

²⁶ See, for instance, the landmark decisions of the ECtHR, *Lingens v. Austria* (Application No. 9815/82, Judgment of 8 July 1986), and *Handyside v. The United Kingdom* (Application No. 543/72, Judgment of 7 December 1976).

²⁷ See, for instance, the ECtHR judgments on the cases of *Grinberg v. Russia* (Application No. 23472/03, Judgment of 21 July 2005); *Krasulya v. Russia* (Application No. 12365/03, Judgment of 22 February 2007); *Fedchenko v. Russia* (No.1 and 2) (Applications Nos. 33333/04, 48195/06, Judgments of 11 February 2010); *Ivpress and Others v. Russia* (Applications Nos. 33501/04, 38608/04, 35258/05 and 35618/05, Judgment of 22 January 2013).

²⁸ ECtHR, *Thoma v. Luxembourg*, 2001 (Application No. 38432/97, Judgment of 29 March 2001).

²⁹ ECtHR, *Özgür Gündem v. Turkey* (Application No. 23144/93, Judgment of 16 March 2000); *Şener v. Turkey* (Application No. 26680/95, Judgment of 18 July 2000); see also General Comment No. 34 to the ICCPR.

³⁰ *Handyside v. The United Kingdom* (Application No. 543/72, Judgment of 7 December 1976).

Article 34 allows restricting “the use of information” only

“by the legislation with the purpose to safeguard honour, dignity, personal and family life of the citizens and the full exercise of their rights.”

Article 7 of the Mass Media Statute of the Republic of Belarus specifically prohibits undue limitations to the freedom of mass information. It explicitly bans censorship, defining it as

“requirements from officials, state bodies, political parties, other public associations, or other legal persons to a legal person who is entrusted with functions of the editorial board of a mass medium, information agency, correspondent post, editor-in-chief (editor), journalist, founder (founders) of a mass medium to agree in advance reports and/or materials with the exception of cases in agreement with the author or interviewee, dissemination of official reports in accordance with Articles 18 and 26 of the present Law”

Among other excessive restrictions, Article 7 also forbids the following actions:

- interference in the sphere of professional independence of mass media;
- suspension or termination of mass media activities in violation of the requirements of this Law, other legal regulations of the Republic of Belarus;
- forcing journalists to disseminate or to refuse to disseminate information;
- violating the rights of journalists guaranteed in the Mass Media Statute or other legal regulations of the Republic of Belarus;
- another obstruction of legal activities of the founder (founders) of mass media, editorial board of the mass media, distributor of mass media products in any form.

Standards regulating accreditation of journalists

International standards acknowledge the importance of accreditation of journalists for exercising freedom of expression and freedom of information. These standards view accreditation of journalists either as a journalistic right or a scheme, system, or pass, rather than a permission.

³¹ While international standards provide that accreditation should not be required, it is necessary to provide accreditation if journalists need to obtain additional privileges to perform their public

³¹ Special Report of the OSCE Representative on Freedom of the Media “Accreditation of Journalists in the OSCE area: Observations and Recommendations.” Published on 25 October 2006. <http://www.osce.org/fom/22065>

duties,³² in line with the OSCE commitments. According to an international legal approach, “when accreditation systems are in place, accreditation should normally be granted.”³³

With regards to foreign journalists, accreditation should provide specific guarantees and benefits that allow them to freely and safely stay, travel, and work in a host country, operate in situations of conflict and tension, and access information as well as “specific venues with limited space or zones closed for safety reasons,” as follows from the 2016 Report. In other words, “accreditation should be used to ensure additional privileges be given to those media actors officially recognized by an accrediting public agency,”³⁴ as the OSCE Representative on Freedom of the Media clarified.

Such privileges for foreign journalists should concern the timely issue of visas,³⁵ including multiple-entry long-term visas “for the purpose of regular reporting.”³⁶ They should also ensure that official press conferences and other similar official press events are open to foreign journalists.³⁷ States can provide additional benefits to perform their international commitments. Nonetheless, privileges for accredited journalists are suggested to be explicitly provided in such a framework.³⁸ The 2016 Report offers examples of relevant existing commitments of the OSCE participating States that concern access to information and the work of foreign correspondents.³⁹ It is recommended that States bear them in mind when drafting or revising their frameworks for accreditation of foreign journalists.

The journalistic profession is intrinsically different from other working activities that require permission to perform them in a foreign country. Generally speaking, freedom of expression implies that anyone can report from any country, while traveling, and this has become easy to do in the digital era. However, because seeking and disseminating information is a

³² The 2016 report “Accreditation of Foreign Journalists in the OSCE region.”

³³ Recommendation of the Council of Europe’s Committee of Ministers No. R (96) 4 on the protection of journalists in situations of conflict and tension. <https://rm.coe.int/09000016804ff5a1>

³⁴ Communique on the accreditation of foreign journalists for implementing the right to freedom of information.

³⁵ Special Report of the OSCE Representative on Freedom of the Media “Accreditation of Journalists in the OSCE area: Observations and Recommendations.”

³⁶ Concluding Document of the Vienna Meeting.

³⁷ Ibid.

³⁸ The 2016 report “Accreditation of Foreign Journalists in the OSCE region.”

³⁹ These commitments include:

- “Promptly reconsidering refusals in accreditation and visas (Concluding Document of the Madrid Meeting);
- Facilitating travel by foreign journalists within their territories, with the exception of areas closed for security reasons (the Helsinki Final Act; Concluding Document of the Madrid Meeting);
- Creating conditions for communications with sources of information including public officials (the Helsinki Final Act; Concluding Document of the Madrid Meeting; Concluding Document of the Vienna Meeting);
- Providing information, on request, on matters of practical concern, such as import regulations, taxation and accommodation (Concluding Document of the Vienna Meeting);
- Ensuring the right to import the technical equipment (photographic, cinematographic, tape recorder, radio and television) if it being taken out again (Helsinki Final Act);
- Respecting professional confidentiality (Concluding Document of the Vienna Meeting)”.

journalistic duty, rather than a personal intention or desire, journalists should have certain additional rights and privileges as compared with ordinary digital technology users, according to international law. Accreditation should serve as a mechanism guaranteeing that these privileges are provided if journalists need them to perform their duties. Therefore, “freelance journalists should have the same rights to be granted accreditation.”⁴⁰ In the General Comment No. 34 paragraph 44, the UN’s Human Rights Committee noted on the ICCPR’s Article 19 that:

“Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere [...]. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.”⁴¹

International human rights organizations raised repeated concerns about abuses by misinterpreting accreditation as a permission. As the 2006 Report provides, “accreditation should not be used as a general work permit for journalism, only as facilitator of the work of journalists.”⁴² It is inadmissible to use accreditation as a precondition to obtain a visa or to enter a country or work in it.⁴³ According to General Comment No. 34 paragraph 45, it is incompatible with Article 19 of the ICCPR to restrict the freedom of journalists and others who seek to exercise their freedom of expression, in particular “to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists... within the State party.”⁴⁴

As follows from paragraph 44 of General Comment No. 34, any restriction on accreditation must comply with the three-tier test. Therefore, an accreditation framework should be clear, foreseeable, transparent, and available to the public to be further applied without discrimination or arbitrary exceptions.⁴⁵ Any excessive requirement to obtain accreditation should be abolished. Accreditation rules should be unambiguous and fair as to the grounds for denials and

⁴⁰ The 2016 report “Accreditation of Foreign Journalists in the OSCE region.”

⁴¹ General Comment No. 34 to the ICCPR.

⁴² Special Report of the OSCE Representative on Freedom of the Media “Accreditation of Journalists in the OSCE area: Observations and Recommendations.”

⁴³ Communique on the accreditation of foreign journalists for implementing the right to freedom of information.

⁴⁴ General Comment No. 34 to the ICCPR.

⁴⁵ Special Report of the OSCE Representative on Freedom of the Media “Accreditation of Journalists in the OSCE area: Observations and Recommendations.”

withdrawals.⁴⁶ Procedures should be overseen by an independent body to exclude abuses by accreditation.

International law views denials or withdrawals in accreditation as extreme measures. Because governments must demonstrate the legal basis for any restrictions imposed on freedom of expression,⁴⁷ the accrediting body should be obliged to explain their reasons for accreditation refusals or withdrawals.⁴⁸ Accordingly, the accreditation framework needs to provide the right to challenge refusals or withdrawals and establish relevant procedures in a clear and transparent manner.⁴⁹

After examining a complaint of Marina Koktish, a Belarusian journalist of the independent newspaper *Narodnaya Volya*, the Human Rights Committee ruled in 2014 that the refusal to grant her accreditation to the House of Representatives of Belarus was a violation of her right to freedom of expression and “amounted to denial of access to information,” although the newspaper could submit a request for accreditation of another journalist from that newspaper.⁵⁰ The Committee clarified that her refusal was not justified. It was only based on that fact that the journalist had not been granted security clearance giving her access to the premises of the National Assembly. It also criticized the grounds for denial of accreditation for being insufficiently precise and lacking the possibility for recourse. It stated that

“whenever a right recognized by the Covenant is affected by the action of a State agent, there must be a procedure established by the State allowing the person whose right has been affected to claim before a competent body that there has been a violation of his/her rights.”⁵¹

The Human Rights Committee also noted that Koktish’s denial of accreditation did not pursue any of the legitimate aims provided in the ICCPR’s Article 19. Finally, it paid attention to the fact that the State party has an obligation “to take steps to prevent similar violations in the future.”⁵²

It is emphasized in the international standards that accreditation cannot be used as a tool to control journalistic publications or punish critical journalists. As the Human Rights Committee noted,

⁴⁶ Communique on the accreditation of foreign journalists for implementing the right to freedom of information.

⁴⁷ General Comment No. 34 to the ICCPR. Para. 27.

⁴⁸ The 2016 report “Accreditation of Foreign Journalists in the OSCE region.”

⁴⁹ Special Report of the OSCE Representative on Freedom of the Media “Accreditation of Journalists in the OSCE area: Observations and Recommendations.”

⁵⁰ Marina Koktish v. Belarus, Communication No. 1985/2010, U.N. Doc. CCPR/C/111/D/1985/2010 (2014).

<http://hrlibrary.umn.edu/undocs/1985-2010.html>

⁵¹ Ibid.

⁵² Ibid.

“The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”⁵³

As Recommendation No. R (96) 4 of the Council of Europe Committee of Ministers “On the Protection of Journalists in Situations of Conflict and Tension” states,

“Member states should refrain from taking any restrictive measures against journalists such as withdrawal of accreditation or expulsion on account of the exercise of their professional activities or the content of reports and information carried by their media.”

Foreign journalists should not be required to provide their publications or detailed descriptions of publications to receive or renew accreditation.⁵⁴ Such requirements would represent indirect censorship that is incompatible with the international legal vision of freedom of expression.

Refusals or withdrawals as a “counterpropaganda measure” or a “symmetrical response” to the limitations imposed by another country towards journalists from a host country are incompatible with international standards.⁵⁵ Any lists of “unwelcome” journalists are extremely undesirable.⁵⁶

⁵³ General Comment No. 34 to the ICCPR. Para. 42.

⁵⁴ The 2016 report “Accreditation of Foreign Journalists in the OSCE region.”

⁵⁵ Ibid.

⁵⁶ Ibid.

Part II. Review of the Resolution in light of applicable international standards

Scope and definitions

It is generally in line with the international standards that the Resolution guarantees to provide accredited foreign journalists with the rights and privileges provided for national journalists. However, the Resolution misuses accreditation as a work permit or “licensing” scheme,⁵⁷ while international standards view accreditation as a pass or journalistic right. Although the previous 2008 Resolution was criticized exactly for this approach in the 2016 OSCE Report, it has not been revised. According to the current 2020 Resolution and Article 35 Clause 4 of the Mass Media Statute, undertaking professional activities on the territory of Belarus without accreditation is not allowed. As shown below, the Resolution retains unnecessary burdens for foreign journalists to enter the country, instead of simplifying their entry and visa receipt, as recommended in the 2016 Report and international standards.

The Resolution develops the provision in Article 1 Clause 1 of the Mass Media Statute that ambiguously defines accreditation as the “confirmation of a journalistic right to cover events” organized by various entities “on the territory of Belarus and outside it”. However, a journalistic right to disseminate information is protected under freedom of expression and information, and exercising it should require no “confirmation”.

These provisions of the Mass Media Statute (when it was still a draft) were criticized in a legal review commissioned by the OSCE Representative on Media Freedom in 2008. It said in particular: “The Draft Law also completely changes the legal nature of accreditation of journalists with various authorities and organizations. The focus is diverted from the right to accreditation to the right to accredit. The Draft Law relegates the fundamental issues of accreditation to the discretion of the accrediting authorities themselves, which emasculates the meaning of accreditation, consisting in unhampered access to information on the activities of state authorities and public organizations.”⁵⁸

It is unclear to what extent the Resolution applies to freelancers and journalists from the countries that have no registration requirements for mass media. According to Article 1, the Resolution applies only to journalists who work for foreign mass media, which, as Article 5 implies, “as a rule” should be viewed as mass media registered in a foreign country. However, such a procedure as registration for print is mostly incompatible with international law,⁵⁹ and,

⁵⁷ The term of the “Article 19,” an international human rights NGO.

⁵⁸ See <https://www.osce.org/files/f/documents/8/b/32599.pdf>

⁵⁹ Special Report: Registration of Print Media in the OSCE area - Observations and recommendations, 29 March 2007. <https://www.osce.org/fom/24436>

moreover, many OSCE participating States have never practiced mass media registration or have abolished it. Therefore, it is recommended to provide legal guarantees for foreign journalists working in such States as well as for freelance journalists to get accreditation in the Republic of Belarus.

Although the Mass Media Statute's vision of accreditation (Article 1 Clause 1 and Article 35 Clause 1) implies that accreditation rules would enshrine rights and privileges for accredited journalists, the Resolution mostly fails to do so. Such was the case with the 2008 Resolution; the new rules mainly set up only duties and limitations. It is strongly recommended to revise the new Resolution to ensure that foreign journalists would get additional assistance to work in Belarus, including on visa receipts, safe work and travel in the country as well as on access to information and its translations.

It is particularly worrying that the Resolution's accreditation of foreign journalists fully depends on the government, namely, the Council of Ministers. This State body solely makes decisions on issuing accreditation (Article 6-7), its renewal (Article 8), refusals (Article 9), as well as withdrawals (Article 10). Several provisions of these articles imply direct State interference with media freedom and insufficiently comply with the three-tier test, as shown below.

Accreditation procedures

Accreditation types

Classification of accreditation schemes into temporary and permanent creates unnecessary bureaucracy and complicates accreditation receipt, making working conditions in the country for foreign journalists nearly unstable.

“Temporary” accreditation permits journalists to work in Belarus for a very short period of time of no more than 14 days (Article 6). The Resolution fails to set up rules for accreditation renewals. Therefore, if journalists need more time, even a day, to complete their professional task, they must apply for “permanent” accreditation.

“Permanent” accreditation is required for those journalists who “*seek, edit, and create (prepare)*” information and publications on the territory of Belarus for foreign mass media “*on a regular basis.*” Because the Resolution fails to define what “a regular basis” means, it is unclear for which type of accreditation journalists need to apply if they visit Belarus to report from time to time. This rule may be used arbitrarily to oblige foreign journalists with “temporary accreditation” to additionally apply for “permanent” type or to punish them, if they have failed to obtain it.

Still, neither “permanent” accreditation, nor its renewal, provide permission to undertake professional journalistic activities on a regular basis. Permanent accreditation is provided only for a term up to a maximum of one year (Article 7). It may be extended for a term of one to three years (Article 8). The process of renewal is insufficiently clear, and it does not differ from getting accreditation. Article 8 explicitly states that the accrediting body may request the same documents as those required to get permanent accreditation.

It is positive that the new Resolution provides shorter terms for considering the applications for accreditation compared to the 2008 Resolution. According to the Resolution, it takes up to five days for an accrediting body to consider an application for temporary accreditation and 30 days for applications for permanent accreditation. Still, it could be recommended to make accreditation more expeditious in urgent cases. Sometimes foreign journalists need to visit another country on short notice to ensure the public right to information concerning issues of public interest, such as natural disasters or epidemics. As the European Court of Human Rights repeatedly emphasized, “news is a perishable commodity and that to delay its publication, even for a short period, may well deprive it of all its value and interest.”⁶⁰ Therefore, accreditation rules should ensure that foreign journalists can enter the country promptly to perform their professional duties.

Requirements for foreign journalists

It is a matter of particular concern that the 2020 Resolution established new requirements for foreign journalists that may be used as a tool to control journalistic expressions, while failing to abolish the old ones. Among other data, Article 7 obliges the applicants applying for permanent accreditation to provide the accrediting State body with their professional CV, “examples of publications,” including on issues concerning Belarus, as well as an application from their editorial offices with “brief data” on the activities of their outlets. Such requirements represent excessive interference with media freedom and may be used to refuse journalists the accreditation for their critical opinions towards public authorities.

The Resolution has unclear provisions that enable setting up additional requirements for foreign journalists to get temporary accreditation. Article 6 states that, “when necessary,” foreign journalists must additionally provide documents confirming their “intention” to undertake professional activity on the territory of Belarus. It is strongly recommended to abolish this

⁶⁰ ECtHR, *Observer and Guardian v. the United Kingdom* (Application No. 13585/88, Judgment of 26 November 1991); and *Sunday Times v. the United Kingdom* (no. 2), (Application No. 13166/87, Judgment of 26 November 1991); *Europapress Holding d.o.o. v. Croatia* (Application No. 25333/06, Judgment of 22 October 2009).

provision because it may be used arbitrarily, especially given that it remains unclear which documents an accrediting body may require.

The other concern is a new ambiguous provision that may be used to require foreign journalists to undergo additional accreditation procedures. Article 2 states that public officials, political parties, public associations, and other legal entities may require foreign journalists to get accreditation from these entities, too. It also enables the adoption of additional legislation to regulate accreditation for foreign journalists who visit Belarus to cover sports and cultural events. These rules may be misused to refuse accreditation or to establish requirements arbitrarily and selectively, in violation of international standards.

To avoid abuses of accreditation, the abovementioned requirements should be abolished. It is also suggested to provide explicit guarantees that accreditation for foreign journalists will be granted. It is recommended not to bureaucratize the process of accreditation with requirements regarding the receipt or loss of an accreditation card.

Refusals and withdrawals

The ban on unjustified refusal of accreditation provided in Article 35 Clause 2 of the Mass Media Statute could substantially benefit media freedom. However, this provision remains mostly declarative as the Resolution has no guarantees against abuses by refusals, such as is recommended. Clear, transparent, and independent procedures to appeal refusals and withdrawals should also be established. As the UN Human Rights Committee stated in its Communication on “Marina Koptish v. Belarus,”

“States parties have undertaken to ensure that any person whose rights are violated shall have an effective remedy, and that any person claiming such a remedy shall have his/her right thereto determined by competent authorities.”⁶¹

The Resolution’s provisions on denials and withdrawals cause particular concerns in light of several cases related to the cancellation of accreditation of foreign journalists in Belarus. In August 2020, the Committee to Protect Journalists and the Belarusian Association of Journalists, NGOs monitoring the violations of journalistic rights, expressed concerns over the withdrawals of accreditation from at least 17 correspondents covering protests following presidential elections in Belarus for foreign media outlets.⁶² In May 2020, the International Federation of Journalists (IFJ)

⁶¹ Marina Koptish v. Belarus, Communication No. 1985/2010, U.N. Doc. CCPR/C/111/D/1985/2010 (2014).

⁶² Belarus strips journalists working for foreign outlets of accreditation. Committee to Protect Journalists, 29 August 2020. <https://cpj.org/2020/08/belarus-strips-journalists-working-for-foreign-outlets-of-accreditation/>

and the Russian Union of Journalists (RUJ) condemned the alleged facts of cancelling press accreditations of two Russian journalists in Belarus, which they linked with critical reports on the coronavirus outbreak in the country.⁶³

It is worrying that the Resolution's provisions on the grounds for refusals (Article 9) and withdrawals (Article 10) may be misused as forms of punishment or as tools to control journalistic expressions. The provisions of articles 9 and 10 are overly broad and may be interpreted extensively. According to Article 9, journalists may be refused accreditation if the documents or data provided are inconsistent with the "requirements of legislation" of the Republic of Belarus. It remains unclear how this provision should be understood and applied in practice, especially given that journalists are required to provide their CVs, publications, and an undetermined set of other documents when applying for accreditation, as stated above. It is inadmissible so that the accrediting State body would rule whether journalistic content complies with national law. Another extremely worrying provision of this article allows withdrawals if journalistic publications have violated the law of the Republic of Belarus or if they contain "information representing a threat to national security, territorial integrity, or public order of the Republic of Belarus, or health and morality of its population" are. Such explicit authorizations of the Ministry of Foreign Affairs to evaluate journalistic expressions go beyond the requirements of the three-tier test and may represent "censorship", according to its definition in Article 7 of the Mass Media Statue of the Republic of Belarus. This article bans requirements from state bodies to "*agree in advance reports and/or materials,*" while the Resolution's provisions on withdrawals may be interpreted as allowing such requirements. For the same reason, the "lack of publications on Belarusian issues" over the previous accreditation period should not be legitimate grounds for refusal in renewing the term for permanent accreditation.

Another concern should be raised regarding refusals and withdrawals in receiving accreditation on the basis that a journalist has previously violated legislation of the Republic of Belarus.

Apart from serving as a tool of control over the publications of foreign journalists, this provision contradicts one of the main legal principles that bans punishing twice for the same act or omission. Additionally, this provision may be applied to refuse or withdraw accreditation for committing minor offenses in Belarus, for instance, traffic violations or similar offences. The provision allowing refusals based on the grounds that a journalist has already had their accreditation in Belarus withdrawn is particularly worrisome. It should be abolished because it

⁶³ Belarus: Government revokes accreditation of two Russian journalists. International Federation of Journalists, 11 May 2020. <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/belarus-government-revokes-accreditation-of-two-russian-journalists.html>

enables the misuse of withdrawal to permanently ban foreign journalists from entering Belarus or undertaking professional activities there. Because the 2020 Resolution fails to set up procedures to appeal unlawful withdrawals, this provision has the potential to cause serious violations of freedom of expression.

It is also very worrying that the new Resolution still keeps a provision allowing withdrawals as a countermeasure against journalists from those countries applying restrictions on Belarusian journalists (Article 11), despite the criticism of such a “symmetrical response” measure in the 2016 Report. It is recommended to be abolished because such a misinterpretation of a withdrawal as a sanction against foreign journalists cannot be compatible with international standards.

In the end, it should be noted the OSCE Representative on Freedom of the Media has on several occasions publicly condemned the practice of imposing liability on Belarusian journalists who work for foreign media for exercising their right to freedom of expression by seeking, receiving and disseminating information without accreditation that they had not been allowed to obtain. In particular, during his visit to Minsk in 2019, the Representative reiterated his call on the authorities to change the accreditation requirements for journalists, and introduce more effective ways to access information. “This is a long-standing issue which my Office has previously raised with the authorities on several occasions. Accreditation requirements should be reconsidered, so as to improve the working conditions of media actors rather than functioning as a work permit, preventing journalists from doing their work,” he said.⁶⁴

⁶⁴ OSCE Media Freedom Representative concludes official visit to Belarus, encourages reform of media freedom environment, see <https://www.osce.org/representative-on-freedom-of-media/414905>