

To: Mr. David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
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Mr. Miklós HARASZTI
Special Rapporteur on the situation of human rights in Belarus
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Submitted by: Legal Transformation Center¹

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Minsk, Belarus

Allegation letter

(information regarding Mr **Ales Zaleuski**, a Belarusian journalist received an official prosecutor's warning for work with a foreign mass medium without accreditation)

According to BAJ² the warning (under Article 22.9 of the Code of Administrative Violations) concerns a video report on Belsat about the expulsion of the human rights defender Mrs **Elena Tonkacheva** from Belarus³. As stated by the prosecutor, it was **Ales Zaleuski** who interviewed **Elena Tonkacheva** and the Russian Human Rights Council representative Mr **Sergei Krivenko** on November 5, and later the report was shown in program *Objective* on Belsat. The prosecutor remind that it is not allowed to work for a foreign mass medium without accreditation⁴.

Ales Zaleuski, on-staff correspondent of Polska TVP, which includes Belsat, has been fined under Art. 22.9 twice this year for total sum of near \$950. The first fine of 4,5 million BYR (~400\$) was imposed on **Ales** by Karelichy district court in May 2014, and upheld by higher instance court. The second fine of 6 million BYR (~560\$) was issued by Slonim district court in December 2014. The TV channel Belsat has many times attempted to get official accreditation in Belarus, but the Foreign Affairs Ministry declines every year.

Legal reference on Article 22.9 of the Code of Administrative Violations

Article 22.9 of the Code of Administrative Violations: "Violating legislation on mass media"
Part 2: "Violating the stipulated order of sending a mandatory free copy of periodic editions, of distributing erotic outlets, of publishing a refutation by a mass medium, as well as illegal production and distribution of mass media products" envisages a fine from 20 to 50 basic amounts.

¹ <http://lawtrend.org> (RUS) Legal Transformation Center (Lawtrend) is a Belarusian human rights NGO

² <http://bai.by/en/aboutbai> (ENG) The Belarusian Association of Journalists (BAJ) is a non-governmental, non-profit and non-partisan association of media workers, promoting freedom of expression and independent journalism ideas in Belarus.

³ Information on the expulsion of Elena Tonkacheva from Belarus <http://www.lawtrend.org/expulsion/spravochnaya-informatsiya-o-vysylke-eleny-tonkachevoj-iz-respubliki-belarus-ot-17-11-2014> (RUS)

⁴ <http://bai.by/en/node/27204> (ENG)

Lawyers of BAJ have many times underlined that it is incorrect to apply art. 22.9 part 2 to individual journalists. "Law enforcement agencies and courts equate journalists to editorial offices, although journalists do not produce "mass media products". According to the Law on Mass Media, journalists prepare materials and reports for mass media, which are basis for editorial offices to make the products. Thus, only an editorial office can be held accountable according to the article, but not a journalist," says Mr Andrei Bastunets, deputy chair of BAJ. Lawyers of BAJ also conclude that it is absurd to demand that publishers of low-circulation press should conclude agreements with distributors because low-circulation press (less than 300 copies) does not need registration as a mass medium, so it does not exist as a legal entity.

Information on satellite TV-Channel Belsat

Belsat has worked since 2007, as a structural unit of Polish Television. According to latest opinion poll, Belsat is watched by nearly 11% of adult audience in Belarus⁵. More than 82% of the respondents agree that the channel offers views different from those of mainstream state-run TV channels; 74% assessed the information of the channel as impartial (the survey conducted by Zerkalo-Info in May 2012).

Earlier facts of pressure on journalists and distributors under Art. 22.9 in 2014

According to BAJ monitoring in 2014 journalists systematically were held liable or got prosecutor's office warnings under Art. 22.9: **Yury Dziashuk; Yauhen Skrabets; Yuliya Sivets; Mikalay Bianco; Sviatlana Stsiapanava; Ales Dzianisaw; Andrei Mialeshka; Maxim Khliabets; Aliksandr Burakow; Maryna Malchanava; Vital Siamashka**. Art. 22.9 was also applied against distributors several times in 2014: **Uladzimir Shulzhytski; Heorhi Stankevich; Ihar Barysaw;**⁶ **Tatsiana Siachko; Volha Krapotsina**⁷.

We consider it unacceptable when the state imposes arbitrary restrictions on the work of independent media in Belarus. These actions by the state contradict at least to the obligations according to OSCE treaties and are not consistent with the obligations under Article 19 of the International Covenant on Civil and Political Rights.

We urge Mr David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Mr Miklós Haraszti, Special Rapporteur on the situation of human rights in Belarus, to take all possible actions within their mandates including but not limited to:

1. Drawing attention to the illegal prosecution of journalists for work with a foreign mass medium without accreditation in Belarus;
2. Continuing to take effort to receive the invitation from the government to make a country visit to Belarus for a detailed assessment of exercising the right to freedom of opinion and expression.

Elena Tonkacheva
Chairperson of Legal Transformation Center

⁵ <http://www.belsat.eu/be/about/nashyia-ghliedachy/> (BEL)

⁶ <http://bai.by/en/node/26455> (ENG)

⁷ <http://bai.by/be/node/27059> (BEL)