



European Commission

Annual Rule of Law Report 2021- Stakeholder Consultation

Contribution on behalf of the International Bar Association's Human Rights Institute

About

- **Organisation Name** - International Bar Association's Human Rights Institute
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Established in 1947, the International Bar Association (IBA) is the world's leading international organisation of legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of over 55,000 individual lawyers and 195 bar associations and law societies spanning all continents. The IBA established its Human Rights Institute in 1995 under the honorary presidency of Nelson Mandela, to promote and protect human rights and the independence of the legal profession under a just rule of law. The International Bar Association's Human Rights Institute (IBAHRI)¹, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI also serves as Secretariat to the High Level Panel of Legal Experts on Media Freedom, an independent body convened in July 2019, at the request of the UK and Canada to advise governments on ways to prevent and reverse abuses of media freedom, as well as ensuring international obligations relating to the freedom of expression are upheld. The

¹ In 2020, the High Level Panel [released a series of four advisory reports](#) that focus on improving international mechanisms to enforce international human rights norms. A further six reports to bring legislation that are most frequently used to target journalists and those undertaking journalistic activity and to bring this in line with international human rights standards will be released throughout 2021.

The UK and Canadian governments are the Co-Chairs of the Media Freedom Coalition, a partnership of 45 countries working together to advocate for media freedom and the safety of journalists and hold to account those who harm journalists for doing their jobs. The High Level Panel reports will be for the attention of states, including members of the Media Freedom Coalition, to implement the recommendations and initiatives proposed.

High Level Panel is proposing initiatives that can be taken by governments to ensure existing international obligations relating to media freedom are upheld, disseminate elements of model legislation to promote and protect a vibrant free press and report on means of raising the cost for those who target journalists for their work.

URL: <https://www.ibanet.org/IBAHRI.aspx>

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BELARUS

Key developments including relating to Media Freedom and Access to Justice

- 1) On 25 March 2020, Siarhei Satsuk, investigative journalist, recognised for his reporting on corruption in the Belarus health care system and chief editor of the *Yezhednevik* news website, was arrested on bribery charges. Two days before his arrest, Mr Satsuk published a story in relation to the Belarusian authorities' information cover-up related to the outbreak of coronavirus in the country.² On 31 March 2020, Belarusian authorities opened a criminal investigation under article 430 of the Belarusian criminal code for accepting bribes. If convicted, Mr Satsuk could face up to ten years in prison³ for simply doing his job.

- 2) Between 6-13 May 2020, Belarusian authorities have arrested over 120 peaceful protestors, opposition bloggers, journalists, and other government critics in over 17 cities⁴, in a crackdown on assembly and expression ahead of upcoming elections. Many protestors are gathering against the current President Alexander Lukashenko's attempt to run for his sixth term in office, however his government's response to the pandemic has seen his approval ratings drop to the all-time low⁵. President Lukashenka has indicated that he is prepared to act against protestors who threaten Belarusian sovereignty and independence, which must be "defended by the army, the KGB, and all the people".⁶

Five journalists who were arrested during this time; On May 11 and 12, four of the journalists were charged with "participating in an unauthorized demonstration" over their coverage of blogger and opposition presidential candidate Siarhei Tsikhanouski, and sentenced to 10 days of administrative detention⁷ each. According to Barys Haretski, head of the Belarusian Association of Journalists, the arrests of journalists began only after Tsikhanouski announced on 6 May 2020 that he would run for president in the August election. The IBAHRI joined Human Rights Watch in condemning the actions of Belarusian authorities in calling for the respect for a free, independent and pluralistic media and tolerance for the crucial reporting of journalists, without persecution and harassment, during the current pandemic.

On 9 June 2020, Belarusian authorities confirmed that vlogger Sergei Tikhanovskiy and seven other activists face up to three years in prison for actions "grossly disrupting public order."⁸ Authorities arrested Tihanovskiy while he was out collecting signatures for the presidential bid of his wife, who is running in his place after he was disqualified from running, having previously participated in an "unauthorized mass event."⁹ Just one year after the launch of his vlog, Tikhanovskiy has galvanized

² EJ, 'Сергей Сатук: Кто сеет панику вокруг коронавируса, президент или сайты и каналы?' 23 March 2020 <https://ej.by/blog/sergey-satsuk/2020/03/23/kto-seet-paniku-po-koronavirusu-prezident-ili-sayty-i-kanaly.html?fbclid=IwAR3HJUBoJIWRfTg-ccM-1IZ2IRRDp2eXMvKJPE6woZnFwjna30rYkkL9-rE>

³ ARTICLE 19, 'Belarus: Release investigative journalist Siarhei Satsuk reporting about the coronavirus crisis,' 1 April 2020 <https://www.article19.org/resources/belarus-release-investigative-journalist-siarhei-satsuk-reporting-about-the-Coronavirus-crisis/>

⁴ Human Rights Watch, 'Belarus: Activists, Journalists Jailed as Election Looms', 22 May 2020 www.hrw.org/news/2020/05/22/belarus-activists-journalists-jailed-election-looms

⁵ New Eastern Europe, 'Belarus is the world's strangest state right now', 28 May 2020 <https://neweasterneurope.eu/2020/05/28/belarus-is-the-worlds-strangest-state-right-now/>

⁶ RadioFreeEurope, 'Lukashenka Warns No "Maidan" Following Mass Rallies Supporting Opposition', 1 June 2020 <https://www.rferl.org/a/lukashenka-warns-no-maidan-following-mass-rallies-supporting-opposition/30646529.html>

⁷ Committee to Protect Journalists, 'Belarus jails 5 journalists over coverage of opposition candidate', 15 May 2020 <https://cpj.org/2020/05/belarus-jails-5-journalists-over-coverage-of-oppos/>

⁸ Euractiv, 'Following arrests, free elections are "key" for EU-Belarus relations, Commission says', 9 June 2020 www.euractiv.com/section/europe-s-east/news/following-arrests-free-elections-are-key-for-eu-belarus-relations-commission-says/

⁹ Euractiv, n.8

Belarusians for the August election in a country where going to the polls is generally regarded as a mere formality, as President Alexander Lukashenko has been in power since 1994. Tikhanovsky's video channel highlights police and court corruption throughout the nation and has amassed a following of 230,000 followers, adding almost 60,000 followers in the last month alone.¹⁰ On 3 June 2020, Brussels, Washington, and London released a joint statement calling for free and fair elections in Belarus, specifically urging "that no politically motivated restrictive measures should prevent potential candidates from fulfilling the registration procedure."¹¹ In response, President Lushenko met with national security chiefs on 9 June to discuss Tikhanovsky's detention, and affirmed his position: "Let democracy be democracy, but there should be no lawlessness. And there will not be... The main task of state agencies of the national security system is to preserve stability in the country and to ensure law and order."¹² On 10 June, the EU called for Tikhanovsky's "immediate and unconditional release" due to the "arbitrary nature" of his arrest.¹³ The IBAHRI also supports Tikhanovsky's immediate release and urges the international community to keep mindful on activities by Belarusian authorities in the two months leading up to the presidential election, especially in regard to government sanctioned crackdowns on opposition and dissenters

- 3) On 13 August 2020, the IBAHRI issued a statement condemning the detention and use of force against peaceful protesters and journalists in the Republic of Belarus, following the announcement of the initial results of the presidential elections on 9 August 2020. According to the Central Election Commission of Belarus, the elections results indicate that incumbent President Alexander Lukashenko won with 80.23 per cent of votes. Several organisations, including the European Union and the Council of Europe, claimed that the elections were neither free nor fair, and one of the main opposition candidates, Svetlana Tikhanovskaya, stressed that she did not believe the results.

Following the announcement of the results, protesters took to the streets. The authorities used force against them with violent dispersal methods, including flash-bang grenades and beating with truncheons. Belarusian human rights organisation Viasna has reported that thousands of individuals have been detained during the protests and one protester has died during a violent clash between riot police and demonstrators. In the months leading up to the elections, more than 40 journalists were arrested. Further, according to the Belarusian Association of Journalists, at least 22 members of the media were arrested and many others were prevented from reporting on the day. At least 10 foreign journalists were denied government accreditation to cover the presidential election. Memory cards were also reportedly seized from a group of photographers, including one from the Associated Press, as they were documenting clashes between police and protesters. The exact number of detainees remains unknown as the internet disruption continues, starting on election day when internet access in Belarus was wholly or partly limited with internet users and the media reporting limited or no access to YouTube, Viber, Telegram, Facebook, Twitter, Instagram and V Kontakte. Access to key Belarusian independent news outlets has also been blocked.

The Organization for Security and Co-operation in Europe (OSCE) had not deployed an observation mission to Belarus ahead of the election due to a lack of invitation by the government. In a November 2019 report on parliamentary elections, the ODIHR Election Observation Mission gave recommendations to the Republic of Belarus on the conduct of state elections, calling for '[aligning] legislation regulating the freedoms of association, assembly and expression with international standards' and 'establishing clear and transparent procedures for counting'.

¹⁰ Euractiv, n.8

¹¹ Euractiv, n.8

¹² Euractiv, n.8

¹³ Euractiv, n.8

Ahead of the elections, the High Representative and Vice-President of the European Commission, Josep Borrell, called on the Belarusian authorities to ensure that political rights, including ‘fundamental freedoms of expression and peaceful assembly, in line with Belarus’ international commitments, are respected.’ On 10 August, Mr Borrell and Olivér Várhelyi, European Union Neighbourhood and Enlargement Commissioner, issued a statement condemning disproportionate and unacceptable state violence, and calling for the immediate release of the detained protesters.

On 21 August 2020, the IBAHRI issued a further statement calling for the immediate and unconditional release of all of the remaining individuals being detained in relation to the protests and urges the Belarusian authorities to provide accurate information on the number of protesters injured and killed. According to credible reports, thousands were arrested in Belarus during the first four days of protests, which saw police dispersing protesters with rubber bullets, water cannons, stun grenades and batons. At least two people have died during the protests, with one from a gunshot wound. We remain deeply troubled by the vast number of torture claims being made by released detainees who were rounded-up in Belarus during protests opposing the recent presidential election result and will continue to monitor the situation¹⁴.

- 4) As mass protests continued in Belarus following the announcement of results from recent presidential elections on 9 August 2020. Several organisations, including the European Union and the Council of Europe, claimed that the elections were neither free nor fair, many have condemned the ongoing unlawful use of force, arrests and harassment of citizens, recording outright violations of fundamental human rights, online and offline, with particular concern as to the rights to peaceful assembly, right to information and freedom of expression.

Across Belarus, major harassment of, and crackdown against, media outlets and journalists covering peaceful protests continued. Reporters without Borders (RSF) reported that on the eve of a major demonstration which took place on 30 August where protestors were calling for new elections, the Belarusian Foreign Ministry withdrew the press accreditations of 19 journalists working for foreign media outlets including Agence France-Presse, the Associated Press, Reuters, the BBC, the German public broadcaster ARD and Prague-based Radio Free Europe/Radio Liberty (RFE/RL)¹⁵. Hundreds of journalists and media workers, both from independent and international outlets, have reported efforts to intimidate and harass them by authorities by confiscating equipment and violence, as well as arbitrary arrests and initiation of criminal proceedings against others. Some have also reported ill-treatment in detention, suffering serious injuries¹⁶. Under Belarusian law, if charged and convicted with participating in an illegal rally, the journalists could face up to 15 days of administrative arrest¹⁷. Scores of individuals, including journalists remain in custody.

Approaching almost a month following the elections, the IBAHRI again appeals to the Republic of Belarus to end the unnecessary prevention of journalistic activities in the country and to promote, enable and respect the role of the independent media reporting on matters of public interest at this time. In addition, we called for all claims of violence and torture to be thoroughly and independently investigated. We also called on the Belarusian authorities to immediately end its interference and

¹⁴ IBAHRI, IBAHRI condemns widespread police brutality and detainee torture in Belarus, 21 August 2020, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=cea24706-3efc-437b-8c32-ba28bd5a4e38

¹⁵ RSF, ‘Belarus: Many journalists arrested, foreign media stripped of accreditation’, 1 September 2020, [/rsf.org/en/news/belarus-many-journalists-arrested-foreign-media-stripped-accreditation#:~:text=Reporters%20Without%20Borders%20\(RSF\)%20calls,%20journalists%20and%20gag%20the%20media.](https://rsf.org/en/news/belarus-many-journalists-arrested-foreign-media-stripped-accreditation#:~:text=Reporters%20Without%20Borders%20(RSF)%20calls,%20journalists%20and%20gag%20the%20media.)

¹⁶ Committee to Protect Journalists (CPJ), ‘Belarusian police continue beating and detaining journalists’, 13 August 2020, [/cpj.org/2020/08/belarusian-police-continue-beating-and-detaining-journalists/](https://cpj.org/2020/08/belarusian-police-continue-beating-and-detaining-journalists/)

¹⁷ CPJ, At least 10 journalists detained covering protest in Belarus, 6 remain in custody, 2 September 2020, [/cpj.org/2020/09/at-least-10-journalists-detained-covering-protest-in-belarus-6-remain-in-custody/](https://cpj.org/2020/09/at-least-10-journalists-detained-covering-protest-in-belarus-6-remain-in-custody/)

disruption to internet access in the country, which has led to the restriction of content online and increased censorship.

- 5) On 13 August 2020, the IBAHRI issued a statement condemning the detention of the media and use of force against protestors in Belarus, as well as disruptions to the internet over the election period and directly after. However, reports suggest that since 12 August, there have been repeated internet disruptions, in response to the larger protests and law enforcement engagement¹⁸. According to Human Rights Watch, one occurrence of disruption took place on 23 August, when more than 100,000 protesters gathered in Minsk. Mobile internet services were disrupted for over three hours as protesters moved toward the presidential palace and three days later, cellular internet was restricted in Minsk again for about an hour, coinciding with arrests at a protest in the city centre. Ahead of the disruptions, the privately-owned internet service provider A1 notified its users that there would be temporary bandwidth restrictions of the company's 3G networks due to 'requests by the authorities related to ensuring national security'¹⁹. The authorities have also blocked websites that covered the presidential election, nationwide protests, and police brutality²⁰. Dozens of sites had been blocked for access by journalists and media outlets and authorities appears to be blocking censorship circumvention services such as virtual private networks (VPNs), used by millions in Belarus to access the blocked websites²¹.

Digital rights organisation, Access Now, has recently issued a statement asserting that private, multinational companies played a direct role in enabling the internet disruptions and censorship in the country²². Reports suggest that deep packet inspection (DPI) technology, which enables both invasive privacy breaches and mass censorship, 'was produced by the Canadian company Sandvine, owned by infamous U.S. private equity firm Francisco Partners, and supplied to Belarus as part of a \$2.5 million contract with the Russian technology supplier Jet Infosystems'²³.

The IBAHRI was concerned to learn of the circumstances and human rights violations in the possible technology used in Belarus at a time when it is both in the public interest and safety for access to reliable, fact-checked information to be readily available. We join with AccessNow and other organisation to request an urgent investigation into process and due diligence, if any, undertaken for the technology tools provided by Sandvine for present use in Belarus.

It was reported that on 15 September 2020, Sandvine Inc., backed by private equity firm Francisco Partners, cancelled its deal with Belarus, saying the government used its products to violate human rights including 'to thwart the free flow of information during the Belarus election' and resulted in 'the automatic termination of our end user license agreement'²⁴. IBAHRI joined AccessNow to welcome the move to end the agreement with Belarus however supports the need for the company 'to address past violations and take clear steps to prevent them in the future. This involves more than ethics board window dressing — including meaningful transparency and due diligence measures. The time has come to hold companies accountable for selling these oppressive technologies to dictators in the first place'²⁵.

¹⁸ Human Rights Watch, 'Belarus: Internet Disruptions, Online Censorship', 28 August 2020, www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship

¹⁹ Human Rights Watch, n.18

²⁰ Human Rights Watch, n.18

²¹ Human Rights Watch, n.18

²² AccessNow, 'Francisco Partners-owned Sandvine profits from shutdowns and oppression in Belarus', 3 September 2020, www.accessnow.org/francisco-partners-owned-sandvine-profits-from-shutdowns-and-oppression-in-belarus/

²³ AccessNow, n.49

²⁴ Bloomberg, 'Francisco-Backed Sandvine Nixes Belarus Deal, Citing Abuses', 15 September 2020, www.bloomberg.com/news/articles/2020-09-15/sandvine-says-it-will-no-longer-sell-its-products-in-belarus

²⁵ AccessNow, 'Censorship tech company Sandvine's human rights "commitments" are too little too late', 16 September 2020, www.accessnow.org/sandvine-human-rights-commitments-too-little-too-late/

On 1 October 2020, 22 members of the #KeepItOn coalition sent an open letter²⁶ calling on Austrian-owned A1 Telekom Austria Group ‘to publicly outline how and why they implemented internet shutdowns and throttling in August and September 2020, report on their impacts, and challenge their legality in courts’. A1 Telekom Austria Group is the parent company of A1 Belarus — the telco implicated in shutting down the internet. The letter claims that the A1 Telekom Austria Group’s actions aided efforts by state actors to cover up egregious rights violations, such as excessive use of force by Belarusian law enforcement against protesters, and the use of arbitrary arrest and detentions targeting journalists, activists and protesters. Further, the letter lists a number of recommendations to uphold digital rights in the country including to Publicly denounce internet shutdowns and disruptions, and highlight their devastating impact; Preserve evidence and reveal any demands from the Belarusian government to disrupt internet access, and pressure to conceal those demands; Publicly disclose details such as when internet services were disrupted, their status throughout the shutdown, and when they came back online; Contest the legality of internet shutdown orders in court; and Consult civil society and rally peer companies to jointly push back against government censorship demands, issue regular transparency reports, and deter future shutdown orders.

On 4 November, the #KeepItOn coalition sent a follow up open letter²⁷ in which they made an additional call for transparency and public disclosure from A1 Belarus to support civil society’s fight against internet shutdowns, and to help hold authorities accountable for their actions. The letter referenced A1 Belarus’ reliance on state-owned, monopolized internet services, and the need to comply with local legal and regulatory requirements, claiming that noncompliance may have resulted in government-implemented larger scale internet shutdowns – the group are calling for commitment from the company to resist shutdown orders in the future. On each occasion, the IBAHRI joined the undersigned organisations in their request for the telecommunications company to respect human and digital rights in Belarus, to support the accountability and reparations process particularly specific rights of peaceful assembly, association, expression, due process and fair trial rights are all presently being severely restricted in the country.

- 6) On 18 September 2020, the United Nations Human Rights Council, during the 45th Session, adopted a resolution²⁸ on the situation of human rights in Belarus amidst protests and police crackdown following the contested re-election of autocrat Alexander Lukashenko, who has been in power since 1994.²⁹ In the resolution, adopted by a vote of 23 in favour, 2 against and 22 abstentions, the Council called upon the Belarusian authorities to enter into a dialogue with the political opposition, including the Coordination Council and civil society, in order to guarantee respect for human rights law, including civil and political rights. The Council further urged the Belarusian authorities to fulfil their obligations under international human rights law, in particular with regard to freedom of peaceful assembly and association, the prohibition of torture and other forms of ill-treatment, and freedom of opinion and expression, both online and offline, including its obligations related to freedom of the media and freedom of information³⁰. The much-anticipated Council resolution comes after weeks of nationwide mass protests in Belarus and the violent response of security forces

²⁶ AccessNow, ‘Shutdowns in Belarus: Austrian telco must denounce actions and commit to accountability’, 1 October 2020, www.accessnow.org/austrian-telco-must-denounce-internet-shutdowns-in-belarus/

²⁷ AccessNow, n.26

²⁸ OHCHR, ‘Human Rights Council adopts resolution on situation of human rights in Belarus’, 18 September 2020, www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26262&LangID=E

²⁹ UN Human Rights Council, 45th Session, ‘Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath’, 17 September 2020, <https://undocs.org/A/HRC/45/L.1>

³⁰ OHCHR, n.28

against the protestors. Many of these concerns had been echoed by the IBAHRI in statements prior to and following the contentious election³¹.

At a special session of the UN Human Rights Council in Geneva on 18 September 2020, the IBAHRI with the International Commission of Jurists delivered an oral statement³² which called on Belarus to comply with its international human rights obligations, including by ceasing ill-treatment of protestors, releasing those arbitrarily detained with immediate effect and ceasing abusive prosecutions as well as harassment of lawyers. We welcome the UN Human Rights Council's resolution on Belarus and strongly urges Belarussian authorities to follow the requests clearly set out, most urgently to respect and protect the Belarussian people's right to freedom of assembly and freedom of expression.

- 7) The situation of increased police violence against post-election protestors continues in Belarus.³³ In previous issues of the Bulletin, the IBAHRI have extensively reported on the situation in Belarus and we continue to closely watch the developments in the country, including violence towards and interference in the reporting of journalists and most recently urging the release of detained lawyers Ilya Salei and Maxim Znak³⁴.

International organizations had stepped up their efforts to stop Lukashenko regime's crackdown on peaceful protestors who have the right to free speech and freedom of assembly. In particular, on 17 September, member states of the Organization for Security and Cooperation in Europe (OSCE) invoked the Moscow Mechanism, establishing an independent expert mission to investigate alleged abuses in Belarus. On 18 September, the United Nations Human Rights Council adopted a resolution about the post-election human rights crisis in Belarus, urging the Belarussian authorities to fulfil their obligations under international human rights law and mandating the UN's Human Rights Commissioner to closely monitor the situation.³⁵

Finally, on 2 October, the EU leaders decided to impose targeted sanctions against 40 Belarussian official who have been identified to be responsible for the crackdown against the peaceful protestors. The sanctions include asset freezes and travel bans. However, unlike the United Kingdom and Canada's sanctions, President Lukashenko is not in the list of sanctioned individuals as the EU leaders voted against imposing sanctions against him.³⁶

The IBAHRI welcomed the heightened scrutiny by international organizations regarding the crisis in Belarus and called on this scrutiny to continue. Furthermore, the IBAHRI strongly called on Lukashenko's regime end violence against peaceful protestors, immediately all detainees, and agree to conduct free and fair elections in consultation with all stakeholders.

- 8) Two journalists, Katsyaryna Andreyeva and Darya Chultsova, were arrested on 15 November 2020, while they were covering a rally in Minsk commemorating Raman Bandarenka. Mr. Bandarenka died from injuries sustained in a vicious beating by a group of masked assailants - who rights

³¹ See IBAHRI statements - [IBA HRI urges Belarus to ensure freedom of expression and conduct fair and free elections](#) (15 July 2020) [IBA HRI condemns detention of media and use of force against protestors following elections](#) (13 August 2020), [IBA HRI condemns widespread police brutality and detainee torture in Belarus](#) (21 August 2020).

³² ICJ, 'ICJ and IBAHRI call on Belarus to comply with its international human rights obligations (UN Statement)', 18 September 2020, www.icj.org/icj-and-ibahri-call-on-belarus-to-comply-with-its-international-human-rights-obligations-un-statement/

³³ Human Rights Watch, 'Police Abuse Continues in Belarus', 21 September 2020, www.hrw.org/news/2020/09/21/police-abuse-continues-belarus

³⁴ IBAHRI, 'IBA HRI urges release of lawyers Ilya Salei and Maxim Znak in Belarus', 28 September 2020, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=e188448b-7541-47aa-8e31-5bcc39501085

³⁵ Human Rights Watch, n. 33

³⁶ Yahoo News, 'EU leaders back Belarus sanctions, warn Turkey', 2 October 2020, news.yahoo.com/eu-leaders-talk-turkey-ties-163553533.html

activists allege were affiliated with the authorities - during one of the weekly rallies demanding the resignation of authoritarian ruler Alyaksander Lukashenko. President Lukashenko, who has led the country since 1994, was declared the victor in the disputed August 2020 Presidential Elections, with outrage from opposition and the public which sparked continuous mass protests in the country. Moreover, the European Union, United States, Canada, and other countries have refused to recognize President Lukashenko as the legitimate leader of Belarus.³⁷

Both journalists have gone on trial in Minsk on a charge of "organizing public events aimed at disrupting civil order" however they maintain that they were just undertaking their professional duties as journalists at the event where they were arrested. To date, security forces have arrested more than 360 journalists, with 20 already behind bars and three now facing serious criminal charges for their coverage of the demonstrations, according to a statement from the Belarusian association of journalists³⁸. If found guilty, the two women face up to three years in prison. The Belarusian human rights organisations have declared the two journalists' political prisoners³⁹ and the IBAHRI joined voices to call on authorities to drop the criminal charges against all journalists and release them unconditionally. Further, we call on the authorities to protect and enable the work of journalists acting as first responders in the context of protests.

³⁷ Radio Free Europe: Two Belarusian Journalists Go On Trial Accused Of Organizing Protests; February 9, 2021. www.rferl.org/a/two-belarusian-journalists-go-on-trial-accused-of-organizing-protests/31094009.html

³⁸ Organized Crime and Corruption reporting project; Protests Quashed in Belarus as Reporters Face Serious Charge; February 12, 2021, www.occrp.org/ru/daily/13474-protests-quashed-in-belarus-as-reporters-face-serious-charges

³⁹ Radio Free Europe, n.37

FRANCE

Key developments including relating to Media Freedom and Access to Justice

- 1) On 11 June 2020, the European Court of Human Rights (ECHR) ruled in the Baldassi and others v France case finding in favour of Boycott, Divestment and Sanctions (BDS) campaigners- the court held that French judges were wrong to convict activists for a demonstration at a supermarket calling for the boycott products produced in Israeli, saying the protest could not be considered an incitement to discrimination, a criminal offence in France⁴⁰. The activists were initially cleared of charges after arguing it was a case of free speech, an appeals court overturned the ruling and found them guilty of inciting people to discriminate against products from Israel. Amnesty International welcomed the decision stating that “the recognition by the ECtHR that these convictions violate their right to freedom of expression should send a clear message to all European states that they must stop the prosecution of peaceful activists⁴¹”. Since 2010, Amnesty has reported how French authorities have specifically instructed prosecutors to use anti-discrimination laws against BDS campaigners which are not used against activists who participate in similar boycott campaigns targeting other countries. The IBAHRI welcomed the courts decision that should discontinue the misuse of anti-discrimination laws to target activists campaigning against human rights violations, including in this case where the campaigners spoke to violations by Israel against Palestinians. The court ordered French authorities to pay each of the applicants 7,380 euros (\$8,383) in damages, and a further 20,000 euros (\$22,720) to jointly cover legal expenses.

- 2) On 27 May 2020, the lower house of French parliament approved the government’s Covid-19 contact-tracing app. The vote, while non-binding, is expected to clear the way for the app to be made available to users on a voluntary basis starting 1 June 2020. The app uses low-energy Bluetooth signals on mobile phones to trace individuals that people infected with the virus come into close contact with and informs users of potential exposure so they can self-isolate. It will store anonymous data in a government-run centralized database for 14 days before erasing it.⁴²

Members of parliament and civil liberties groups have raise concerns with the app, as the French government have chosen a centralised model, which does not sufficiently secure citizens data as anonymised data is stored on a central server. The President of the Parliament's Laws Committee, Yaël Braun-Pivet, warned that the app should not be obligatory or be able to geolocate or conserve data.⁴³ Further, the National Consultative Commission for Human Rights, in a recent statement stated that the app “affects in a disproportionate manner the rights and freedoms of all citizens.”⁴⁴ The IBAHRI appreciates efforts by the French government to halt the spread of the virus and in doing so, notice that they have tried to consider some key rights and privacy considerations, including erasing data. However, we encourage all states to utilise apps alongside manual contact tracing, to ensure effectiveness. Governments must be

⁴⁰ <https://www.amnesty.eu/news/france-landmark-ecthr-judgement-finds-boycott-campaign-against-israel-cannot-be-criminalized/>

⁴¹ Amnesty, n.40

⁴² The New York Times, ‘French Lawmakers Endorse the Country's Virus Tracing App’, 27 May 2020 www.nytimes.com/aponline/2020/05/27/business/ap-eu-virus-outbreak-french-tracing-app.html

⁴³ Euronews, ‘France approves release of controversial COVID-19 tracking app’, 28 May 2020 www.euronews.com/2020/05/27/france-s-controversial-covid-19-tracking-phone-app-approved-by-lower-house-of-parliament

⁴⁴ The New York Times, ‘French Lawmakers Endorse the Country's Virus Tracing App’, 27 May 2020 www.nytimes.com/aponline/2020/05/27/business/ap-eu-virus-outbreak-french-tracing-app.html

able to guarantee that apps are developed with privacy and data protection in the design, and in line with human rights and privacy standards.

- 3) A bill on Global Security adopted by France's National Assembly's Laws Committee, tabled by the Interior Minister, Gerald Darmanin, will severely and disproportionately restrict the rights of journalists and freedom of the press.⁴⁵ The bill would effectively make it illegal to disseminate photographs or videos of the faces, or identifying features, of police officers and gendarmes "with intent to harm."

Article 24 of the bill holds that "*Dissemination of face images or any other identifying element of an officer belonging to the national police or the gendarmerie acting in the context of a policing operation, by any means whatsoever and on any medium whatsoever, with the aim of causing harm to his or her physical or psychological integrity.*"⁴⁶ The draconian law also includes hefty criminal sanctions for contravention by introducing up to a year in prison and a maximum fine of €45 000.

The clause in its current form doesn't pertain to all photos or videos of police. The police officer, or gendarme, must be identifiable in the photo or video and its dissemination must directly and deliberately seek to harm them. If a complaint is brought against a journalist or any other person that posts such media publicly, then the prosecutor must prove intent to cause harm. On the issue, leading free expression organisation, Reporters sans Frontier (RSF) stated that "in the case of journalists covering protests, it would seem, on the face of it, to be very hard to produce such evidence" however it could lead to the harassment of journalists.⁴⁷ This could include searching an accused's home or office and examining their emails and social media accounts. The open ended interpretation of "intent to cause harm" could be exploited by the prosecutor's office in their determination when examining criticisms of the police, which, in the context of increasing police violence and racial profiling in France, could lead to further abuse of power against journalists and government critics.

Furthermore, the bill on Global Security will inevitably disrupt the work of journalists as it provides cause for police to detain virtually anyone filming law enforcement officers, even if covering cases of police brutality, thus leading to impunity and possible censorship, even if the likelihood of conviction is low. During demonstrations protesting the passing of the law on the Saint-Germain boulevard near the parliament building, police had arrested five journalists.⁴⁸ The Ombudsman for human rights in France, Claire Hedon, stated that the bill involves "significant risks of undermining fundamental rights", including press freedom, and that "the publication of images relating to police interventions are legitimate and necessary for democratic functioning."⁴⁹

⁴⁵ The Guardian, 'Concern over French bill that cracks down on photos identifying police', 09 November 2020, www.theguardian.com/world/2020/nov/09/french-law-protect-police-press-freedom-journalists-ban-intent-harm

⁴⁶ Council of Europe, Bill on Global Security Threatens Press Freedom, 09 November 2020, www.coe.int/en/web/mediafreedom/detailalert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertId=75726024

⁴⁷ Reporters Sans Frontiers, 'France: As it stands, ban on filming police "with intent to harm" would threaten press freedom', 06 November 2020, rsf.org/en/news/france-it-stands-ban-filming-police-intent-harm-would-threaten-press-freedom

⁴⁸ Daily Sabah, 'French police arrest journalists at protest over proposed security law', 18 November 2020, www.trtworld.com/europe/french-police-arrest-journalists-at-protest-over-proposed-security-law-41590

⁴⁹ Daily Sabah, n.48

The IBAHRI expressed concerns over the passing of the new law, which is already on the fast-track procedure to being passed by the Assemblée Nationale which severely undermines media freedom, freedom of expression and freedom of assembly by enabling the disruption of the public's right to be informed and civil society's ability in holding police to account. Furthermore, it creates a chilling effect on the entire media profession, human rights activists and government critics. The IBAHRI called on French lawmakers to reform the bill and remove its offending clause due to its incompatibility with the fundamental rights and the rights of journalists.

GREECE

Key developments including relating to Media Freedom and Access to Justice

- 1) On 18 April 2020, the Athens-based offices of SKAI, one of the largest media groups in Greece hosting the prominent daily newspaper Kathimerini and the SKAI radio and TV stations, was targeted in a firebomb attack. No casualties were reported and there was little damage to the offices. The attack was claimed by a group called Anarchist Comrades, who posted footage online, alongside a statement denouncing SKAI as being part of the “mass media” mouthpiece of the right-wing government during the COVID-19 pandemic. The statement said Molotov cocktails had been used and hinted at further attacks. Government spokesman Stelios Petsas publicly condemned of any attempt to intimidate or threaten media⁵⁰.
- 2) On 22 January 2021, opposition parties and journalist associations in Greece protested against the ruling New Democracy party after its decision to push forward a bill which provides that journalists will be limited to standing in a “specific spot’ during demonstrations. The Minister of Citizens’ Protection Michalis Chrysochoidis said the main objective is to protect the physical integrity of journalists in case of riots during a demonstration. But journalists and photo reporters took this as a clear sign of an attack against the freedom of the press. “The ban on journalists’ access to the scene of events, in addition to a serious restriction on the freedom of the press, can also be seen as a harbinger of what events will unfold there,” commented professor Giorgos Pleios, who is also a member of the independent Greek National Council for Radio and Television. Pleios added that not even Hungary’s PM Viktor Orbán had attempted to take such an action. The journalist association are now threatening to take the case to international forums and have urged the conservative government to immediately withdraw the bill. The political opposition has said that the government aims to create a “police-state” to crack down on social reactions to a difficult economic situation that is coming up due to the pandemic⁵¹.

⁵⁰ MMF, <https://mappingmediafreedom.org/index.php/categories/intimidation/>

⁵¹ Euractiv, https://www.euractiv.com/section/politics/short_news/new-greek-bill-limits-journalists-to-a-specific-spot-in-protests/

HUNGARY

Key developments including relating to Media Freedom and Access to Justice

- 1) On 30 March 2020, Hungarian Prime Minister Viktor Orbán was granted the right to rule by decree for an indefinite period of time. The Hungarian executive could bypass Parliament entirely. The bill allows the Hungarian authorities to imprison anyone who interferes with the government's response, including spreading 'false information' for up to five years. The emergency legislation further allows authorities to prevent public demonstrations and mitigate criticism by political opponents and the media⁵².

Many in Europe have accused Orbán of using the state of emergency to increase his own power, to the detriment of the basic principles of democracy. The opposition within Hungary itself called the move an 'attempted coup d'état', and urged the Prime Minister to establish a time limit on the state of emergency⁵³. The IBAHRI firmly opposed this decision in a press release last week and denounced it as a contravention of Hungary's commitment to international human rights standards. Indeed, Article 51 of the Siracusa Principles states that any emergency measure that derogates to the normal, constitutional conduct of state affairs must strictly conform to requirements of necessity and proportionality to the nature and extent of the threat. The state of Hungary is also bound by obligations under the International Covenant on Economic, Social and Cultural Rights, which states in its Article 12, that state parties 'recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,' which involves the duty to take steps to prevent threats to public health and to provide medical care to those who need it without exclusion.

Although a state of emergency can indeed justify extraordinary measures that may infringe on human rights norms, as justified by the peremptory nature of the requirements of public health, these eventual restrictions must meet certain standards of international law, namely legality, necessity and proportionality. It could be argued that these governments, having used emergency powers to impose broad restrictions on freedom of expression and the public's right to know without openly referring to these standards, may have violated its commitment to human rights. It should also be noted that governments are repeatedly using the notion of 'false' or 'fake' news to silence dissent and opposition, arguing that sources that do not reiterate official news constitute an obstacle to their work against coronavirus. By establishing itself as the authority on what is 'fake' and what is 'real', a government is able to manipulate discourses, as well as impose and enforce its own biased definitions thanks to the range of punishments provided by the law. This further raises concerns relating to the effect of Covid-19 on global democratic stability.

- 2) On 4 May 2020, Hungarian authorities issued Decree No.179/2020, which restricts the protection and rights of data subjects. More specifically, the decree suspends Articles 15 to 22 of the EU General Data Protection Regulation (GDPR) in relation to personal data processed for the purpose of preventing, recognising or investigating the spread of the new coronavirus. The decree also restricts the right to claim public information.⁵⁴ The suspension of the GDPR

⁵² CNBC, 'Hungary's nationalist leader Viktor Orban is ruling by decree indefinitely amid coronavirus', 31 March 2020 <https://www.cnn.com/2020/03/31/coronavirus-in-hungary-viktor-orban-rules-by-decree-indefinitely.html>

⁵³ RFI, 'EU warns of Hungary power grab as Orban seeks State of emergency extension', 27 March 2020 <http://www.rfi.fr/en/europe/20200327-eu-warns-of-hungary-power-grab-as-government-seeks-coronavirus-State-of-emergency-extension-pm-viktor-orban-covid19>

⁵⁴ CMS Law Now, 'Hungarian government overwrites the GDPR in its COVID-19 state-of-emergency decree', 7 May 2020 www.cms-lawnow.com/ealerts/2020/05/hungarian-government-overwrites-the-gdpr-in-its-covid-19-state-of-emergency-decree

is expected to last as long as the state of emergency (which has been prolonged for an indefinite duration on 31 March).

This means that data controllers are not obliged to take action upon requests for access to, erasure, rectification and restriction of the processing of a data subject's personal data relating to Covid-19 until the termination of the state of emergency. The new measure does not detail the categories of data and of the data controllers concerned, which results in uncertainty as any data controller processing personal data relating to Covid-19 can loosely interpret the provisions. Further, data controllers will not be required to provide personalised information to data subjects upon processing their information, but simply a privacy notice stating the purpose and legal basis of the processing.⁵⁵

Although the decree mentions Covid-19 as its motivation for the change, it does not specify exactly why the suspension of the GDPR regulations are necessary. Some have argued that the Hungarian authorities have suspended these data rights in order to implement their own contact-tracing programme. Meanwhile, the Hungarian data protection authority said it had not been consulted on this decision.⁵⁶

Article 23 (1) of the GDPR allows for certain restrictions on the scope of the rights and obligations provided, *inter alia*, by Articles 12 to 22 when such restrictions respect the essence of the fundamental rights and freedoms, and are necessary and proportionate in a democratic society to safeguard defence, national security and public security, etc. Article 23 (2) however, provides that any such legislative measure must contain specific provisions, where relevant, as to: the purposes of the processing or categories of processing; the categories of personal data; the scope of the restrictions introduced; the safeguards to prevent abuse or unlawful access or transfer; the specification of the controller or categories of controllers; the storage periods and applicable safeguards; the risks to the rights and freedoms of data subjects; and the rights of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.⁵⁷

These conditions are meant to provide safeguards against abuses by states in contexts of threats against national and public security. Consequently, the IBAHRI urged Hungarian authorities not to impose a clear-cut choice between protecting privacy and digital rights on one hand, and promoting public health on the other; and to condition any restriction on individual rights to criteria of necessity, proportionality and legality.

- 3) On 30 March 2020, Prime Minister Viktor Orbán was granted the right by the Hungarian Parliament to rule by decree for an indefinite period⁵⁸, a decision that led to significant criticism by rights experts and professionals across the globe with the European Commission Vice-President, Věra Jourová, describing the laws as “very disturbing”⁵⁹. In early May, lawmakers in the European Parliament demanded that Orban's government be punished for using the

⁵⁵ CMS Law Now, n.42

⁵⁶ Global Data Review, ‘Hungary under fire for GDPR suspension’, 7 May 2020 <https://globaldatareview.com/data-privacy/hungary-under-fire-gdpr-suspension>

⁵⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016R0679#d1e1374-1-1>

⁵⁸ The Guardian, ‘Hungarian government to end Orbán's rule-by-decree legislation’, 26 May 2020, www.theguardian.com/world/2020/may/26/hungarian-government-to-end-orbans-rule-by-decree-legislation-emergency-coronavirus

⁵⁹ The Guardian, n.46

pandemic to grab power⁶⁰. On 26 May 2020, the Hungarian government announced that they plan to bring an end to the controversial policy on 20 June 2020⁶¹, the supposed end of a ‘state of danger’⁶².

In the nearly two-month period of the rule by decree, under Orbán’s leadership there have been over 100 decrees issued, most of which had little to no direct relevance to tackling the Covid-19 virus. In the same time period, Parliament passed a number of controversial legislative bills in the traditional format, including one that strips legal recognition from transgender Hungarians and another that classified information about a Chinese-funded railway project.⁶³

Critics worried that the new legislation revoking Orbán’s rule of decree will do little to curb his vast executive overreach. Specific concerns surround the provision that “fearmongering and spread of information” will remain punishable by up to 5 years in prison.⁶⁴ The legislation to revoke Orbán’s rule of decree is nothing more than political theater and will continue to allow the government to rule by decree for an indefinite period of time with minimal constitutional safeguards.⁶⁵ This is especially troubling as Hungary slides into a Covid-19 economic recession and Orbán will struggle to retain political control in turbulent times. Further, a new bill was being proposed which would give the government the power to order any and all measures it deems necessary without parliamentary approval, including suspending laws, to respond to the current and future public health emergencies. The proposed bill would also allow the government to declare a “state of medical emergency” which would allow the government the power to restrain fundamental rights and freedoms⁶⁶. The “state of medical emergency” could be applied indefinitely and it is suggested that this would be declared by the Chief Medical Officer, a position that is not impartial and currently remains under state control.

- 4) On 2 June 2020, the IBAHRI reported concerns that the repeal of Hungary’s state of emergency legislation was in fact designed to codify President Viktor Orban’s extended authority. The Bill on Terminating the State of Danger (T/10747) and the Bill on Transitional Provisions related to the Termination of the State of Danger (T/10748), adopted on 16 June 2020, as examined in a joint statement and from the Hungarian Helsinki Committee (HHC), Amnesty International Hungary, and the Hungarian Civil Liberties Union and an explanatory note from the HHC are “nothing but an optical illusion.” The statement argued that if the termination bills are adopted in their present form, it will allow the government to again rule by decree for an indefinite period of time with significantly weakened constitutional safeguards.⁶⁷

The bills give the government unchecked authority to declare state of medical emergencies, giving the government the power to curtail rights like freedom of assembly for up to six months, renewable indefinitely.⁶⁸ The bills also give the government the power to conduct all and any

⁶⁰ NPR, ‘European Parliament Lawmakers Demand Punishment for Hungary Over Emergency Powers’, 14 May 2020 www.npr.org/sections/coronavirus-live-updates/2020/05/14/855918912/european-parliament-lawmakers-demand-punishment-for-hungary-over-emergency-power

⁶¹ The Guardian, n.46

⁶² The Guardian, n.46

⁶³ The Guardian, n.46

⁶⁴ NPR, ‘Hungary Says It Will End State of Emergency Giving Orban Power to Rule By Decree’, 27 May 2020 www.npr.org/sections/coronavirus-live-updates/2020/05/27/862925730/hungary-says-it-will-end-state-of-emergency-giving-orban-power-to-rule-by-decree

⁶⁵ The Hungarian Helsinki Committee, ‘Never-Ending Story?’, 27 May 2020 www.helsinki.hu/en/never-ending-story

⁶⁶ Human Rights Watch, ‘Ending Hungary’s State of Emergency Won’t End Authoritarianism’, 29 May 2020 www.hrw.org/news/2020/05/29/ending-hungarys-state-emergency-wont-end-authoritarianism

⁶⁷ Hungarian Helsinki Committee, ‘Explanatory Note for Bills T/10747 and T/10748 Pending Before the Hungarian Parliament’, 12 June 2020 www.helsinki.hu/wpcontent/uploads/HHC_explanatory_note_Bills_T10747_and_T10748.pdf

⁶⁸ Human Rights Watch, n.16

measures it deems necessary without parliamentary approval—including suspending laws—to respond to current and future public health emergencies. An analysis of the bill by Karoly Eotvos Institute, a watchdog organization in Budapest, concluded that the legislation had no intent of restoring Hungary’s pre pandemic legal order, but rather “creates a legal basis for the use of newer extraordinary and unlimited government powers.”⁶⁹

Under existing state of emergency legislation, Hungarian cities have been stripped of tax receipts, authorities have detained government critics for social media posts, parliamentary parties have seen their state subsidies cut in half, data privacy safeguards have allegedly been breached, and the military has been dispatched to support businesses deemed to be important by the state. Other measures—undeniably unrelated to the pandemic—including a bill that denied rights to transgender people and another that classified contracts related to a business deal with China have raised further concerns. The IBAHRI joined fellow rights watch organisations to urge the EU Commission to continue to monitor Orban’s proposed legislation.

- 5) On 15 September 2020, the state media authority, the National Media and Info-communication Authority (the Media Council), published an unexpected statement announcing the cancellation of independent outlet, Klubradio’s frequency broadcasting contract as of February 2021, announcing an open tender for the frequency from next February. The Council justified its decision by referring to the commercial station’s breaches of Hungary’s restrictive Media Act. According to Media Council’s, during the seven years of operation of Klubradios, which broadcasts on the frequency, ‘it has repeatedly violated the provisions of the Media Act, due to which the Media Authority applied various legal consequences’. They wrote that the decisions affected by the repeated infringement were noted by Klubrádio, the legal remedy was not initiated in court, and the amount of the fines was paid.

The decision to shut down Klubradio is the latest example of the Hungarian government’s efforts to crackdown on the independent media, taking ownership and control of the content and landscape. In July, the editor-in-chief of leading news site Index was fired by the new owner, who has close links to the government. The paper’s entire staff resigned in protest. In 2016, Hungary’s biggest opposition daily Nepszabadsag was closed down. The 2018 merger of nearly 500 outlets into one conglomerate loyal to the government, sidestepping competition laws, effectively put an end to media pluralism in the country⁷⁰. Agnes Urban, head of the Mertek Media Monitor think-tank, said the move amounted to ‘executing Klub Radio... The systematic eradication of media freedom in Hungary is underway.’⁷¹

The IBAHRI condemned the system of media capture in Hungary and extraordinary efforts to monopolise and control the media in the state. An open and free media landscape with divergent opinions is very important for the development of democratic societies. The IBAHRI stands in solidarity with Klubradio and organisations including the International Press Institute in calling on the EU to act, ‘the European Union claims that press freedom and fair market competition are among its core values, yet it has so far failed to defend these values in Hungary’⁷².

⁶⁹ New York Times, ‘Hungary Moves to End Rule by Decree, but Orban’s Powers May Stay’, 16 June 2020 www.nytimes.com/2020/06/16/world/europe/hungary-coronavirus-orban.html

⁷⁰ Human Rights Watch, ‘Hungary Renews Attacks on Independent Radio Station’, 15 September 2020, www.hrw.org/news/2020/09/15/hungary-renews-attacks-independent-radio-station

⁷¹ DW, ‘Hungary’s Klubradio critical of Viktor Orban set to lose license’, 11 September 2020, www.dw.com/en/hungarys-klubradiocritical-of-viktor-orban-set-to-lose-license/a-54900168

⁷² IPI, ‘Hungary’s last independent radio station could be forced off airwaves’, 11 September 2020, [//ipi.media/hungarys-last-independent-radio-station-could-be-forced-off-airwaves/](http://ipi.media/hungarys-last-independent-radio-station-could-be-forced-off-airwaves/)

- 6) Following the report at 5) the National Media and Info-communication Authority Council, published an unexpected statement announcing the cancellation of independent outlet, Klubrádió's frequency broadcasting contract as of February 2021. The government-controlled Media Council justified its decision by referring to the commercial station's alleged breach of Hungary's restrictive Media Act.

According to the Media Council, during the seven years of Klubrádió's operation and broadcasts on the frequency, 'it has repeatedly violated the provisions of the Media Act, due to which the Media Authority applied various legal consequences.' They wrote that the decisions affected by the repeated infringement were noted by Klubrádió, the legal remedy was not initiated in court, and fines were paid. Agnes Urban, head of the Mertek Media Monitor think-tank, said the move amounted to 'executing Klubrádió...[T]he systematic eradication of media freedom in Hungary is underway.'⁷³ The radio station has now been resigned to broadcasting solely from the internet after February 14 and cap the end of a decade-long campaign by the ruling Fidesz party led by Prime Minister Viktor Orbán to muzzle one of the country's last remaining critical radio stations⁷⁴.

The IBAHRI condemned the system of media capture in Hungary and extraordinary efforts to monopolise and control the media in the state and stood in solidarity with Klubrádió and organisations including the International Press Institute in calling on the EU to act, 'the European Union claims that press freedom and fair market competition are among its core values, yet it has so far failed to defend these values in Hungary.'⁷⁵

It was reported that on 4 February 2021, a decision handed down by a court in Budapest rejected the temporary license extension to Klubrádió in Hungary, upholding the September decision by the to revoke Klubrádió's licence for alleged breaches of the country's restrictive media laws.⁷⁶ Dunja Mijatovic, the Council of Europe's human rights commissioner, tweeted: "Another silenced voice in Hungary, another sad day for media freedom." The Hungarian government actions are in direct breach of Article 11 of the European Union's Charter of Fundamental Rights on freedom of expression and information.⁷⁷ The IBAHRI joined with organisations, including Article 19 and Media Freedom Rapid Response in urging the European Commission to address this issue to find an immediate solution that prevents the silencing of another independent media outlet in Hungary.

⁷³ DW, 'Hungary's Klubrádió critical of Viktor Orban set to lose license', 11 September 2020, www.dw.com/en/hungarys-klubradiocritical-of-viktor-orban-set-to-lose-license/a-54900168

⁷⁴ Media Freedom Rapid Response, 'Leading independent radio station muzzled in Hungary', 9 February 2021, www.mfrr.eu/leading-independent-radio-station-muzzled-in-hungary/

⁷⁵ International Press Institute, 'Hungary's last independent radio station could be forced off airwaves', 11 September 2020, <https://ipi.media/hungarys-last-independent-radio-station-could-be-forced-off-airwaves/>

⁷⁶ Human Rights Watch, 'Hungary Renews Attacks on Independent Radio Station' 15 September 2020, www.hrw.org/news/2020/09/15/hungary-renews-attacks-independent-radio-station

⁷⁷ Article 19, 'Hungary: MFRR calls for EU action as Klubrádió is silenced' 4 February 2021, www.article19.org/resources/mfrr-klubradio/

MALTA

Key developments including relating to Media Freedom and Access to Justice

- 1) (2020) Three years have passed since the assassination of journalist Daphne Caruana Galizia and it remains to be seen if justice will be served. The perpetrators who planned and carried out the assassination have not yet been brought to trial and the Prime Minister of Malta, Robert Abela, failed to take concrete steps towards the anticipated press freedom reform in his first year at the office.⁷⁸

Only with sustained international pressure, a public inquiry into Caruana Galizia's assassination was established in 2019. However, Maltese Prime Minister, Robert Abela attempted to interfere with the public inquiry by stating that the inquiry would be extended for one time only, which puts immense pressure on the board of inquiry and threatens its independence and impartiality.

Also, there has not been meaningful progress in the Maltese court case into Caruana Galizia's assassination. Accused hitmen Alfred Degiorgio, George Degiorgio and Vincent Muscat have been detained since December 2017, but have not been brought to trial. Self-confessed middleman and key witness Melvin Theuma was hospitalised with severe injuries attributed to self-harm, while the evidence against the alleged mastermind Yorgen Fenech is yet to be compiled.

The IBAHRI regretted the lack of meaningful progress in the investigation and trial into Caruana Galizia's assassination and fears that this lack of progress will result in 'a wider chilling effect which is felt in the society where those attacks and killings take place'⁷⁹. The IBAHRI reminded Maltese authorities their obligations under Article 2 of the European Convention on Human Rights to fully and effectively investigate Caruana Galizia's death. Moreover, the IBAHRI called on Malta to implement media freedom reform in line with international recommendations and address the systemic problems that led to this heinous attack.

- 2) In February 2021, the IBAHRI welcomed the long awaited developments in the murder case of journalist Daphne Caruana Galizia where one of three accused hitmen has been sentenced to 15 years in prison earlier this week after entering a guilty plea, and three men have been arrested under suspicion of supplying the bomb that took Caruana Galizia's life. Right until her death, Ms. Caruana Galizia was a relentless investigative journalist who uncovered networks of alleged corruption by Maltese politicians and officials. We join hopes that this will be the first step in securing full justice for Ms. Caruana Galizia and her family.

On 23 February 2021, a Maltese court sentenced Vincent Muscat - one of three accused hitmen who has been detained since December 2017 - to 15 years in prison after he pled guilty to involvement in the assassination of Ms. Caruana Galizia and agreed to provide information to the police. On the same day, four men were arraigned in connection with the assassination as well as other crimes: brothers Adrian and Robert Agius, Jamie Vella, and George Degiorgio, with all four pleading 'not guilty.' Police Commissioner, Angelo Gafa, stated that he believed everyone connected to Ms.

⁷⁸ Reporters Without Borders, 'Malta: Three years on, pursuit of justice for Daphne Caruana Galizia stalled by constant obstacles and lack of press freedom reform', 16 October 2020, <https://rsf.org/en/news/malta-three-years-pursuit-justice-daphne-caruana-galizia-stalled-constant-obstacles-and-lack-press>

⁷⁹ Centre for Freedom of the Media, 'BREAKING DOWN THE WALL OF SILENCE ABOUT VIOLENCE AGAINST JOURNALISTS IN EUROPE', 19 October 2020, www.cfof.org.uk/2020/10/19/breaking-down-the-wall-of-silence-about-violence-against-journalists-in-europe/

Caruana Galizia's assassination has now been apprehended. The IBAHRI will continue to monitor developments in this regard.

The pursuit of justice since her death has come to symbolize the battle over press freedom and journalism and the obstacles faced by those seeking accountability. While the independent public inquiry into Ms. Caruana Galizia's assassination continues to review evidence, the IBAHRI recalled how Ms. Caruana Galizia was killed as a result of her work, with the focus of her journalism around state corruption and reflects on the existing culture of impunity has allowed for the circumstances that caused her death. Although these developments are welcomed, states who are implicated in the murder of journalists should not be allowed to investigate their murder as the obligations relating to duty to investigate include for it to be prompt, independent, impartial, thorough, effective and transparent. Recalling the recent report by the High Level Panel of Legal Experts on Media Freedom, '*Advice on Prompting More Effective Investigations for Crimes Against Journalists*'⁸⁰, setting up a standing International Investigative Task Force with the mandate to investigate attacks on journalists and other activists targeted for their role in exposing information (such as human rights defenders, bloggers etc.) would ensure that attacks against journalists get investigated effectively and promptly.

⁸⁰ Read the report here: www.ibanet.org/Investigations-report-launch-2020.aspx

THE NETHERLANDS

Key developments including relating to Media Freedom and Access to Justice

- 1) Dutch authorities started to implement a policy programme named ‘The Sensing Project’ in the city of Roermond using algorithmic systems to predict criminal activities before they occur. Amnesty international has described the new policing tool as “indiscriminate mass surveillance and ethnic profiling”⁸¹ in its report, *‘We Sense Trouble’*.

These tools operate by utilising data and algorithmic models to assess the risk of a crime being committed by a particular person or at a particular location. Thereafter, law enforcement officers are directed towards those individuals or locations deemed ‘high risk’ by the programme.⁸² However, the data input has been found to be highly discriminatory against certain groups, particularly Eastern Europeans with Roma ancestry, revealing its prejudicial, rather than predictive, nature. This is further exasperated by the under-regulation of such tools within the EU, as well as little oversight and accountability mechanisms, and the fact that the system is fundamentally flawed with the profusion of false positives in the use of facial recognition technology. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Tendayi Achiume, also warned that “emerging digital technologies driven by big data are entrenching racial inequality, discrimination and intolerance”,⁸³ describing artificial intelligent as “systems of discrimination”⁸⁴ at their core. Facial recognition should not be viewed as an objective and unbiased system by states. Algorithms are only as accurate as the information used to train them, which is curated by upper-class white engineers in Silicon Valley graduating from universities such as MIT and Stanford, and it is them who decide where to source images from, be it licensing bureaus, prison databases or social media.⁸⁵

The Sensing Project violates several human rights, particularly the right to privacy, with the European Court of Human Rights (ECtHR) previously ruling that when authorities store data relating to private life in the context of criminal law enforcement, there is an interference with privacy.⁸⁶ Additionally, stopping and searching a person in public can be an interference with the right to privacy.⁸⁷ A UK court held in August that the use of automated facial recognition violated Article 8 of the European Convention on Human Rights (ECHR).⁸⁸ This form of policing is akin to other policies such as the ‘stop-and-frisk’ policy of New York, or the ‘Sus laws’ of the UK which depended on racial profiling and targeting individuals from minorities groups, particularly of African origins, as a crime prevention method. This revealed the

⁸¹ Amnesty International, Netherlands: End Dangerous Mass Surveillance Policing Experiments, 29 September 2020, www.amnesty.org/en/latest/news/2020/09/netherlands-end-mass-surveillance-predictive-policing/

⁸² Amnesty International, We Sense Trouble: Automated Discrimination and Mass Surveillance in Predictive Policing in the Netherlands, 29 September 2020, www.amnesty.org/download/Documents/EUR3529712020ENGLISH.PDF

⁸³ United Nations Human Rights Council, Racial discrimination and emerging digital technologies: a human rights analysis, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 3 July 2020, <https://undocs.org/en/A/HRC/44/57>

⁸⁴ UNHRC, n.83, Para. 7.

⁸⁵ Chun, S. *Facial Recognition Technology: A Call for the Creation of a Framework Combining Government Regulation and a Commitment to Corporate Responsibility* (2020) 21 North Carolina Journal of Law and Technology, Vol. 21(4). P. 107. ncjolt.org/wp-content/uploads/sites/4/2020/04/Chun_Final.pdf

⁸⁶ ECtHR 16 February 2000, no. 27798/95 (Amann v. Switzerland), para. 65-67; ECtHR 7 July 2015, no. 28005/12 (M.N. and others v. San Marino), para. 53.

⁸⁷ ECtHR 12 January 2010, no. 4158/05 (Gillan and Quinton v. United Kingdom), para. 61-65.

⁸⁸ UK Human Rights Blog, ‘Facial Recognition Technology not ‘In Accordance with Law’’, 13 August 2020 ukhumanrightsblog.com/2020/08/13/facial-recognition-technology-not-in-accordance-with-law/

prejudicial bias of police officers, revealing institutionalised racism, whilst the current Dutch ‘Sensing Project’ reveals the same form of institutionalised racism and confirmation bias from the algorithm’s developers and law enforcement agencies, and is now underpinned with prejudicial artificial intelligence.

The use of mass surveillance can never be a proportionate interference with the rights to privacy and freedom of expression.⁸⁹ The IBAHRI reminded the Netherlands that the project is therefore a violation of the right to privacy and must be put to an end immediately as it cannot be reconciled with international human rights law and the European Convention on Human Rights.

⁸⁹ Amnesty International, n.82

POLAND

Key developments including relating to Media Freedom and Access to Justice

- 1) On 14 August 2020, the IBAHRI issued a press release urging the Republic of Poland to ensure freedom of expression for supporters of lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) persons' rights. In the statement, we called for an immediate end to the homophobic rhetoric currently espoused by Polish leaders, including President Andrzej Duda, who, in a campaign speech, declared the promotion of LGBT rights an 'ideology' more dangerous than communism.

Polish police had violated citizens' freedom of expression rights by using blasphemy laws to arrest LGBTQI+ activists during peaceful protests. Under Article 196 of Poland's criminal code, a person who 'offends the religious feelings of others by publicly insulting a religious object or place of worship' may face up to two years in prison. The Polish transgender activist well-known as Margot, has been arrested several times, with the government defending police action against her and other activists, stating 'certain boundaries [of tolerance] were crossed.'

LGBTQI+ rights have become a national issue in Poland, fuelled by the ruling Law and Justice Party (PiS), which has used homophobic rhetoric to build support among conservative voters. In late June, PiS politician Mr Duda was re-elected president following a campaign that deliberately deployed anti-LGBTQI+ rhetoric as an election strategy. Furthermore, the Justice Ministry is currently funding work aimed at 'counteracting crimes related to the violation of freedom of conscience committed under the influence of LGBT ideology.' On 22 June 2020, human rights leaders, as part of the Organization for Security and Co-operation in Europe Parliamentary Assembly⁹⁰, expressed their deep concern at the increasing intolerance LGBTQI individuals face in the country stating that 'Efforts by politicians to demonise respect for LGBT rights as a destructive "ideology" and the declarations of so-called 'LGBT-free zones' are blatant manifestations of hate and have no place in our societies.'

- 2) On 22 October 2020 the new Polish Constitutional Tribunal, majorly consisting of members of the governing party, presented a proposal banning abortions including in cases of fetal defects. Thousands of people rallied in mass protests held across Poland against the proposal. The government has not published the ruling as a law amid pressure from the masses.⁹¹ In order to curb protestors, the Polish police have been using tear gas and excessive force on mostly female and young protesters. In some cases, police officers in plain clothes were using batons on some of the protesters.⁹² Additionally, protestors are being arbitrarily detained through violent arrests, while some protestors were targeted by the police and visited at home by law enforcement in an effort to intimidate them. In a number of incidents in November, several photojournalists were forcefully detained and beaten with batons.⁹³ The International Press Institute has strongly condemned the police violence against photojournalists covering the protests like Tomasz Gutry, a 74-year-old long-time photojournalist for the Polish weekly magazine Tygodnik

⁹⁰ IBAHRI, IBAHRI condemns LGBTQI+ rights crackdown in Poland, 14 August 2020, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=0ce7ba4e-9a8f-48df-89d0-3a4e730047dc

⁹¹ AlJazeera, 'Poland's mass protests for abortion rights: 'This is war', 6 November 2020, www.aljazeera.com/features/2020/11/6/polands-protests-against-abortion-ban-this-is-war

⁹² AP, 'Polish police criticized for using tear gas on protesters,' 19 November 2020, apnews.com/article/europe-poland-coronavirus-pandemic-courts-europe-8fd07c868e11af4e022454939ff00146

⁹³ Article 19, 'Poland: Authorities must end police brutality and persecution of protesters and journalists,' 26 November 2020, www.article19.org/resources/poland-authorities-must-end-police-brutality-and-persecution-of-protesters-and-journalists/

Solidarność, who was shot in the face with a rubber bullet by a police officer from a distance of several meters.⁹⁴ This level of police brutality on peaceful protestors and journalists constitutes a gross violation of the freedom of speech and expression.

The Polish authorities have used the Covid pandemic as an excuse to exercise excessive use of force on the protestors, claiming it to be a necessary measure against protestors who may cause danger to the health and life of people by spreading the virus.⁹⁵ The Constitutional Court has been criticised for its lack of independence, thus undermining the power of the judiciary. The IBAHRI supports the human rights organisations around the world calling on the Polish government to cede the violence and persecution of those exercising their right to free speech, the right to protest and to protect journalists and protestors and uphold their human rights obligations. Further, the IBAHRI reminds the Polish government of the role of an independent judiciary as the cornerstone of democracy.

- 3) On 10 February 2021, Polish independent media, including commercial TV channels and radio stations, suspended news coverage and web pages, replacing front pages with black screens,⁹⁶ to protest a new advertising tax that broadcasters and publishers argue is aimed not at raising money as the State claims, but at undermining the freedom of the press.⁹⁷ This comes a day after Hungary's leading private radio station, Klubrádió, who were known to criticise the Hungarian government lost its broadcasting licence after the country's media regulator said it had infringed administrative rules, as reported by the IBAHRI in previous editions of the Bulletin, raising new press freedom concerns in the EU member state.⁹⁸

The new tax, which ranges from 2% to 15%, is being rushed through Parliament at the insistence of the government who claim that this is a way to repair public finances strained by the pandemic, with the money going to health care and culture.⁹⁹ Conversely, media outlets and the political opposition see the tax as an effort to cow the independent press by the government led by the nationalist law and justice (PiS) party. Dozens of privately-owned Polish media firms signed an open letter opposing plans for the tax on advertising revenue, arguing that the wildly varying charges facing different companies were 'outrageous' and that changing the terms of existing broadcast licenses was unacceptable in a country governed by the rule of law.¹⁰⁰

The European Commission expressed its concern for press freedom in the country, given the government's actions to stifle opposition outlets and is currently under investigation for alleged rule of law violations.¹⁰¹ Poland has plummeted in recent press freedom rankings by Reporters Without Borders in its annual World Press Freedom Index. Poland ranked 62 out of 180

⁹⁴ IPI, 'Poland: IPI condemns police violence against journalists amidst Warsaw clashes,' 13 November 2020, ipi.media/poland-ipi-condemns-police-violence-against-journalists-amidst-warsaw-clashes/

⁹⁵ Article 19, n.81

⁹⁶ The Irish Times, 'Polish media blackout flags up press freedom fears over tax plan', 10 February 2021 www.irishtimes.com/news/world/europe/polish-media-blackout-flags-up-press-freedom-fears-over-tax-plan-1.4481439

⁹⁷ POLITICO Europe, 'Polish Media Suspend Reporting to Protest a Planned Tax on Advertising', 10 February 2021, www.politico.eu/article/polish-media-suspend-reporting-to-protest-a-planned-tax-on-advertising/

⁹⁸ France24, 'Hungary's Leading Independent Radio Station Loses Broadcast License' 10 February 2021 www.france24.com/en/europe/20210210-hungary-s-leading-independent-radio-station-loses-broadcast-license

⁹⁹ The Irish Times, n.87

¹⁰⁰ POLITICO Europe, n.97

¹⁰¹ The Guardian, "'This used to be your favourite show": Polish Media Hold Blackout in Protest at Tax Threat' 10 February 2021, www.theguardian.com/world/2021/feb/10/polish-media-hold-blackout-in-protest-at-tax-threat

countries in 2020. The IBAHRI shared concerns surrounding the developments across Poland; all countries must refrain from imposing legislative constraints and fiscal policies that would obstruct their duty to ensure a free and independent media ecosystem.

SLOVENIA

Key developments including relating to Media Freedom and Access to Justice

- 1) On April 27 2020, the Minister for Interior, Aleš Hojs, sent tweets calling for journalists and media professionals who reported from the scene of anti-lockdown protests to face criminal prosecution. His comments relate to a number of small-scale demonstrations against the authorities handling of the Covid-19 pandemic that were held in several Slovenian cities, including the capital Ljubljana. Several journalists attended different rallies to report on events, as is their journalistic right. The Slovene Association of Journalists (DNS) has cautioned the remarks made by the Minister and emphasized that media were at the event to inform the public. Similarly, the General Police Department released a statement underlining its autonomy in handling such issues and stressing it does not act on “opinions of persons from the public and political arenas”.¹⁰²
- 2) Three Slovenian journalists, Vesna Vuković, Tomaž Modic and Primož Cirman at the *Necenzurirano*, a Slovenian investigative news portal, are facing a series of SLAPP lawsuits, brought against them by Rok Snežič, a tax consultant and advisor to Slovenian prime minister Janez Janša. The charges were filed after the journalists published reports of Snežič’s role in organized tax evasion via entities in Bosnia-Herzegovina and his alleged role in a dubious finance deal for Janša’s Slovenian Democratic Party (SDS) party. Over the last six months, a total of 39 lawsuits have been filed by Snežič against the three journalists. There have been well documented links between Snežič and Janša.¹⁰³

This move has been severely condemned by DNS, the main Slovenian journalists’ association and the International Press Institute (IPI). One of the biggest challenges to media freedom in Slovenia is the criminalization of defamation. As a result of which, these journalists may be facing not only monetary damages but also incarceration. Their plight has only been further exacerbated as none of these proceedings have seen the light of day for the last five years due to several factors, including the Covid pandemic affecting the working of the judiciary.¹⁰⁴

These SLAPP lawsuits have been touted as a means to intimidate journalists financially and with the threat of incarceration and stop watchdog journalism all together. Slovenia has a history of using lawsuits as a bullying tactic to silence journalists. A number of frivolous lawsuits of this nature have been previously filed in Slovenia. These methods have clearly been established as threats used by powerful agencies against journalists and media outlets to stop their investigative work into such agencies. These coordinated attempts to silence the media and dismantle the judiciary are a threat to the Slovenian democracy, thus paving the way for blatant attempts to curb media freedom in Slovenia.¹⁰⁵ The IBAHRI called on the Slovenian government along with the EU to establish an EU Directive to protect the individuals that are threatened with such lawsuits and to sanction the perpetrators involved.

¹⁰² <https://mappingmediafreedom.org/index.php/corona-watch-the-latest-violations-of-press-and-media-freedom-during-the-covid-19-crisis/>

¹⁰³ IPI, ‘Slovenia, SLAPPS and Silencing of the Media,’ 26 November 2020, <https://ipi.media/slovenia-slapps-and-silencing-of-the-media/>

¹⁰⁴ IPI, n. 103

¹⁰⁵ IPI, n. 103

SWEDEN

Key developments including relating to Media Freedom and Access to Justice

- 1) On 20 April 2020, Mahmoud Abbas, a Palestinian cartoonist living in Sweden, began receiving death threats for a cartoon he posted on Twitter about the collapse of international oil prices. Twitter users recognised the image to be crown prince Mohammed Bin Salman¹⁰⁶, who is shown running down a hill with a rolling barrel of oil behind him, perceived to be ‘mocking the gulf’.¹⁰⁷ Personal information about Abbas and his family and their location has been shared online. The IBAHRI supports the International and European Federation of Journalists (IFJ and EFJ) and the Journalistförbundet of Sweden’s (SJF) complaint to the Swedish police. In the wake of the tragic death of Sajid Hussain, another Palestinian journalist living in Sweden, we implore the Swedish police to take these threats seriously.

- 2) Pakistani journalist, Sajid Hussain Baloch, Editor in Chief of the news website *Balochistan Times*, disappeared from his home in Sweden, where he lives in exile, and some have already started looking towards Pakistan’s security agencies¹⁰⁸. The province of Balochistan, neighbouring Iran, is reported to be very vulnerable to the pandemic, as its healthcare system drastically lacks infrastructure and competent medical staff. As an important hub for pilgrims on their way to religious sites in Iran, the whole region is particularly exposed to the disease¹⁰⁹. Reports further suggest that thousands of Pakistanis returning from Iran are being kept in camps near border towns in forced quarantine and very poor conditions, pushing some of them to protest or flee the quarantine. While many have blamed both the central and provincial governments for their late response to the threat of the coronavirus, there are fears of heightened sectarianism in the country, as pilgrims returning from Iran are Shia Muslims, and have therefore attracted blame from the Sunni majority. The significant Shia minority has already been singled out, with stricter quarantine measures in areas where they constitute a majority¹¹⁰.

As the full extent of the virus is still unfolding in Pakistan, and as the health crisis is threatening to trigger a social and ethnic crisis in the Balochistan province, reports of the disappearance of a Baloch journalist exiled in Sweden is especially worrying. Although there is no evidence linking a Pakistan agency to the disappearance of Sajid Hussain Baloch, it is crucial that Pakistani authorities offer their full cooperation in the investigation led by the Swedish police. An attack on an independent journalist at a time of deep concern for the unfolding situation in Pakistan would be tantamount to an attack on democratic values and a blow dealt to civil society’s efforts to ensure transparency and efficiency in the fight against Covid-19.

On 1 May 2020, Mr Sajid Hussain’s body was found in a river 35 miles north of Stockholm¹¹¹. The Swedish prosecutor’s office has said that the autopsy did not point strongly to foul play.

¹⁰⁶Middle East Monitor, ‘Palestine artist attacked over anti-Bin Salman caricature’, 23 April 2020 www.middleeastmonitor.com/20200423-palestine-artist-attacked-over-anti-bin-salman-caricature

¹⁰⁷ European Federation of Journalists, ‘Sweden: Cartoonist threatened with death after publishing cartoon’, 8 May 2020 <https://europeanjournalists.org/blog/2020/05/08/sweden-cartoonist-threatened-with-death-after-publishing-cartoon>

¹⁰⁸ The Guardian, ‘Exiled Pakistani journalist goes missing in Sweden’, 31 March 2020 <https://www.theguardian.com/world/2020/mar/31/exiled-pakistani-journalist-goes-missing-in-sweden>

¹⁰⁹ Unrepresented Nations & Peoples Organizations, ‘Balochistan: Healthcare System Lacks Infrastructure to Deal with COVID-19’, 31 March 2020 <https://unpo.org/article/21795>

¹¹⁰ South Asian Voices, Covid-19 in Balochistan’, 30 March 2020 <https://southasianvoices.org/covid-19-in-balochistan/>

¹¹¹ The New York Times, ‘Exiled Pakistani Journalist Found Dead in Sweden’, 2 May 2020, www.nytimes.com/2020/05/02/world/asia/pakistan-journalist-dead.html?campaign_id=51&emc=edit_MBE_p_20200504&intance_id=18199&nl=morningbriefing®i_id=111398989§ion=whatElse&segment_id=26545&te=1&user_id=c8c5a91a58f0584b6234b3c0ceb3ce8b

Reporters Without Borders (RSF) has expressed scepticism in a statement on Mr Hussain's death: 'as long as murder cannot be excluded, there is a strong possibility that he was killed in connection with his work as a journalist'. Pakistan is one of the most dangerous countries for journalists to work in and threats have known to come from both Pakistani intelligence agencies and its militant groups. Sajid Hussain's family maintain patient with the slow investigation process and we will continue to monitor the situation closely.

- 3) 17 September 2020 - As the landmark trial of the founder of Wikileaks Julian Assange resumes, the IBAHRI shared a statement stating that a potential extradition of Mr Assange from the United Kingdom to the United States would:
- a. be in contravention of Article 4 (1) of the Extradition Treaty between the UK and US;
 - b. constitute a violation of freedom of expression;
 - c. set a dangerous precedent¹¹² in the restriction of press freedom in the UK, US and in other countries;
 - d. potentially subject him to an unfair trial in the US; and
 - e. if convicted, see him receive a sentence of up to 175 years imprisonment.

In the context of reports stating it was Wikileaks' publication of internal US military logs of the Afghanistan War that led to the International Criminal Court initiating an investigation into alleged US war crimes in Afghanistan – which the Trump administration has opposed – the current extradition trial appears politically motivated. Extradition on political grounds is expressly prohibited by the Extradition Treaty. Following a brief interruption due to a suspected COVID-19 case amongst his defence lawyers, Mr Assange's trial restarted at the Central Criminal Court of England and Wales in London, UK, on Monday 14 September 2020. District Judge Vanessa Baraitser, who is presiding over the case, refused a request made the previous week by Mr Assange's lawyers to postpone the trial until after the US presidential election following evidence given by Paul Rogers, Emeritus Professor of Peace Studies at Bradford University, that President Trump is pursuing Mr Assange over the publication of classified military and diplomatic cables more than a decade ago, due to his war with the press and 'considerable personal antipathy to President Obama and what he did in his two periods in office.' In 2010, Donald Trump suggested there should be a 'death penalty' for the 'disgraceful' actions of WikiLeaks.

Barack Obama did not pursue the extradition of Mr Assange and, in his final days as president, commuted the 35-year military prison sentence of the US army soldier Chelsea Manning who released approximately 700,000 military files and cables on the nature of warfare in Afghanistan and Iraq to WikiLeaks at the age of 22. Ms Manning walked free after nearly seven years of confinement dating from arrest on 27 May 2010.

IBAHRI Co-Chair and former Justice of the High Court of Australia (1996–2006), the Hon Michael Kirby AC CMG, commented: 'The charges against Julian Assange relate to his publication of information of alleged US war crimes, making the material of interest to the general public. If Mr Assange is extradited, it will set a dangerous precedent endangering freedom of the press and expression in two countries boasting mature democratic systems. It will have a chilling effect on free expression by whistle-blowers and journalists disclosing to the public potentially grave human rights law violations. The UK and US must remember their

36 RSF, 'Missing Pakistani journalist's body found in Sweden', 5 May 2020 <https://rsf.org/en/news/missing-pakistanijournalists-body-found-sweden>

¹¹²IBA, 'Assange: a decisive moment for national security journalism', 16 August 2019, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=20F4F951-8AB0-434D-8D6C-7DA497D885A3

obligations under Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights guaranteeing an individual's right to freedom of expression. Further, the First Amendment of the US Constitution upholds freedom of expression and freedom of the press.'

Julian Assange was originally detained in the UK following a request by Sweden to extradite him to investigate allegations of sexual assault. These charges were dropped in November 2019. In 2012, during the request for extradition from Sweden, Mr Assange sought asylum in the Ecuadorian embassy explaining his fears that the US would take the opportunity to attempt to extradite him from Sweden and prosecute him. His fears have now been realised. Nils Melzer, the United Nations-appointed Special Rapporteur on Torture and Inhuman Treatment, published a report in 2019, arguing that the mistreatment of Mr Assange over the last decade amounted to psychological torture. In March 2020¹¹³, the IBAHRI released statement expressing concern over the reported mistreatment of Mr Assange during his remand in Her Majesty's Prison Belmarsh and during hearings before the Courts.

¹¹³ IBAHRI, September 2020, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=C05C57EE-1FEE-47DC-99F9-26824208A750>

GENERAL – EUROPEAN UNION

Key developments including relating to Media Freedom and Access to Justice

- 1) On 3 July 2020, several European organisations advocating for media freedom and the safety of journalists issued a joint statement raising concern about the climate of hostility and violence against journalists covering protests across the European Union. The signing institutions, the European Centre for Press and Media Freedom (ECPMF), Article 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the International Press Institute (IPI), and the Osservatorio Balcani e Caucaso Transeuropa (OBCT), have recorded over 31 cases of attacks and media freedom violations against at least 41 different journalists and media workers while covering protests in the first half of 2020.¹¹⁴ Ten of the incidents led to the hospitalisation of journalists following serious injuries, and four have resulted in police arrests.¹¹⁵

The incidents were recorded in 11 European countries: Germany, France, Italy, Poland, Belgium, Spain, Montenegro, Albania, Greece, Austria and the United Kingdom.¹¹⁶ The attacks happened in protests covering a range of issues, including the Covid-19 lockdown measures, the Black Lives Matter protests, far-right rallies, and anti-migration protests.¹¹⁷ Reports from the incidents show that the aggressions have many sources, including protestors, activist groups, and police forces. In many cases, attacks took place even in circumstances where journalists and media workers are clearly identified. These attacks clearly show a deterioration of the right of free assembly and association and the right of free press in the continent.

The right to freely assemble is enshrined in the constitutions of all countries in the European Union and the Candidate Countries, in Article 12 of the Charter of Fundamental Rights of the European Union, in Article 11 of the European Convention of Human Rights, in Article 21 of the International Covenant on Civil and Political Rights, and in Article 20 of the Universal Declaration of Human Rights.

The freedom of press, closely intertwined with the freedom of thought and expression, is enshrined in the constitutions of all countries in the European Union and the Candidate Countries. It is also guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union, Article 10 of the European Convention of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declaration of Human Rights.

- 2) In Autumn 2020, the IBAHRI reported how the EU was introducing new travel surveillance measures with the aim of tighter migration control and increased border security, which are expected to be in use in 2022. These new measures involve intensive data-gathering and data-sharing procedures that raise significant privacy concerns.¹¹⁸ According to the report by Statewatch, a public watchdog in Europe, the new measures will gather data of travellers from 165 countries, potentially impacting billions of individuals worldwide. The measures will

¹¹⁴ International Press Institute, ‘Fresh attacks worsen climate of hostility against journalists covering protests across Europe’, 3 July 2020, <https://ipi.media/fresh-attacks-worsen-climate-of-hostility-against-journalists-covering-protests-across-europe/>

¹¹⁵ IPI, n.114

¹¹⁶ IPI, n.114

¹¹⁷ IPI, n.114

¹¹⁸ Privacy International, ‘Travel surveillance in the EU’, 12 August 2020 <https://privacyinternational.org/explainer/4119/travel-surveillance-eu>

include profiling tools, biometric databases, and a watch list by Europol. At the same time, the overlapping legal frameworks in place will make it more difficult for individuals to exercise their data rights.¹¹⁹

Four points have been identified by Statewatch that raise particular concern. First, given the issues in the past regarding the inaccuracy of EU databases, the risk of harm to individuals is significantly higher with the collection of more data. Second, the new measures are coming into use when anti-immigrant sentiments are on the rise in Europe. Within this context, centrally storing sensitive data of all foreigners travelling to the EU has significant potential for political abuse. Third, the tools to be used have not been tested for their impact on fundamental rights, in particular, there is a potential for discriminatory practices, and non-EU citizens will become the test subjects of these unproven technologies. Fourth, due to the overlapping data protection regimes in the EU and its member states, it will be complicated for individuals to exercise their data rights and access effective remedies. The complexity of the EU legal system will be particularly challenging for non-EU citizens since they are entirely unfamiliar with the system, which most likely functions in a language they do not speak fluent enough to bring legal claims.

In June 2020, a group of civil society organisations sent a letter to the EU to express collective concern at the lack of a robust legal framework to prevent cyber security surveillance being sold to repressive governments. These government have been accused of using the technology to crack down on human rights defenders, journalists and opposition groups.

The IBAHRI called on EU law and policy makers to review the new travel surveillance measures, as well as measures relating to cyber security surveillance, to bring them in line with the EU's human rights obligations, including the EU Charter of Fundamental Rights. The EU must guarantee data protection of any new tools and technologies, have systems in place to mitigate any risks to fundamental rights of data subjects consulting with experts and the wider public to facilitate this.

- 3) On 6 October, the Court of Justice of the European Union (CJEU) passed a ground-breaking judgement on indiscriminate government mass surveillance regimes. The court confirmed that EU laws preclude national legislation requiring a provider of electronic communications services to carry out the general and indiscriminate transmission or retention of traffic data and location data for the purpose of combating crime in general or of safeguarding national security.¹²⁰ The proceedings were brought against mass surveillance legislation in the UK, France and Belgium concerning the lawfulness of legislation that created obligations on internet and electronic service providers to forward users' traffic and location data to a security or intelligence agencies, or to retain the data in a general and indiscriminate way. This includes its use as a preventative measure.¹²¹

The court reiterated that such retention unduly infringes on the right to freedom of expression, data protection and privacy, particularly member states' obligation to ensure the confidentiality of communications and traffic data. Furthermore, it violates Article 23(1) of the General Data Protection Regulation which protects against such general data retention. However, it did hold that in accordance with the general EU law principle of proportionality, derogations from this rule can occur if:

¹¹⁹ Statewatch, 'Automated Suspicion: The Eu's New Travel Surveillance Initiatives', July 2020 www.statewatch.org/automated-suspicion-the-eu-s-new-travel-surveillance-initiatives/

¹²⁰ CJEU, Press Release No. 123/20, 06 October 2020, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200123en.pdf>

¹²¹ CJEU, n.120

- (a) a pressing national security threat exists that can justify such bulk collection of data if the threat is proven to be genuine and present or foreseeable,
- (b) its scope is limited and temporary to what is strictly necessary, and
- (c) there is effective review by a court or an independent administrative body whose decisions are binding.¹²²

Moreover, the decision does not preclude the use of real-time collection and surveillance, including technology such as facial recognition, but that collection must be limited to specific persons with a valid reason to suspect their involvement in terrorist activities and is subject to prior review by a court or independent body.¹²³

Although member states have a margin of appreciation in dealing with matters of national security and crime prevention, it cannot do so in what constitutes serious interference with EU fundamental rights, particularly when there is no link between the conduct of the persons whose data is collected, and the objective pursued by the legislation. This ruling will ripple through other states that are implementing mass surveillance programs, such as in the Netherlands and Russia discussed in the previous bulletin issue, in order to combat crime and terrorism or crack down on political opposition and journalists.

The IBAHRI welcomed the judgement as a strong deterrent on state surveillance and called on governments to cease the imposition of such programs, like the “Sensing Project”¹²⁴, that rely on unregulated and indiscriminate facial recognition software and prejudicial algorithms in tracking groups and individuals. The cases will now return to each individual country’s courts for implementation of the judgment.

- 4) On 9 November 2020, the European Parliament unveiled that it had reached an agreement with the European Council on setting new rules to limit the sale of cyber-surveillance technology to states that have a record of using such technology to violate human rights.¹²⁵ The agreement sets a new criteria for granting export licenses for dual purpose goods, which are products, software and technology with civilian applications, but can be repurposed in ways that violate human rights. These products can include high-performance computers, spyware, drones, artificial intelligence, facial recognition and certain chemicals.

The main outcomes of the agreement include the setting up of an EU-wide system of controlling cyber-surveillance items that are not listed as dual use items, strengthening member states’ public reporting obligations on export controls to make the cyber-surveillance sector in particular more transparent; increased importance of human rights as a licensing criterion; and agreeing on rules to include emerging technologies in the regulation. The head of the negotiating delegation, Bernd Lange, stated that through this agreement, “*respect for human rights will become an export standard... as export rules for surveillance technologies have been*

¹²² Tech Crunch, Europe’s top court confirms no mass surveillance without limits, 06 October 2020, <https://techcrunch.com/2020/10/06/europes-top-court-confirms-no-mass-surveillance-without-legal-limits/>

¹²³ EDRI, Press release: The data retention regimes of France, United Kingdom and Belgium are illegal says CJEU, 06 October 2020, <https://edri.org/our-work/press-release-the-data-retention-regimes-of-france-united-kingdom-and-belgium-are-illegal-says-cjeu/>

¹²⁴ See Issue 14 of the IBAHRI Freedom of Expression Bulletin for more information- . www.ibanet.org/Document/Default.aspx?DocumentUId=0C757A73-122C-412A-843C-0D35C887F026

¹²⁵ European Parliament, ‘Dual use goods: Parliament and the EU ministers agree on new EU export rules’, 09 November 2020, www.europarl.europa.eu/news/en/press-room/20201105IPR90915/dual-use-goods-parliament-and-eu-ministers-agree-on-new-eu-export-rules

agreed for the first time [in the EU]. Economic interests must not take precedence over human rights.”¹²⁶

The new rules will require governments to publicly share details of the licenses they grant, which is of particular salience as these sales are usually cloaked in secrecy, meaning that multibillion-dollar technology is bought and sold with little public scrutiny. The leading opponents to the new rules included France and Sweden, both of whom have thriving surveillance corporations, such as Morpho and Axis Communications, who have expanded China’s systems of surveillance, which Amnesty reported that may have been used in the surveillance of Uyghurs held in internment camps.¹²⁷ The new regulations will reign in such companies, however its implementation and effectiveness will depend on the political willingness of Europe’s national governments.

The IBAHRI welcomed the policy reform at the EU on the sale and export of surveillance technology by states and corporations to authoritarian regimes. Increased due diligence and regulations will ensure that member states and companies are prevented from profiting off the sale of digital surveillance technologies that are linked to appalling human rights violations. The informal political agreement now needs to be formally endorsed by the International Trade Committee, the Council and Parliament as a whole before it can enter into effect.

- 5) It has been revealed that EU development aid and cooperation programmes have been extensively used to train and equip security forces with surveillance techniques and tools in non-member countries, including authoritarian regimes in Africa and the Middle East, according to documents obtained by Privacy International.¹²⁸ The public release of hundreds of documents were obtained by Privacy International after a year of negotiating with EU bodies to gain access, and these documents disturbingly revealed that:
1. The EU has been supporting and training police and security agencies in Africa, the Middle East and the Balkans in spying on internet and social media users through the use of malware and other controversial surveillance techniques and tools,¹²⁹
 2. EU bodies have been training and equipping border and migration authorities in non-member countries with surveillance tools, including wiretappings systems and other phone surveillance tools, in a bid to ‘outsource’ the EU’s border controls,¹³⁰
 3. Civipol, a French security company, is developing mass surveillance and biometrics systems in Western Africa with EU aid funds to prevent migration and to facilitate deportations without adequate assessing risks.¹³¹

The funds and training have been offered to countries with histories of systematic human rights abuse, including Niger and Morocco. Training slides for a session taught Moroccan intelligence services and

¹²⁶ European Parliament, n.125

¹²⁷ Amnesty International, ‘EU companies selling surveillance tools to China’s human rights abusers’, 21 September 2020, www.amnesty.org/en/latest/news/2020/09/eu-surveillance-sales-china-human-rights-abusers/

¹²⁸ Privacy International, ‘Surveillance disclosures show urgent need for reforms to EU aid programmes’, 10 November 2020, <https://privacyinternational.org/long-read/4291/surveillance-disclosures-show-urgent-need-reforms-eu-aid-programmes>

¹²⁹ Privacy International, ‘Revealed: The EU training regime teaching neighbours how to spy’, 10 November 2020, privacyinternational.org/long-read/4289/revealed-eu-training-regime-teaching-neighbours-how-spy

¹³⁰ Privacy International, ‘Borders without borders: How the EU is exporting surveillance in bid to outsource its border controls’, 10 November 2020, privacyinternational.org/long-read/4288/borders-without-borders-how-eu-exporting-surveillance-bid-outsource-its-border

¹³¹ Privacy International, ‘Here’s how a well-connected security company is quietly building mass biometric databases in West Africa with EU aid funds’, 10 November 2020, <https://privacyinternational.org/news-analysis/4290/heres-how-well-connected-security-company-quietly-building-mass-biometric>

police forces on the use of GrayKey, a tool which bypasses iPhone lock screens, in a country with a proven track record of repeatedly using spy tools to target the iPhones of activists and journalists, according to Amnesty.¹³² This means that the EU has knowingly, intentionally and systematically supported the mass surveillance of citizens, including journalists and human rights defenders, in non-EU states, in violation of the EU's fundamental rights and international human rights law.

This, however, is not the first time that EU aid agencies have been caught providing authoritarian regimes and militia states in Africa with training and equipment to its intelligence and security agencies. The 'Khartoum Process' began in 2014 where the EU allocated more than €200 million to the Al-Bashir regime in hopes of curbing migration from the horn of Africa through Sudan by financing intelligence services and the infamous Rapid Security Forces (previously known as Janjaweed). It had resulted in Sudanese security agencies systematically spying on migrants, issuing mass deportations and holding asylum seekers in detention centres ripe with torture and sexual abuse reports, as well as collusion between authorities and human traffickers.¹³³ It now appears that the EU's aim of curbing migration through law enforcement has shifted towards mass surveillance of entire populations, and not just migrants headed for Europe.

Furthermore, the disclosure of the recent mass surveillance training program is especially critical as it comes days after the European Parliament and EU ministers agreed on new EU export rules for cyber-surveillance tools. The rules set out new restrictions on the granting of export licenses for dual-use goods, software and technology that has civilian applications but could be repurposed for military use or in ways which violate human rights.

The EU has actively violated both regional and international law in terms of its support and development of restrictive measures on privacy that are disproportionate, unnecessary and do not achieve a legitimate aim, in accordance with Article 7 and 8 of the EU Charter, and Article 17 of the ICCPR. Corporations that were complicit in the surveillance programs in third countries contravened the OECD Guidelines for Multinational Enterprises, particularly on due diligence.¹³⁴ Additionally, the EU is complicit in supporting refoulment by third countries, which is a violation of the UN refugee convention. The IBAHRI condemned the use of EU aid funds in supporting mass surveillance and mass deportation programmes in non-member states and called on the EU to urgently reform such support.

¹³² Amnesty International, 'Moroccan Journalist Targeted with Network Injection Attacks Using NSO Group's Tools', 22 June 2020, www.amnesty.org/en/latest/research/2020/06/moroccan-journalist-targeted-with-network-injection-attacks-using-nso-groups-tools/

¹³³ The New Humanitarian, 'Inside the EU's flawed \$200 million migration deal with Sudan', 30 January 2018, www.thenewhumanitarian.org/special-report/2018/01/30/inside-eu-s-flawed-200-million-migration-deal-sudan

¹³⁴ OECD Guidelines for Multinational Enterprises, 2011 Edition, www.oecd.org/daf/inv/mne/48004323.pdf/