



Human Rights Institute

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IBAHRI Freedom of Expression Bulletin

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As the landmark trial of the founder of Wikileaks Julian Assange resumes, the International Bar Association's Human Rights Institute (IBAHRI) released a statement to express its grave concern over the possible extradition of Mr Assange from the UK to the United States, including how it would violate freedom of expression and set a dangerous precedent in the restriction of media freedom across the world. 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 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.'*¹

¹ Julian Assange extradition would threaten freedoms of expression and media, says IBAHRI, 17 September 2020
www.ibanet.org/Article/NewDetail.aspx?ArticleUid=5c8b0e55-1b47-450e-ac0b-4587a241e9a6

1. National security and emergency measures

Since the outset of the Covid-19 pandemic, several states have chosen to resort to emergency measures to allow for the issuing of new extraordinary measures. Although a state of emergency may be justified in the context of a pandemic, it is risky to extend a government's powers beyond the constitutional standard, as it becomes difficult to review all measures taken and to ensure that the government relinquishes its newly-extended powers at the end of the crisis.

2. Privacy and surveillance

As the spread of the virus relies heavily on the public's behaviour and on how well informed people are regarding the virus' transmission and its effects, some states have taken it into their hands to monitor and closely control people's movements, even at the cost of their privacy. Many states have demonstrated how technological surveillance is being used in this context and also how worrying such measures are when they are not strictly defined and limited.

3. Safety of journalists

During this pandemic, the personal safety of journalists and media workers, especially those reporting from the frontlines of this global crisis with accurate and reliable information for the public, is paramount. There are very real concerns about the physical safety of journalists, and the considerable psychological stress of reporting on the outbreak.² Across the globe, we are seeing journalists being threatened and punished for speaking out about the extent of the situation in their countries.

4. Free speech

Some countries have sought to restrain freedom of speech, as they consider that alternative reporting on the current state of affairs constitutes a counter-productive discourse, and is therefore an obstacle in their response to the crisis. This is a worrying trend that could result in a detrimental unawareness of the real implications of the pandemic. By silencing non-official voices, states not only hinder the global response to the virus, but also sap democratic stability by favouring opacity over transparency.

5. Digital rights and internet shutdowns

It is clear that the internet has played a key role in fighting the spread of coronavirus, as it facilitates the exchange of information about the virus around the globe as well as the international coordination of efforts against the virus. Consequently, restricting access to the internet in general, or to certain websites such as social media platforms, participates in obscuring the reality of this global pandemic, which is tantamount to preventing the public from accessing relevant scientific facts.

² UNESCO, 'UNESCO stresses importance of safety of journalists amid COVID-19 pandemic', 27 March 2020
<https://en.unesco.org/news/unesco-stresses-importance-safety-journalists-amid-covid-19-pandemic>

1. National security and emergency measures

A state of emergency usually involves a devolution of power to the executive organs of the state, with little or no legislative review, as justified by the urgency of the situation. It enables a government to take measures, which, for a limited amount of time, may restrain individual liberties or hinder government accountability in order for it to swiftly and adequately respond to a crisis. A state of emergency is an extraordinary status as it allows the state to interfere with individual rights, and there is always the risk that a state may take advantage of this and use its extended powers for purposes less commendable than that of containing the virus.

Belarus

During the 45th Session on 18 September 2020, the United Nations Human Rights Council adopted a resolution³ on the situation of human rights in Belarus amid protests and a police crackdown following the contested re-election of autocrat Alexander Lukashenko, who has been in power since 1994.⁴ In the resolution, adopted by a vote of 23 in favour, two 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, with particular 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 information.⁵ The much-anticipated Council resolution comes after weeks of nationwide mass protests in Belarus and the violent response of security forces against the protestors. Many of these concerns have been echoed by the IBAHRI in statements prior to, and following, the contentious election.⁶

At a special session of the UN Human Rights Council in Geneva on 18 September 2020, the IBAHRI, along with the International Commission of Jurists, delivered an oral statement,⁷ 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 urge Belarussian authorities to follow the requests

³ 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

⁴ 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>

⁵ OHCHR, n.2.

⁶ See IBAHRI statements - [IBAHRI urges Belarus to ensure freedom of expression and conduct fair and free elections](#) (15 July 2020) [IBAHRI condemns detention of media and use of force against protesters following elections](#) (13 August 2020), [IBAHRI condemns widespread police brutality and detainee torture in Belarus](#) (21 August 2020).

⁷ 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/

clearly set out, most urgently to respect and protect the Belarussian people's right to freedom of assembly and freedom of expression.

Tanzania

Ahead of the elections in October 2020, there has been an increasing crackdown on civil rights and media freedom in Tanzania. The crackdown is intensified by restrictive legislation⁸ that has recently been enacted in Tanzania, particularly the Political Parties Act, which significantly restricts the space for political parties and threatens the rights to peaceful assembly.⁹

Moreover, since the start of the Covid-19 pandemic, media freedom and free speech has been under attack in Tanzania. In the previous issues of this Bulletin, IBAHRI addressed the increasingly shrinking space for media outlets. The recent report by Article 19, a global free speech organisation, shows that the Tanzanian authorities are yet to take action to protect media pluralism and freedom of expression in the country. Many news outlets have had their licenses suspended by regulatory authorities, creating a chilling effect for the whole media environment in Tanzania.¹⁰

The shrinking civic space has also become a reality for the NGOs operating in Tanzania. On 12 August 2020, the Tanzanian government froze the bank accounts of the Tanzania Human Rights Defenders Coalition, on the grounds that the local NGO failed to submit its contractual agreements with donors to the State Treasury.¹¹

The IBAHRI regrets that Tanzanian authorities continue to undermine civil and political rights in the country. In this respect, IBAHRI reminds authorities in Tanzania of their obligations as set out in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, to which Tanzania is a state party, requires the state to respect and protect the right to free and fair elections, the right to peaceful assembly and the right to freedom of expression. Tanzania must act in accordance with its international human rights obligations and cease attacks on civil rights and freedoms.

Myanmar

As the elections in Myanmar, scheduled for 8 November 2020, near, the government tightens its grip on freedom of expression through severe restrictions on candidates, voters, and the general public.¹² In August 2020, Myanmar's Union Election Commission (UEC), responsible for organising and overseeing elections in Myanmar, announced that any attempt to call for a boycott

⁸ See IBAHRI Freedom of Expression Bulletin, Issue 12, 9 September 2020, www.ibanet.org/Human_Rights_Institute/Freedom-of-Expression.aspx

⁹ Article 19, 'Tanzania: Shrinking civic space ahead of the October 2020 elections', 11 September 2020, www.article19.org/resources/tanzania-shrinking-civic-space/

¹⁰ Article 19, n.8

¹¹ Article 19, n. 8.

¹² Article 19, 'Myanmar: As campaign period begins, freedom of expression violations ramp up', 10 September 2020 www.article19.org/resources/myanmar-as-campaign-period-begins-freedom-of-expression-violations-ramp-up/

of the upcoming election violates election law. Those who boycott the elections face up to one year of imprisonment and a fine of 100,000 Kyats (US\$76).¹³

Ahead of the election campaigning period, the UEC issued a notice regarding permissions to broadcast campaigns. According to the notice, political parties must submit the manuscript of the campaign and the name of the speaker before the broadcast. The UEC will review the manuscript and has the power to censor political messages, including those that disrespect existing laws, tarnish the image of the country and defame the military.¹⁴

Moreover, the UEC has systematically excluded many Rohingya candidates from running in the elections. Rohingya are identified as foreigners in Myanmar, denying them access to full citizenship rights, including the right to run in elections. According to the current election law in Myanmar, potential political candidates must be born of two parents who are citizens of Myanmar.¹⁵

The developments leading up to the November elections in Myanmar are profoundly concerning. The IBAHRI reminds the Myanmar authorities that freedom to express political expression is fundamental to running free and fair elections. In this respect, the IBAHRI strongly urges Myanmar to cease any attempt to control and censor political expressions ahead of the elections in November. We further urge Myanmar to stop the exclusion of Rohingya from running for office – no one should be excluded from an election as a result of their ethnic background and religion.

¹³ The Irrawaddy, 'Myanmar Authorities Say Election Boycott Campaign May Face Legal Action', 12 August 2020, www.irrawaddy.com/news/burma/myanmar-authorities-say-election-boycott-campaign-may-face-legal-action.html

¹⁴ Global New Light of Myanmar, 'Permission for broadcast campaigns of political parties', 24 July 2020, www.gnlm.com.mm/permission-for-broadcast-campaigns-of-political-parties/

¹⁵ Fortify Rights, 'Myanmar: Prevent Exclusion of Rohingya Candidates from National Elections', 19 August 2020, www.fortifyrights.org/mya-inv-2020-08-19/

2. Privacy and surveillance

Certain states have opted to track down individuals' movements by using their mobile phone data with little, if any, regard for their privacy. Although this sort of measure may be supported in the midst of a pandemic that is lethal for a significant proportion of the population, such technological prowess should be watched attentively, as it is evident that it could be used to serve other purposes.

Contact tracing apps are reported to be in operation in China, Czech Republic, Ghana, Hong Kong, Iceland, India, North Macedonia, Poland, Singapore and South Korea. The IBAHRI, along with many global privacy campaigners, activists and lawyers, is concerned about the implications of mass surveillance through these apps. Particularly whether the current Covid-19 pandemic is being used as a 'Trojan horse' to build a surveillance infrastructure that will long continue after the health threat has passed, or one that is largely dependent on political will to have conditions reviewed and revoked. In April 2020, Amnesty International, along with 100 other organisations, issued a statement calling for limits on this kind of surveillance.¹⁶ The statement requests that states interested in Covid-19 containment projects comply with eight conditions endorsed by the IBAHRI:

- 1) Surveillance must be 'lawful, necessary and proportionate'.
- 2) Extensions of monitoring and surveillance must have sunset clauses.
- 3) The use of data would have to be limited to Covid-19 purposes.
- 4) Data security and anonymity would have to be protected and shown to be protected based on evidence.
- 5) Digital surveillance would have to avoid exacerbating discrimination and marginalisation.
- 6) Any sharing of data with third-parties would have to be defined in law.
- 7) There must be safeguards against abuse and procedures in place to protect the rights of citizens to respond to abuses.
- 8) 'Meaningful participation' by all 'relevant stakeholders' would be required, including public health experts and marginalised groups.

India

In India, the Ministry of Electronics and Information Technology has published a report on Non-Personal Data Governance Framework and issued a call for feedback from civil society actors. The proposed framework only covers non-personal data, namely (i) data that has no connection to any identifiable person and (ii) data that has been anonymised. As India currently does not have a comprehensive legal framework protecting the personal data of individuals, Access Now, an

¹⁶ Joint civil society statement: States use of digital surveillance technologies to fight pandemic must respect human rights (PDF), Amnesty International, 2 April 2020, www.amnesty.org/download/Documents/POL3020812020ENGLISH.pdf

international digital rights organisation, has stated that it is counter-intuitive and counterproductive to regulate non-personal data before regulating personal data.¹⁷

On 13 September 2020, Access Now submitted its comments regarding the proposed framework. The submission highlights that a comprehensive data protection framework should prioritise the protection of individuals' data rather than economic value creation of companies. Moreover, it asserts that the Indian government should focus on a legal framework of non-personal data only *after* a personal data protection framework is drafted in consultation with stakeholders and in line with the approach of the European Union's GDPR, as it provides for valuable lessons for India.¹⁸

The IBAHRI welcomes the call for comments by the Ministry of Electronics and Information Technology of India since a comprehensive legal framework can only be established through the involvement of all stakeholders, including civil society organisations. In accordance with the suggestions by Access Now, the IBAHRI calls for the Indian government to first draft a human rights-based and individual-centric legal framework on personal data protection, before focusing on non-personal data.

Uganda

On 7 September 2020, the Ugandan Communications Commission (UCC) issued a directive stating that anyone wishing to publish information online must be licensed before 5 October 2020, ahead of the elections in 2021. Numerous organisations have reacted to the directive, including Amnesty International, stating that freedom of expression does not need a license.¹⁹

The latest directive comes two years after the initial notice shared on 6 March 2018. Human rights organisations and civil society heavily criticised the initial notice as it was seen to be an attack on freedom of expression online. Due to the threat of being suspended by UCC, a number of service providers have applied and acquired authorisation by early 2019.²⁰

Given that the 2021 election campaigning in Uganda will only be allowed on conventional and social media platforms due to Covid-19 measures and restrictions, the UCC's attempt to restrict freedom of expression through licencing and authorisation is deeply concerning. The IBAHRI reminds the Ugandan authorities that Uganda has ratified the African Charter on Human and Peoples' Rights (in 1986) and the International Covenant on Civil and Political rights (in 1995). Both international treaties, as well as the Constitution of Uganda, guarantees the right to freedom of expression. In this respect, the IBAHRI calls on the UCC to withdraw its directive that restricts online free speech.

¹⁷ Access Now, 'Access Now on India's plan to regulate "non-personal" data: protect personal data first', 16 September 2020, www.accessnow.org/access-now-on-indias-plan-to-regulate-non-personal-data-protect-personal-data-first/

¹⁸ Access Now, n. 16.

¹⁹ Amnesty International, 'Uganda: Government to license online posts in fresh assault on freedom of expression', 9 September 2020, www.amnesty.org/en/latest/news/2020/09/uganda-government-to-license-online-posts-in-fresh-assault-on-freedom-of-expression/

²⁰ African Centre for Media Excellence, 'UCC threatens to shut down Daily Monitor website', 8 February 2020, <https://acme-ug.org/2019/02/08/ucc-threatens-to-shut-down-monitor-website/>

Technology companies: Facebook

On 14 September 2020, a memorandum written by a former Facebook data scientist, Sophie Zhang, was exposed. This memorandum details Facebook's failure to take action against governments and political parties in their attempt to sway public opinion.²¹ In her detailed memorandum, Ms Zhang claims that Facebook ignored political manipulation campaigns that used fake accounts, and inauthentic activity on the platform in countries including Bolivia, Brazil, Ecuador, India, Spain and Ukraine.

According to the Verge, Facebook did not respond to their request for comments on Ms Zhang's allegations.²² The IBAHRI has been deeply concerned by the widespread disinformation, exacerbated by the Covid-19 pandemic and reminds Facebook that it plays an immense role in the right to receive and impart information and ideas globally. Its platform is actively used by political campaigners, which runs the risk of undermining free and fair elections worldwide. In this respect, the IBAHRI calls for Facebook to investigate the allegations by Ms Zhang and issue a public statement.

²¹ BuzzFeed News, 'I Have Blood on My Hands': A Whistle-blower Says Facebook Ignored Global Political Manipulation', 14 September 2020, www.buzzfeednews.com/article/craigsilverman/facebook-ignore-political-manipulation-whistleblower-memo

²² The Verge, 'Facebook ignored blatant political manipulation around the world, claims former data scientist', 14 September 2020, www.theverge.com/2020/9/14/21436852/facebook-data-scientist-memo-political-manipulation.

3. Safety of journalists

The independence and safety of journalists is a crucial factor of transparency and accountability, and, therefore, a vital component of democracy. As a result, any attempt by a state against the integrity, the livelihood or the safety of journalists is fundamentally anti-democratic. In addition, the current state of the pandemic has made the work of journalists even more crucial, as the exchange of information relating to the virus and our consequent increased knowledge of its characteristics and impact will eventually contribute to the outcome of this crisis. However, a trend of grave concern to the IBAHRI is how many governments across the world are adopting legislation that clearly risks impeding the work of journalists and the media, therefore restricting the public's right to receive accurate and reliable information at this unprecedented time. Problematically, many laws also carry heavy fines and criminal sanctions, threats of arrest and jail time for those on the frontline simply doing their jobs.

Algeria

On 15 September 2020, Algerian journalist Khaled Drareni was sentenced to two years in prison by the Algiers Court of Appeals for covering the Hirak protests in the country. His coverage of the demonstrations documented police violence and arbitrary arrests. Mr. Drareni's sentence constitutes a flagrant attack on press freedom in Algeria.²³ Khaled Drareni, editor of Casbah Tribune news, a correspondent for French-language channel TV5 Monde and Algerian reporter for Reporters without Borders (RSF), was initially tried at the Sidi M'hamed court in Algiers alongside two Hirak leaders on charges of 'provoking an unarmed rally' and 'undermining national unity'. Since the Hirak movement in 2019, attacks on media freedom and freedom of speech have increased in Algeria. Journalists and media workers who cover the protests often face lengthy prison terms. RSF ranked Algeria 146 in the 2020 World Press Freedom Index²⁴.

On 16 September, UN human rights experts released a statement calling on Algerian authorities to overturn the sentence and release Khaled Drareni. In the statement, they condemned his arrest stating that, 'under international law, any person who monitors an assembly must be protected by the State, whether it is a journalist, a member of national human rights institution or an ordinary citizen, It is unacceptable to arrest anyone – especially a journalist – for simply disseminating a video that shows security forces using violence against demonstrators'.²⁵

The IBAHRI condemns the prison sentence against Khaled Drareni and remains alarmed that media freedom is in a state of deterioration amid Algeria's supposed political change. We strongly urge the Algerian authorities to immediately and unconditionally release Khaled Drareni and cease all attacks on journalists for conducting their professional activities.

²³ Article 19, 'Algeria: Imprisonment of journalist Khaled Drareni is attack on press freedom', 15 September 2020, www.article19.org/resources/algeria-imprisonment-of-journalist-khaled-drareni-is-attack-on-press-freedom/

²⁴ Reporters without Borders, <https://rsf.org/en/algeria>

²⁵ OHCHR, 'UN experts condemn jail sentence against Algerian journalist and call for his release', 16 September 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26243&LangID=E

Azerbaijan

In the case of *Mirgadirov v Azerbaijan and Turkey*, on 17 September 2020, the European Court of Human Rights (ECtHR) unanimously held that Azerbaijan violated Articles 5, 6 and 8 of the European Convention on Human Rights (ECHR), while finding the application against Turkey inadmissible.²⁶

The applicant, Rauf Habibula oglu Mirgadirov, is an Azerbaijani national and a well-known journalist working as a correspondent for an Azerbaijani newspaper in Turkey before the Turkish authorities withdrew his press accreditation and residence permit in April 2014 and eventually deported him to Azerbaijan.

On arrival at Baku airport, Mr Mirgadirov was arrested and charged with high treason for allegedly providing secret information to Armenian agents. He was held in pre-trial detention until his conviction in December 2015 as he was sentenced to six years in prison. He was eventually released in March 2016 following the suspension of his sentence by the court of appeals.

While in pre-trial detention, Mr Mirgadirov was restricted to use the telephone as well as to meet and correspond with anyone besides his lawyers on the grounds that he supplied information to Armenia. After exhausting the domestic remedies, he then applied to the ECtHR.

The ECtHR held that the applicant's detention lacked reasonable suspicion of a criminal offence, review of his arrest was not in accordance with Article 5(4) ECHR, and he was held in detention for two days in 2014 without a court order. Moreover, the statement released by the Azerbaijan Ministry of National Security about the restrictions imposed on the applicant during his pre-trial detention was formulated in a way to leave the reader with no doubt that the applicant committed the crime of high treason. Therefore, Azerbaijan violated the applicant's right to be presumed innocent pending trial, a right protected under Article 6 (2) ECtHR. Finally, the ECtHR found a violation of Article 8 ECtHR as he was separated from the outside world and his family during his term in prison pending trial.

The IBAHRI welcomes this ECtHR judgment against Azerbaijan while regretting that the Court refrained from ruling that the applicant's arrest was politically motivated in violation of Article 18, ECtHR. The IBAHRI calls for Azerbaijan to follow the ECtHR's judgments and prevent any further arbitrary detentions of journalists.

China

Australian journalists Bill Birtles and Mike Smith, who worked in Beijing and Shanghai respectively for many years, were forced to leave China on 7 September 2020 following mounting intimidation by Chinese authorities.²⁷

Mr Birtles and Mr Smith were subjected to simultaneous night-time raids in their homes conducted by Chinese national security officials. The two journalists took shelter in Australian

²⁶ European Court of Human Rights, *Mirgadirov v. Azerbaijan and Turkey* (application no. 62775/14), 17 September 2020, hudoc.echr.coe.int/eng?i=001-204584

²⁷ ABC News Australia, Australian correspondents Bill Birtles and Mike Smith pulled out of China after five-day diplomatic standoff over national security case, 8 September 2020, www.abc.net.au/news/2020-09-08/bill-birtles-mike-smith-evacuated-china-safety-concerns/12638786

consular missions while waiting for Chinese authorities to allow them to leave the country. Following diplomatic communications between China and Australia, Chinese authorities agreed to lift their travel ban as the two journalists agreed to be interrogated as part of an investigation.²⁸

Following the incident, the IBAHRI addressed China to remind the state of its international obligations to protect freedom of expression and media freedom. The IBAHRI remains alarmed about the intimidation and harassment of journalists in China and closely monitors the situation. In this regard, we once again call for Chinese authorities to stop targeting journalists for merely doing their work and to act in accordance with international human rights obligations.

Egypt

On 9 September 2020, Islam El Kalhy, a prominent Egyptian journalist working for a local independent news outlet, Darb, was arrested and detained on fake news charges. His employer, Khaled el-Balshy stated that Mr El Kalhy's arrest could be as a result of his recent reporting of an incident where a young man died while he was in police custody following his arrest over clashes in one of the Giza neighbourhoods at the beginning of September. After his arrest, security forces did not disclose his whereabouts for 24 hours.

On 9 April, access to Darb's website was restricted by the authorities, just one month after the news website launched.²⁹ Mr El Kalhy's arrest is part of a recent clampdown on journalists and media workers, resulting in the arrest and detention of several journalists despite the increasing number of Covid-19 cases reportedly surging in prisons.

Media freedoms and the exercise of freedom expression have been under attack in President Abdel Fattah El-Sissi's government. Scores of dissident voices face arrest and lengthy imprisonment that are justified based on 'national security'. Media outlets suffer from a wide range of censorship and restrictions.

The IBAHRI reiterates that Egyptian authorities must cease harassing journalists and obstructing free expression in the country, as is in accordance with international obligations set out in the International Convention on Civil and Political Rights.

Turkey

On 9 September 2020, three prominent investigative journalists accused of revealing national security secrets were ordered to be released from prison after six months under detention.³⁰ The journalists had been detained for allegedly revealing the identity of a Turkish intelligence officer killed in Libya in February this year.

Although allowing release, the journalists were still sentenced by the court. Murat Agirel was sentenced to four years and eight months in prison for 'disclosing information and documents

²⁸ ABC News Australia, n. 26.

²⁹ CPJ, 'Egyptian journalist Islam al-Kalhy detained, charged with spreading false news', 14 September 2020, [//cpj.org/2020/09/egyptian-journalist-islam-al-kalhy-detained-charged-with-spreading-false-news/](https://cpj.org/2020/09/egyptian-journalist-islam-al-kalhy-detained-charged-with-spreading-false-news/)

³⁰ Al Monitor, 'Turkish court releases detained journalists, issues prison sentences pending appeals', 9 September 2020, www.al-monitor.com/pulse/originals/2020/09/turkey-court-journalists-detained-released-prison-sentences.html

about intelligence activities'. Baris Pehlivan and Hulya Kilinc were sentenced to three years and nine months in prison under the same charge.³¹

During the trial, the journalists rejected the accusations, stating that the agent's name had previously been publicised, that the journalists were lawfully reporting on the officer's funeral and did not intend to reveal any state secrets. The Prosecutor had sought prison sentences up to 19 years for the journalists. As the IBAHRI addressed in previous issues of this Bulletin, freedom of journalists and the media remains in critical condition in Turkey. RSF, an international organisation protecting press freedom worldwide, ranks Turkey 154 out of 180 countries.³²

The IBAHRI welcomes the release of three journalists but regrets that they have not been acquitted. On 17 September, Istanbul 14th High Criminal Court, via a public announcement warned Can Dündar, a predominant, self-exiled Turkish journalist to return to Turkey within 15 days otherwise he will be deemed as a fugitive and all his assets will be seized under Article 248 of the CMK (Turkish Criminal Procedure Law).³³

In response to the statement, Can Dündar posted on his Twitter account how for 'doing 'nothing but journalism... the court decided to seize in four minutes is 40 years of our labour'."³⁴

Can Dündar was the chief editor of the pro-opposition Turkish daily newspaper, Cumhuriyet, when he was arrested on 26 November 2015 on charges of 'disclosing state secrets, espionage and aiding a terrorist group'. He was held for 92 days in pre-trial detention before being released on 26 February 2016. In May 2015, he published a report in Cumhuriyet 'alleging that Turkey's intelligence service sought to send weapons to Syrian rebel groups'.³⁵ Turkish president, Recep Tayyip Erdoğan reacted to the report stating that 'Dündar would pay a heavy price'. Mr Dündar was accused of 'espionage, revealing state secrets and propaganda for the Gülen Movement, an Islamist network led by US-based cleric Fethullah Gülen that Turkey blames for having orchestrated a failed coup attempt in 2016'.³⁶ Consequently, Mr Dündar stepped down from the position as the Editor in Chief of Cumhuriyet in August 2016, after he received five years and ten months of the jail sentence. Further, 14 members of staff of the Cumhuriyet outlet were charged with terrorism and propaganda for the Gülen Movement in 2018.³⁷

The IBAHRI condemns the recent court decision to seize the assets of Mr Dündar. Like many other Turkish journalists, Mr Dündar has faced a grave consequence of exercising his right to free expression and being independent in government-controlled media. We call on the Turkish authorities to revoke the unjust decision in this case and remind Turkey of its international obligations to guarantee freedom of the press and call on the authorities to release all journalists jailed on arbitrary charges immediately.

³¹ Al Monitor, n. 28

³² Reporters Without Borders, 'Turkey', 2020, <https://rsf.org/en/taxonomy/term/145>

³³ Sozcu, 'The process of being considered illegal was initiated for Can Dündar' , 17 September 2020, www.sozcu.com.tr/2020/gundem/can-dundar-icin-kacak-sayilma-sureci-baslatildi-6042790/

³⁴ Ahval News, 'Exiled journalist Can Dündar to have assets seized unless returns to Turkey', 17 September 2020, ahvalnews.com/can-dundar/exiled-journalist-can-dundar-have-assets-seized-unless-returns-turkey

³⁵ CPJ, 'Can Dündar, Turkey: International Press Freedom Awards 2016', [//cpj.org/awards/can-dundar-turkey/](http://cpj.org/awards/can-dundar-turkey/)

³⁶ Ahval News, n.32

³⁷ Ahval News, n.32

4. Free speech

Article 19 of the Universal Declaration of Human Rights allows for everyone to possess the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and share information. Globally, in recent years, we have seen freedom of expression being eroded, and the Covid-19 crisis intensifies concerns of greater repression of free speech.

Hungary

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 the Media Council, during the seven years of Klubradio'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 Klubrádio, the legal remedy was not initiated in court, and fines were 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 newspaper 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 country.³⁸ 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'.³⁹

The IBAHRI condemns 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'.⁴⁰

³⁸ 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

³⁹ 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

⁴⁰ 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/)

5. Digital rights and internet shutdowns

Governments that are currently imposing an internet shutdown in states, including Jammu and Kashmir, restrict the flow of information during the Covid-19 global crisis. Other states have instead elected to simply cap internet speed, making it virtually impossible to download files, communicate and disseminate information.

Belarus

In previous editions of this Bulletin, the IBAHRI reported on the contracting of private, global company Sandvine Inc. and its direct role in enabling the internet disruptions and censorship in the country. 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 US private equity firm Francisco Partners, and supplied to Belarus as part of a \$2.5 million contract with the Russian technology supplier Jet Info systems'. The company's technology, which is used to filter and manage internet networks, was used by a state-run internet agency in Belarus to block thousands of websites in the country amid nationwide protests over a disputed election. The IBAHRI expressed concern at the possible violations of human rights as a result of contracting the tech company and called for an urgent investigation into process and due diligence, if any, undertaken for the technology tools provided by Sandvine for use in Belarus over the recent weeks.

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'.⁴¹ The IBAHRI joins AccessNow to welcome the move to end the agreement with Belarus. Natalia Krapiva, Tech Legal Counsel at Access Now 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'.⁴²

⁴¹ 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

⁴² 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/