

FREEMUSE

FREEDOM OF MUSICAL EXPRESSION

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STAKEHOLDER SUBMISSION

FREEMUSE – The World Forum on Music and Censorship is an independent international membership organization advocating and defending freedom of expression for musicians and composers worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

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SUMMARY

1. In her June 2013 report, “The Right to Artistic Freedom and Creativity,” the United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, observed that the “vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.”ⁱ

2. As the Special Rapporteur noted, the right to artistic freedom and creativity is explicitly guaranteed by international instruments; most importantly, Article 15(3) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), under which state parties to the treaty “undertake to respect the freedom indispensable for . . . creative activity” and in International Covenant on Civil and Political Rights (ICCPR) Article 19(2), which provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art.”

3. Moreover, artistic freedom is enabled by other fundamental rights; chiefly, liberty and security of person; freedom of association, assembly, and movement; freedom of thought, conscience, and religion; and equal protection of the law. The practice of artistic freedom in turn can support these fundamental rights and freedoms by witnessing to their violation and by developing and enriching cultures that affirm the inherent and equal dignity of the person.

4. This Universal Periodic Review (UPR) submission examines the protection of artistic freedom of expression and association in Belarus, with particular attention given to the broadcasting and performance of popular music.ⁱⁱ We find that Belarus could do more to honor its international commitments and we conclude with several proposals for the implementation of the recommendations accepted by Belarus during the previous review.

FREEDOM OF EXPRESSION

5. During the first cycle of its UPR in 2010, Belarus supported a number of recommendations relevant to artistic freedom of expression. It supported, *inter alia*, the recommendations by Switzerland that it respect the provisions of the International Covenant on Civil and Political Rights and the Convention against Tortureⁱⁱⁱ and that it guarantee freedom of association and expression for all citizens, including the press, human rights defenders, political parties, civic organizations and trade unions.^{iv}

6. A number of prominent Belarusian rock musicians took part in the campaigns of alternative candidates in 2010 presidential elections and some clearly voiced their opposition after the violent dispersal of a post-election peaceful protest. For example, famous musician and performer Zmicier Vajciuskevic openly backed opposition candidate Uladzimir Niakliajeu. The bands Krama, Neuro Dzubel, Vincent, and Lavon Volski performed during campaign rallies by another opposition candidate Andrei Sannikov. Lavon Volski also composed a song for “Speak the Truth” campaign.

7. During the post-election crackdown, unofficial “blacklisting” of artists returned to Belarus for the first time since a 2007 rapprochement between a group of musicians and Aleh Praliaskouski, then former of the Ideology Department of the Office of the President. In private conversations, directors of radio stations recount being informed of a list of artists whose works could not be broadcast. The blacklist was communicated via phone calls so as to avoid printed evidence. Although the existence of the censorship list has been denied by the authorities, a staffer at a Minsk-based radio station claims to have posted it on the internet.

8. This blacklist included musical acts Lyapis Trubetskoy, Palac, Krama, NRM, Neuro Dzubel, Krambambula, Naka, Zmicier Vajciuskievic, playwright Andrei Kureichyk, the Belarus Free Theatre group led by Nicolai Khalezin and Natalia Kaliada, writer Volha Ipatava, Belarus “People’s Artist” Zinaida Bandarenka, members of the Council of Belarusian Intellectuals and poets Henadz Buraukin, Siarhei Zakonnikau, Anatol Viartsinski, artists Mikola Kupava and Aliaksei Marachkin, playwright Uladzimir Khalip, and film directors Yury Khashchavatski, Uladzimir Kolas. The list also banned several foreign artists critical of the regime’s response to post-election demonstrations: DDT, Naiv, Tarakany, Pet Shop Boys, Tru Thoughts, Wah Wah 45, 7 Samurai, and others. The blacklist also banned prominent playwright Tom Stoppard and actor Jude Law. Meanwhile, Autoradio—the only FM radio station broadcasting alternative music in the Belarusian language and ran campaign advertisements by alternative presidential candidates—was closed down.

FREEDOM OF ASSEMBLY

9. During its previous review, Belarus supported a number of recommendations relevant to artistic freedom of assembly. Among these were the recommendation by Norway to ensure a participatory and inclusive process with civil society, including independent non-governmental organizations, in accordance with the right to freedom of association, in the follow-up of universal periodic review recommendations^v and the recommendation by Lao People’s Democratic

Republic to continue to carry out reforms in the country in order to fully ensure the protection of human rights and the rule of law in the country.^{vi}

10. Immediately after the blacklists appeared, dozens of scheduled concerts were cancelled. Cancellations are usually done unofficially via phone calls from ideology departments at district administrations, the Office of the President and KGB (State Security Committee). Since all concert venues are either state-owned or rented from state-owned organizations, it is very easy for officials privately to pressure club owners who then appear to cancel performances for their own reasons. While not publicly acknowledging pressure from officials, club owners have confirmed this pressure in private conversations.

11. For example, when the March 17, 2011, performance by the band Krumbambula at Pub Gosci in Minsk was cancelled, the publicly cited explanation was “due to illness of lead singer Lavon Volski. He has fallen sick and ticket sales were suspended.” Interviewed at the time, Lavon Volski commented, “I have no health complains. On the contrary, I am in a top singing form.” When the March 24, 2011, performance at the Reactor Club in Minsk in tribute to Neuro Dzubel and featuring Neuro Dubel Reactor Club was cancelled, the club director Andrei Startsev cited “technical reasons.” Such tactics have proven highly effective. In 2011-2012 such bands as Lyapis Trubetskoy, Krumbambula, Krama, Naka, Neuro Dubel, Zmicier Vaiciushkevich and many others were prevented from playing a single engagement.

12. On September 1, 2013, a new system of concert organization was introduced under President Lukashenka’s Edict No. 257. Previously, organizers would first agree with a club and a performer and then notify the authorities (at the Department of Culture). Under the new edict, organizers are first required to apply for the so-called “concert certificate” or a permit to organize a cultural event to be approved by the ideology department at the local administration. The permit is free of charge for concerts with participation of Belarusian bands. But if organizers plan to bring foreign bands, the permit costs between \$45 and \$3000 depending on the number of seats in the venue. State-owned organizations are exempt from the permit fee.

13. Unless the concert certificate (permit) is received, the organizer is not allowed to advertise the event even in social media. When submitting an application, the organizer must provide the program of the concert and description of bands including musical style and a list of songs to be performed. The application is reviewed within five working days but this period can be extended for two more days when the approval requires the judgment of a Commission of Experts on the prevention of pornography, violence and cruelty.

14. Grounds for the rejection of an application for a permit include:

The National (Regional) Commission of Experts to prevent pornography, violence and cruelty detects that the event promotes pornography, violence and cruelty;

When the timing and place of the event coincides with another event that was scheduled earlier by another organizer;

When there is no sufficient data in the documents submitted by the organizer or the information submitted is in conflict with the provisions in this Regulation;

In addition, paragraph 2(5) provides that events are not allowed:

When they aim to promote war or extremism;

When they constitute a threat to national security, public order, morality and health of people, the rights and freedoms of citizens.

The law specifies that the “rejection of an application cannot be justified by the inexpediency of the event and that “the decision to refuse the concert certificate may be appealed at the Ministry of Culture within one year since the date of the decision or in court in accordance with the established procedure.”

15. Presidential Edict No. 257 has already been enforced. AmaroKa, a punk band from Minsk, was denied a certificate for a performance on June 5, 2014. The official document said the commission reviewed the band’s repertoire and did not allow organizing the concert under Paragraph 2(5). A concert by Polish metal band Behemoth scheduled for May 27, 2014 was prohibited for the same reason. Initially, the organizers obtained the concert certificate but revoked it after pressure from the Russian Orthodox Church. Lyapis Trubetskoy and Zmicier Vaiciuskevich remain blacklisted. In July 2014, both performers signed agreements to stage concerts at two concert venues in Minsk. Inexplicably, their applications for permits were rejected under Paragraph 3 (16): “the timing and place of the event coincides with the event that was earlier scheduled by another organizer.”

RECOMMENDATIONS

16. Belarus is failing to abide by its international commitments to protect fully the fundamental artistic freedoms of its citizens. We therefore offer the following recommendations to the government:

1. **Adopt a policy of transparency regarding its communications with media broadcasters.**
The state under review should take active steps publicly to document and explain its communications with media organizations concerning the broadcasting of works by artists. Furthermore, the government should fully cooperate with the investigation being conducted by Euroradio in collaboration with the Rock Solidarity campaign.

2. **Formally review the legality of Presidential Edict No. 257 in light of best practices and the state's international obligations.** In particular, the state under review should ensure that restrictions on freedom of expression are “clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression; are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize.”^{vii}

ⁱ Report of the Special Rapporteur in the field of cultural rights: The right to freedom of artistic expression and creativity, A/HRC/23/34, 13 March 2013, para.3.

ⁱⁱ This submission was prepared with the assistance of European Radio for Belarus (Euroradio) and Vital Zybluk.

ⁱⁱⁱ Human Rights Council, Report of the working group on the Universal Periodic Review, United States of America, A/HRC/15/16, 21 June 2010, para. 97(15).

^{iv} A/HRC/15/16, para. 97(39).

^v A/HRC/15/16, para. 97(41).

^{vi} A/HRC/15/16, para. 97(54).

^{vii} These guidelines are taken from *The Camden Principles on freedom of expression and equality* (London: Article XIX, 2009), 9.