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**OPINION ON THE COMPATIBILITY WITH INTERNATIONAL AND REGIONAL
STANDARDS OF RECENT AMENDMENTS TO THE BELARUSIAN LEGISLATION
AFFECTING NGOs**

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A. INTRODUCTION

1. This opinion examines the compatibility with international and regional standards and best practices of the amendments to the legislation of the Republic of Belarus that are likely to have an impact on the operation of NGOs and the exercise of the right to freedom of association.
2. In particular, it examines them with respect to the requirements in the International Covenant on Civil and Political Rights (“the International Covenant”)¹, Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (“Recommendation CM/Rec(2007)14”), the Joint Guidelines on Freedom of Association of the regional Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (“the Joint Guidelines”) and the [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) (“Declaration on Human Rights Defenders”).
3. The opinion first outlines the changes made by the amendments and then considers particular problems relating to their compliance with international and regional standards.
4. This opinion was prepared by Rytis Jokubauskas and Jeremy McBride.

B. THE AMENDMENTS

5. The amendments relate to the Law of the Republic of Belarus on Citizenship of the Republic of Belarus (“the Law on Citizenship”), the Code of the Republic of Belarus on Administrative Offences (“the Code on Administrative Offences”), the Criminal Code of the Republic of Belarus (“the Criminal Code”), the Civil Procedure Code of the Republic of Belarus (“the Civil Procedure Code”) the Law of the Republic of Belarus on Countering Extremism (“the Law on Countering Extremism”), the Law of the Republic of Belarus on Mass Events in the Republic of Belarus (“the Law on Mass Events”), the Law of the Republic of Belarus on the Prevention of Rehabilitation of Nazism (“the Law on the Prevention of Rehabilitation of Nazism”).²

¹ Ratified by Belarus on 12 November 1973.

² The amendments were effected by Laws of the Republic of Belarus, No. 67-З. of December 2020, No. 85- З. of 6 January 2021, Nos. 103- З. and 104- З. of 14 May 2021, No. 112- З. of 26 May 2021 and No. 108- З. of 24 May 2021.

1. The Law on Citizenship

6. Article 19 of the Law on Citizenship now has a new part, which provides that the citizenship of the Republic of Belarus, where acquired through registration, restoration or on grounds stipulated by international treaties, may be lost by a person who has reached the age of 18 due to the presence of a verdict - whether of a court of the Republic of Belarus, a foreign court in a criminal case, an international tribunal (court) or a mixed tribunal (court) - confirming the participation of this person in extremist activities or infliction of serious harm to the interests of the Republic of Belarus.

7. For the purposes of the Law on Citizenship:

...participation in extremist activities or infliction of serious harm to the interests of the Republic of Belarus is understood as the commission in any form by a person who has reached the age of 18 of at least one of the acts recognized in the Republic of Belarus as crimes specified in articles 124-126, 130-133, 287, 289-290.⁵, 293, 356, 357, 359-361(3) of the Criminal Code of the Republic of Belarus, regardless of the place of its commission.

8. These offences concern not only activities connected with terrorism, various activities linked to the use of force or serious disorder, treason and seizure of state power³ but also: inciting racial, national, religious or other social hatred or discord; rehabilitation of Nazism; denial of the genocide of the Belarusian people; ecocide; subversion; calls for restrictive measures (sanctions), other actions aimed at causing harm to the national security of the Republic of Belarus; creation of an extremist formation or participation in it, as well as a formation whose activity is aimed at the rehabilitation of Nazism; financing of extremist activities or of activity aimed at the rehabilitation of Nazism; facilitating extremist activities; and undergoing training to engage in extremist activities.

2. The Code of Administrative Offences

9. The new version of Article 24.23 introduces heavier penalties for violation of the procedure for organising or holding an assembly, rally, street march, demonstration, picketing or other mass event, as well as calls for organising or holding such mass events.

³ I.e., acts of terrorism against a foreign state or international organisation; acts of international terrorism; recruitment, training, financing and use of mercenaries; mercenary; creation of an illegal armed formation; acts of terrorism; threat to commit an act of terrorism; financing of terrorist activities; facilitating terrorist activities; undergoing training to engage in terrorist activities; establishment of an organisation for the implementation of terrorist activities or participation in it; organisation of the activities of a terrorist organisation and participation in the activities of such an organisation; mass riots; treason to the state; conspiracy or other acts to seize state power; act of terrorism against a state or public figure; sabotage; act of terrorism against a state or public figure; sabotage; and participation on the territory of a foreign state in an armed formation or armed conflict, hostilities, recruitment or training of persons for such participation.

10. Previously, a participant in any of these activities could incur a warning or a fine of up to thirty base amounts but now s/he will be subject to a fine of up to one hundred base amounts or public works or administrative arrest.
11. Similarly, the maximum penalty for an organiser of such activities was forty base amounts or administrative arrest for a natural person and one hundred base amounts for a legal entity whereas the maximum fines are now respectively one hundred and two hundred base amounts.
12. There are comparable increases in the penalties for repeated commission of the offence within one year and for commission of the offence for remuneration.⁴

3. The Criminal Code

13. Several new offences have been created by the amendments made to the Criminal Code and some modifications have been made to an existing one.
14. The first of the new offences duplicates one in the Code of Administrative Offences, namely, that of repeated violation of the procedure for organizing or holding mass events. However, the penalty in the offence created by Article 342² of the Criminal Code is more severe as it entails arrest or restriction of liberty for up to three years or deprivation of liberty for the same term.
15. Secondly, a new Article 369³ has been added, establishing criminal liability for public calls to organise or hold a meeting, rally, street procession, demonstration or picketing in violation of the established procedure for their organisation or conduct, or the involvement of persons in participating in such mass events by violence, threat of violence, deceit or payment of remuneration, or any other organisation or holding of such mass events, if the holding of them negligently entailed the death of people, the infliction of grievous bodily injury to one or several persons, or the infliction of damage on a large scale in the absence of signs of the crimes provided for in Articles 293 and 342 of this Code.⁵
16. The commission of this offence is punishable by arrest, or restriction of liberty for a term up to five years, or imprisonment for the same term.

⁴ The maximum fine in the case of the former is now two hundred base amounts for a participant or organiser and in the case of the latter it is also two hundred base amounts for a participant but five hundred base amounts for an organiser.

⁵ For the purpose of this provision, “damage on a large scale” is recognized as the amount of damage that is five hundred or more times higher than the amount of the basic amount established on the day the crime was committed. The offences in Articles 293 and 342 concern respectively mass riots and organisation and preparation of actions grossly violating public order, or active participation in them.

17. Thirdly, there are five new offences that are amongst those referred to by Article 19 of the Law on Citizenship, namely, the creation of an extremist formation or participation in it, as well as a formation whose activity is aimed at the rehabilitation of Nazism; financing of extremist activities or of activity aimed at the rehabilitation of Nazism; facilitating extremist activities; and undergoing training to engage in extremist activities.⁶
18. The penalties for persons convicted of these offences can entail the imposition on them of significant periods of imprisonment.⁷
19. The offence modified is Article 361, which covers not only public calls for the seizure of power, forcible change of the constitutional order, treason, commission of acts of terrorism or subversion and violation of territorial integrity but also any other calls for actions aimed at inflicting harm on the national security of the Republic of Belarus and such calls addressed to a foreign state or foreign or international organisation.
20. For present purposes, the relevant changes are the increase in the maximum penalty from three to five years' arrest or deprivation of liberty, except where the offence is committed using the mass media or the internet or by an official using official powers, in which case the maximum penalty was increased from five to seven years' arrest or deprivation of liberty.

4. The Civil Procedure Code

21. Two provisions in this Code have been modified.
22. The first is to include in the list of cases which Article 158 part 2 provides must be considered by the court of first instance no later than one month from the date of acceptance of the application those cases relating to:

the recognition of an organization, including a foreign one or an international organization, extremist, the prohibition of its activities on the territory of the Republic of Belarus, its liquidation, the prohibition of the use of its symbols and paraphernalia, the recognition of symbols and paraphernalia, information products as extremist materials.
23. The second is to include the recognition of a strike as illegal in the list of those decisions which Article 313 specifies should be subject to immediate execution.

⁶ Established by Articles 361¹, 361², 361⁴ and 361⁵ respectively.

⁷ Up to seven years for creating an extremist formation, ten years for repeated commission of such actions or by using official powers to do so and six years for joining such a formation; up to five years for financing extremist activities or eight years if such an act is committed repeatedly, by a group of persons or by using official powers; up to six years for facilitating extremist activities or seven years if such an act is committed repeatedly, by a group of persons or by using official powers; and up to three years for undergoing training to engage in extremist activities.

5. The Law on Countering Extremism

24. The amendments made to this Law involve its complete replacement by a new version.

25. There is a very broad definition in Article 1 of “extremism (extremist activity)” which covers a wide range of activities seen as linked to planning, organizing, preparing and committing infringements on independence, territorial integrity, sovereignty, the foundations of the constitutional system or public security.

26. These activities cover not only those linked to the use of force (such as forcible change of the constitutional system and territorial integrity and seizure or retention of state power by unconstitutional means, creation of armed formation and terrorism) but many other categories of activity for which there could well be significant dispute as to whether the conduct concerned actually falls within them.

27. This is especially so as regards:

dissemination for this purpose of deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus, or the legal status of citizens in the Republic of Belarus, that discredits the Republic of Belarus;

insulting for this purpose of a representative of the government due to performance of their official duties, discrediting executive and administrative bodies;

incitement of racial, national, religious or other social enmity or discord, political or ideological enmity, enmity or discord against any social group, including the commission for this purpose of illegal acts against public order and public morale, governance procedures, life and health, personal freedom, honor and dignity of an individual, or property;

propaganda of exclusivity, superiority or inferiority of citizens based on their social, racial, national, religious or linguistic identity;

distribution of extremist materials, as well as the production, publication, storage or transportation of such materials for the purpose of distribution;

rehabilitation of Nazism, propaganda or public display, manufacture, distribution of Nazi symbols and attributes, as well as storage or acquisition of such symbols or attributes with a view to disseminate them;

public calls to organize or conduct for these purposes an illegal assembly, rally, street march, demonstration or picketing in violation of the established procedure for their organization or conduct, or through involving individuals in such mass events through violence, threats of violence, deceit or remuneration, or other organizing or conduct of such mass events, if their conduct have negligently caused death of people, serious bodily injury to one or more individuals, or damage on a large scale;

public calls for [these] actions ..., as well as public justification of such actions.

28. Furthermore, it designates as an “extremist organization”:

an organization that carries out extremist activity, or provides other assistance to extremist activity, or recognizes the possibility of their implementation as part of its activity, or finances extremist activity, in respect of which a decision was made by a court and took legal effect on recognizing it as extremist

and an “extremist formation” as

a group of citizens that carries out extremist activity, or provides other assistance to extremist activity, or recognizes the possibility of their implementation as part of their activity, or finances extremist activity, in respect of which a decision was made by the Ministry of Internal Affairs or the State Security Committee on recognizing it as extremist.

29. The Law establishes a framework for countering extremism involving many actors, notably, the internal affairs, state security and prosecutorial bodies or agencies.
30. The measures prescribed for countering terrorism cover: the giving of an official warning and of notices to comply to eliminate an identified violation if there are no grounds for prosecution;⁸ the suspension of the activity of an organization, a representative office of a foreign or international organisation or an individual entrepreneur in the case of the preparation for the commission of extremist activities, the commission of those activities or the failure to take or untimely measures to comply;⁹ the liquidation of an organization and the termination of the activity of an entrepreneur recognized as “extremist”;¹⁰ recognizing a group of citizens as an extremist activity and banning its activity;¹¹ criminal liability;¹² and the prohibition of the activity of extremist foreign and international organisations on the territory of the Republic of Belarus¹³.
31. During the suspension of their activities, organizations will not be able to: use current (settlement) bank accounts, except for payments to fulfil various liabilities that have been incurred; carry out any business activity within their statutory goals and objectives, including acquiring, alienating or otherwise disposing of property belonging to them; organise and conduct assemblies, rallies, street marches, demonstrations, picketing, and other mass events; carry out reorganization or liquidation (termination of activity), to form structural divisions; carry out advertising, publishing and printing activity; produce, issue mass media, to distribute mass media products; delegate the functions of a legal entity with the mandate to run a mass media editorial office to another legal entity; transfer the powers of a founder of a mass media to other individuals and legal entities; hold congresses, conferences, general assemblies; participate in the work of state bodies; and use their own symbols and attributes.¹⁴
32. In addition, there is provision made for: criminal liability for financing extremist activity;¹⁵ maintaining and publishing lists of organisations, formations, individual entrepreneurs

⁸ Articles 9 and 10.

⁹ Article 11.

¹⁰ Articles 12 and 13.

¹¹ Article 15.

¹² Articles 14 and 23.

¹³ Article 16.

¹⁴ Part 5 of Article 11.

¹⁵ Article 17.

and citizens involved in extremist activity;¹⁶ evaluating symbols and attributes and information products for the presence (absence) of signs of extremism;¹⁷ the preventing of the implementation of extremist activity during mass events;¹⁸ and requiring organisations to declare disagreement with statements calling for extremist activity by an official of their governing body where this was not indicated as being her/his personal opinion¹⁹.

6. The Law on Mass Events

33. Several additions or revisions have been made to existing provisions of the Law on Mass Events, as well as the insertion of an entirely new provision.
34. The first revision relates to Article 8, which is concerned with the preparation of a mass event.
35. As a result of the addition, Article 8 now provides that the organiser (organisers) of such events, as well as other organisations and citizens, are prohibited from publicly calling for the organization and holding of a mass event. This prohibition is stated as covering any announcement of the date, place and time of the event in the mass media, on the Internet and through distributing leaflets, posters and other material for this purpose.
36. Secondly, a new prohibition has been added to part 4 of Article 10, namely, collecting receiving and using funds, other property, including property rights, as well as exclusive rights to the results of intellectual activity, as well as performing works, or providing services for the purpose of reimbursing expenses inflicted by accountability of a person for violation of the procedure for organizing or holding mass events.
37. Thirdly, a new prohibition has been added to part 4 of Article 11, namely, the covering of any mass event held in violation of the established procedure for their organization or conduct in the mass media, the Internet or other information networks in real time (live) mode where this is for the purpose of popularisation or propaganda of such events.
38. Therefore, mass events, that are held without the approval of the local executive and administrative body, cannot be covered in the media and their organizer (organizers) do not have a possibility to compensate the expenses inflicted by accountability for violation for organizing an unapproved event.

¹⁶ Article 18.

¹⁷ Article 19.

¹⁸ Article 20.

¹⁹ Article 21.

39. It is also provided that this prohibition is applicable to persons attending a mass event as a mass media journalist. In addition, it is now specified that such a person does not have the right to act as an organizer or a participant of a mass event.
40. Fourthly, the addition made to Article 15 – which provides for the possibility of liquidating political parties, trade unions and other organisations whose responsible persons failed to organize a mass event with proper procedures and the event caused large-scale damage, or significant harm to the rights and legitimate interests of citizens, organizations or state or public interests – now requires the governing body of these entities to declare in the mass media within five days its disagreement with the commission by their head of actions of a public call for the organization and holding of a mass event prior to permission for this being obtained. The absence of this statement shall be the ground for imposing liability on such organisations.
41. Finally, an entirely new Article 9¹ has been introduced into this law. This provides for the giving of a written notification to the relevant local executive and administrative body for the holding of mass events in permanent locations for holding such events. Such a notification must be sent to the relevant body no later than 10 days before the expected date of the event.
42. That body must inform the organiser (organisers) in writing no later than 5 days prior to the expected date of the event about the inadmissibility of holding it and the need to stop preparing for it where either it has already received a prior notification for a mass event in the same place and at the same time or the requirements for submitting the notification have not been fulfilled.
43. The organizer (organisers) must then disseminate information about that mass event in the same manner as any previous public dissemination of information about the time and place of holding it where the notification has either been withdrawn or information about its inadmissibility has been received

7. The Law on the Prevention of Rehabilitation of Nazism

44. This is an entirely new piece of legislation.
45. Its provisions include: a definition of terms; the basic principles for preventing rehabilitation of Nazism and the areas of focus for doing so; and the measures to prevent and counteract such rehabilitation.
46. Although “Nazism” is defined principally by reference to:

totalitarian ideology (doctrine) and the practical application of that ideology by Hitler's Germany and its allies and satellites over the period 1933-1945²⁰

the relations associated with countering the rehabilitation of Nazism that are not regulated by this Law are subject to the legislation on countering extremism,²¹ with the latter term referring to its use in the Law on Countering Extremism.²²

47. Moreover, the measures to counteract the rehabilitation of Nazism are stated to include:

recognition of an organization registered on the territory of the Republic of Belarus, whose activity is aimed at the rehabilitation of Nazism, as extremist, prohibition of its operations and liquidation of such an organization;

...

countering the activity of extremist groups whose activity is aimed at the rehabilitation of Nazism; prohibition of the activity of extremist foreign and international organizations whose activity is aimed at the rehabilitation of Nazism;

...

other measures to counteract the rehabilitation of Nazism under the legislation on countering extremism.

The procedure for applying measures to counteract the rehabilitation of Nazism is determined under the legislation on countering extremism.²³

C. ANALYSIS

48. The amendments made to these laws have implications for rights other than freedom of association, notably the rights to freedom of expression and of peaceful assembly. However, the focus of this opinion is on the potential for these amendments to constrain substantially the operation of NGOs and the exercise of the right to freedom of association.

49. It is evident that the amendments do have that potential because they affect the activities that can be undertaken by NGOs through not only the restrictions in them on organizing mass events but also through the possibility of some legitimate activities undertaken by them being treated as "extremist".

50. In addition, the amendments have significant implications for both the formation and continued operation of NGOs, as well as those who provide support for their activities.

51. Finally, the penalties prescribed in the amendments are likely in at least some instances to be disproportionate and thus not necessary in a democratic society, even if the objective being pursued could arguably be regarded as an admissible one.

²⁰ Article 1.

²¹ Article 2.

²² Article 1.

²³ Article 12.

52. These issues are addressed in turn in the following sub-sections.

1. *Calling for mass events*

53. As regards the restrictions relating to the holding of mass events, it should be noted that the sanctioning of even publicly calling for the organization and holding of a mass event by reference to the consequences that might ensue - as seen in the Law on Mass Events - goes considerably beyond those restrictions on the right to peaceful assembly in Article 21 of the International Covenant which have been considered justified by the United Nations Human Rights Committee.

54. Thus, the Committee has observed that:

having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right. Where such requirements persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Such systems should also be not unduly bureaucratic.²⁴

55. As a result of the new restriction, NGOs will be deterred from proposing that a mass event should be held even before permission for it to be held has been sought on account of the uncertainty that if it takes place there would then be death, injury or damage ascribed as being negligently caused by the event in question having been held.

56. Indeed, the ascription of responsibility to the NGO calling for the mass event will be for calling for the event where the relevant consequences occur but will not involve any assessment as to its activities in the course of the event itself.

57. The ascription of such responsibility to the NGO would give rise to a violation of the right to peaceful assembly under Article 21 of the International Covenant similar to that seen in [Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia](#), in which the European Court of Human Rights found that:

291. (...) the judgment in respect of the second applicant attributed responsibility for the violence to the protesters, and to him personally as one of the organisers, without assessing to what extent the authorities had contributed to the deterioration of the assembly's peaceful character.

292. Furthermore, the Court finds that the second applicant's conduct and his statements to the public remained peaceful at all stages. He demanded airtime on Russia's main television channels, called for the presidential inauguration of Mr Putin to be cancelled and for new elections to be held and called on the assembly participants to stay at the meeting venue for an indefinite protest action. He may also have encouraged the setting-up of campsites supposedly inspired by the "Occupy"

²⁴ [Krasulina v. Belarus](#), Communication No.3126/2018, Views adopted 23 July 2021, CCPR/C/132/D/3126/2018, para. 7.4.

movement. These calls, in particular for overstaying the allocated time-slot of the assembly and for setting up a campsite, were clearly illegal as they would have been in breach of the established rules on holding a public assembly.

293. However, none of the second applicant's statements incited recourse to physical force or actions of a destructive nature. On the contrary, he repeatedly called on the participants to remain calm and peaceful. The fact that certain protesters may have committed violent acts does not affect the assessment of the second applicant's conduct in the absence of evidence that they had been incited by him. The mere fact that the second applicant was one of the event organisers is not sufficient to hold him responsible for the conduct of the attendees (see *Mesut Yıldız and Others v. Turkey*, no. [8157/10](#), § 34, 18 July 2017).

294. Neither could the second applicant's violent intentions be inferred from the circumstances underlying the related set of charges examined in the same set of proceedings, namely preparation of the organisation of acts of mass disorder (other than the one at Bolotnaya Square). In particular, no such intentions were apparent from the fundraising activities which he carried out before and after 6 May 2012 in order to finance opposition rallies, training sessions for activists and media campaigns. The recordings of negotiations examined at the trial and referred to in the judgment contained no reference to armed or other forceful methods of exerting political pressure on the authorities.²⁵

58. Thus, the restriction introduced into the Law on Mass Events amounts to an excessive restriction on the ability of NGOs to organize mass events in pursuit of their lawful objectives.

59. Moreover, the governing body of NGOs are required by Article 15 – on pain of liquidation of the NGOs – to denounce a public call for the organisation and the holding of a mass event prior to permission being obtained in those instances where such a call has been made by their responsible persons, regardless of whether those persons had made the call in that particular capacity.

60. The possibility of liquidation for non-denunciation would be disproportionate even if the responsible person had organised the mass event for the NGO concerned as there is already liability under both the Code of Administrative Offences and the Criminal Code for calling for the organisation of "irregular" mass events or holding them. As a result, liquidation would effectively entail the imposition of a double penalty for the same activity. Where the responsible person had not acted on behalf of her/his NGO, liquidation would be even more disproportionate.

61. This penalty is thus inconsistent with applicable international and regional standards.²⁶

²⁵ Appl. no. 75734/12, 19 November 2019.

²⁶ See Principle 10 and paragraphs 252-253 of the Joint Guidelines and paragraph 72 of Recommendation CM/Rec(2007)14. In particular, it should be noted that paragraph 253 of the Joint Guidelines provides that: "the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the association".

2. Objectives pursued

62. The definition of “extremist activity” in the Law on Countering Extremism covers a number of activities that would not be consistent with the exercise of the right to freedom of association, notably those referred to in paragraphs 25 and 26 above.²⁷
63. However, this cannot be said to be so as regards all of those listed in paragraph 27 above.
64. Thus, treating the dissemination of “deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus” as “extremist activity” seems an over-reaction even if the information concerned is actually false.
65. However, the characterisation of information as “false” in a given case could well be unjustified and reflect no more than a difference of view about the country’s political, economic, social, military or international situation.
66. Indeed, this is frequently the case with such matters and is something seen in political debate in all democratic countries.
67. Moreover, such differences of view are all the more likely in the situation in Belarus following the contested presidential election in 2020, which has resulted in the imposition of sanctions by the European Union²⁸.
68. As a result, treating as false information that others regard as valid, runs the risk of restricting the legitimate activities of NGOs as regards taking part in issues of public debate²⁹ and complaining about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, including through communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms³⁰.
69. A similar conclusion could be drawn about the treating of criticism of government representatives as “insulting” and the criticism of government policies as inciting national or social enmity or discord, political or ideological enmity, and enmity or discord against any social group and thus “extremist”.³¹

²⁷ See, in this connection, [Refah Partisi \(The Welfare Party\) and Others v. Turkey](#) [GC], no. 41340/98, 13 February 2003.

²⁸ See <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/>.

²⁹ As recognised in Principle 6 of the Joint Guidelines and paragraph 12 of Recommendation CM/Rec(2007)14.

³⁰ As recognised in Article 9(3) and (4) of the declaration on Human Rights Defenders.

³¹ See, for example, the rulings of the European Court of Human Rights in [Öztürk v. Turkey](#) [GC], no. 22479/93, 28 September 1999 and [Andrushchenko v. Russia](#), no. 33938/08, 24 March 2020.

70. Furthermore, the Law on Countering Extremism also treats as an “extremist activity” a call for organising or conducting mass events contrary to the established procedure solely by reference to possible consequences of such an event, notwithstanding that those consequences were not sought or promoted by the NGO.
71. As already seen in the preceding sub-section, this treatment of such calls is inconsistent with the right to freedom of peaceful assembly under Article 21 of the International Covenant and this inconsistency would be exacerbated by characterising them as “extremist activity”.
72. Although there is nothing intrinsically inconsistent with the right to freedom of associations in measures to prevent the rehabilitation of Nazism, the conflation of extremism with Nazism seen in the Law on the Prevention of Rehabilitation of Nazism runs the risk of losing sight of the tight definition of Nazism in that law³² and leading to all those who are seen as “extremist” because they are opposed to government policies being wrongly stigmatised as seeking the rehabilitation of Nazism.
73. As a result, this would only exacerbate the inappropriate way in which “extremism” is understood in parts of the Law on Countering Extremism.
74. As has been seen, the new part of Article 19 of the Law on Citizenship explains participation in extremist activities or infliction of serious harm to the interests of the Republic of Belarus by reference to a number of offences including those of inciting discord, creation of an extremist formation and calls for sanctions.
75. There is no express link in Article 19 of the Law on Citizenship to the Law on Countering Extremism in either the Criminal Code or the Law on Citizenship, which could give rise to uncertainty as to how “extremism” is defined for those measures and thus be inconsistent with the need for restrictions on rights and freedoms to be always clearly prescribed in the law.
76. However, even if the link is made between all three provisions, it has already been noted that incitement to discord could be used in a way that is incompatible with the right to criticise government officials and policies.

³² Thus, Article 1 provides that: “For the purposes of the present Law, the following basic concepts and their definitions shall be used: “Nazism” means the totalitarian ideology (doctrine) and the practical application of that ideology by Hitler’s Germany and its allies and satellites over the period 1933-1945, associated with totalitarian and terrorist methods of rule, the official ranking of all nations on a scale of intrinsic value, and propaganda promoting the superiority of certain nations over others, accompanied by crimes against peace and security of mankind, war crimes, and other crimes, recognized as such by the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis (hereinafter the International Military Tribunal).”

77. Moreover, the stipulation that calling for sanctions is extremism and is indeed an offence is undoubtedly contrary to the right of human rights defenders to communicate with international bodies on matters of human rights and fundamental freedoms.

3. Formation and operation

78. The new offence in the Criminal Code on forming an extremist formation limits the ability to establish an informal NGO, i.e., one without legal personality. Insofar as the objectives of such a formation are considered “extremist” in the circumstances referred to in the preceding sub-section, the bar on formation would be contrary to the requirement for the law to allow the establishment of informal associations and NGOs.³³

79. Furthermore, the powers to suspend the activity of, as well as to liquidate, an NGO deemed “extremist” in the Law on Countering Extremism, reinforced by the Law on the Prevention of Rehabilitation of Nazism would - insofar as the preceding sub-section shows that treating its activity as such would be contrary to international and regional standards - in turn be contrary to the regulatory framework that these require to govern the use of such measures.³⁴

80. Also problematic are the provisions in the Law on Citizenship and the Criminal Code relating to participating in an extremist formation and financing and facilitating extremist activities insofar as these could capture such participation, financing and facilitation of activities treated as extremist contrary to the international and regional standards already discussed. In that event, the application of the relevant provisions would be contrary to the right of individuals to take part in associations and would be inconsistent with the standards applicable to funding and other support for NGOs³⁵.

4. Penalties

81. Even if the measures outlined above were not inconsistent with international and regional standards, the various penalties other than the already discussed ones of suspension and liquidation are likely to be contrary to those standards on account of the significant nature of penalties prescribed as a result of the amendments.

82. Thus, there has not only been a substantial enhancement of the penalties in the Code of Administrative Offences relating to the organising or holding or calling for the holding or

³³ See paragraph 42 of the Joint Guidelines and paragraph 3 of Recommendation CM/Rec(2007)14.

³⁴ See Principle 10 and paragraphs 248-256 of the Joint Guidelines and paragraphs 72-74 of Recommendation CM/Rec(2007)14.

³⁵ I.e., Principle 7 and paragraphs 200-202 and 218-223 of the Joint Guidelines and paragraph 50 of Recommendation CM/Rec(2007)14.

organising of mass events but the same conduct can now also attract imprisonment rather than fines as a result of the duplication of the offences in that Code by ones introduced into the Criminal Code.

83. Moreover, the provision for the deprivation of citizenship in the Law on Citizenship for a conviction for participation in extremist activities would probably be regarded as inconsistent with the right to privacy, family and home under Article 17 of the International Covenant, at least where this rendered the person stateless and liable to expulsion.³⁶

84. Certainly, it is well-established that where penalties are disproportionate, then there would be a violation of the relevant right, even if a legitimate aim was being pursued.³⁷

D. CONCLUSION

85. Through an overly broad conception of “extremist activities” and excessive controls relating to the organising and holding of mass events in the adoption of these amendments, the operation and continued existence of NGOs in Belarus is seriously threatened.

86. Their adoption has only added to what was already a particularly hostile environment for NGOs.³⁸

87. As such the amendments are clearly incompatible with international and regional standards.

³⁶ See, e.g., [K2 v. United Kingdom](#) (dec.), no. 42387/13, 7 February 2017 and [Ghoumid and Others v. France](#), no. 52273/16, 25 June 2020.

³⁷ See, e.g., [Erdođdu and İnce v. Turkey](#) [GC], no. 25067/94, 8 July 1999

³⁸ See, the information relating to Belarus in [The Legal Space for Non-governmental Organisations in Europe](#), (Council of Europe, 2021).