

BOFAXE

Flashbangs against Empowerment

WHAT A GOVERNMENT'S VIOLENCE TELLS US ABOUT CIVIL AND POLITICAL RIGHTS (II)

— A government's fear of empowerment

That the repressions are not in accordance with international human rights law is undeniable. While political rights may be limited under certain circumstances (for instance under Article 4 ICCPR (“derogability in times of public emergency”) and Article 5 in conjunction with Art. 19 and 21 ICCPR (“restrictability”), the onus to justify such limitations is on the state. The Belarusian government has not presented a credible legitimate purpose for the restrictions imposed before and after the election and the violence against and detentions of peaceful protesters to begin with. There have been no reports of independent media that protesters assembled in a non-peaceful way, before or after the election, or that the exercise of their civil and political rights posed a threat to public order or security in any other way. Moreover, besides the lack of a legitimate purpose for the restrictions, it is hardly conceivable how the scale of violence employed could be necessary and proportionate.

Given the unprecedented challenge to power in the country, one may assume that the real reason for the harsh crackdowns on citizens exercising their civil and political rights is the authorities' nervousness. This is proof of the empowering potential of civil and political rights which the HRC recognized in the first paragraph of its most recent [General Comment No. 37](#) on the right to peaceful assembly (GC 37), Article 21 ICCPR:

“The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for inclusive, participatory and peaceful resolution of differences.”

Similarly, on the freedoms of opinion and expression, Article 19 ICCPR, the HRC holds in its [General Comment No. 34](#):

“Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”

It is this enabling dimension of political rights that scares autocratic governments. The exercise of civil and political rights enables individuals to hold those in power accountable, even in states where democratic accountability through fair elections is impossible. When ideas and sentiments are expressed collectively in exercise of the right of peaceful assembly, people are enabled to experience that they are not few, but many. This collective experience allows them to overcome fear, and it empowers them to challenge oppressive governments. In the weeks leading up to the Belarusian elections, this is exactly what happened. The fear of the people diminished with every rally Tikhonovskaya held.

Reporting on the exercise of civil and political rights (or the suppression thereof) amplifies their empowering potential. Thus, the HRC acknowledges that “[t]he role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies, is of particular importance for the full enjoyment of the right of peaceful assembly, and they are entitled to protection under the Covenant” (GC 37, para. 30). Especially today, when reporting via the internet can create immediate global reactions of empathy, togetherness can be felt beyond borders and further empower those who want to hold their government to account. This explains why for this year's challenging elections, it was reportedly even more difficult than previously for foreign journalists to get accreditation for Belarus, and why OSCE observers were not invited to monitor the elections. It also explains why since the day of the election, access to the internet has been severely restricted. Such action can be interpreted as a nervous reaction to the empowerment that Tikhonovskaya's rallies embodied.

Which way forward for the European Union?

The apparent human rights violations in Belarus are indicative of the government's increasing weakness and the authority's fear of the empowering potential of civil and political rights. As the last nights have made utterly clear, their nervousness is dangerous. In the face of the most serious challenge to its power yet, the government seems so far set rather on flight than on fight. What does this mean for the international community, in particular for the European Union, Belarus' immediate neighbour? Calls for sanctions and condemnations of the events in the country have already been voiced. Some even called for investigations of the International Criminal Court, despite the Court's obvious lack of jurisdiction as Belarus is not a party to the Rome Statute. However important it may be to express contempt of oppression and hold those responsible to account, what is even more important is that the last weeks have emphasized again the empowering potential of civil and political rights. European leaders should be guided by this insight and make supporting the people the maxim of their actions. Measures must not stifle this empowerment; they must bolster it. A strong sign of support was sent by European ambassadors to Belarus when they went to the site where a protester had died and laid down flowers. The European Union will discuss the possible measures at an extraordinary foreign affairs council today, on 14 August 2020. However, the way forward is geopolitically delicate as past sanctions have often led to Belarus' moving closer to its neighbour on the other side, and Russia has in fact already pushed for closer integration with Belarus – something European leaders should be mindful of.

VERANTWORTUNG Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, Massenbergrasse 9b, 44787 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: ifhv-publications@rub.de.

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