

BELARUS

Lawyers Under Threat: Increasing Suppression of the Legal Profession in Belarus

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I. INTRODUCTION

This joint report has been prepared by an informal coalition of legal organizations including Lawyers for Lawyers (L4L), the American Bar Association Center for Human Rights (ABA CHR), and the International Bar Association Human Rights Institute (IBAHRI). It summarizes worrying trends of suppression of the legal profession and individual lawyers in Belarus highlighted by the Human Rights Council in Resolution 44/19.¹

The report outlines the government crackdown on opposition and critical voices in Belarus following the 2020 presidential election, including lawyers defending opposition figures and protestors or speaking out about the rule of law, administration of justice, and human rights. It uses various public case studies to illustrate the harassment, intimidation, hindrance, and interference inflicted upon lawyers in Belarus following the contested August 2020 election of President Alexander Lukashenko. The public cases² not only illustrate the impact of the government crackdown on individual lawyers but also reveal a concerning trend of interference with the independence of the legal profession in Belarus and violations of lawyers' human rights to freedom of expression, assembly, and association.

Protests in Minsk, Belarus
Photo Credit: Jana Shnipelson, 2020



¹ Human Rights Council, *Resolution adopted by the Human Rights Council on 17 July 2020*, U.N. Doc. A/HRC/RES/44/19 (2020), <https://undocs.org/A/HRC/RES/44/19> (expressing “continued concern” about the undue restrictions on freedom of peaceful assembly, association and expression, resulting in “the detention of human rights defenders, members of the opposition, [. . .] and of other members of civil society” and deploring the pressure on defence lawyers).

² The summaries of individual cases in this report contain only publicly available information.

ABOUT THE AUTHORS

Lawyers for Lawyers (L4L) is an independent and non-political foundation which seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. L4L supports lawyers worldwide who face reprisals, improper interference, or unreasonable restrictions in the execution of their profession. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013.

The **American Bar Association (ABA) Center for Human Rights** promotes and protects human rights worldwide by mobilizing lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. The ABA is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA Center for Human Rights has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. This joint report was prepared in part by external pro-bono counsel, consultants, and staff attorneys of the American Bar Association Center for Human Rights and reflects their views. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case.

International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. IBAHRI provides human rights training and technical assistance for legal practitioners and institutions, building their capacity to effectively promote and protect human rights under a just rule of law. A leading institution in international fact-finding, IBAHRI produces expert reports with key recommendations, delivering timely and reliable information on human rights and the legal profession. IBAHRI supports lawyers and judges who are arbitrarily harassed, intimidated, or arrested through advocacy and trial observations. A focus on pertinent human rights issues, including the abolition of the death penalty, poverty, and sexual orientation forms the basis of IBAHRI's targeted capacity building and advocacy projects.

II. BACKGROUND: SITUATION IN BELARUS

Since the widely disputed 2020 presidential election in Belarus, in which Alexander Lukashenko declared a landslide victory, the Belarusian government has engaged in a “widespread, brutal crackdown” on opposition.³ The government crackdown has resulted in mass protests around the country, thousands of arrests, and the exile of major opposition figures.⁴ There have been “credible reports that, in response to these protests, law enforcement agencies were employing unjustified violence and torture against civilians.”⁵ According to Human Rights Watch’s Director of Europe and Central Asia, in 2020, “the Belarusian government shattered its own horrendous record for brutality and repression.”⁶

Journalists, opposition figures, civic activists, and human rights defenders (including lawyers) are among those who have been arrested or otherwise targeted by the Lukashenko government.⁷ Beginning shortly after the August 2020

elections, Belarusian lawyers who allegedly participated in peaceful protests, represented opposition leaders or alleged protestors, or made public statements about the state of the rule of law or human rights violations in Belarus have faced intimidation and harassment, administrative and criminal charges, extraordinary certification requirements, and disbarment.⁸

The UN High Commissioner for Human Rights reported that between 9 August and 30 November 2020, “more than 1,000 criminal cases were opened against peaceful protesters, opposition members and supporters, journalists, human rights defenders, lawyers, and other persons critical of the Government.”⁹ Between August 2020 and May 2021, at least 17 lawyers have been disbarred.¹⁰ Most, if not all, of these lawyers represented opposition leaders and protestors or themselves engaged in protests or publicly criticized the Lukashenko government.¹¹ As such, the criminal charges,

³ See Human Rights Watch, *Belarus: Unprecedented Crackdown*, 13 Jan. 2021, <https://www.hrw.org/news/2021/01/13/belarus-unprecedented-crackdown>;

⁴ See *id.*; BBC, *Belarus President Alexander Lukashenko under Fire* (11 Sept. 2020), <https://www.bbc.com/news/world-europe-53637365>.

⁵ ABA Center for Human Rights, *BELARUS: Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk* (May 2021), p. 2, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/belarus-disbarment-english.pdf [hereinafter ABA CHR Analysis of Arbitrary Disbarments] (internal citations omitted).

⁶ Human Rights Watch, *Belarus: Unprecedented Crackdown*, *supra* note 3.

⁷ Human Rights Watch, *Belarus: Unprecedented Crackdown*, *supra* note 3.

⁸ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 2; see also ABA Center for Human Rights (2020), *Belarus: Preliminary Report on the Disbarment of Alexander Pylchenko*, https://www.americanbar.org/groups/human_rights/reports/belarus-disbarment/ [hereinafter ABA CHR Belarus: Preliminary Report].

⁹ Human Rights Council, *Situation of human rights in Belarus in the context of the 2020 presidential election*, Report of the UN High Commissioner for Human Rights, U.N. Doc. A/HRC/4 (15 Feb. 2021), par. 43 [hereinafter Report of the UN High Commissioner for Human Rights].

¹⁰ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 4.

¹¹ *Id.*

disbarments, and other measures are viewed by the international human rights community to be politically motivated.¹² The post-election harassment, arrest, detention, and disbarment of lawyers in Belarus illustrates a concerning trend of punishing lawyers for the legitimate exercise of their professional functions and/or of their rights to freedom of expression and freedom of assembly.

In addition to targeting lawyers on an individual basis, the government of

Belarus has adopted amendments to the Law on the Bar and Advocacy in Belarus, affecting the legal profession as a whole. The new amendments will “severely restrict the rights and independence of Belarusian lawyers.”¹³ The new amendments illustrate another concerning trend in Belarus - the government’s encroachment upon the management of the legal profession and the government’s desire to undercut its independence.

¹² *Id.*, at 4.

¹³ *Id.*

III. EFFECTIVE MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS: THE ROLE OF LAWYERS

Lawyers, together with judges and public prosecutors, play a vital role in the administration of justice and in upholding the rule of law. They are also indispensable players in protecting human rights, including the rights to an effective remedy, due process, a fair trial and freedom from torture and other cruel, inhuman, or degrading treatment or punishment. Their work is necessary for instilling and maintaining public confidence in the legal system and for ensuring effective access justice for all. The independence of lawyers is thus considered a fundamental principle of international law.¹⁴

The International Covenant on Civil and Political Rights (ICCPR), to which Belarus is a State Party, guarantees all individuals the right to counsel and equality before the courts.¹⁵ For their part, lawyers - as "essential agents of the administration of justice" - must maintain the honor and dignity of the profession at all times.¹⁶ Moreover, lawyers, who are charged with both protecting their clients' rights and

also "promoting the cause of justice," must "act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession."¹⁷ However, where improper interference or reprisals become widespread and systematic, this creates a climate in which lawyers may eventually refuse to represent clients connected to politically sensitive or controversial issues out of fear of becoming the target of harassment or acts of retaliation.¹⁸ This severely compromises the right to effective legal representation as well as the independence of the legal profession, the proper functioning of the rule of law, and the protection of human rights.

The role of lawyers in protecting the rule of law and human rights is all the more fundamental in the context of the current escalating crackdown in Belarus. However, despite their crucial role, lawyers in Belarus cannot fulfil their professional obligations and duties independently due to numerous forms of harassment and other interference.

¹⁴ Human Rights Watch (2008), *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China*, <https://www.hrw.org/reports/2008/china0408/china0408web.pdf> [hereinafter Human Rights Watch, *Walking on Thin Ice*].

¹⁵ International Covenant on Civil and Political Rights, 16 Dec. 1966, 999, T.I.A.S. 92-908, U.N.T.S. 171 [hereinafter ICCPR], art. 14.

¹⁶ UN Basic Principles on the Role of Lawyers [hereinafter UN Basic Principles], Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, Principle 12, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>; UN Basic Guidelines on the Role of Prosecutors, Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Guideline 3, <https://www.un.org/ruleoflaw/blog/document/guidelines-on-the-role-of-prosecutors/>.

¹⁷ UN Basic Principles on the Role of Lawyers, *supra* note 16, Principle 14.

¹⁸ See, e.g., Human Rights Watch, *Walking on Thin Ice*, *supra* note 14, at 4-5.

IV. IMPROPER INTERFERENCE AND OTHER INFRINGEMENTS ON THE INDEPENDENCE OF LAWYERS

Government authorities in Belarus have engaged in a number of tactics that interfere with the independence of lawyers in contravention of international law and standards. Pursuant to international standards, lawyers should be free from intimidation, hindrance, harassment, or improper interference.¹⁹ The United Nations Basic Principles on the Role of Lawyers (UN Basic Principles) further stipulate that governments must ensure that lawyers neither “suffer, [n]or be threatened with, prosecution or administrative, economic[,] or other sanctions for any action taken in accordance with recognized professional duties, standards[,] and ethics.”²⁰

Yet, since the August 2020 presidential elections, lawyers in Belarus working on sensitive cases have been the subject of judicial harassment, arbitrary arrests, detention, administrative sanctions, criminal prosecution, and disciplinary sanctions - including disbarment. Belarusian authorities not only have failed to fulfil their duty to protect lawyers from such harassment and sanctions for performing their professional activities but also appear to be the source of the harassment and sanctions against lawyers. As a result, lawyers in Belarus are effectively prohibited from carrying out their professional duties independently.

A legal profession controlled, manipulated, or unduly influenced by politicians or any other third party cannot effectively carry out its duty to ensure the fair and effective administration of justice and adherence to the rule of law.

A. ARRESTS, DETENTION, AND CRIMINAL PROSECUTION OF LAWYERS

Criminal charges against lawyers were increasingly brought in the context of post-election protests. The UN High Commissioner for Human Rights noted in her recent report on the situation of human rights in Belarus that “according to official sources, between 9 August and 30 November [2020], more than 1,000 criminal cases were opened against peaceful protesters, opposition members and supporters, journalists, human rights defenders, lawyers, and other persons critical of the Government.”²¹ At the time of writing this report, criminal cases are still pending against a number of lawyers who appear to be facing politically motivated charges in connection with their professional activities representing peaceful protestors and opposition figures or the exercise of their own rights to freedom of expression, assembly, and/or association. The case studies below are based on publicly available information.

¹⁹ UN Basic Principles on the Role of Lawyers, *supra* note 16, Principle 16(a).

²⁰ *Id.*, Principle 16(b).

²¹ Report of the UN High Commissioner for Human Rights, *supra* note 9, at par. 43.

1. CASE STUDIES

Maksim Znak

Maksim Znak represented Viktor Babaryko, a potential candidate in the presidential elections who was not allowed to formally register. He also provided legal assistance to Svetlana Tikhonovskaya, a former candidate for the presidency who is now in exile, and Maria Kolesnikova, Coordination Council co-leader. According to our information, Mr. Znak was arrested in September 2020 for allegedly having committed the offence of “calls to actions seeking to undermine national security” in violation of Article 361(3) of the Criminal Code of Belarus.²² He was allegedly taken from the Coordination Council’s office on 9 September 2020 by unidentified men in ski masks.²³ At the time of his detention, Mr. Znak was widely regarded as the last active member of the Coordination Council in his capacity of member of the Presidium of the Coordination Council.²⁴

In February 2021, additional charges were added, including conspiracy to seize state power and organising extremism.²⁵ These charges - which were also brought against Mr. Znak’s former client, Maria Kolesnikova - carry a penalty of up to 12 years in jail.²⁶ Mr. Znak denies all the charges but is still being held in pre-trial detention.

Ilya Salei

Ilya Salei also represented Viktor Babariko and Maria Kolesnikova and was also arrested on 9 September 2020 and subsequently charged with the same criminal offence initially lodged against Maksim Znak - “inciting actions aimed at harming [Belarus’s] national security.”²⁷ On 17 October 2020, his remand in custody was replaced with house arrest.²⁸ Then, on 16 April 2021, Mr. Salei was released on bail and has been free to move around the country and work. But he “remains in the status of an accused” under Criminal Code Article 361 and is obliged to appear when summoned by investigating authorities or the court.²⁹

²² Lawyers for Lawyers, *Joint letter on the arrest and detention of Maksim Znak and Ilya Salei* (23 Sept. 2020), <https://lawyersforlawyers.org/en/joint-letter-on-the-arrest-and-detention-of-maksim-znak-and-illia-salei/>; Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus* (10 March 2021), <https://lawyersforlawyers.org/joint-statement-on-the-repression-of-lawyers-in-belarus/>.

²³ Luke Harding, *Belarus opposition figure Maxim Znak taken from office by masked men*, THE GUARDIAN (9 Sept. 2020), <https://www.theguardian.com/world/2020/sep/09/belarus-opposition-figure-maxim-znak-taken-from-office-by-masked-men>.

²⁴ Lawyers for Lawyers, *Lawyers who have represented Belarusian opposition leaders are subject to persecution* (14 April 2021), <https://lawyersforlawyers.org/lawyers-who-have-represented-belarusian-opposition-leaders-are-subject-to-persecution/> [hereinafter Lawyers for Lawyers, *Lawyers who have represented Belarusian opposition leaders*].

²⁵ Matthias Williams, *Two opponents of Belarus leader face more jail time as he floats reform*, REUTERS (12 Feb. 2021), <https://www.reuters.com/article/us-belarus-politics/two-opponents-of-belarus-leader-face-more-jail-time-as-he-floats-reform-idUSKBN2AC12E>.

²⁶ *Id.*

²⁷ Human Rights Watch, *World Report 2021: Belarus* (2021), <https://www.hrw.org/world-report/2021/country-chapters/belarus>.

²⁸ Lawyers for Lawyers, *Lawyers who have represented Belarusian opposition leaders*, *supra* note 24.

²⁹ *Илье Салею изменили меру пресечения с домашнего ареста на залог* [The preventive measure imposed on Ilya Salei was changed from house arrest to bail], REFORM.BY (16 April 2021), <https://reform.by/217530-ile-saleju-izmenili-meru-presechenija-s-domashnego-aresta-na-zalog>; *Harassment of Lawyers in Belarus after the 2020 Elections*, DEFENDERS.BY, <https://defenders.by/lawyers-persecution-2020#levanchuk> (last visited 28 May 2021).

Liliya Vlasova

Liliya Vlasova - lawyer, international mediator, and member of the seven-person Presidium of the Coordinator Council - was detained on 31 August 2020 following a search of her house by officers from the State Control Committee, a government agency responsible for economic audit and combating corruption.³⁰ The search was allegedly carried out in relation to an investigation of alleged tax violations by companies owned by her son.³¹ On 9 September 2020 - the same day that Maksim Znak and Ilya Salei were arrested - Ms. Vlasova was charged with tax evasion under Article 243 of the Criminal Code.³² She was reportedly released to house arrest in October 2020.³³ The house arrest was subsequently cancelled along with other restrictions.³⁴

Leonid Sudalenko

Leonid Sudalenko is a lawyer and human rights defender who for many years has represented the interests of victims of human rights violations against the

government of Belarus before the UN Human Rights Committee. Mr. Sudalenko was detained on 18 January 2021 and, during a search of his offices, confidential materials of communications with the Committee were seized.³⁵ He was subsequently charged under the Belarus Criminal Code with the "organization and preparation of actions that grossly violate public order and the financing of such activities."³⁶ He remains in pre-trial detention in Homiel.³⁷

Syarhei Drazdouski and Aleh Hrableuski

Syarhei Drazdouski and Aleh Hrableuski, who are both human rights lawyers representing the Office for the Rights of Persons with Disabilities (ORPD), an organization that initiated Belarus's ratification process of the UN Convention on the Rights of Persons with Disabilities, were detained in early February 2021.³⁸ On 21 January 2021, the State Control Committee's Financial Investigations Department (FDI) visited the ORPD offices and the homes of Syarhei Drazdouski and Aleh Hrableuski.³⁹ Then on 2 February, the

³⁰ Amnesty Int'l, Public Statement, *Belarus: 'They are Stealing the Best of Us'. Arbitrary Arrests and Forced Expulsion of Leading Opposition Activists* (10 Sept. 2020), <https://www.amnesty.org/download/Documents/EUR4930402020ENGLISH.pdf>.

³¹ *Id.*; Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus*, *supra* note 22.

³² American Bar Association, Letter to Hon. Alyaksandr Ryhoravich Lukashenka, President of the Republic of Belarus regarding the imprisonment of lawyers Maksim Znak, Illia Salei and Liliya Vlasova (22 Oct. 2020), https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/detention-of-lawyers-belarus.pdf [hereinafter ABA Letter to President of Belarus, Oct. 2020]; *Harassment of Lawyers in Belarus after the 2020 Elections*, *supra* note 29.

³³ ABA Letter to President of Belarus, Oct. 2020, *supra* note 32.

³⁴ *Марии Колесниковой предъявили окончательное обвинение* [Maria Kolesnikova has finally been charged], НАСТОЯЩЕЕ ВРЕМЯ [CURRENT TIME], 12 May 2021, <https://www.currenttime.tv/a/marii-kolesnikovoy-predyavili-okonchatelnoe-obvinenie/31251343.html>.

³⁵ Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus*, *supra* note 22.

³⁶ *Id.*; see also Frontline Defenders, *Human Rights Defenders Leonid Sudalenka and Maryia Tarasenko Detained in Gomel*, <https://www.frontlinedefenders.org/en/case/human-rights-defenders-leanid-sudalenka-and-maryia-tarasenko-detained-gomel> (accessed 27 May 2021).

³⁷ Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus*, *supra* note 22.

³⁸ International Federation for Human Rights (FIDH), *Belarus: Arbitrary detention of Syarhei Drazdouski and Aleh Hrableuski* (12 Feb. 2021), <https://www.fidh.org/en/issues/human-rights-defenders/belarus-arbitrary-detention-of-syarhei-drazdouski-and-aleh-hrableuski>.

³⁹ Human Rights Watch, *et al.*, *Belarus: End reprisals against human rights defenders* (18 March 2021), https://www.hrw.org/sites/default/files/media_2021/03/EUR4938542021ENGLISH.pdf.

FDI summoned Drazdouski and Hrableuski and conducted a seven-hour interrogation of the two men without the presence of a legal representative.⁴⁰ The following day, the men were called for questioning again, and Mr. Drazdouski was placed under house arrest and Mr. Hrableuski was detained.⁴¹ The precise charges against them are unknown as their lawyers were forced to sign a non-disclosure agreement.⁴² However, the actions taken by the FDI are believed to have been part of a criminal case initiated against the two lawyers “in relation with their participation in disabled persons’ marches on 15 and 22 October 2020 as well as their provision of legal support for those arrested in protests.”⁴³

Marina Dubina

Marina Dubina, an environmental human rights lawyer and executive director of the NGO Ecohome, was arrested on 6 October 2020 and sentenced two days later to 13 days in administrative detention for participating in a peaceful protest in Minsk on 23 September 2020.⁴⁴ After her release she has suffered from bronchitis from being held in poor prison conditions.⁴⁵

2. LEGAL ANALYSIS

The increase of arrests, detention, and criminal prosecution against lawyers in

Belarus that have taken place since the presidential elections in August 2020 stands in stark contrast to the safeties guaranteed to lawyers under the UN Basic Principles. These tactics by the Lukashenko government serve to intimidate, harass, hinder and interfere with the lawyers’ work in contravention of Basic Principle 16 and the government has done nothing to fulfil its duty to ensure lawyers do not suffer from such prosecution or administrative or other sanctions for any actions “taken in accordance with recognized professional duties, standards, and ethics.”⁴⁶

In addition, lawyers must not be identified with their clients or their clients’ causes as a result of discharging their functions⁴⁷ and have the right, like any other individual, to the freedoms of expression, assembly, and association.⁴⁸ The right to freedom of expression includes the right to take part in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights.⁴⁹

All of the lawyers discussed in the case studies appear to have been targeted for their work defending human rights, protestors, or opposition figures or for themselves being associated with the opposition or exercising their rights to freedom of expression, assembly, and

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus*, *supra* note 22.

⁴³ FIDH, *Belarus: Arbitrary detention of Siarhei Drazdouski and Aleh Hrableuski*, *supra* note 38.

⁴⁴ CCBE, *Sentencing of lawyer Marina Dubina* (19 October 2020),

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Belarus_-_Bielorussie/2020/EN_HRL_20201019_Belarus_Sentencing-of-lawyer-Marina-Dubina.pdf.

⁴⁵ Frontline Defenders, *Woman Human Rights Defender Marina Dubina Administratively Arrested*,

<https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-marina-dubina-administratively-arrested> (accessed 27 May 2021).

⁴⁶ UN Basic Principles on the Role of Lawyers, *supra* note 16, Principle 16(b).

⁴⁷ *Id.*, Principle 18.

⁴⁸ *Id.*, Principle 23.

⁴⁹ *Id.*, Principle 23.

association. There is thus reason to believe that the arrest, detention, and prosecution of the abovementioned lawyers is connected to their professional activities. As such, these actions taken against the lawyers constitute violations of these internationally recognised principles and the independence of the legal profession.

The interference in the work of lawyers in the form of arrests, detention, and prosecution may also lead to violations of the right to a fair trial under Article 14 of the ICCPR. The UN Human Rights

Committee has stated that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure[,] or undue interference from any quarter.”⁵⁰ In addition, these actions taken against the lawyers violate the right to a fair trial of the clients they represent because these actions deprive clients of legal representation of their own choosing and impermissibly restrict access to justice in Belarus.⁵¹

B. DISBARMENT AND OTHER DISCIPLINARY MEASURES

In recent months, there also has been an unprecedented increase in the disbarment of lawyers. In reaction to these events, the UN High Commissioner for Human Rights noted: “In Belarus, lawyers defending politically sensitive cases or cases involving human rights violations (...) face disbarment or disciplinary sanctions by the Bar Association, which lacks independence and over which the MOJ exercises broad control.”⁵² The cases below illustrate a clear pattern in the use of disciplinary proceedings against lawyers who represent political opponents of the government or those who openly criticize the government on issues of public significance. The cases below are drawn from the public sources.

1. CASE STUDIES

Alexander Pylchenko

Alexander Pylchenko, a prominent human rights lawyer and former chair of the Minsk City Bar Association, represented detained opposition leaders Viktor Babaryko and Maria Kolesnikova. He also spoke publicly about the government’s obligations to prevent and investigate allegations of torture in detention and other rule of law concerns that have emerged in the wake of the disputed 2020 presidential election.⁵³

⁵⁰ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before court and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, par. 34.

⁵¹ See ICCPR, *supra* note 15, Art. 14.

⁵² Report of the UN High Commissioner for Human Rights, *supra* note 9.

⁵³ ABA CHR Belarus: Preliminary Report, *supra* note 8; Elena Tolkacheva, *Lawyer: Prosecutor General must remove from office the head of the Ministry of Internal Affairs, his deputies and the head of the IVS*, TUT.BY (14 Aug. 2020), <https://news.tut.by/economics/696651.html>.

On 7 October 2020, Mr. Pylchenko received a notice from the Ministry of Justice (MOJ) requesting that he attend a meeting of the Qualification Commission regarding the revocation of his law license.⁵⁴ The Commission's notice did not specify the precise claims against him, and although the Commission considered written statements submitted by Mr. Pylchenko, it denied his request that his counsel attend the meeting on 15 October 2020.⁵⁵ The only issue discussed during the meeting was a TUT.BY interview of Mr. Pylchenko in which he spoke about what actions law enforcement officials and the judiciary should take in response to unjustified violence and torture against civilians and his commentary about similar issues in another interview that aired on the ONT government TV channel.⁵⁶

The same day, the Commission issued an opinion indicating that Pylchenko's statements were "incompetent, misle[d] the public about the powers of state authorities, and call[ed] for illegal action" and, therefore, constituted a violation of Belarusian rules on professional ethics.⁵⁷ The Commission recommended that, in light of his purported "actions discrediting the Bar" (in the form of these statements),

the MOJ terminate Pylchenko's license to practice law.⁵⁸

Based on the Commission's opinion, on 16 October 2020, a board of the MOJ terminated Pylchenko's law license with immediate effect.⁵⁹ Pylchenko filed a complaint in the Moskovskiy District Court of Minsk City to appeal the decision. On 26 February 2021, Pylchenko's appeal on the disbarment was dismissed by the appeal court, setting a precedent for the revocation of a lawyer's license for expressing their legal opinion.⁶⁰

Yulia Levanchuk

Yulia Levanchuk was also disbarred in October 2020.⁶¹ She represented Maksim Kharoshyn, the owner of a flower shop in Minsk who handed out flowers to protesters. After his detention on 13 October 2020, he reportedly was so badly beaten that he had to be hospitalized.⁶² According to sources, the justification for revoking Ms. Levanchuk's license was that she allegedly used threats in online correspondence with the investigator in charge of her client's case.⁶³ However, her license was revoked following a public statement she made on behalf of her client about the alleged torture.⁶⁴ Ms. Levanchuk

⁵⁴ ABA CHR Belarus: Preliminary Report, *supra* note 8.

⁵⁵ *Id.*

⁵⁶ Opinion of the Qualification Commission for Legal Practice in the Republic of Belarus (15 Oct. 2020), No.8.

⁵⁷ *Id.*

⁵⁸ *See id.*, No.8. Of note, the Commission "did not address the fact that the Minsk City Bar, of which Mr. Pylchenko was a member, had examined his statements and did not initiate procedures to sanction him." ABA CHR Belarus Preliminary Report, *supra* note 8 (citing Complaint of Aleksandr Pylchenko Appealing the Decision of the MOJ of October 16, 2020 (November 11, 2020)).

⁵⁹ ABA CHR Belarus Preliminary Report, *supra* note 8.

⁶⁰ Lawyers for Lawyers, *Lawyers who have represented Belarusian opposition leaders*, *supra* note 24.

⁶¹ Helsinki Foundation for Human Rights, *Public statement on the human rights situation in Belarus: repressions against lawyers and advocates*, <https://www.hfhr.pl/en/public-statement-on-the-human-rights-situation-in-belarus-repressions-against-lawyers-and-advocates/> (accessed 27 May 2021).

⁶² Lawyers for Lawyers, *Joint letter on revocation licenses of Aliaksandr Pylchanka and Yulia Levanchuk* (3 Nov. 2020), <https://lawyersforlawyers.org/en/joint-letter-on-revocation-licenses-of-aliaksandr-pylchanka-and-yulia-levanchuk/> [hereinafter Lawyers for Lawyers, *Joint letter on revocation of licenses*].

⁶³ *Id.*; *see also Harassment of lawyers in Belarus after the 2020 elections*, *supra* note 29.

⁶⁴ Lawyers for Lawyers, *Joint statement on the repression of lawyers in Belarus*, *supra* note 22.

reportedly denied the charges against her and appealed the disbarment.⁶⁵ There is no public information about whether her appeal has been successful.

Liudmila Kazak

Liudmila Kazak is a prominent human rights lawyer who has defended political prisoners, human rights defenders, and journalists, including the opposition leader Maria Kolesnikova. On 24 September 2020, she was detained in Minsk by three masked men who neither identified themselves nor explained the reasons for her detention.⁶⁶ They reportedly forced her into an unmarked car and took her to a building of the District Department of Internal Affairs.⁶⁷ Upon her arrest, she was subjected to a personal search that led to the seizure of attorney-client privileged documents.⁶⁸

The next day, Ms. Kazak appeared in court, where state authorities alleged that she had been detained on suspicion of participating in an unauthorized mass event, and that, in the context of such detention, committed the administrative offense of “disobedience to a police officer.”⁶⁹ She rejected the charges. The court dropped the initial charge of participating in an unauthorized mass

event but held Ms. Kazak administratively liable for disobeying police officers based on testimony given by anonymous masked witnesses who appeared via Skype and claimed to be the arresting officers.⁷⁰ She was sentenced to a fine of 675 rubles under article 23.4 of the Belarusian Administrative Code and was released on 26 September 2020.⁷¹

Because of her arrest, Ms. Kazak was unable to represent Ms. Kolesnikova at a hearing that took place on 25 September 2020. She was Ms. Kolesnikova’s fourth lawyer to be subjected to harassment and intimidation on the basis of their identification with their client or their client’s cause.

On 10 November 2020, an appellate court upheld the decision in Ms. Kazak’s case.⁷² And on 11 February 2021, she was notified of a pending disciplinary proceeding against her before the MOJ’s Qualification Commission.⁷³ The notice informed her that the Commission would determine whether she had committed actions incompatible with the title of a lawyer and discredited the legal profession by committing an administrative offense and whether to terminate her law license accordingly.⁷⁴ On 19 February 2021, the

⁶⁵ Lawyers for Lawyers, *Joint letter on revocation of licenses*, *supra* note 62.

⁶⁶ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 6; Special Rapporteur on the independence of judges and lawyers, *et al.*, Letter to the Government of Belarus, 6 Nov. 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25674>. [hereinafter Special Rapporteur Letter 6 Nov. 2020].

⁶⁷ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 6.

⁶⁸ See Special Rapporteur Letter 6 Nov. 2020, *supra* note 66.

⁶⁹ See *id.*

⁷⁰ *Id.*; ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 6.

⁷¹ Special Rapporteur Letter 6 Nov. 2020, *supra* note 66.

⁷² Elena Tolkacheva, *Еще раз показывает незащищенность граждан перед произволом. Суд отклонил жалобы по делу адвоката Казак* [The vulnerability of citizens to arbitrariness is again evident. The court dismissed the complaints in the case of the lawyer Kazak], TUT.BY (10 Nov. 2020), <https://news.tut.by/economics/707373.html>.

⁷³ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 6.

⁷⁴ *Id.* at 6-7.

Commission disbarred Ms. Kazak.⁷⁵ Ms. Kazak's lawyer was not allowed to attend the hearing. Ms. Kazak appealed the decision, but, on 15 April 2021, the Moskovskiy District Court in Minsk upheld Ms. Kazak's disbarment.⁷⁶ On 17 June 2021, an appellate court upheld the district court decision.

Mikhail Kirilyuk

On 19 February 2021, the Qualification Commission revoked Mikhail Kirilyuk's license to practice law.⁷⁷ Mr. Kirilyuk was a member of the Minsk Regional Bar Association. He was disbarred for his alleged "inappropriate online statements about the authorities" under paragraph 73 of the Rules of professional ethics of the lawyers.⁷⁸ The alleged "inappropriate online statements about authorities" appear to be in reference to a series of Facebook posts by Mr. Kirilyuk in September 2020 "regarding the state of the rule of law in Belarus and the potential for the peaceful transfer of power."⁷⁹

Maksim Konon

On 19 February 2021, the Qualification Commission also revoked Maksim Konon's license to practice law. Mr. Konon has a history of defending individuals critical of the government, journalists, and

protestors.⁸⁰ He also was a member of the Minsk Regional Bar Association. In October 2020, he was found guilty of the administrative offence of participating in an unauthorized mass event in violation of article 23.34 (1) of the Belarusian Administrative Code.⁸¹ Mr. Konon served a 12-day sentence upon conviction and was subsequently disbarred on the basis of this administrative offense.⁸² Mr. Konon reportedly believes that he may have been targeted due to his public criticism of the inaction by investigating authorities into allegations of mistreatment of detainees and his work defending individuals critical of the government.⁸³

Konstantin Mikhel

On 19 February 2021, the Qualification Commission similarly revoked Konstantin Mikhel's license to practice law. Mr. Mikhel was a member of the Minsk Regional Bar Association and has been practicing law in Belarus since 1995. Mr. Mikhel was convicted of an administrative offense under Article 23.34(1) of the Belarusian Administrative Code for his alleged participation in a mass event that lacked the appropriate permission from authorities.⁸⁴ He served a 14-day sentence upon conviction and was subsequently

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 9.

⁷⁸ We were informed that paragraph 73 of the Rules of professional ethics of the lawyers lays down that actions that are incompatible with the title of a lawyer include "committing actions that discredit the title of a lawyer and the bar." We were further informed that it should be noted that there is no provision in the law which stipulates that criticism of the authorities discredits the bar.

⁷⁹ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 8 (internal citations omitted).

⁸⁰ *Id.*, at 7.

⁸¹ *Id.*

⁸² *Id.*, at 7-8.

⁸³ *Id.*, at 8 (citing Elena Tolkacheva, *Адвоката Максима Конона тоже хотят лишить лицензии* [Authorities also want to revoke lawyer Maxim Konon's license], TUT.BY (12 Feb. 2021), <https://news.tut.by/economics/718741.html>).

⁸⁴ *Id.*, at 7.

disbarred on the basis of his administrative responsibility.⁸⁵

Vladimir Sazanchuk

On 24 February 2021, the Disciplinary Committee of the Minsk City Bar Association decided to revoke Vladimir Sazanchuk's license to practise law. Mr. Sazanchuk served as defense counsel for opposition politician Mikalai Statkevich and video blogger Dmitry Kazlou.⁸⁶ He also publicly criticized government authorities for creating multiple obstacles for lawyers in performing their professional duties.⁸⁷ Mr. Sazanchuk faced disbarment, among other retaliatory measures, for publicly criticizing the authorities for putting multiple obstacles in the way of lawyers' attempts to perform their professional duties under paragraph 73 of the Rules of Professional Ethics for Lawyers.

2. LEGAL ANALYSIS

Like the arrests, detention, and criminal prosecutions of lawyers, the disciplinary proceedings and the subsequent disbarments outlined above have been used to interfere with the work of lawyers defending human rights contrary to UN Basic Principle 16 and undermine the independence of the legal profession.

An important factor in the independence of the legal profession is the establishment of an independent system for the consideration of disciplinary proceedings

for alleged violations of the rules of professional ethics. Under UN Basic Principle 27, "charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice."⁸⁸ Under UN Basic Principle 28, "disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review."⁸⁹ Under Principle 29, "all disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized ethical standards of the legal profession and in the light of these principles."⁹⁰

The United Nations Special Rapporteur on the Independence of Judges and Lawyers has stated that "disbarment, which consists in taking away a lawyer's license to practice law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards" and stressed that "disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting

⁸⁵ *Id.* In disbaring Mr. Mikhel, the Qualification Commission reasoned that the commission of an administrative offense "discredited the title of lawyer and the legal profession and is incompatible with the title of lawyer" and Mr. Mikhel "should therefore be prohibited from practicing law." *Id.*

⁸⁶ Helsinki Foundation for Human Rights, *Public statement on the human rights situation in Belarus: repressions against lawyers and advocates* (4 March 2021), https://www.hfhr.pl/en/public-statement-on-the-human-rights-situation-in-belarus-repressions-against-lawyers-and-advocates/#_ftn4.

⁸⁷ *Id.*

⁸⁸ UN Basic Principles, *supra* note 16, Principle 27.

⁸⁹ *Id.*, Principle 28.

⁹⁰ *Id.*, Principle 29.

all guarantees to the accused lawyer.”⁹¹ The European Court on Human Rights made similar remarks when it noted that disbarment “cannot but be regarded as a harsh sanction capable of having a chilling effect on the performance by lawyers of their duties as defense counsel.”⁹²

Disciplinary proceedings in Belarus are not independent of the executive; rather, they are conducted by the Qualification Commission, which operates under the MOJ. The Qualification Commission is established by the MOJ and only 8 out of the Commission’s 17 members are lawyers.⁹³

Furthermore, the disbarments of lawyers speaking critically of the government or about matters concerning the administration of justice, human rights, or rule of law in Belarus violate the lawyers’ right to freedom of expression. Belarus has committed, through the ICCPR, ratified by Belarus in 1973, to respect individuals’ rights “to freedom of expression [including] freedom to seek, receive and impart information and ideas of all kinds.”⁹⁴ Moreover, the UN Basic Principles emphasize that “lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights . . . without suffering professional

restrictions by reason of their lawful action or their membership in a lawful organization.”⁹⁵ States may only restrict expression where such restrictions are provided by law and necessary for the protection of the rights or reputations of others, national security or of public order (*ordre public*), or public health or morals.⁹⁶

The punitive use of disbarment as mentioned in the cases above is a severe sanction that appears to be based solely either on statements made in public in defense of their clients or the government’s handling of protesters. Yet in none of the cases did the MOJ or Qualification Commission establish that the restriction of the lawyers’ rights in the form of disbarment was necessary to protect national security, the public order, the rights and reputations of others, or public health and morals. The disbarments thus cannot be deemed necessary.

Moreover, by upholding the disqualifications of these lawyers, the courts have undermined the fundamental right of the lawyers’ clients to legal representation. The ICCPR guarantees the right to counsel, including that of “everyone charged with a criminal offence (...) to communicate with counsel of his own choosing.”⁹⁷

The disciplinary actions brought against Belarusian lawyers represent a worrying trend. Lawyers who are critical of the

⁹¹ Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348 (22 Aug. 2016), par. 96.

⁹² Bagirov v. Azerbaijan, nos. 81024/12 and 28198/15, paragraph 84, Eur. Ct Hum. Rts., 25 June 2020.

⁹³ This has been laid down in Article 14.2 of the Law of the Republic of Belarus On the Bar and Advocate Activity in the Republic of Belarus 334-3 (2011) [hereinafter Law on the Bar and Advocacy in Belarus], available at: <https://rka.by/about/zakon-respubliki-belarus/>

⁹⁴ ICCPR, *supra* note 15, art. 19.

⁹⁵ UN Basic Principles on the Role of Lawyers, *supra* note 16, Principle 23.

⁹⁶ ICCPR, *supra* note 15, art. 19(2).

⁹⁷ *Id.*, art. 14.

Lukashenko government, as well as those lawyers who publicly speak out against human rights violations committed against their clients, are targeted by the professional representative body that is supposed to support them and ensure that they can carry out their professional functions freely.

C. EXTRAORDINARY CERTIFICATION OF LAWYERS

1. OVERVIEW

On 3 March 2021, seven lawyers were called before the Qualification Commission to undergo an examination to re-certify their qualification to practice law in Belarus on the basis of their alleged “improper fulfillment of their professional duties.”⁹⁸ Three of the seven lawyers had their licenses suspended for six months, subject to review, and three others were disbarred; only one lawyer passed the examination.⁹⁹ The MOJ (MOJ) reportedly ordered the extraordinary certification¹⁰⁰ of the seven lawyers as a result of alleged

improper performance of their professional duties on the basis of complaints shared by citizens about the actions of the lawyers and the outcomes of a random inspection by the Minsk Regional Bar Association that was conducted in the second half of 2020.¹⁰¹

The Qualification Commission met again on 24 March 2021 and called another lawyer - Sergei Zikratsky - for an extraordinary certification exam, which resulted in the revocation of his law license.¹⁰² On 21 April 2021, the Qualification Commission conducted another extraordinary certification exam, which resulted in two more lawyers having their licenses revoked.¹⁰³

2. LEGAL ANALYSIS

The series of extraordinary certification examinations issued by the MOJ Qualification Commission in recent months spurs further concern over the independence of the judiciary in Belarus. Subjecting lawyers to arbitrary re-

⁹⁸ ABA CHR Analysis of Arbitrary Disbarments, *supra* note 8, at 5 (citing *Квалификационной комиссией по вопросам адвокатской деятельности в Республике Беларусь проведена внеочередная аттестация адвокатов* [The Qualification Commission on the Issues of Advocate Activity in the Republic of Belarus carried out an extraordinary certification of advocates], TELEGRAM POST, Пресс-служба Минюста Беларуси [Press Service of the MOJ of Belarus] (3 Mar. 2021), https://t.me/minjust_by/956; *Три беларусских адвоката не прошли аттестацию Минюста* [Three Belarusian lawyers did not pass the certification of the MOJ], REFORM.BY (3 Mar. 2021), <https://reform.by/205985-tri-belarusskih-advokata-ne-proshli-attestaciju-minjust>).

⁹⁹ *Id.*

¹⁰⁰ In accordance with Presidential Decree of 26 November 2015 No. 475, the ordinary certification is held every five years; however certification can be held at any time on request of the MOJ. This is called an extraordinary certification.

¹⁰¹ BelTA, *Квалификационная комиссия провела внеочередную аттестацию адвокатов* [The Qualification Commission conducted an extraordinary certification of lawyers] (24 March 2021), <https://www.belta.by/society/view/kvalifikatsionnaja-komissija-provela-vneocherednuju-attestatsiju-advokatov-434201-2021/>; see also ABA CHR Analysis of Arbitrary Disbarments, *supra* note 5, at 3 (noting that the Qualification Commission carried out the extraordinary certification examination “on the basis of their alleged ‘improper fulfillment of their professional duties.’”) (internal citations omitted).

¹⁰² *Id.*, at 4.

¹⁰³ *Еще двух адвокатов вызвали на внеочередную аттестацию* [Two more lawyers were summoned for an extraordinary certification], TUT.BY (19 April 2021), <https://news.tut.by/society/727128.html>; Blizko.BY, *Минюст лишил лицензии еще двух белорусских адвокатов. Зачем?* [The MOJ revoked two more Belarusian lawyers' licenses. For what?] (21 April 2021), <https://blizko.by/notes/minyust-lishil-litsenzii-esche-dvuh-belorusskih-advokatov-za-cht>.

certification examinations at the whim of the executive branch not only violates the lawyers' rights to practice law free from harassment, intimidation, and improper interference but also contravenes international standards on the role of bar associations.

The UN Basic Principles emphasize that professional associations of lawyers play "a vital role in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements."¹⁰⁴ They further require that bar associations be independent from government and other executive and private interests.¹⁰⁵ According to the Special Rapporteur on the Independence of Judges and Lawyers, a bar association is "generally deemed to be independent" when "it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, the development and implementation of codes of professional conduct, and the right of lawyers to join the association."¹⁰⁶

Moreover, several international institutions, including the United Nations Special Rapporteur on the Independence of Judges and Lawyers, have expressed concerns about situations where the "entry into or continued practice within the legal profession is conditioned or controlled by the executive or the judicial branch."¹⁰⁷ The Special Rapporteur cautioned that in such a situation, State authorities may use their own "prerogatives to prevent certain individuals from entering the legal

profession or to exclude lawyers who they deem to be 'problematic' through the arbitrary withdrawal of lawyers' licenses, registration or practising certificates."¹⁰⁸ Rather than State authorities, the legal profession itself should determine admission requirements and procedures and be responsible both for the administration of examinations and other requirements and for the granting of professional licenses.

To ensure the independent and effective functioning of the legal profession, self-governing professional associations of lawyers must also have sufficient competencies and powers relating to the legal profession to be able to protect and strengthen it. These include powers in relation to the qualification and continuing education of lawyers, access to the legal profession, and competence in relation to disciplinary proceedings against lawyers.

In Belarus, decisions about the continued practice of lawyers within the legal profession are not made by an independent entity; the decisions are conditioned and controlled by the executive branch in the form of the Qualification Commission of the MOJ. There are reasons to believe that the lawyers that were called in for extraordinary certification by the Qualification Commission were targeted for working on human rights cases as

¹⁰⁴ UN Basic Principles on the Role of Lawyers, *supra* note 16, Preamble.

¹⁰⁵ See UN Basic Principles on the Role of Lawyers, *supra* note 16, Principles 24-26.

¹⁰⁶ See UN Gen. Ass., *Report of the Special Rapporteur on the independence of judges and lawyers*, U.N. Doc. A/73/365 (5 Sept. 2018), para. 23 [hereinafter Special Rapporteur 2018 Report].

¹⁰⁷ See *id.*, para. 60.

¹⁰⁸ *Id.* (emphasis added).

means of reprisal.¹⁰⁹ This is yet another form of harassment, intimidation, and improper interference in the work of lawyers in Belarus and contradicts international standards.

D. HARASSMENT OF LAWYERS

In addition to criminal prosecutions, disbarments and other disciplinary proceedings, and procedures leading to disbarment, Belarusian lawyers have been harassed by government authorities in other ways. This harassment similarly violates international standards on the role of lawyers and independence of the legal profession.

1. OVERVIEW

UN bodies and other organizations have expressed concern over the increase in cases of lawyers being harassed and threatened in Belarus since the presidential election of 2020. In October 2020, the IBAHRI communicated its “grave concern over ongoing attacks and intimidation tactics deployed against lawyers in Belarus for carrying out their professional roles.”¹¹⁰ The IBAHRI

correspondingly called upon Belarus authorities “to halt all forms of intimidation directed at legal professionals.”¹¹¹ In reaction to the intensified crackdown on lawyers in the aftermath of the 2020 presidential elections, the UN High Commissioner for Human Rights stated in her recent report on the situation in Belarus that “in Belarus, lawyers working with politically sensitive cases or cases of human rights violations were subjected to pressure, harassment, and intimidation for carrying out their professional activities.”¹¹² In March 2021, the UN Special Rapporteur on the Situation of Human Rights Defenders similarly conveyed her concern over the “increasing crackdown against human rights defenders in Belarus,” including lawyers working to promote human rights.¹¹³

According to the UN Special Rapporteur, “raids on offices, arrests of human rights defenders[,] and the hampering of lawyers’ work have become common practice.”¹¹⁴ In addition, lawyers have recently been forced into non-disclosure agreements.¹¹⁵ The requirement for lawyers to sign non-disclosure agreements

¹⁰⁹ See Int’l Comm’n of Jurists, *Belarus: stop politically motivated prosecution and disbarment of lawyers* (13 April 2021), <https://www.icj.org/belarus-stop-politically-motivated-prosecution-and-disbarment-of-lawyers/> (noting that the Qualification Commission’s extraordinary certification procedure “appears to target lawyers working to defend human rights, as a means of harassment or reprisal”); Roman Vasyukovich, “Оставят без куска хлеба за исполнение своих обязанностей”. Десятки адвокатов Беларуси лишились лицензий из-за защиты протестующих

[‘They will be left without a piece of bread for fulfilling their duties.’ Dozens of Belarusian lawyers lost their licenses over the protection of protestors], НАСТОЯЩЕЕ ВРЕМЯ [CURRENT TIME] (3 May 2021),

<https://www.currenttime.tv/a/desyatki-advokatov-lishilis-licenzii-za-zashitu-protestyushih/31232068.html> (noting that one of the lawyers who lost her right to practice in March 2021 as a result of the extraordinary certification process believes it was due to “the fact that in the courts she defended participants in peaceful protests and publicly condemned violence and repression”).

¹¹⁰ Int’l Bar Assn, *Belarus: harassment and intimidation of lawyers is of great concern and must end* (29 Oct. 2020), <https://www.ibanet.org/article/3bac5c3d-eaf1-45f2-a422-c7d503c2c47d>.

¹¹¹ *Id.*

¹¹² Report of the UN High Commissioner for Human Rights, *supra* note 9, at par. 43.

¹¹³ UN Belarus, *Belarus: crackdown on human rights defenders deepens – expert* (19 March 2021), <https://belarus.un.org/en/122675-belarus-crackdown-human-rights-defenders-deepens-expert>.

¹¹⁴ *Id.*

¹¹⁵ See discussion on the Extraordinary Certification of Lawyers, *supra* at Section IV.C.

in almost all politically motivated criminal cases has become a practice of pressure and obstruction to the performance of the lawyers' professional activities in Belarus. As described by the UN Special Rapporteur on the Situation of Human Rights Defenders, "[n]on-disclosure agreements de facto criminalise the sharing of information on human rights."¹¹⁶

2. ANALYSIS

The various forms of harassment described by the UN Special Rapporteur - including

forced non-disclosure agreements in criminal cases - violate Principle 16 of the UN Basic Principles on the Role of Lawyers. The raids on human rights lawyers' offices further violate UN Basic Principle 17, which requires government authorities to adequately safeguard lawyers' security in discharging their professional functions.¹¹⁷

Belarusian authorities should cease the harassment of lawyers defending human rights and human rights defenders and fulfil their obligations under the UN Basic Principles.

Protests in Minsk, Belarus
Photo Credit: Natallia Rak, 2020



¹¹⁶ UN Belarus, *Belarus: crackdown on human rights defenders deepens – expert*, *supra* note 113.

¹¹⁷ See UN Basic Principles, *supra* note 16, Principle 17.

V. AMENDMENTS TO THE LAW ON THE BAR AND ADVOCACY

A. OVERVIEW

In April 2021, amendments were proposed by the Lukashenko administration to the Law on the Bar and Advocacy in Belarus. The bill was since adopted in May 2021 and will come into force in November 2021.¹¹⁸ The amendments to the Law on the Bar and Advocacy in Belarus prohibit lawyers who work individually or for law firms to take on cases concerning criminal or administrative offences, limiting these cases to so-called legal consultations governed by the regional bar associations.¹¹⁹

The amendments also increase the MOJ's power over the legal profession. For example, the amendments require each candidate lawyer to be approved by the MOJ and empower the MOJ to develop the rules for the professional ethics of lawyers.¹²⁰ It can monitor lawyers, law firms and bar associations on their compliance with these professional ethics and subject them to disciplinary procedures in case of violation.¹²¹ These disciplinary proceedings take place before the Qualification Commission, which also falls under the control of the MOJ.¹²² Furthermore, candidates for chair of the bar associations have to be approved by

the MOJ. If all candidates proposed by territorial bar association are rejected twice by the MOJ, the MOJ proposes its own candidate. If the MOJ candidate is rejected twice by the members of the territorial bar, the candidate is nonetheless automatically "elected."¹²³ It also can dismiss these chairs if the Qualification Committee is of the opinion that they violated professional ethics.¹²⁴ Under the amendments, MOJ officials also would have the right to participate in the activities of the bar associations and request any documents from the bar associations or individual lawyers to be able to fulfil these powers, subject to attorney-client privilege.¹²⁵

B. LEGAL ANALYSIS

The heightened control granted to the MOJ over the regional and national bar associations in the amendments undermines their independence and the independence of the legal profession in Belarus. The Special Rapporteur on the Independence of Judges and Lawyers emphasized the importance of the independence and self-governing nature of bar associations in order to protect and ensure the functioning of the legal profession.¹²⁶ Moreover, UN Basic Principle

¹¹⁸ Office Life, *Адвокатских бюро в Беларуси не будет с октября 2021 года* [There will be no law offices in Belarus from October 2021] (29 May 2021), <https://officelife.media/news/25945-advokatskikh-byuro-v-belarusi-ne-budet-s-oktyabrya-2021-goda/>.

¹¹⁹ See Law on Amendments to the Law on the Bar and Advocacy in Belarus, Law of the Rep. of Belarus No. 113-3 (27 May 2021) [hereinafter Amendments], Art. 3(24) and 3(25).

¹²⁰ See *id.*, Art. 3(27).

¹²¹ See *id.*

¹²² See *id.*

¹²³ See *id.*, Art. 3(31).

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ Special Rapporteur 2018 Report, *supra* note 106, at par. 89.

24 provides that “[l]awyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training[,] and protect their professional integrity.”¹²⁷ It further stipulates that the professional associations’ executive body “shall be elected by its members and shall exercise its functions without external interference.”¹²⁸

Not allowing lawyers or their professional associations to independently draft codes of professional conduct also violates Basic

Principle 26. Furthermore, subjecting the regional and national bar associations to the control of the MOJ is not in line with Basic Principle 24, which provides for the right of lawyers to form and join self-governing professional associations which function without external interference.

The amendments to the Law on the Bar and Advocacy further undermine the independence of the legal profession in Belarus and further expose Belarusian lawyers to harassment, intimidation, and improper interference as they try to perform their professional functions.

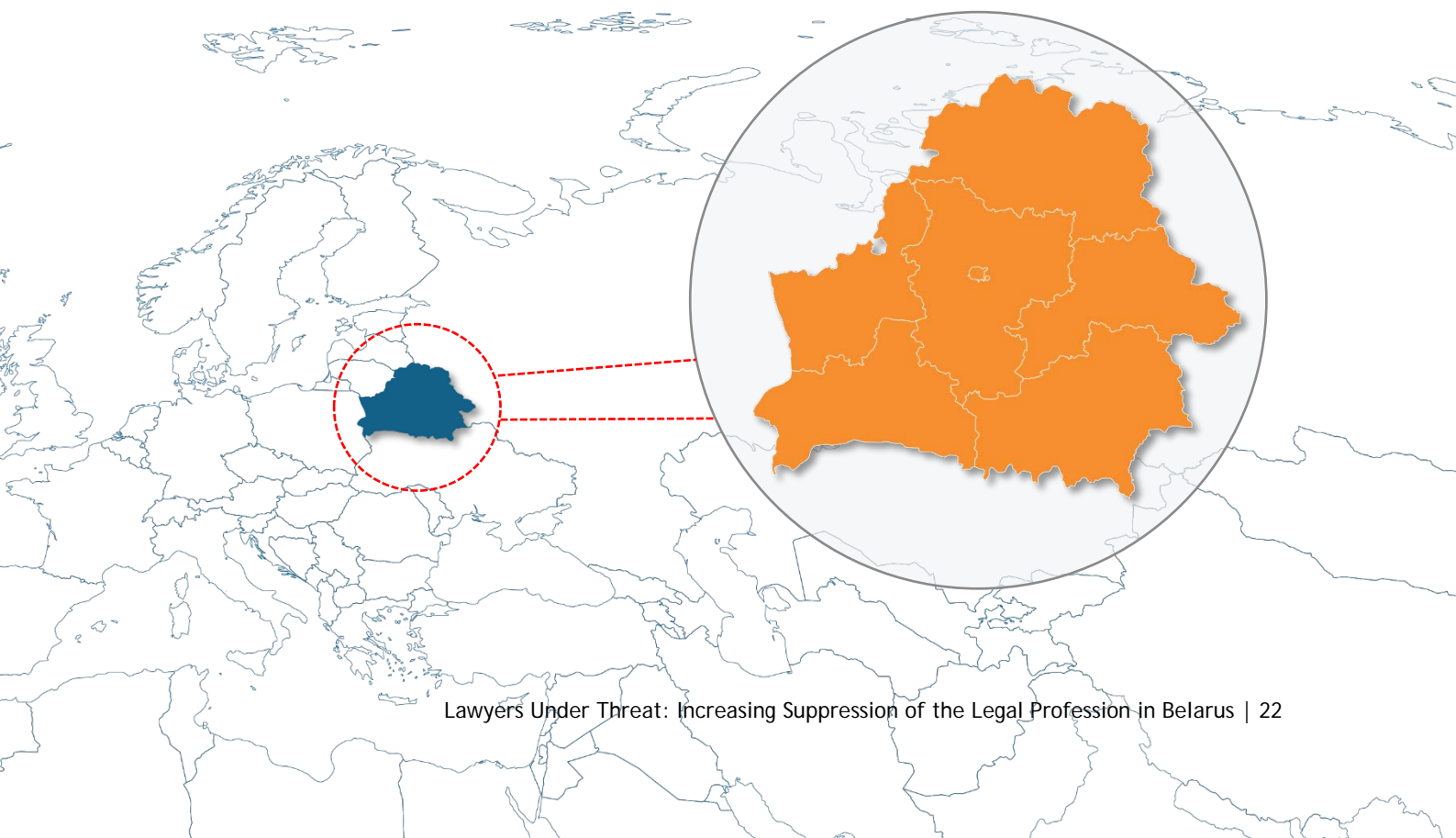
¹²⁷ UN Basic Principles on the Role of Lawyers, *supra* note 16, Principle 24.

¹²⁸ *Id.*

VI. RECOMMENDATIONS

In accordance with international law and standards, L4L, the ABA CHR, and the IBAHRI urge the Government of Belarus and all relevant authorities to take the following measures to ensure full independence of the legal profession in Belarus:

- 1 Take all necessary measures to guarantee the physical safety and security of lawyers in Belarus;
- 2 Immediately and unconditionally cease all acts of harassment against lawyers, including office raids, politically motivated investigations and criminal prosecutions, extraordinary certifications, and disbarments;
- 3 Guarantee that in all circumstances, lawyers in Belarus are able to carry out their legitimate professional activities and engage in the legitimate exercise of their fundamental human rights without fear of reprisal and free from harassment or other improper interference in their work;
- 4 Reinstatement of the lawyers that have been disbarred since August 2020, including those in the cases summarized in this report;
- 5 Introduce adequate protections for the integrity and independence of lawyers, including through the establishment of a fully independent bar association; and
- 6 Repeal the new amendments to the Law on the Bar and Advocacy in Belarus and amend the Law to remove oversight and control of the legal profession by the MOJ as well as any other provisions that restrict the independence of the legal profession in contravention to international standards.



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