

Submission pursuant to Human Rights Council resolution 45/1 by the Helsinki Foundation for Human Rights

Violation of the right to defence through the prosecution of lawyers

The attempts by the Belarusian authorities to repress the increased political activity of the citizens of Belarus resulted in harassment and persecution of the representatives of civil society and legal profession. The authorities widely use targeted repressions against the members of the Belarusian Bar, in particular. Those lawyers who defend civil activists and opposition members, have been removed from the Bar Association and their licenses were revoked. This prevents members of the professional community from getting involved in politically motivated cases, and from expressing their principled views in public.

As a result of that practice the right to have access to legal aid and representation is not duly ensured in the Republic of Belarus. These systemic problems have been repeatedly emphasised by international organisations¹ as well as NGOs².

At present, we observe the increased pressure on lawyers, including by means of criminal prosecution.

The authorities of Belarus systematically violate the right to a fair trial (Article 14 of the International Covenant on Civil and Political Rights) and Principle 16 of the UN Basic Principles on the Role of Lawyers) in Belarus. For example:

- disbarment of lawyers (Mr. Aleksandr Pylchenko, and Mrs. Yulia Levanchuk);
- criminal prosecution of lawyers (Mr. Ilia Salei, and Mr. Maxim Znak; Mrs. Lilia Vlasova);
- administrative actions against lawyers (Mrs. Liudmila Kazak);
- creation of administrative, bureaucratic and technical barriers in order to prevent the access of lawyers to their clients in administrative and criminal cases (Mr. Sergei Zikratskyi, and Mr. Dmitri Laevskyi and others).

Lawyers Facing Criminal Charges in Belarus

Mr. Maxim Znak

Mr. Maxim Znak was a legal representative and assisted in the election campaign of former presidential candidate, Mr. Victor Babariko in several matters. Mr. Znak submitted Mr. Babariko's application to register as a presidential candidate and in June 20, 2020; he represented Mr. Babariko before the Central Electoral Commission of the Republic of Belarus (CEC) and filed a complaint to the Supreme Court against the CEC's decision to refuse to register Mr. Babariko as a presidential candidate. Additionally, Mr. Znak represented the campaign of the presidential candidate, Mrs. Svetlana Tikhanovskaya and submitted her complaint to the CEC against the results of the 2020 presidential elections. On behalf of Mrs. Tikhanovskaya, on 21 August 2020, Mr. Znak submitted a complaint to the Supreme Court of Belarus requesting the results of the 2020 presidential elections to be declared invalid based on multiple evidence of fraud and falsification.

In mid-August 2020, Mr. Znak on behalf of Mrs. Tikhanovskaya participated in the creation of the Coordination Council, an informal association of 4,691 citizens that "identifies its goal in finding the paths to overcome the political crisis in the Republic of Belarus and in ensuring the harmonious consensus in the society on the basis of the Constitution." He was subsequently elected as a member of the Board of the Coordination Council and, in that role, continued to provide legal support and counsel to the Coordination Council.

On 9 September 2020, Mr. Znak was arrested, and he still remains in detention. On 18 September 2020, he was charged under Art. 361(3) of the Criminal Code of Belarus with engaging in "actions aimed at causing harm to the national security of the Republic of Belarus." In their indictment, the authorities failed to mention any activities beyond his participation in the Coordination Council, discussed above, as the basis for these allegations. This fact indicates that Mr. Znak has been imprisoned and prosecuted solely in connection with the lawful exercise of his professional duties, expression of professional legal opinion and exercise of the right to freedom of association. Mr. Znak's detention fails to comply with the international standards, since the decision on detention was made not by the court, but by the prosecutor.

Mr. Ilia Salei

Mr. Ilia Salei also provided legal advice to the campaigns of Mr. Babariko and Mrs. Tikhanovskaya, including by assisting in the preparation of the complaint to the Supreme Court of Belarus filed by Mr. Znak on 21 August 2020. Though not a member of the Coordination Council himself, he has represented Mrs. Kolesnikova, a member of the Board of the Coordination Council who was arrested on 9 September 2020, in relation to a criminal case under Art. 361(3) of the Criminal Code. That same day, Mr. Salei was

¹ https://www.hfhr.pl/wp-content/uploads/2019/11/hfhr_omct_raport_UPR_Belarus_eng.pdf

² <https://spring96.org/en/news/100179>

taken into custody. Like Mr. Znak, on 18 September 2020, Mr. Salei was charged under Art. 361(3) of the Criminal Code of Belarus with engaging in “actions aimed at causing harm to the national security of the Republic of Belarus.”

It was reported that on 16 October 2020, Mr. Salei was released from detention and placed under house arrest.

Mrs. Liliya Vlasova

Mrs. Liliya Vlasova is a well-known lawyer, mediator and another elected member of the Board of the Coordination Council. Mrs. Vlasova was detained on 31 August 2020. Like other members of the Board of the Coordination Council, including Mr. Znak, she was taken into state custody. On 9 September 2020, Mrs. Vlasova was charged under Article 243 of the Criminal Code (tax evasion). It was also reported that on 16 October 2020, Mrs. Vlasova was released from detention under the house arrest. Currently, preventive measures against her have been revoked.

Lawyers facing administrative charges

Mrs. Ludmila Kazak

Mrs. Ludmila Kazak is a defence lawyer in a case brought against a member of the Board of the Coordination Council of the Belarus opposition Mrs. Kolesnikova, who is facing charges under Article 361.3 of the Criminal Code (“calls to actions aimed at harming the national security of the Republic of Belarus”).

24 September, 2020 Mrs. Kazak was seized without explanation by unknown people in the center of Minsk on her way to a court hearing. As it turned out later, she was detained “on the suspicion” of participation in an unauthorized mass event under Articles 23.34, which was not confirmed either at the time of her arrest or later. Nevertheless, Mrs. Kazak was taken to one of the police departments of Minsk, where she received indictment under Article 23.4 of the Administrative Code (“disobedience to a police officer”), and then was placed in the Okrestina Preliminary Detention Center in Minsk. For more than eight hours after her arrest, no information about her location was available, the police department, where Mrs. Kazak was detained, informed her lawyers that she was not there, Mrs. Kazak did not have access to her lawyers - Mr. Matskevich and Mrs. Gorbatok - until 11 am of the next day.

On 25 September 2020, the court found Mrs. Kazak guilty of “disobedience to police officers”. It needs to be noted that the police officers, who testified via Skype, hid their faces under balaclavas, did not provide their names and failed to explain the reasons for arrest. Mrs. Kazak was fined 675 Rubles (approximately 220 euros).

Lawyers losing their license and cannot fulfil their professional duties

On 15 October 2020, the Qualification Commission for legal practice in the Republic of Belarus³ took a decision, that has been approved by the Ministry of Justice, to cancel licenses of lawyers Mr. Alexander Pylchenko⁴ (Minsk City Bar) and Mrs. Yulia Levanchuk (Brest Regional Bar). Mr. Pylchenko was a lawyer for the presidential candidate, Mr. Viktor Babariko and Mrs. Maria Kolesnikova. Mrs. Levanchuk represented Mr. Maxim Kharoshyn, the owner of a flower shop in Minsk who handed out flowers to protesters. After his detention on 13 October 2020 Mr. Kharoshyn was badly beaten and reportedly removed from Belarus. Mrs. Levanchuk publicly stated that her client was beaten by riot police.

³ The qualification commission for legal practice is established by the Ministry of Justice, headed by a deputy minister, lawyers (members of the Bar Association) within the commission represented in the minority.

⁴ On 7 October 2020, Aliaksandr Pylchanka received a notification from the Ministry of Justice of the Republic of Belarus that a meeting of the Qualification Commission for legal practice in the Republic of Belarus had been scheduled for 15 October 2020 to consider the revocation of his licence to practise law. The notification explained that the decision had been made as a result of Pylchanka’s involvement in “the commission of a misdemeanor incompatible with the title of lawyer”, namely, “the commission of actions discrediting the bar”. Prior to 7 October 2020, Aliaksandr Pylchanka had received no official communication from the Ministry of Justice informing him of the complaints against him. The materials to be considered at the meeting of the Commission as supporting evidence for the revocation of his licence were only shared with Pylchanka for review on 9 October 2020. Analysis of these materials indicates that evidence against Pylchanka consists of an interview with him, published on the TUT.BY Internet portal on 14 August 2020. In the interview, Pylchanka comments on what actions should be taken by law enforcement officials and the judicial system in Belarus following the widespread, unjustified use of violence and torture against civilians by these agencies (numerous reports of incidents of violence and torture were published in the media in the period 9-14 August 2020 and continue to be reported).

On October 16, Mr. Pylchenko and Mrs. Levanchuk lawyer's licenses were terminated by the Ministry of Justice, due to incompetent comments in the media, which “discredits the title of lawyer and the legal profession”, and also “refers to an offense incompatible with the title of advocate”.

Conclusions

Lawyers, who work with either opposition leaders or those who detained and arrested during peaceful protests in Belarus over the past two months faced difficulties to perform their professional activities due to the pressure from the Ministry of Justice and the Bar Association. Apart from professional pressure their personal safety and security is at risk.

The Bar Association, which is the highest body of advocate self-government, has not demonstrated effective protection of either the professional rights of advocates or the protection of advocates themselves from threats, interference and termination of their status.

The Bar Association limited its activities to formal correspondence with government agencies and the publication of conciliatory positions on its website. The Bar Association did not advocate for the protection of the rights of its members and itself. At the same time, foreign and international lawyers' communities (ABA, CCBE, ICJ, etc.), human rights organizations publicly express their serious concerns over the severe violation of the right to defence and “legal default”, that has been observed since June 2020.

Recommendations

- Ensure the independence of the bar in accordance with international standards, inter alia eliminate excessive control over the bar by the Ministry of Justice and give wider powers to the self-government bar bodies.
- Follow the international minimum standards as provided in the Basic Principles on the Role of Lawyers.
- Provide all lawyers and attorneys in Belarus with the ability to carry out their professional activities, including the freedom to exercise legal profession, without fear and intimidation.
- Immediately release, dismiss all the charges and terminate all the proceedings against lawyers, including Mr. Ilya Salei, Mr. Maxim Znak.
- Restore the revoked licences of Mr. Aleksandr Pylchenko and Mrs. Yulia Levanchuk.
- Guarantee freedom of expression, physical integrity and psychological well-being to lawyers and attorneys and lawyers who are working in politically sensitive cases.

Annex 1

UN Mechanism: Key Documents Regarding the Situation in Belarus

1. [The coalition report by the Belarusian human rights organizations on the fulfilment by the Republic of Belarus of its human rights obligations \(to be presented to the 36th session of the UN Human Rights Council\)](#)
3. [Report of the UN Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin](#)

National Human Rights Organisations Reports

1. [Belarus on Hold: crackdown on post-election protests. Finding of fact-finding mission to Belarus](#)
2. Human Rights Situation in Belarus by Human Rights Centre 'Viasna': [August](#), [September 2020](#)
3. [Belarus After Election. Report on the human rights situation in Belarus in the post-period \(the report has been prepared to assist expert mission established under the OSCE Moscow Mechanism\)](#)

International Law Associations and Societies

1. Open Letter of the Dean of the Warsaw Bar Association of Advocates with the Resolution 1 of the Council of the Warsaw Bar Association of Advocates dated October 15, 2020 in the matter of harassment of Belarusian advocates (October 16, 2020)
2. Statement of the Council of Bars and Law Societies in Europe (CCBE): Concerns Regarding the Situation of Lawyers in Belarus (August 17, 2020)
3. Statement of the Council of Bars and Law Societies in Europe (CCBE): [Arrest of Lawyer Lilia Vlasova \(September 2, 2020\)](#)
4. Statement of the Council of Bars and Law Societies in Europe (CCBE): [Revoked License of Lawyers Aleksandr Pylchenka and Yulia Levanchuk \(October 19, 2020\)](#)
5. Statement of the International Commission of Jurists: [Revoke Disbarment of Lawyer Aleksandr Pylchenko \(October 21, 2020\)](#)
6. Statement of the International Commission of Jurists: [Authorities must Grant Access to Lawyers to Detained Protestors, Release Those Arbitrary Detained and Account for the Missing \(August 31, 2020\)](#)
7. Statement of the American Bar Association: [Imprisonment of Lawyers Maksim Znak, Illia Salei and Yulia Vlasova \(October 22, 2020\)](#)
8. International Federation for Human Rights: [Judicial Harassment and Intimidation Against Mr. Aliaksandr Pylchanka and Ms. Yulia Levanchuk \(October 26, 2020\)](#)
9. Helsinki Foundation for Human Rights: [Open Statement in Connection with the Detention of Belarusian Lawyers Ilya Salei and Maksim Znak \(September 11, 2020\)](#)
10. Join Intervention Letter from the Law Society and Lawyers for Lawyers: [Arrest and Detention of Lawyers in Belarus \(September 24, 2020\)](#)
11. Statement of the International Bar Association's Human Rights Institute (IBAHRI): [Release of Lawyers Ilya Salei and Maxim Znak in Belarus \(September 28, 2020\)](#)