

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL BLR 9/2020

6 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, 42/22, 41/22, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest and detention of lawyers, allegedly in connection to the legitimate exercise of their professional activities in favour of opposition leaders, such as Ms. Maria Kalesnikova.**

Maria Kolesnikova is one of the leaders of the Belarusian protest movement and member of the Presidium of a non-governmental organization called "the Coordination Council". On 16 September 2020, special procedures mandate holders expressed concerns on her alleged enforced disappearance in a communication addressed to your Excellency's Government (AL BLR 7/2020). We thank your Excellency's Government for its response, received on 5 October 2020; however, we remain concerned that Ms. Kolesnikova remains in pre-trial detention in Zhodino centre.

According to the information received:

Maksim Znak.

Mr. Maksim Znak is a lawyer and a member of the Presidium of the Coordination Council. Prior to his arrest, he was the lawyer of a number of prominent political figures, including a presidential candidate in the latest presidential elections and another individual who participated in the pre-registration stage of presidential elections without managing to register as a candidate.

On 9 September 2020, the police searched the apartment of Mr. Znak allegedly without any judicial order, and he was taken to the Investigative Committee for questioning. Following the interrogation, he was placed in the pre-trial detention facility No.1 at the Okrestina Preliminary Detention Center in Minsk.

On 18 September, the Main Investigation Department of the Investigative Committee of the Republic of Belarus charged him under Part 3 of Art. 361 of the Criminal Code (Calls for actions aimed at causing harm to the national security of the Republic of Belarus). Mr. Znak has been accused of destabilising

the national security of the country through the opinions he expressed on the media and the Internet; however, the indictment did not provide any elements to clarify what Mr. Znak had done to violate national legislation.

Mr. Znak challenged the legality of his pre-trial detention before the local court of Partizansky city district, the district where the Investigative Committee is located. After the rejection of his complaints, he challenged the decision of the local court of Partizansky city district before the Minsk city court, which rejected his appeal on 25 September 2020.

Mr. Znak started a hunger strike shortly after the decision of the national authorities to place him in pre-trial detention. He allegedly continues to be detained in the pre-trial detention facility No.1 at the Okrestina Preliminary Detention Center.

Liudmila Kazak

Ms. Liudmila Kazak is a lawyer and a member of the Minsk City Bar Association. She works at “Legal advice No. 2 of the Central District of Minsk”. Ms. Kazak has become the legal counsel of Ms. Kolesnikova following the arrest of her legal representative, which took place on 9 September 2020.

On 24 September 2020, Ms. Kazak was arrested with the accusation of having participated in an unauthorised mass protest that took place on 30 August 2020 in Minsk, on Pobediteley Avenue. At the moment of her arrest, Ms. Kazak’s mobile phone and other personal belongings, including the case file on Ms. Kolesnikova, have been confiscated by the police. It is unclear whether the seizure of her personal belongings took place on the basis of a judicial warrant.

Following her arrest, Ms. Kazak was placed in pre-trial detention at the Okrestina Preliminary Detention Center in Minsk.

On 25 September 2020, the defendant appeared before the Oktyabrsky District Court of Minsk. The hearing was conducted online. Ms. Kazak was charged pursuant to articles 23.34 and 23.4 of the Code of Administrative Offenses (“participation in an unauthorised mass event” and “disobedience to a police officer”).

At the hearing, Ms. Kazak rejected the charges, stating that on 30 August she spent the whole day with her daughter at the shopping mall “Galileo”, located in Minsk.

Legal proceedings before the Oktyabrsky District Court were allegedly marred with a number of procedural violations of the defendant’s minimum guarantees. Ms. Kazak apparently did not receive a copy of the indictment before the hearing, and was granted a very limited period of time to familiarize herself with the charges and discuss the defence strategy with her lawyer. Furthermore, a

number of requests presented by the legal counsel of Ms. Kazak were allegedly dismissed by the court without a solid legal basis.¹

At the end of the hearing, the Court sentenced Ms. Kazak to a fine of 675 rubles pursuant to article 23.4 of the Administrative Code for “disobedience to a police officer”, but the reason why she was found guilty remained unclear. The charges under article 23.34 were allegedly dropped.

Ms. Kazak was released on 26 September 2020. She claims that the reasons behind her arrest and detention was to prevent her from providing legal assistance to her client, Ms. Kolesnikova, as well as to obtain confidential information about her client.

Because of her arrest, Ms. Kazak was unable to represent Ms. Kolesnikova at a hearing that took place on 25 September 2020 before the Partisanski District Court of Minsk to challenge the legality of her pre-trial detention. Another lawyer, Mr. Aliaksandr Pylchenko, replaced her at the hearing, but was not familiar with the case, since the submission to the Court for obtaining the release of Ms. Kolesnikova had been prepared by Ms. Kazak herself. At that hearing, the Court dismissed the submission and declared that the detention of Ms. Kolesnikova was lawful.

Aliaksandr Pylchenko

Mr. Aliaksandr Pylchenko a lawyer and has been a member of the Minsk City Bar Association for over 30 years. Recently, he has been providing legal services to members of the Presidium of the Coordination Council as well as to a number of political figures, including Ms. Kolesnikova and another candidate who was the main opponent to the current President in the recent presidential elections.

On 15 October 2020, the Qualification Commission on Advocacy recommended the collegium of the Ministry of Justice that Mr. Pylchenko’s license to practice law be revoked. Disbarment proceedings were initiated after Mr. Pylchenko openly criticised the response of the law enforcement authorities to allegations of torture and other forms of ill-treatment allegedly inflicted by on peaceful protesters.²

The body that decided on the disbarment of Mr. Pylchenko is not an independent body established by the legal profession. It is presided by the Minister of Justice and composed of senior staff members of the Ministry of Justice.

The decision of the collegium was allegedly taken without any formal procedure, and Mr. Pylchenko’s right to a fair hearing was reportedly

¹ The defence had requested to verify the identities of the witnesses summoned by the prosecutor, who were suspected of having provided false generalities; to have access to the CCTV recordings collected at the shopping mall and in possession of the Police Department of the Central district of Minsk; and to examine two witnesses who were present at the time Ms. Kazak was apprehended by the police.

² <https://news.tut.by/economics/696651.html> (in Russian)

disregarded, as the defendant was not allowed to defend himself in person or through a lawyer of his choice

Mr. Pylchenko contends that the recommendation to revoke his license to practice law constitutes a sanction that aims at preventing him from providing legal assistance to his clients, in particular Ms. Kolesnikova and another presidential candidate in the latest presidential elections.

The lawyer has appealed the decision of the collegium before the judicial authority. However, it appears unlikely that the judiciary reverts the decision of the collegium and order that Mr. Pylchenko's license to practice law be reissued.

It is reported that the alleged facts described above are not isolated, and that several lawyers providing legal support in politically-sensitive cases, including those who defend prominent opposition figures and human rights defenders, face various forms of intimidation and harassment, including arbitrary arrest and disbarment. We have received information about other lawyers who have been subject to such interference as a result of the legitimate exercise of the legal profession. These cases will be brought to your Excellency's Government attention once we receive the consent from the alleged victims.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the alleged arbitrary arrests as well as intimidation and harassment that lawyers who defend prominent political figures appear to face in Belarus as a result of the legitimate exercise of their professional functions. If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession.

According to these standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

We are extremely concerned about that the situation of lawyers in Belarus may be exacerbated by the fact that no independent bar association exists in the country. Without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence, especially from State authorities. Even worse, in places where bar associations are controlled by the State, lawyers often become the target of attacks from the very organizations that should be protecting them. Such attacks most often take the form of groundless or arbitrary suspension to practice or disbarment, and are frequently accompanied by further restrictions, including arbitrary detention and prosecution. Silencing and/or controlling bar associations not only poses great risks to the legal community, but also has far reaching consequences as it erodes the rule of law and the ability of ordinary people to defend their human rights.

We further express serious concerns that actions taken against the lawyers directly constitute unlawful restrictions to the exercise of the right to freedom of expression, and indirectly form part of a pattern of criminalization of dissent in the country. In this regard, we note that Mr. Maksim Znak and Ms. Liudmila Kazak have been charged either for expressing their opinions on the internet or through their participation in peaceful assemblies. The decision to disbar Mr. Aliaksandr Pylchenko came directly as a consequence of his criticism of public authorities for their alleged human rights violations. More generally, all the lawyers mentioned in this letter have defended political figures in the country. The actions against the lawyers must thus be understood in the context of widespread repression against political dissent in the country, which UN Special Procedures have expressed serious concerns about in the past.

We are further concerned that the apparent targeting of the above mentioned lawyers, for their work representing those subjected to human rights violations, is congruent with a broader pattern of targeting human rights defenders in Belarus following the most recent presidential election. The criminalization of the work of human rights defenders, in highlighting, reporting on and denouncing human rights violations, is a point of serious concern, for its stifling effect on civil society in the country.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the facts that led to the arrest and detention of Mr. Maksim Znak, and explain how his arrest and detention is compatible with Belarus' obligations under articles 9, 14, 19, 21 and 22 of the Covenant. Please also explain the charges presented against Mr. Znak and provide further information about the ongoing proceedings against him.
3. Please provide detailed information as to whether Mr. Maksim Znak had a prompt access to a lawyer following his arrest, and explain why his request to be freed pending trial has been rejected by the judicial authority.
4. Please provide detailed information on the arrest of Ms. Liudmila Kazak and explain how her arrest can be considered in line with existing standards on due process and fair trial. Please also provide detailed information on the alleged violations of fair trial standards that took place during the hearing of Ms. Kazak on 25 September 2020.

5. Please provide detailed information on the reasons that led to the disbarment of Mr. Aliaksandr Pylchenko and explain whether the decision was taken by an independent organ established by the legal profession and in accordance to an appropriate and fair procedure previously established by law. Please also explain whether the decision to disbar Mr. Pylchenko is subject to judicial review.
6. Please provide detailed information on the legislative and other measures adopted by Belarus to ensure that lawyers able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic principles on the Role of Lawyers) and to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (principle 18).

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted a joint communication to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Anais Marin
Special Rapporteur on the situation of human rights in Belarus

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, and to the Basic Principles on the Role of Lawyers.

According to article 9 (1) of the ICCPR, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (2) establishes that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. We would also like to remind your Excellency's Government that, according to article 9 (3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody. Furthermore, in accordance with article 9(4) of the ICCPR, anyone deprived of his or her liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37).

Article 14 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Where the security of lawyers is threatened as a result of discharging their functions, the Basic Principles provide that they must be adequately safeguarded by the authorities

(principle 17). Furthermore, lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions (principle 18).

In a recent report to the Human Rights Council, the Working Group on Arbitrary Detention expressed its concern at the various forms of retaliatory measures reportedly taken against lawyers solely for providing professional legal services to their clients. While noting the key role that lawyers have in preventing instances of arbitrary deprivation of liberty, the Working Group underlined the importance of preserving the independence and impartiality of the profession (A/HRC/45/16, paras. 50-55).

Furthermore, in a report on bar associations, the Special Rapporteur on the independence of judges and lawyers 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 all guarantees to the accused lawyer (A/73/365, para. 73; see also A/71/348, para. 96). The Special Rapporteur has stressed on a number of occasions that in many countries, lawyers are exposed to the threat of disbarment or other forms of intimidation and harassment. Such threats aim at preventing the discharge of their professional duties, or constitute an act of reprisal for activities carried out in the legitimate exercise of their responsibilities.

Article 19 of the ICCPR enshrines the rights to freedom of opinion and expression. The Human Rights Committee has recommended States to take “effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression” (General Comment 34 para. 23), an expression of the general positive obligation to ensure the rights enshrined in the Covenant (see article 2 (1) of the ICCPR). Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. The Committee has noted that lawyers are often exposed to attacks for their activities gathering, analysing or commenting on the human rights situation in their countries. Such attacks, including penal measures under administrative and criminal law, aimed at silencing expressions of dissent or criticism against the government, would be incompatible with the Covenant (*id.* para. 23 and 38).

We also wish to recall that a deprivation of liberty may be arbitrary when it results from the peaceful exercise of the rights or freedoms guaranteed by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.