

**Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in Belarus; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
AL BLR 5/2021

18 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in Belarus; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 44/8, 44/19 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the revocation of the licenses to practice law of five lawyers who have been providing legal services to, inter alia, opposition leaders and peaceful protesters.**

On 28 October 2020, Special Procedures mandate holders expressed concerns on the arrest and detention of Ms. Liudmila Kazak and other lawyers in a communication addressed to your Excellency's Government (AL BLR 9/2020). We would like to seize this opportunity to thank your Excellency's Government for its response, received on 21 December 2020; however, we remain concerned about alleged Government interference with the legitimate exercise of the legal profession lawyers carry out in favour of opposition leaders, peaceful protesters, independent journalists and human rights defenders.

According to the information received:

On 19 February 2021, the Qualification Commission for legal practice in the Republic of Belarus revoked the licenses to practise law of four Belarusian lawyers:

Ms. **Liudmila Kazak**, member of the Minsk City Bar Association, was disbarred following an administrative penalty under article 23.4 of the Belarusian Administrative Code ("disobedience to a police officer"). It is alleged that she had been sanctioned for representing the interests of political activists, including Ms. Maria Kolesnikova, one of the leaders of the Belarusian protest movement and member of the Presidium of "the Coordination Council". Ms. Kazak is the fourth lawyer of Ms. Kolesnikova who has been subjected to harassment and intimidation on the basis of their identification with their client or their client's cause.

Mr. **Mikhail Kirilyuk**, member of the Minsk Regional Bar Association, was disbarred for "inappropriate online statements about the authorities" pursuant to paragraph 73 of the Rules of professional ethics of the lawyers. The Rules lay down a number of behaviours that are incompatible with the exercise of the legal profession, including "committing actions that discredit the title of a lawyer and the bar". Nevertheless, it is reported that Mr. Kirilyuk has not

committed any actions set forth in this provision.

Mr. **Maksim Konon**, member of the Minsk Regional Bar Association, was disbarred following his sentencing to administrative detention pursuant to article 23.34 (1) of the Belarusian Administrative Code, for his alleged participation in a protest in Braslav.

Mr. **Kanstantsin Mikhel**, member of the Minsk Regional Bar Association, was disbarred following his sentencing to administrative detention pursuant to article 23.34 (1) of the Belarusian Administrative Code for his alleged involvement in mass gatherings.

On 24 February 2021, the Disciplinary Committee of the Minsk City Bar Association decided to revoke the license to practice law of Mr. **Vladimir Sozonchuk**. Mr. Sozonchuk was disbarred pursuant to paragraph 73 of the Rules of professional ethics of the lawyers allegedly for criticising national authorities and creating obstacles to other lawyers in the exercise of their professional duties. Mr Sozonchuk is defending, among others, a political opposition leader and a well-known video blogger.

It is alleged that the Qualification Commission is not an independent body established by the legal profession. It is composed of a majority of members from the executive branch of power, and only two out of its 13 members are lawyers.<sup>1</sup>

It is also alleged that during the procedure before the Qualification Commission, the defendants – who had been allowed to defend themselves in person or through a lawyer of their choice – had the right to take the floor, but were interrupted or halted on several occasions by the Deputy Minister. According to the information received, the procedure before the Qualification Commission was not in compliance with international standards on disciplinary proceedings against lawyers, which provide that the defendant shall have the right to a fair hearing.

The lawyers have appealed the decision taken by the collegium before the judicial authority. However, there are no recent cases of lawyers who have been reinstated after successfully challenging the decision of the Qualification Commission before national courts. Therefore, it appears unlikely that the judiciary reverts the decision of the collegium.

According to national legislation, it appears that lawyers must undergo a re-qualification procedure before the Qualifications Commission of the Ministry of Justice every 5 years, or upon the recommendation of the Minister of Justice or his deputy whenever “facts indicating the lawyer’s insufficient qualification be revealed”.

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<sup>1</sup> According to article 14.2 of the Law of 30 December 2011 “On the Bar and Advocate Activity in the Republic of Belarus”, the Qualification Commission consists of: the Deputy Minister of Justice of the Republic of Belarus, who presides the Commission; the Chairman of the Belarusian Republican Bar Association; one representative of the territorial bar associations; one representative of the Supreme Court of Belarus; one representative of the Prosecutor General’s Office of the Republic of Belarus; one representative of other State bodies; five representatives from the Ministry of Justice of the Republic of Belarus; and two representatives from scientific organizations.: <https://rka.by/about/zakon-respubliki-belarus/>

In this regard, it has been brought to our attention that between 24 and 31 March 2021, seven more lawyers who were defending people involved in protest marches have been disbarred after failing the recertification procedure:

- **Mr. Andrey Bartashevich**, a member of the Minsk City Bar Association, has been working in the legal field for 25 years, specialising in labour, corporate and civil law. He has openly expressed his views on politically-sensitive cases. On 24 March 2021, Mr. Bartashevich was disbarred by the Qualification Commission for showing “a low level of knowledge of the current legislation, which indicated his insufficient qualification”.
- **Mr. Vladislav Filipovich**, a member of the Minsk City Bar Association, has been working as a lawyer for 5 years, specialising in civil, family and criminal law. In 2020, he defended two local residents who had been arrested following a clash with riot police in Maladzyechna and subsequently sentenced to three years of prison for opposing resistance to the police. On 24 March 2021, Mr. Filipovich was disbarred at an extraordinary meeting of the Qualification Commission for “showing a low level of knowledge of the current legislation, which indicated his insufficient qualification”.
- **Mr. Sergey Pichukh**, a member of the Minsk City Bar Association, was disbarred on 24 March 2021 for an administrative offence relating to the violation of the established procedure for holding rallies. Following an extraordinary meeting of the Qualification Commission, the Ministry of Justice announced that Mr. Pichukh’s behaviour amounted to a misdemeanor incompatible with the title of a lawyer, and discredited the title of a lawyer and the legal profession as a whole.
- **Ms. Elena Shinkarevich**, a member of the Minsk City Bar Association, has practiced law for 12 years, specialising in labour, corporate and civil law. Recently, she represented an IT worker charged for participating in an unauthorised mass event in a very controversial case. On 24 March 2021, Ms. Shinkarevich was disbarred at an extraordinary meeting of the Qualification Commission for “showing a low level of knowledge of the current legislation, which indicated her insufficient qualification”.
- **Mr. Sergey Zikratsky** has been a member of the Minsk City Bar Association for 16 years, defending the interests of mass-media companies, advertising agencies, and internet projects. In 2020, he represented a number of journalists and press companies in highly-politicised cases before administrative and criminal courts. On 31 March 2021, Mr. Zikratsky was disbarred for making comments on media that, according to the Ministry of Justice and the Qualification Commission, were incompatible with national legislation on the exercise of legal profession and reflected an improper performance of his professional duties. On 3 May 2021, Mr. Zikratsky left Belarus for fear of further repressions.

- **Ms. Olga Baranchik**, a former chairperson of the Disciplinary Committee of the Minsk Regional Bar, has worked in the legal profession for 25 years. She was disbarred at an extraordinary meeting of the Qualification Commission for her “inability [...] to fulfill her professional duties due to insufficient qualification”.
- **Mr. Boris Leskovsky**, also an experienced lawyer, failed the recertification exam, apparently as retribution for his involvement in protest marches. For his involvement in the protest, he was detained and later sentenced to administrative arrest.

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 figure 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.

In AL BLR 9/2020, a number of Special Procedures mandate holders expressed concern over the disbarment, on 15 October 2020, of Mr. Aleksandr Pylchenko, member of the Minsk City Bar Association for over 30 years and legal adviser to a number of political figures, including Ms. Kolesnikova.

In a recent report on the situation of human rights in Belarus,<sup>2</sup> the United Nations High Commissioner for Human Rights noted that in Belarus, lawyers defending politically sensitive cases or cases involving human rights violations have been under pressure, harassed and intimidated for exercising their professional activities, and face disbarment or disciplinary sanctions by the Bar Association, which lacks independence and over which the Ministry of Justice exercises broad control.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the revocation of the licenses to practise law of the five lawyers referred to above, which seems to be in direct correlation with the legal services they provide to, inter alia, opposition leaders and peaceful protesters. 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.

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<sup>2</sup> Situation of human rights in Belarus in the context of the 2020 presidential election, Report of the United Nations High Commissioner for Human Rights, A/HRC/4.

In relation to the right to freedom of expression, international standards provide that like other citizens, lawyers are entitled to freedom of expression, association and assembly, and 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession. In this regard, we are concerned that some of the charges brought up against the aforementioned lawyers may not be in line with international norms and standards related to the exercise of fundamental freedoms by lawyers.

Concerning the disbarment of lawyers as a result of the re-qualification procedure, we are concerned that according to national legislation, Belarusian lawyers must undergo requalification at the Qualifications Commission of the Ministry of Justice every 5 years, or upon the recommendation of the Minister of Justice or his deputy whenever “facts indicating the lawyer’s insufficient qualification be revealed”. Given the legal uncertainty of such concepts, we are concerned that the process of launching an impromptu re-qualification procedure is being used to harass, intimidate and ultimately disbar lawyers, not due to their insufficient professionalism, but because they are working on political sensitive cases, and defending the freedom of expression and peaceful assembly of people with dissenting views.

We are extremely concerned 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. 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 an adverse impact on the rule of law and the ability of ordinary people to defend their human rights.

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 revocation of the licenses to practice law of the five lawyers referred to above, and explain how their disbarment may be regarded as compatible with Belarus’ obligations under article 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights.

3. Please provide detailed information on the composition and functioning of the Minsk City Bar Association, explain its relationship with the Qualification Commission for legal practice in the Republic of Belarus, and explain to what extent they can be regarded as independent disciplinary bodies established by the legal profession.
4. Please provide detailed information on the disciplinary procedure that led to the disbarment of the five lawyers, and explain to what extent this procedure could be regarded as an appropriate and fair procedure previously established by law. Were the defendants granted the right to a fair trial, including the right to defend themselves in person or through a lawyer of their choice?
5. Please provide detailed information on the re-qualification procedure before the Qualifications Commission of the Ministry of Justice, and explain how it can be regarded as being consistent with international standards relating to the free and independent exercise of the legal profession.
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.

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

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

Anaïs 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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I 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.

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).

I would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-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.

Principle 18 provides that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

We further recall that article 19 of the ICCPR enshrines the right to freedom of opinion and expression. According to international law, freedom of expression can only be subjected to narrow limitations pursuant to standards of legality, necessity and legitimacy. As stated by the Human Rights Committee, restrictions to freedom of expression must “never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too

are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers” (CCPR/C/GC/34 para. 23).

In relation to the right to freedom of expression, the Basic Principles on the Role of Lawyers provide that like other citizens, lawyers “are entitled to freedom of expression, belief, association and assembly”, and have in particular “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”. They also have the right “to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization”. In exercising these rights, lawyers “shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession” (principle 23).