

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus

Ref.: AL BLR 11/2021
(Please use this reference in your reply)

14 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights in Belarus, pursuant to Human Rights Council resolutions 44/8 and 44/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Ministry of Justice's suspension of Ms. Matskevich from performing her professional duties in connection with the disciplinary proceedings initiated against her on the basis of the order of the former Minister of Justice. She was later excluded from the Minsk Bar Association.

Natalia Matskevich is a Belarusian lawyer. She defended a number of high-profile cases, including those of ex-presidential candidates [REDACTED].

We have been in touch on similar issues before. 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. On 18 May 2021, Special Procedures mandate holders also expressed concerns regarding 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 (AL BLR 5/2021). We would like to thank your Excellency's Government for its response, received on 24 June 2021.

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:

The source indicates that all claims relate to the case of [REDACTED]
[REDACTED]
[REDACTED] and the work Ms. Natalia Matskevish carried out as a lawyer.

On 20 June 2020, Ms. Matskevich received a remark from the investigator during the interrogation for "interrupting" him. At the confrontation, on 7 July 2020, the investigator "pointed out the inadmissibility of talking during his speech". The source alleges these remarks reflected attacks from the investigator to Ms. Matskevich.

On 9 April 2021, during the interrogation of the prosecution witness at the court session, Ms. Matskevich "interrupted testimony" and objected to the actions of the prosecution witness's lawyer, asking the court to explain to the lawyer his capabilities in the process. The source indicates that this intervention by Ms. Matskevich was a comment on a procedural matter.

According to the source, after Ms. Matskevich claimed her client's human rights were violated in open court hearings, and after information about her client's case was published in media, the KGB sent information related to the incidents that happened in June, July and April 2020 to the Ministry of Justice, one and a half years later.

The KGB, as investigative body, could have approached the Bar Association at the time of the alleged incidents if it considered the lawyer's behavior as inappropriate, but it did not do so.

On October 13, 2021, the Ministry of Justice suspended Ms. Matskevich from performing her professional duties in connection with the disciplinary proceedings initiated against her on the basis of an order of the former Minister of Justice of Belarus [REDACTED] dated October 12, 2021.

On October 25, 2021, Ms. Matskevich was excluded from the Minsk City Bar Association, and as a result, was deprived of her license to practice law, which left her clients unprotected.

On October 27, 2021, the Council of the Minsk City Bar Association approved the decision of the disciplinary commission.

While we do not want to prejudge the accuracy of these allegations, we express serious concerns at the suspension and disbarment of Ms. Matskevich, which seems to be in direct correlation with the legal services she provides to, inter alia, opposition figures. 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 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 attacks and 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 disciplinary action against Ms. Matskevich, her suspension, and the revocation of her license to practice law, and explain how her 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 legislative and other measures adopted by Belarus to ensure that lawyers are 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. Past 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

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 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR 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.