

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 1/2022
(Please use this reference in your reply)

10 March 2022

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 arrest, detention and conviction of Mr. Leanid Sudalenka as a possible reprisal for the cooperation of his organization Viasna with the United Nations in the field of human rights and for his human rights work and the exercise of his profession as lawyer to his clients.

Mr. Leanid Sudalenka is a Belarusian human rights lawyer and head of the Homiel branch of the Viasna Human Rights Centre and 2018 winner of the French Republic's "Liberty- Equality-Fraternity Prize" for his human rights work. Special procedures have already sent four communications about Mr. Sudalenka to the attention of Your Excellency's Government.

On 12 March 2021 (JAL BLR 4/2021), UN Special Procedures mandate holders communicated concerns over the questioning, arrest and official charges against Mr. Sudalenka for breaching of part 1 and 2 of Article 342 (violating public order). The 2021 report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights reported an intensified harassment, criminalization and targeting of the staff of Human rights Viasna, with a long-standing history of cooperation with the UN. (A/HRC/45/36, Annex I, para. 25).

For the case of Mr. Sudalenka, mandate-holders have expressed their concerns three times before. In November 2015 (JAL BLR 2/2015) and in April 2015 (JUA BLR 1/2015). We take thank the Government of Your Excellency for the reply to this communication was received in June 2015. Another communication on the case of Mr. Sudalenka was sent on February 2011 (JUA BLR 2/2011).

Regarding the situation of lawyers in general, 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. On 13 December 2021, we expressed concerns on the arrest and detention of Ms. Matskevich in a communication addressed to your

Excellency's Government (AL BLR 9/2020).

However, we remain concerned about alleged Government interference with the legitimate exercise of the legal profession lawyers carry out in favour of opposition activists, peaceful protesters, and independent journalists and human rights defenders.

According to the information received:

On 5 January 2021, officers from the Department for Combating Organized Crime and Corruption of the Belarus Ministry of Internal Affairs entered Mr. Sudalenka's offices with a search warrant. It is alleged that the officers searched the premises in connection with a criminal case that was opened in December 2020 against opposition activist [REDACTED]. Mr. Sudalenka was due to appear as a witness in this case.

It is alleged that 304 items were seized during the search, including case files and Mr. Sudalenka's laptop and bank cards. Subsequently, there was a search of his apartment where his work computer and another two bank cards were taken.

Mr. Sudalenka was then taken to the Office for Combating Organized Crime for an interrogation. However, it has been reported that during his questioning he was primarily interrogated about the legal advice provided to those detained, fined and arrested during the post-electoral protests in Homiel. After this interrogation, he was released.

On 18 January 2021, Mr. Sudalenka was detained again, this time by the Investigative Committee of Belarus as part of a criminal case brought under Part 1 of article 342 of the Belarus Criminal Code ("organising or preparing actions that grossly violate public order or taking active part in such actions"). For many hours, he was denied access to his lawyer.

On 29 January 2020, Mr. Sudalenka was charged under Parts 1 and 2 of article 342 ("financing actions that grossly violate public order") of the Belarus Criminal Code. Mr. Sudalenka remains in custody in a pre-trial detention center in Homiel.

On 3 November 2021, after a hearing behind closed doors, the Centralny District Court of Homiel found Mr. Sudalenka guilty of "organizing and preparing actions that grossly violate public order" (Part 1 of article 342 Criminal Code) and "training and preparation of persons for participation in such actions, as well as their financing or other material support" (part 2 of article 342 of the Criminal Code).

It has been reported that Mr. Sudalenka was accused of paying for firewood for the children from a large family, whose father was later convicted of "rioting", appearing in a video on YouTube to explain to a blogger what a people's protest is, a call on social media to meet a Viasna volunteer after serving 15 days of administrative imprisonment, arranging a seminar on digital security for human rights defenders, payment of fines, court fees, and lawyers' services.

Mr. Sudalenka was sentenced to three years of imprisonment in a general-security penal colony. He appealed this decision, which was confirmed by the Homiel Oblast' Court on 14 January 2022 following yet another hearing behind closed doors.

On 26 January 2022, Mr. Sudalenka was transferred to penal colony No. 3. To date, there is no information regarding his well-being, nor about the conditions of his detention. The source indicates that the family's phone calls to Mr. Sudalenka in the penal colony remain unanswered and they have also not received any reply to the letters that were sent to him.

In the last months of Mr. Sudalenka's stay in the pre-trial detention center, he was provided with very basic medical assistance. Mr. Sudalenka asked his family to pass medications, and they gave them to him. In the detention center, no one monitored his blood pressure, diabetes and other health problems, and no one responded to his health related complaints either. It was only thanks to his cellmates and family that he was able to take the medications and cope with the illnesses.

There have been no updates about Mr. Sudalenka or his well-being since 9 February 2022.

While we do not want to prejudge the accuracy of these allegations, we express serious concerns at the detention, interrogation, arrest, and sentencing of Mr. Sudalenka, which seems to be an arbitrary reprisal for the legal services he provides to, inter alia, dissenting civil society activists. 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.

In addition, there are concerns that his criminalization and alleged ill treatment may be a reprisal for their cooperation with the United Nations in the field of human rights. We are also concerned by the lack of information about him, his health status and about his reported lack of contact with family and counsel.

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 recognized 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 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 information on the current conditions of detention and health situation of Mr. Sudalenka. In particular, indicate measures taken so Mr. Sudalenka may have regular access to his counsel and family.
3. Please provide information on the legal and factual basis for which Mr. Sudalenka is accused of offences relating to part 1 and 2 of Article 342 of the Criminal Code of Belarus and explain how this are consistent with your obligations under international law.
4. Please indicate any measures taken to prevent the occurrence of acts of intimidation or reprisal, including where necessary, by adopting and implementing specific legislation and policies in order to effectively protect those who seek to cooperate or have cooperated with the United Nations, its representatives, and mechanisms in the field of human rights.
5. 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.

In light of the allegations of possible acts of reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication –and any response received from Your Excellency’s Government -with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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.

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21 and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the

field of human rights. In these resolutions, States are urged to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. The Human Rights Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.