

# Continuous Crackdown on the Legal Profession in Belarus: An Update

SEPTEMBER 2022



## ■ ABOUT THE AUTHORS

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Lawyers for Lawyers (L4L) is an independent and non-political foundation which seeks to promote the proper functioning of the rule of law by supporting freedom and independence of the legal profession. L4L supports lawyers worldwide who face reprisals, improper interference, or unreasonable restrictions in the practice of their profession. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013.

### **American Bar Association**

The American Bar Association (ABA) Center for Human Rights promotes and protects human rights worldwide by mobilizing lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. The ABA is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA Center for Human Rights has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries.

### **International Bar Association's Human Rights Institute**

The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity of the International Bar Association, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI provides human rights training and technical assistance for legal practitioners and institutions, building their capacity to effectively promote and protect human rights under a just rule of law. A leading institution in international fact-finding, the IBAHRI produces expert reports with key recommendations, delivering timely and reliable information on human rights and the legal profession. IBAHRI supports lawyers and judges who are arbitrarily harassed, intimidated, or arrested through advocacy and trial observations.

## ■ DISCLAIMER

This joint report was prepared in part by external pro-bono counsel, consultants, and legal advisers of the American Bar Association Center for Human Rights and reflects their views. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case.

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# I. INTRODUCTION

This report has been prepared by an informal coalition of legal organizations, including Lawyers for Lawyers, the American Bar Association Center for Human Rights (ABA CHR), and the International Bar Association Human Rights Institute. It summarizes the ongoing worrying trend of suppression of the legal profession and individual lawyers in Belarus as highlighted by the Human Rights Council in Resolution 50/L.18.<sup>1</sup>

This report is a follow-up to our 2021 report titled “Lawyers Under Threat: Increasing Suppression of the Legal Profession in Belarus”<sup>2</sup> (“2021 Belarus Report”). It outlines the ongoing government crackdown on opposition and critical voices in Belarus in the aftermath of the 2020 presidential elections through mid-August 2022, including on lawyers defending opposition figures, protestors, and those who speak out about the rule of law, the administration of justice, and human rights. The report uses various public case studies to illustrate the harassment, intimidation, hindrance, and interference inflicted upon lawyers in Belarus following the contested August 2020 election of President Alexander Lukashenko. The public cases described in this report<sup>3</sup> not only illustrate the impact of the government crackdown on individual lawyers but also

reveal a concerning and ongoing trend of interference with the independence of the legal profession in Belarus that has continued up to the present. These cases also demonstrate the systematic violation of Belarusian lawyers’ human rights to freedom of expression, assembly, and association.

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- 1 Human Rights Council, *Resolution adopted by the Human Rights Council on 30 June 2022*, U.N. Doc. A/HRC/50/L.18 (2022), <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/50/L.18&Lang=E>, expressing “deep concern about the continuing systematic violations of human rights and fundamental freedoms in Belarus, in particular the ongoing oppressive restrictions on the right to freedoms of peaceful assembly, association and expression, both online and offline, resulting in the harassment, intimidation and repression of civil society and independent media, and the continuously increasing number of arbitrary detentions and arrests of individuals on politically motivated grounds or for exercising their human rights or fundamental freedoms, (...) including human rights defenders (...) and lawyers (...),” and noting with “deep concern the increasingly restrictive legal framework that further restricts the right to freedoms of opinion and expression and of peaceful assembly in violation of international human rights law or that leads to violations of other human rights, and especially targeting (...) human rights defenders (...) and lawyers.”
  - 2 American Bar Association, *Belarus: Lawyers Under Threat - Increasing Suppression of the Legal Profession in Belarus* (July 2021), [https://www.americanbar.org/groups/human\\_rights/reports/belarus--lawyers-under-threat--increasing-suppression-of-the-leg/](https://www.americanbar.org/groups/human_rights/reports/belarus--lawyers-under-threat--increasing-suppression-of-the-leg/).
  - 3 The summaries of individual cases in this report contain only publicly available information.

## II. BACKGROUND: SITUATION IN BELARUS

Since the widely disputed 2020 presidential election in Belarus, in which incumbent Alexander Lukashenko claimed a landslide victory, the Belarusian government has engaged in a “widespread, brutal crackdown” on opposition.<sup>4</sup> This has included acts of harassment, intimidation, and prosecution of journalists, opposition figures, civil society activists, and human rights defenders, including lawyers, on an immense scale.<sup>5</sup> The government’s systematic repression has resulted in mass protests around the country, thousands of arrests, and the exile of major opposition figures.<sup>6</sup>

The UN High Commissioner for Human Rights has reported that over 37,000 individuals were arrested and detained pursuant to this crackdown between 2020 and 30 March 2022, with most receiving sentences of fines or up to 15 days of administrative detention.<sup>7</sup> However, many remain in custody. According to the prominent civil society organization Viasna Human Rights Centre, 1,262 individuals remained arbitrarily detained on politically motivated grounds in Belarus as

of mid-August 2022.<sup>8</sup>

As part of its repression of dissent, the Belarusian authorities have dramatically restricted civil society. Over the course of 2021 and 2022, the government has shut down hundreds of civil society organizations.<sup>9</sup> In addition, the Lukashenko administration has amended legislation and developed restrictive policies to further tighten the grip on civic space, including by re-introducing criminal liability for individuals’ involvement in unregistered NGOs.<sup>10</sup> The Special Rapporteur on the human rights situation in Belarus has stated that various laws, policies and practices have led to “a virtual annihilation of independent non-governmental organisations, media, and cultural organisations.”<sup>11</sup>

The Office of the UN High Commissioner for Human Rights (OHCHR) has roundly condemned the ongoing crackdown, stating that this period of time in Belarus “has seen the fundamental human rights of tens of thousands violated, with no sign of any of

- 4 See Human Rights Watch, *Belarus: Unprecedented Crackdown* (13 Jan. 2021), <https://www.hrw.org/news/2021/01/13/belarus-unprecedented-crackdown>;
- 5 Human Rights Watch, *Belarus: Civil Society ‘Purge’* (13 January 2022), <https://www.hrw.org/news/2022/01/13/belarus-civil-society-purge>.
- 6 See *id.*; BBC, *Belarus President Alexander Lukashenko under Fire* (11 Sept. 2020), <https://www.bbc.com/news/world-europe-53637365>.
- 7 Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, A/HRC/49/71, available at <https://documents-ddsny.un.org/doc/UNDOC/GEN/G22/332/24/PDF/G2233224.pdf?OpenElement>.
- 8 This is the figure provided on Viasna’s website as of 11 August 2022. For more information: <https://prisoners.spring96.org/en>.
- 9 Human Rights Watch, *Retaliating against Rights Group Means Retaliating Against People in Need* (19 January 2022), <https://www.hrw.org/news/2022/01/19/retaliating-against-rights-groups-means-retaliating-against-people-need>.
- 10 FIDH, *Belarus: new amendment to the Criminal Code leaves no room for legal human rights activities* (31 January 2022), <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-new-amendment-to-the-criminal-code-leaves-no-room-for-legal>.
- 11 OHCHR, *Belarus ‘engulfed in fear’ as systematic violations and impunity persist: UN expert*, (29 June 2022), <https://www.ohchr.org/en/press-releases/2022/06/belarus-engulfed-fear-systematic-violations-and-impunity-persist-un-expert>.

the perpetrators being held accountable”.<sup>12</sup> The Special Rapporteur on the situation of human rights in Belarus has also deplored the situation, finding that “systemic human rights violations and impunity for those crimes have engulfed Belarus in a climate of arbitrariness and fear”.<sup>13</sup>

This widespread and systematic repression has encompassed the work of the legal profession in Belarus. Between August 2020 and June 2022, at least 56 lawyers have been prevented from practicing their profession through disbarment and the revocation of their licenses.<sup>14</sup> Most, if not all, of these lawyers represented opposition leaders and protestors or themselves engaged in protests or publicly criticized the Lukashenko government.<sup>15</sup> As such, the criminal charges, disbarments, and other measures are viewed by the international human rights community as politically motivated.<sup>16</sup>

Furthermore, in March 2022, the council of the Minsk Regional Bar Association and the council of the Minsk City Bar Association initiated disciplinary proceedings against several lawyers who signed a petition against the war in Ukraine,<sup>17</sup> in contradiction to the government’s stance. These disciplinary proceedings may result in disbarment.

The post-election harassment, arrest, detention, and disbarment of lawyers in Belarus illustrates a concerning and ongoing trend of punishing lawyers for the legitimate exercise of their professional functions and/or of their rights to freedom of expression and freedom of assembly.

In addition to targeting lawyers on an individual basis, the government of Belarus interfered with the legal profession as a whole by amending the Law on the Bar and Advocacy in Belarus in May 2021.<sup>18</sup> The new amendments, which entered into force in November 2021, “severely restrict the rights and independence of Belarusian lawyers”<sup>19</sup> and illustrate another concerning trend in Belarus - the government’s encroachment upon the management of the legal profession and the government’s desire to undercut the Bar’s independence.

12 OHCHR, *Belarus: UN report reveals extent of violations in human rights crackdown* (9 March 2022), <https://news.un.org/en/story/2022/03/1113582>.

13 OHCHR, *Belarus 'engulfed in fear' as systematic violations and impunity persist: UN expert*, *supra* note 11.

14 Right to Defence, *Persecution of lawyers in Belarus after the elections in 2020* (last updated on 13 June 2022), [https://www.defenders.by/persecutionoflawyers\\_2020#lazarenko](https://www.defenders.by/persecutionoflawyers_2020#lazarenko).

15 *Id.*

16 Since the crackdown on the legal profession began, numerous lawyers, bar associations, nonprofits, and scholars in Eastern Europe have condemned the measures and voiced support for the persecuted lawyers in Belarus. See, e.g., Helsinki Foundation for Human Rights, *Statement delivered by Olga Salomatova on behalf of the Helsinki Foundation for Human Rights (HFHR), General Assembly, 46th regular session of the Human Rights Council* (25 February 2021), [https://www.hfhr.pl/wp-content/uploads/2021/03/46thSessionHRC\\_statementHFHR\\_Belarus\\_Eng.pdf](https://www.hfhr.pl/wp-content/uploads/2021/03/46thSessionHRC_statementHFHR_Belarus_Eng.pdf); CCBE/Article 19/OMCT/Helsinki Foundation for Human Rights, *Statement on the mounting repression against Belarusian lawyers and the disbarment of Dmitriy Laevski*, [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Statements/2021/EN\\_20210802\\_Belarus\\_Lawyers\\_Laevski-Statement\\_Segnees.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2021/EN_20210802_Belarus_Lawyers_Laevski-Statement_Segnees.pdf).

17 See the petition here: [https://docs.google.com/forms/d/e/1FAIpQLSeS3qeY6ArudbpFkP-O9tIU\\_i7TKCrFJqXyATnFWD584Veehg/viewform?fbzx=-1803078672296712396](https://docs.google.com/forms/d/e/1FAIpQLSeS3qeY6ArudbpFkP-O9tIU_i7TKCrFJqXyATnFWD584Veehg/viewform?fbzx=-1803078672296712396).

18 Office Life, *Адвокатских бюро в Беларуси не будет с октября 2021 года* [There will be no law offices in Belarus from October 2021] (29 May 2021), <https://officelife.media/news/25945-advokatskikh-byuro-v-belarusi-ne-budet-s-oktyabrya-2021-goda/>.

19 *Id.*

### ■ III. EFFECTIVE MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS: THE ROLE OF LAWYERS

Lawyers, together with judges and public prosecutors, play a vital role in the administration of justice and in upholding the rule of law. They are also indispensable in the protection of human rights, including the rights to an effective remedy, due process, a fair trial, and freedom from torture and other cruel, inhuman, or degrading treatment or punishment. Their work is necessary for instilling and maintaining public confidence in the legal system and for ensuring effective access to justice for all. The independence of lawyers is thus considered a fundamental principle of international law.<sup>20</sup>

International standards provide that lawyers should also be free from intimidation, hindrance, harassment, or improper interference.<sup>21</sup> The United Nations Basic Principles on the Role of Lawyers (Basic Principles) further stipulate that governments must ensure that lawyers neither “suffer, [n]or be threatened with, prosecution or administrative, economic[,] or other sanctions for any action taken in accordance with recognized professional duties, standards[,] and ethics.”<sup>22</sup>

The International Covenant on Civil and Political Rights (ICCPR), to which Belarus is a State Party, guarantees all individuals the right to counsel and equality before the courts.<sup>23</sup> For their part, lawyers - as “essential agents of the administration of justice” - must maintain the honor and dignity of the profession at all times.<sup>24</sup> Moreover, lawyers, who are charged with both protecting their clients’ rights and also “promoting the cause of justice,” must “act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”<sup>25</sup> When improper interference with or reprisals against attorneys become widespread and systematic, this creates a climate in which lawyers may eventually refuse to represent clients connected to politically sensitive or controversial issues out of fear of becoming the target of harassment or acts of retaliation.<sup>26</sup> This severely compromises the right to effective legal representation as well as the independence of the legal profession, the proper functioning of the rule of law, and the protection of human rights.

20 Human Rights Watch (2008), *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China*, <https://www.hrw.org/reports/2008/china0408/china0408web.pdf> [hereinafter Human Rights Watch, *Walking on Thin Ice*].

21 UN Basic Principles on the Role of Lawyers [hereinafter UN Basic Principles], Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, Principle 16(a), <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

22 *Id.*, Principle 16(c).

23 International Covenant on Civil and Political Rights, 16 Dec. 1966, 999, T.I.A.S. 92-908, U.N.T.S. 171 [hereinafter ICCPR], art. 14.

24 UN Basic Principles on the Role of Lawyers, *supra* note 21, Principle 12; UN Basic Guidelines on the Role of Prosecutors, Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Guideline 3, <https://www.un.org/ruleoflaw/blog/document/guidelines-on-the-role-of-prosecutors/>.

25 UN Basic Principles on the Role of Lawyers, *supra* note 21, Principle 14.

26 *See, e.g.*, Human Rights Watch, *Walking on Thin Ice*, *supra* note 20, at 4-5.

The role of lawyers in protecting the rule of law and human rights is all the more fundamental in the context of the continuing crackdown in Belarus. However, despite their crucial role, lawyers in Belarus cannot fulfil their professional obligations and duties independently due to numerous forms of harassment and other interference.



## ■ IV. IMPROPER INTERFERENCE AND OTHER INFRINGEMENTS ON THE INDEPENDENCE OF LAWYERS

Government authorities in Belarus have engaged in several tactics that interfere with the independence of lawyers in contravention of international law and standards. Since the run-up to the 2020 presidential election and in its aftermath, lawyers in Belarus working on sensitive cases have been the subject of judicial harassment, arbitrary arrests, detention, administrative sanctions, criminal prosecution, and disciplinary actions - up to and including disbarment. The Belarusian authorities not only have failed to fulfill their duty under international law to protect lawyers from harassment and punishment for performing their professional activities, but in fact appear to be the very source of such unlawful actions. As a result, lawyers in Belarus are effectively prohibited from carrying out their professional duties independently.

A legal profession controlled, manipulated, or unduly influenced by politicians or any other third party cannot effectively carry out its duty to ensure the fair and effective administration of justice and adherence to the rule of law.

### A. Arrests, Detention, and Criminal Prosecution of Lawyers

Criminal charges against lawyers have dramatically escalated in the context of the post-election protests and into the first half of 2022, during which period criminal charges were brought against at least four more lawyers in Belarus. At the time of writing, numerous legal professionals face

pending politically motivated charges in connection with their professional activities representing peaceful protestors and opposition figures or exercising their own rights to freedom of expression, assembly and/or association. The case studies below are based on publicly available information.

#### 1. Case Studies

##### *i. Maksim Znak*

As a defense attorney, Maksim Znak represented Viktor Babariko, an aspiring candidate in the presidential elections who was barred by the government from formally registering for the vote. Znak also provided legal assistance to Svetlana Tikhonovskaya, a former presidential candidate now in exile, and Maria Kolesnikova, co-leader of the Coordination Council, an opposition coordination body. Maksim Znak was arrested on 9 September 2020. His arrest and pre-trial detention were covered in the 2021 Belarus Report.

On 6 September 2021, the Minsk Regional Court sentenced Maksim Znak to 10 years of imprisonment after finding him guilty of “calls for action aimed at causing harm to national security”, “conspiracy to seize power by unconstitutional means”, and the “creation and leading of an extremist organization” (art. 361 (3), art. 361-1 (1), and art. 357 (1), respectively, of the Criminal Code of Belarus). The charges and sentencing were brought forth in relation to his activities as

part of the Coordination Council.<sup>27</sup> Since the public was barred from observing his trial, the specific details and grounds of his sentence remain unknown.

On 23 May 2022, Belarusian authorities designated Maksim Znak as a “terrorist” under the list maintained by the State Security Committee.<sup>28</sup> On 25 May 2022, the UN Working Group on Arbitrary Detention (WGAD) issued an opinion finding the detention of Maksim Znak unlawful and requesting that the Belarusian government immediately release him and provide him with compensation and other forms of reparations.<sup>29</sup> Yet to date, the Belarusian authorities have ignored these findings. Maksim remains in prison serving the sentence imposed upon him for his lawful professional activities.

### ii. *Leanid Sudalenko*

Leanid Sudalenko is a lawyer and human rights defender who has represented the interests of victims of human rights violations vis-à-vis the government of Belarus before the UN Human Rights Committee. He is also the Chairman of the Homiel branch of the Viasna Human Rights Centre. Leanid Sudalenko was detained on 18 January 2021, at which time the authorities seized confidential materials from his office relating to communications with the Committee.<sup>30</sup>

On 3 November 2021, after a closed-door trial, the Centralny District Court of Homiel found Mr. Sudalenko guilty of “organizing and preparing actions that grossly violate public order” (art. 342 (1) of the Criminal Code) and “training and preparation of persons for participation in such actions, as well as their financing or other material support” (art. Article 342 (2) of the Criminal Code). Mr. Sudalenko was reportedly

charged in connection with: buying firewood for the children from a large family whose father was later convicted of “rioting”; appearing in a Youtube video to explain to a blogger what a “people’s protest” is; calling on social media to meet a Viasna volunteer who had served a sentence of 15 days in administrative detention; arranging a seminar on digital security for human rights defenders; and paying for fines, court fees, and lawyers’ services. Mr. Sudalenko was sentenced to three years of imprisonment in a general-security penal colony.<sup>31</sup>

### iii. *Alexander Danilevich*

Alexander Danilevich is a lawyer specializing in representing clients in international commercial arbitration. On 20 May 2022, he was detained and placed in the pre-trial detention center of the State Security Committee. Persons with knowledge about the details of the case signed non-disclosure agreements under threat of being held criminally liable for the disclosure of information.<sup>32</sup>

His detention is reportedly linked to statements he has made, including on social networks or in the media, condemning the prosecution of people active in the protection of fundamental rights, against the war in Ukraine, or on other societal issues. These statements include his signature in his professional capacity on a public petition against the war in Ukraine.

The basis of the accusations against Danilevich was not known until his closed-door preliminary hearing in mid-July 2022. Based on information on the court’s hearing schedule, he was charged with “calls for action aimed at causing harm to national security, including the use of restrictive measures (sanctions)”, or “distribution of materials containing such calls” under art. 316

27 Lawyers for Lawyers, *Laureate of 2021 Lawyers for Lawyers Award Maksim Znak sentenced* (10 September 2021), <https://lawyersforlawyers.org/laureate-of-2021-lawyers-for-lawyers-award-maksim-znak-sentenced/>.

28 Viasna, *KGB adds Maryia Kalesnikava and Maksim Znak to ‘terrorists’ list* (25 May 2022), <https://spring96.org/en/news/107835>.

29 UN Working Group on Arbitrary Detention, *Opinion No. 24/2022 concerning Maksim Znak (Belarus)* (25 May 2022), <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-24-BLR-AEV.pdf>.

30 Lawyers for Lawyers, *Joint letter on the arrest and detention of Leanid Sudalenka* (5 February 2022), <https://lawyersforlawyers.org/joint-letter-on-the-arrest-and-detention-of-leanid-sudalenka/>.

31 Lawyers for Lawyers, *Letter on the sentencing of Leanid Sudalenka* (30 November 2021), <https://lawyersforlawyers.org/letter-on-the-sentencing-of-leanid-sudalenka/>.

32 Lawyers for Lawyers, *Concerns about disciplinary proceedings against lawyers who have signed statement against the war in Ukraine* (13 April 2022), <https://lawyersforlawyers.org/concerns-about-disciplinary-proceedings-against-lawyers-who-have-signed-a-public-statement-against-the-war-in-ukraine/>.

(3) of the Criminal Code.<sup>33</sup> Danilevich's case remains pending.

iv. *Vitaly Braginets*

On 23 May 2022, the authorities detained lawyer Vitaly Braginets, searched his apartment, and transported him to the State Security Committee and then to the police station for questioning about his "involvement in protest activities". During questioning, Braginets allegedly started swearing and screaming and tried to leave the police department and was consequently accused of "disobeying a police officer" under art. 24 (3) of the Code of the Republic of Belarus on Administrative Offenses.<sup>34</sup>

Two days later, on 25 May 2022, the Partizansky District Court of Minsk sentenced Vitaly Braginets to 15 days of administrative detention. According to the transcript of the court hearing, his alleged protest activities relate to organizing and taking part in an unauthorized protest in Minsk and using protest channels on Telegram. Despite the expiration of his 15-day detention term, Vitaly Braginets was not released on 7 June 2022.<sup>35</sup> At the time of writing, more than three months after the end of his court-imposed sentence, Vitaly Braginets remained in detention.

v. *Andrey Machalau*

In June 2022, Belarusian authorities initiated a criminal case against lawyer Andrey Machalau. Machalau is a human rights lawyer known for providing legal assistance to torture survivors, independent journalists, human rights defenders, and civil and political activists in Belarus. The criminal case was initiated on charges of "using deliberately forged documents" (art. 380 (1) of the Criminal Code) - namely, a lawyer's certificate and a warrant for the protection of

a client.

The authorities alleged that, in June 2022, in spite of having been informed that the disciplinary commission of the Minsk Regional Bar Association had issued a decision to expel him from the bar, Machalau still went to court to defend his client, where, as usual, he provided a certificate and a warrant.<sup>36</sup>

However, according to the then-applicable legislation of Belarus, a decision of the Bar Association's disciplinary commission to expel an attorney from the bar would not be equivalent to expulsion itself, which would not take place automatically following such a decision.

Although there was a subsequent decision by the council of the Bar Association to disbar Machalau, resulting in his actual expulsion, the decision was made behind closed doors, and he had not been duly notified by the time he represented his client. Therefore, his actions up to that point, including the use of official documents such as certificates and warrants, were fully in compliance with applicable legislation.

Machalau had chosen the above-mentioned lawyer Vitaly Braginets to represent him during the criminal proceedings. Given that the term of Braginets' own administrative detention was due to expire on 7 June 2022, Machalau petitioned the court to postpone the session for two days, to 8 June. The judge refused the request and appointed another lawyer to defend Machalau; the lawyer was granted only 20 minutes to study the criminal case and prepare his defense.<sup>37</sup>

On 16 June 2022, the Leninsky district court of Minsk found Andrey Machalau guilty as charged under art. 380 (1) of the Criminal Code and sentenced him to two years of confinement.<sup>38</sup>

33 Right to Defence, *It Became Known What Alexander Danilevich is Accused Of* (15 July 2022), <https://www.defenders.by/post/51ch2c7231-it-became-known-what-alexander-danilevic>.

34 Lawyers for Lawyers, *Letter on detention of Vitaly Braginets and criminal case brought against Andrey Machalau* (8 June 2022), <https://lawyersforlawyers.org/letter-on-detention-of-vitaly-braginets-and-andrey-machalau-and-criminal-case-brought-against-andrey-machala/>.

35 *Id.*

36 *Id.*

37 *Id.*

38 Right to Defence, *Disbarred Andrei Mochalov is sentenced to two years' restricted freedom* (23 June 2022), <https://defenders.by/post/9pnarx5v11-disbarred-andrei-mochalov-is-sentenced-t>.

vi. *Anastasia Lazarenko*

On 2 June 2022, the Belarusian authorities detained Anastasia Lazarenko, a lawyer at Legal Advice No. 2 of the Moskovsky district of Minsk, and charged her under art. 130 (3) of the Criminal Code for allegedly passing information about security forces and judges to “extremist” Telegram channels.<sup>39</sup> Proceedings were ongoing at the time of writing and Lazarenko remains in detention.

## 2. Legal Analysis

The increase in arrests, detention, and criminal prosecution of lawyers in Belarus that has taken place since the presidential elections in August 2020 stands in stark contrast to the protections guaranteed to lawyers under the UN Basic Principles. In contravention of Basic Principle 16, the Belarusian government’s tactics serve to intimidate, harass, hinder, and interfere with lawyers’ legitimate activities. Far from fulfilling its duty to ensure lawyers do not suffer prosecution or other sanctions for any actions “taken in accordance with recognized professional duties, standards, and ethics,”<sup>40</sup> the government has itself undertaken such harassment and interference.

In addition, lawyers must not be identified with their clients or their clients’ causes as a result of discharging their functions<sup>41</sup> and have the right, like all persons, to the freedoms of expression, assembly, and association.<sup>42</sup> The right to freedom of expression includes the right to take part in public discussion on matters concerning the law, the administration of justice, and the promotion and protection of human rights.<sup>43</sup>

All of the lawyers discussed in the case studies above appear to have been targeted for their work defending human rights, protestors, or

opposition figures or for themselves being associated with the opposition or exercising their rights to freedom of expression, assembly, and association. These circumstances give reason to believe that the arrest, detention, and prosecution of the aforementioned lawyers is connected to their professional activities. As such, the actions taken against them constitute violations of internationally recognized principles and the independence of the legal profession.

The interference in the work of lawyers in the form of arrests, detention, and prosecution may also lead to violations of the right to a fair trial under Article 14 of the ICCPR. In connection with this right, the UN Human Rights Committee has stated that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure[,] or undue interference from any quarter.”<sup>44</sup> In addition, the actions taken against these lawyers violate their clients’ right to a fair trial with legal representation of their own choosing.<sup>45</sup> This interference impermissibly restricts access to justice in Belarus.

## **B. Disbarments of Lawyers**

Since 2020, Belarus has seen an unprecedented increase in the disbarment of lawyers. In expressing concern at the start of this trend, the UN High Commissioner for Human Rights observed in February 2021 that the Bar Association, responsible for making decisions on disbarment, was under the control of the Ministry of Justice and lacked independence, and that the lawyers facing such disciplinary action were those who represented clients in politically sensitive cases or those relating to human rights violations.<sup>46</sup> Since the publication

39 Right to Defence, *Persecution of lawyers in Belarus after the elections in 2020*, *supra* note 14.

40 UN Basic Principles on the Role of Lawyers, *supra* note 21, Principle 16(b).

41 *Id.*, Principle 18.

42 *Id.*, Principle 23.

43 *Id.*, Principle 23.

44 Human Rights Committee, General Comment No. 32, Article 14: Right to equality before court and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, para. 34.

45 See ICCPR, *supra* note 23, Art. 14.

46 Human Rights Council, *Situation of human rights in Belarus in the context of the 2020 presidential election*, Report of the UN High Commissioner for Human Rights, U.N. Doc. A/HRC/4 (15 Feb. 2021), para. 43.

of the 2021 Belarus Report, which highlighted the circumstances surrounding ongoing disbarments, this attack on the independence of the legal profession has continued unabated, with at least 50 lawyers deprived of their right to practice through disbarment or license revocation.<sup>47</sup>

The cases below illustrate a clear pattern in the use of disciplinary proceedings against lawyers who represent political opponents of the government or those who openly criticize the government on issues of public significance. The following information about these cases has been drawn from public sources.

## 1. Case Studies

### i. *Dmitri Laevsky*

Dmitri Laevsky was one of the lawyers defending Viktor Babariko, the ex-presidential candidate who was sentenced to 14 years in prison on 6 July 2021.<sup>48</sup> He also represented Maksim Znak, whose case is described above. On 8 July 2021, Laevsky was disbarred by the Disciplinary Commission of the Minsk City Bar on the grounds that some of his argumentation during Babariko's criminal trial was based on the innocence of other people involved in the same case, an assessment that the Commission considered a violation of the Rules of Professional Ethics.<sup>49</sup> The Bar Association agreed and expelled Laevsky on 9 July 2021, just three days after his client Babariko's own sentencing.

### ii. *Natalia Matskevich*

Natalia Matskevich, a lawyer known for defending prominent political prisoners in Belarus including Viktor Babariko, was disbarred on 27 October 2021 following disciplinary

proceedings initiated by the Ministry of Justice and a decision by the Disciplinary Commission of the Minsk City Bar Association earlier that month. The formal grounds for Matskevich's disbarment were "breach of the order of conducting investigative actions" and "unethical actions towards participants in proceedings". These ethical charges related to Matskevich's defense of Victor Babariko in 2020 and 2021, including two episodes of "interruptions of an investigator" - referring to incidents in which she spoke while an investigator was speaking - and objecting to the statements of a prosecution witness's lawyer in court. In making its decision to disbar Matskevich for these actions, the Commission "took account of the severity of the acts committed, the circumstances under which they were committed, and Matskevich's non-recognition of her guilt".<sup>50</sup> At the time of her disbarment, Matskevich was representing Sergei Tikhanovsky, a well-known opposition leader, in his ongoing trial.

### iii. *Yevgeny Pylchenko*

The lawyer Yevgeny Pylchenko also defended Viktor Babariko and Maksim Znak. The Ministry of Justice initiated disciplinary proceedings against him on 19 October 2021, at which time he was suspended from the bar.<sup>51</sup>

On 28 October 2021, the Disciplinary Commission of the Minsk City Bar Association disbarred Pylchenko for "systematic violations of the advocacy law". The decision to disbar Pylchenko was reportedly based on two violations: first, that had he made an assessment of opposing lawyers' statements during the criminal trial against Babariko; and second, that he had violated the rules on conflicts of interest by representing both Viktor Babariko and Svyatlana Kupreyeva, a friend of Babariko's family. The

47 Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/50/58 (4 May 2022) para. 85 [hereinafter Special Rapporteur 2022 Report].

48 DW, *Viktor Babariko: Belarus jails former presidential contender* (6 July 2021), <https://www.dw.com/en/viktor-babariko-belarus-jails-former-presidential-contender/a-58171056>.

49 Right to Defence, *Хроника событий: давление и исключение из коллегии адвоката Дмитрия Лаевского* (Last updated on 16 July 2021), <https://defenders.by/laevsky>.

50 Lawyers for Lawyers, *Joint statement: Bar Association of Belarus should reinstate disbarred lawyer Natalia Matskevich* (28 October 2021), <https://lawyersforlawyers.org/en/joint-statement-bar-association-of-belarus-should-reinstate-disbarred-lawyer-natalia-matskevich/>.

51 Belsat, *Victor Babaryka left without legal defense* (29 October 2021), <https://belsat.eu/en/news/29-10-2021-viktar-babaryka-left-without-legal-defense/>.

nature of the alleged conflict, reported to the Disciplinary Commission by the security services, was never disclosed to Pylchenko or supported by any documentation.<sup>52</sup>

Pylchenko was Viktor Babariko's fourth lawyer who was subjected to disciplinary proceedings while representing him. Pylchenko's disbarment had the de facto effect of depriving Viktor Babariko of his right to be assisted in his defense by a lawyer of his choosing.<sup>53</sup>

*iv. Several Lawyers Who Signed Petitions  
Protesting Against the War in Ukraine*

Several Belarusian lawyers, including actively practicing attorneys as well as a number of former bar members who had previously been disbarred, signed a petition against the war in Ukraine that was created on 28 February 2022. On 10 and 11 March 2022, the council of the Minsk Regional Bar Association and the council of the Minsk City Bar Association initiated disciplinary proceedings against a number of the practicing lawyers who signed the petition that could result in their disbarment.<sup>54</sup> Concurrently with the disciplinary proceedings, these Bar Associations also reportedly demanded that the lawyers in question withdraw their signatures from the petition or explain their reasons for signing it.

## 2. Legal Analysis

Like the arrests, detention, and criminal prosecutions of lawyers, the authorities have utilized disciplinary proceedings and subsequent disbarments of attorneys to interfere with their work in defending cases that are politically sensitive or related to human rights issues. This interference stands in plain contravention of UN Basic Principle 16 and the independence of the

legal profession.

International standards provide that a number of safeguards must be afforded to attorneys facing disciplinary action that could result in their disbarment. Such proceedings must be conducted "fairly under appropriate procedures," and lawyers facing disciplinary charges must be given a fair hearing with legal representation of their own choosing.<sup>55</sup> In addition, the body overseeing the disciplinary proceedings must be impartial and subject to independent judicial review.<sup>56</sup> Finally, any such disciplinary proceedings and eventual action stemming from them must be in accordance with an established procedure and in line with the UN Basic Principles.<sup>57</sup>

These standards reflect the gravity of a disbarment for a practicing attorney. As emphasized by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, disbarment "constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards" and "should only be imposed in the most serious cases of misconduct" following fair proceedings marked by appropriate safeguards and due process guarantees.<sup>58</sup> The European Court of Human Rights has also commented on the devastating effect that disbarments can have on the legal profession as a whole, referring to this disciplinary tool as "a harsh sanction capable of having a chilling effect on the performance by lawyers of their duties as defense counsel."<sup>59</sup>

In addition, international law and standards protect lawyers' rights to freedom of expression. As a state party to the ICCPR, Belarus is obligated to respect individuals' rights to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Lawyers for Lawyers, *Concerns about disciplinary proceedings against lawyers who have signed a public statement against the war in Ukraine* (13 April 2022), <https://lawyersforlawyers.org/concerns-about-disciplinary-proceedings-against-lawyers-who-have-signed-a-public-statement-against-the-war-in-ukraine/>.

<sup>55</sup> UN Basic Principles, *supra* note 21, Principle 27.

<sup>56</sup> See *id.*, Principle 28.

<sup>57</sup> *Id.*, Principle 29.

<sup>58</sup> Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348 (22 Aug. 2016), para. 96.

<sup>59</sup> *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, para. 84, Eur. Ct. Hum. Rts., 25 June 2020.

all kinds.”<sup>60</sup> States may only restrict expression where such restrictions are provided by law and necessary for the protection of the rights or reputations of others, national security or public order (*ordre public*), or public health or morals.<sup>61</sup> The UN Basic Principles emphasize that lawyers enjoy the right to freedom of expression like all other individuals, and that they may exercise this right through participation in public discourse on “matters concerning the law, the administration of justice and the promotion and protection of human rights” without negative repercussions.<sup>62</sup>

The situation in Belarus flatly contradicts the above-noted applicable international law and standards. First, disciplinary proceedings against lawyers in Belarus are not conducted by an impartial and independent body, but rather by the Qualification Commission, which sits under the Ministry of Justice (MOJ) and is therefore under the control of the executive. Furthermore, of the Commission’s 21 members, only 8 are lawyers, calling into question their ability to assess the nature and severity of the disciplinary charges they rule upon.<sup>63</sup>

In addition, the disbarment of lawyers speaking critically of the government or about matters concerning the administration of justice, the war in Ukraine, human rights, or rule of law in Belarus violates these lawyers’ right to freedom of expression. Neither the MOJ nor Qualification Commission established in any of these cases that the restriction of the lawyers’ rights in the form of disbarment was necessary to protect national security, public order, the rights

and reputations of others, or public health and morals. The disbarments thus cannot be deemed a lawful and necessary measure under the ICCPR.

Moreover, by upholding the disqualifications of some of these lawyers upon challenge, Belarusian courts have undermined the fundamental right of the lawyers’ clients to legal representation of their own choosing, particularly in cases such as Babariko’s where the authorities have systematically punished each of his attorneys in succession in a clear attempt to deprive him of this right.

### C. Revocation of Lawyer’s Licenses in Extraordinary Re-Certification Proceedings

Attacks on Belarusian lawyers’ ability to practice their profession goes beyond prosecutions and disciplinary disbarments. Starting in the aftermath of the 2020 presidential elections and continuing until the present, at least 36 lawyers have lost their license to practice law after being called before the Qualification Commission to undergo an extraordinary re-certification examination. These lawyers have been stripped of their right to practice law on the basis of such grounds as alleged “improper fulfillment of... professional duties”, “insufficient qualifications”, or for vaguely-defined “offenses incompatible with the title of a lawyer”.<sup>64</sup> It appears that these lawyers were targeted for working on human rights cases.<sup>65</sup>

60 ICCPR, *supra* note 23, art. 19.

61 ICCPR, *supra* note 23, art. 19(3).

62 UN Basic Principles on the Role of Lawyers, *supra* note 21, Principle 23.

63 This has been laid down in Article 14.2 of the Law of the Republic of Belarus On the Bar and Advocate Activity in the Republic of Belarus 334-3 (2011) [hereinafter Law on the Bar and Advocacy in Belarus], available at: <https://rka.by/about/zakon-respubliki-belarus/>. According to the latest information, there are currently 21 members sitting on the Commission. See [https://www.defenders.by/attestacija\\_izmeneniya](https://www.defenders.by/attestacija_izmeneniya).

64 Right to Defence, *Persecution of lawyers in Belarus after the elections in 2020*, *supra* note 14.

65 See Int’l Comm’n of Jurists, *Belarus: stop politically motivated prosecution and disbarment of lawyers* (13 April 2021), <https://www.icj.org/belarus-stop-politically-motivated-prosecution-and-disbarment-of-lawyers/> (noting that the Qualification Commission’s extraordinary certification procedure “appears to target lawyers working to defend human rights, as a means of harassment or reprisal”); see also Roman Vasyukovich, “Оставят без куска хлеба за исполнение своих обязанностей”. Десятки адвокатов Беларуси лишились лицензий из-за защиты протестующих

[‘They will be left without a piece of bread for fulfilling their duties.’ Dozens of Belarusian lawyers lost their licenses over the protection of protestors], *Настоящее Время* [CURRENT TIME] (3 MAY 2021), <https://www.currenttime.tv/A/DESYATKI-ADVOKATOV-LISHILIS-LICENZII-ZA-ZASHITU-PROTESTUYUSHIH/31232068.HTML> (NOTING THAT ONE OF THE LAWYERS WHO LOST HER RIGHT TO PRACTICE IN MARCH 2021 AS A RESULT OF THE EXTRAORDINARY CERTIFICATION PROCESS BELIEVES IT WAS DUE TO “THE FACT THAT IN THE COURTS SHE DEFENDED PARTICIPANTS IN PEACEFUL PROTESTS AND PUBLICLY CONDEMNED VIOLENCE AND REPRESSION”).

These extraordinary proceedings have taken place outside of the routine process for re-certification, usually held every 5 years, and appear to specifically target lawyers who defend human rights cases.<sup>66</sup> Most recently, the Qualification Commission met on 4 August 2022 to conduct another extraordinary certification exam, which resulted in three more lawyers having their licenses revoked. During this session, the license of lawyer Vitaly Braginets, whose administrative case and ongoing detention was described above, was revoked for “misconduct incompatible with the lawyer’s title”.<sup>67</sup>

## 1. Legal Analysis

Subjecting lawyers to arbitrary re-certification examinations at the whim of the executive branch not only violates their right to practice law free from harassment, intimidation, and improper interference, but also contravenes international standards on the role of bar associations.

The UN Basic Principles emphasize that professional associations of lawyers play “a vital role...in upholding professional standards and ethics [and] protecting their members from persecution and improper restrictions and infringements.”<sup>68</sup> They further require that bar associations be independent from government and other executive and private interests.<sup>69</sup> According to the Special Rapporteur on the Independence of Judges and Lawyers, a bar association is “generally deemed to be independent” when “it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, the development and implementation of codes of professional conduct, and the right of lawyers to join the

association.”<sup>70</sup>

The Rapporteur has expressed concern where control over the legal profession lies in whole or in part with either the executive or judicial branches, since such control allows for the removal of lawyers that the authorities view as “problematic” through measures including arbitrary disbarment or other disqualification.<sup>71</sup> A self-governing body of the legal profession itself should determine admission requirements and procedures and be responsible both for the administration of examinations and other requirements and for the granting of professional licenses.

In Belarus, decisions about the continued practice of lawyers within the legal profession are not made by an independent entity; the decisions are conditioned and controlled by the executive branch through the MOJ’s qualification procedures and through the local collegiums. As seen in the case studies above, the MOJ wields its power as a weapon to punish lawyers who defend political opposition figures or who represent clients whose human rights have been violated. This political instrumentalization of the procedures for certifying attorneys in Belarus represents exactly the type of intimidation and improper interference that are the reasons for vesting control over the legal profession in an independent body.

## D. Other Forms of Harassment and Interference with the work of Lawyers

In addition to the above-described forms of harassment, intimidation, and interference, Belarusian lawyers have been prevented from effectively exercising their duties through

66 See International Commission of Jurists, *Belarus: ICJ deplors continuing reprisals against independent lawyers* (1 February 2022), <https://www.icj.org/belarus-icj-deplors-the-continuing-reprisals-against-independent-lawyers/> (noting that “such attacks on the legal profession have a chilling effect and deprive the profession of those lawyers who defend their clients’ human rights guaranteed under international human rights law”). In accordance with the Presidential Decree of 26 November 2015 No. 475, ordinary certification is held every five years; however, extraordinary certification can be held at any time upon the Ministry of Justice’s request.

67 Right to Defence, *Another Ministry of Justice Certification. Attorney Vitaly Braginets is Disbarred* (8 August 2022), <https://www.defenders.by/tpost/jgn70uhps1-another-ministry-of-justice-certificatio>.

68 UN Basic Principles on the Role of Lawyers, *supra* note 21, Preamble.

69 *Id.*, Principles 24-26.

70 See *Report of the Special Rapporteur on the independence of judges and lawyers*, U.N. Doc. A/73/365 (5 Sept. 2018), para. 23 [hereinafter Special Rapporteur 2018 Report].

71 See *id.*, para. 60.



other means. This harassment similarly violates international standards on the role of lawyers and independence of the legal profession.

These measures by the government not only interfere with lawyers' ability to effectively practice their profession, but violate the rights of their clients to a fair trial under international law. Among other obstructions, the authorities have denied lawyers access to their clients and/or to relevant files; refused to allow lawyers to consult confidentially with their clients; and provided insufficient time for lawyers to prepare an adequate defense.<sup>72</sup> Furthermore, courts have obstructed Belarusian attorneys' work in the course of criminal trials. This has included allowing prosecution witnesses to testify anonymously over video-link,<sup>73</sup> closing hearings to the public - especially in high-profile cases involving the political opposition - and forcing defense attorneys to sign non-disclosure agreements.

In May 2022, referring to all of the above-described forms of intimidation and harassment, the Special Rapporteur on the human rights situation in Belarus stated that "the intimidation and punishment of independent lawyers is having a devastating effect on the administration of justice and the overall rule of law in Belarus".<sup>74</sup>

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<sup>72</sup> Special Rapporteur 2022 Report, *supra* note 47, para. 82

<sup>73</sup> *See id.*

<sup>74</sup> Special Rapporteur 2022 Report, *supra* note 47, para. 86.

## V. AMENDMENTS TO THE LAW ON THE BAR AND ADVOCACY

### A. Overview

A series of proposed amendments to the legislation relating to lawyers introduced by the Lukashenko administration in April 2021 dealt a further blow to the independence of the legal profession in Belarus. These amendments to Law on the Bar and Advocacy in Belarus, which entered into force in November 2021,<sup>75</sup> dramatically increased the executive branch's control over the work of lawyers and made it impossible for many lawyers to represent clients in human rights and political dissidence cases.

In line with the government's systematic efforts to prevent any independent lawyers from representing clients of whom the authorities disapprove, the amendments explicitly prohibit lawyers who work individually or for law firms to take on cases concerning criminal or administrative offences, limiting available representation in such cases to so-called legal consultations governed by regional bar associations.<sup>76</sup>

In addition, under the new amendments, the MOJ wields ever greater power over the practice of law in Belarus. For example, the amendments require each candidate lawyer to be approved by the MOJ and empower the

MOJ to develop rules for the professional ethics of lawyers.<sup>77</sup> The MOJ can now monitor lawyers, law firms, and bar associations on their compliance with these professional ethics and subject them to disciplinary proceedings in the case of violations.<sup>78</sup> These disciplinary proceedings take place before the Qualification Commission and the local collegiums, which also fall under the control of the MOJ.<sup>79</sup>

Furthermore, under the new amendments, candidates for chair of the bar associations must be approved by the MOJ. If all the candidates proposed by territorial bar associations are rejected twice by the MOJ, the MOJ now has the power to propose its own candidate. If the MOJ candidate is rejected twice by the members of the territorial bar, the candidate is nonetheless automatically "elected."<sup>80</sup> The MOJ can also dismiss these chairs if the Qualification Committee is of the opinion that they violated professional ethics.<sup>81</sup>

On a further assault to the independence of the legal profession, under these amendments, MOJ officials now have the right to participate in the activities of the bar associations and request any documents from bar associations or individual lawyers

75 Office Life, *Адвокатских бюро в Беларуси не будет с октября 2021 года* [There will be no law offices in Belarus from October 2021] (29 May 2021), <https://officelife.media/news/25945-advokatskikh-byuro-v-belarusi-ne-budet-s-oktyabrya-2021-goda/>.

76 See Law on Amendments to the Law on the Bar and Advocacy in Belarus, Law of the Rep. of Belarus No. 113-3 (27 May 2021), Arts. 3(24) and 3(25).

77 See *id.*, Art. 3(27).

78 See *id.*

79 See *id.*

80 See *id.*, Art. 3(31).

81 See *id.*

to be able to fulfill these powers, subject to attorney-client privilege.<sup>82</sup>

Consistent with the clear aim of these amendments, President Lukashenko recently expressed his disdain for an independent bar, saying that “the bar should be controlled” and that lawyers are “government men” whose “actions should be based on the law, rather than some made-up norms like freedom of speech, and other freedoms.”<sup>83</sup> The Belarusian Minister of Justice Sergei Khomenko also recently referred to lawyers as “government men” who should safeguard the “legitimate interests” of individuals and legal entities.<sup>84</sup>

In May 2022, the Special Rapporteur on the situation of human rights in Belarus reported that since the amendments entered into force, over 200 lawyers have left the bar.<sup>85</sup> As a result of the amendments and the deteriorating situation for lawyers in Belarus, the availability of legal representation is currently estimated to be about one lawyer per 5,000 inhabitants.<sup>86</sup>

## 1. Legal Analysis

The heightened control granted to the MOJ over the regional and national bar associations by the aforementioned amendments drastically undermines the associations’ independence and the independence of the legal profession in Belarus.

The Special Rapporteur on the Independence of Judges and Lawyers has emphasized the importance of the independence and self-governing nature of bar associations in order to protect and ensure the functioning of the legal profession.<sup>87</sup> Moreover, UN Basic Principle 24 provides that lawyers must be able to form and participate in professional associations,

governed by an executive body that is elected by its own members and operates free from external interference, to “represent their interests” and “protect their professional integrity.”<sup>88</sup> The recent amendments clearly violate this principle by placing control over the bar associations, and the right to establish professional conduct standards, firmly under the executive branch.

The amendments to the Law on the Bar and Advocacy further undermine the independence of the legal profession and expose Belarusian lawyers to ever greater harassment, intimidation, and improper interference in the exercise of their professional duties. Furthermore, the dramatic decrease in the number of lawyers in Belarus inevitably leads to restrictions to access to justice and the guarantee under international law to be assisted by a lawyer of one’s own choosing in the course of criminal proceedings.

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82 *See id.*

83 Right to Defence, *Lukashenko States That The Bar Should Be Controlled* (4 May 2022), <https://defenders.by/tpost/6jvsnmlgv1-lukashenko-states-that-the-bar-should-be>.

84 Right to Defence, *Lawyers are Called Government Men in the Minister of Justice’s Congratulation on the Centennial of the Belarusian Bar* (15 July 2022), <https://defenders.by/tpost/2yiuns5vl1-lawyers-are-called-government-men-in-the>.

85 Special Rapporteur 2022 Report, *supra* note 47, para. 85.

86 Right to Defence, *Lawyers’ Exodus from the Belarusian Bar Continues* (21 July 2022), [https://www.defenders.by/lawyers\\_exodus](https://www.defenders.by/lawyers_exodus).

87 Special Rapporteur 2018 Report, *supra* note 70, at para. 89.

88 UN Basic Principles on the Role of Lawyers, *supra* note 21, Principle 24.

## ■ VI. RECOMMENDATIONS

In accordance with international law and standards, L4L, the ABA CHR, and the IBAHRI urge the Government of Belarus and all relevant authorities to take the following measures to ensure the full independence of the legal profession in Belarus:

- Take all necessary measures to guarantee the physical safety and security of lawyers in Belarus;
- Immediately and unconditionally cease all acts of harassment against lawyers, including searches of business and private premises, politically motivated investigations, arrests, detentions and criminal prosecutions, extraordinary certifications, and disbarments;
- Guarantee that in all circumstances, lawyers in Belarus are able to carry out their legitimate professional activities and engage in the exercise of their fundamental human rights without fear of reprisal and free from harassment or other improper interference in their work;
- Reinstate the lawyers that have been disbarred in violation of international standards since August 2020, including those in the cases summarized in this report;
- Introduce adequate protections for the integrity and independence of lawyers, including through the establishment of a fully independent bar association; and
- Repeal the amendments to the Law on the Bar and Advocacy in Belarus and further amend the Law to remove oversight and control of the legal profession by the MOJ as well as any other provisions that restrict the independence of the legal profession in contravention of international standards.

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