

# BELARUS

## PROTECTION OF LAWYERS

SUBMISSION TO SPECIAL RAPPORTEUR ON THE INDEPENDENCE  
OF JUDGES AND LAWYERS



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# INTRODUCTION

This report is prepared by the Belarusian Helsinki Committee in the framework of the call issued by Special Rapporteur on the Independence of Judges and Lawyers.

Founded in 1995, the Belarusian Helsinki Committee (BHC) is one of the oldest human rights defenders organization in Belarus. The list of its founders includes the nation's most prominent leaders such as Vasil' Bykau, Sviatlana Alexievich (Nobel prize in literature 2015).

BHC works mainly on six major human rights topics, such as: business and human rights (the topic has never been widely discussed in Belarus, and BHC, in fact, is pioneering business and human rights), discrimination (BHC carries out research and promotes the introduction of special anti-discrimination legislation), human rights based approach (BHC promotes incorporation of human rights instruments in project development at various levels), international human rights mechanisms (BHC promotes the use of the mechanisms by non-human rights organizations and develops electronic resources for assisting these organizations), national human rights mechanisms (BHC examines the legislation and addresses its gaps in order to provide as many protective measures as possible), death penalty (BHC carries out research and opens new aspects of death penalty such as overall brutalization of societies in which death penalty is practiced, for those interested).

BHC has a huge experience in expertise in the topic of human rights, including independence of lawyers and judges. The organization has prepared hundreds of proposals to state bodies on improving legislation and practice in the field of human rights. Dozens of reports and communications to the UN Special Procedures, treaty bodies were sent in order to strengthen the rule of law and good governance. For many years, BHC reinforces the ability of CSOs to effectively work further on reporting to UN mechanisms and on advocacy in dialogue with the government. Among other things, BHC also helps NGOs to use UN mechanisms through training, support and creating special web resources for NGOs.

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# QUESTIONNAIRE

## **I. TAKING INTO CONSIDERATION THE GUARANTEES FOR THE FUNCTIONING OF LAWYERS, CONTAINED IN PRINCIPLES 16-22 OF THE BASIC PRINCIPLES ON THE ROLE OF LAWYERS, PLEASE DESCRIBE THE CONSTITUTIONAL, LEGAL, ADMINISTRATIVE AND POLICY MEASURES ADOPTED IN YOUR COUNTRY TO ENABLE LAWYERS TO EXERCISE THEIR PROFESSIONAL ACTIVITIES IN FAVOUR OF THEIR CLIENTS IN A FREE AND INDEPENDENT MANNER.\***

The activities of the Belarusian authorities currently contradict the Basic Principles on the Role of Lawyers, since various retrogressive measures are being taken to limit the opportunities for lawyers to carry out their professional activities in the interests of the client freely and independently. Such measures are being taken both in the field of legislation and in the field of policy.

The amendments made to the Law “On the Legal Profession and Legal Advocacy” and entered into force on November 30, 2021, strengthen the control of the State over the activities of lawyers and undermine the independence of the bar. The key changes in this context are the following:

1. The leadership of the bar associations and legal consultation offices is agreed upon with the Ministry of Justice (the MoJ).<sup>1</sup>
2. The list of trainees of the bar is agreed upon with the MoJ;<sup>2</sup>
3. Former employees of courts, prosecutor's offices, the MoJ system, law enforcement agencies, etc. do not have to take an exam in order to become a lawyer;<sup>3</sup>
4. Such forms of legal activity as individual lawyers and law offices (bureau) are abolished; only legal consultation offices remain.

Moreover, since summer 2020 the authorities launched a campaign to intimidate lawyers who professionally defended the rights of their clients in politically motivated criminal and administrative cases through the leadership of the bar, the MoJ and other bodies. Initially the leadership of the bar association had conversations with lawyers, where they said that lawyers should be out of politics, and then they began to deprive the lawyers of their licenses to practice law. Recently, a new trend has appeared: the MoJ issues an order to initiate disciplinary proceedings and immediately suspends the activities of

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<sup>1</sup> The Law “On the Legal Profession and Legal Advocacy”, Article 38:  
[http://www.advokat.by/content/zakonodatelstvo/zakon\\_ob\\_advokature/](http://www.advokat.by/content/zakonodatelstvo/zakon_ob_advokature/)

<sup>2</sup> Ibid., Article 38

<sup>3</sup> Ibid., Article 9

lawyers, suddenly leaving clients without protection. Lawyers Natalia Matskevich and Yevgeny Pylchenko, who defended famous political leaders and activists, faced such a situation.<sup>4</sup>

Defenders of public activists, representatives of the political opposition and citizens expressing protest are not only hindered in their work, but they are subjected to arbitrary detention, criminal and administrative prosecution, deprivation of lawyer status - in violation of international standards of advocacy, reports and recommendations of international non-governmental organizations concerning the problems of legal aid in the Republic of Belarus.

**II. WHAT ENTITIES AND/OR MECHANISMS ARE IN PLACE TO PREVENT AND/OR PUNISH INTERFERENCES WITH THE FREE AND INDEPENDENT EXERCISE OF THE LEGAL PROFESSION? PLEASE BRIEFLY DESCRIBE THEM AND SPECIFY WHETHER THEY ARE INDEPENDENT BODIES OR IF THEY BELONG TO THE ADMINISTRATIVE STRUCTURE OF THE STATE.\***

The bodies and mechanisms that exist to prevent and/or punish interferences with the free and independent exercise of the legal profession include the following: the leadership of the bar, the MoJ and the Prosecutor's Office (in the framework of competence to monitor compliance with the law by all state bodies and other organizations and citizens).

The leadership of the bar is not independent according to the amended Law "On the Legal Profession and Legal Advocacy". The new Law stipulates that all candidates for the leadership of bar associations and legal consultation offices must be agreed upon with the MoJ. If they have not been approved by the MoJ, it is necessary to submit other candidates. If they do not fit, the MoJ will propose its own candidates. In addition, the norm, according to which the candidacies of the members of the Councils (lawyer self-government bodies) must also be agreed upon with the MoJ, continues to apply.<sup>5</sup>

The MoJ and the Prosecutor's Office belong to the administrative structure of the State. And although, according to the law, the MoJ must take measures to protect lawyers from unlawful interference in their activities, in practice, on the contrary, this is the body through which the State intervenes in the activities of lawyers, initiating inspections and disciplinary proceedings against "undesirable"

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<sup>4</sup> Human Rights Watch, Belarusian Authorities Retaliate Against Lawyers Defending Human Rights: <https://www.hrw.org/news/2021/10/26/belarusian-authorities-retaliate-against-lawyers-defending-human-rights>

<sup>5</sup> The Law "On the Legal Profession and Legal Advocacy", Articles 38, 43: [http://www.advokat.by/content/zakonodatelstvo/zakon\\_ob\\_advokature/](http://www.advokat.by/content/zakonodatelstvo/zakon_ob_advokature/)

lawyers, etc. The Prosecutor's Office formally supervises compliance with the law, but in practice it is not an independent body and does not perform its functions.

**III. PLEASE INDICATE IF THERE ARE ANY LEGISLATIVE, ADMINISTRATIVE, OR INSTITUTIONAL BARRIERS THAT HAVE HINDERED THE WORK OF LAWYERS AND THE EXERCISE OF THE LEGAL PROFESSION IN YOUR COUNTRY, AND DESCRIBE THEM.\***

First of all, it should be pointed out that in Belarus, based on the Law "On the Legal Profession and Legal Advocacy" it is prohibited to practice law for those individuals who:

- have been recognized in accordance with the established procedure as incapable or with partially incapable;
- have previously committed an intentional crime;
- have been excluded (dismissed) from the bar association, as well as dismissed from law enforcement and other bodies and organizations for discrediting circumstances, and in respect of which the MoJ has decided to terminate the license for committing actions discrediting the title of a lawyer and the bar, within three years from the date of the relevant decisions;
- have applied for a license within one year from the date of entry into force <...> of the decision to terminate or revoke a special permit (license) to carry out advocacy, legal services activities in cases established by legislative acts, except for the termination of the relevant special permit (license) on the licensee's own initiative;
- have held positions, the time of work on which is counted in the length of public service, from the date of submitting an application for admission to the qualification exam until the date of obtaining a license.<sup>6</sup>

Such restrictions are generally acceptable, however, taking into account that many Belarusian lawyers have been excluded from the bar associations for political reasons, they are deprived of the opportunity to become a lawyer again for a certain period of time.

The main barriers to the work of lawyers and the implementation of the legal profession are provided for by the latest amendments to the Law "On the Legal Profession and Legal Advocacy".

- Candidates for admission as trainees of a lawyer will now be agreed upon with the MoJ.<sup>7</sup>

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<sup>6</sup> Ibid., Article 8

<sup>7</sup> Ibid., Article 38

At the same time, the Law does not specify the criteria that the MoJ should follow when approving candidates. It is assumed that even if formal criteria are developed, in practice candidates will be eliminated on the basis of the presence of earlier administrative penalties for certain types of administrative offenses, and as a result of checking their activity on the Internet.<sup>8</sup>

It is worth noting the simplification of the procedure for entering the Bar for former law enforcement officers.<sup>9</sup> The purpose of these changes is to create a mechanism that, on the one hand, will not allow those people who, according to the State, should not participate in legal proceedings as a lawyer, to get into the bar, and on the other hand, will give an opportunity to become lawyers in a simplified manner to those who have proved their loyalty to the State and its bodies.

- Such forms of legal activity as individual lawyers and law offices are abolished; only legal consultation offices remain.
- The powers of the MoJ are being expanded.

With the adoption of amendments to the Law, total control and interference in the activities of the bar will be carried out. At any time, the MoJ may request the information and documents of any lawyer for verification, conduct an extraordinary attestation against any lawyer, without any special grounds.<sup>10</sup> And due to the need provided for by the Law to agree upon all candidates for self-government bodies with the MoJ and the exclusion from the Law of such a body as the disciplinary commission, the MoJ will be able to control the conduct of disciplinary proceedings against lawyers, since the consideration of materials on disciplinary offenses will be considered by the Council of the local bar association, composition of which is being agreed upon with MoJ.

It should also be mentioned that often the leadership of the bar itself, fearing possible problems with the State, arbitrarily interferes in the activities of the bar and lawyers, for example, there is a mandatory coordination of lawyers' speeches in the media: lawyers must agree upon their public speeches with the leadership of the bar.

#### **IV. PLEASE DESCRIBE THE ROLE OF THE NATIONAL BAR ASSOCIATION(S) IN PROTECTING LAWYERS AND THE FREE EXERCISE OF THE LEGAL PROFESSION. IS**

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<sup>8</sup> Defenders.by, "Access to the profession: commentary on changes to the legislation on advocacy": [https://defenders.by/dostup\\_k\\_professii](https://defenders.by/dostup_k_professii)

<sup>9</sup> The Law "On the Legal Profession and Legal Advocacy", Article 9: [http://www.advokat.by/content/zakonodatelstvo/zakon\\_ob\\_advokature/](http://www.advokat.by/content/zakonodatelstvo/zakon_ob_advokature/)

<sup>10</sup> Ibid., Article 38.

## THE BAR ASSOCIATION DE JURE AND DE FACTO INDEPENDENT FROM THE STATE?\*

At the moment national bar associations can not be considered as bodies for the protection of the rights of lawyers.

Formally, bar associations are independent, although the law also allows for the actual interference of the MoJ in their activities. However de-facto national bar associations are extremely dependent on the State. In essence, bar associations are a repressive body, which, despite the fact that it is designed to protect lawyers from interference, punishes lawyers for expressing their civic position and actively protecting the rights of clients.

Viktor Chaichits, the Chairman of the Belarusian Republican Bar Association, at the reporting and election conference of the Minsk City Bar Association, demonstrating approval of the pressure on lawyers within the colleges for expressing their legal opinion, stated: "We have been constantly holding events together with the Belarusian Republican Bar Association and tried to inspire, to stop lawyers from these political statements, political slogans. And perhaps, if there were no such events, then much more lawyers would somehow, somewhere unknowingly, probably, get into the politics."; "We need to show by our actions that we are able to sort things out in <...> our institute, and that in the future we will be more strict and more demanding to those lawyers who violate the law and who "get into politics" there. Dear colleagues, I ask you to pay attention to this and somehow draw the appropriate conclusions, if someone has not done them yet".<sup>11</sup>

It is necessary to mention the opinion of the Chairman of the Minsk City Bar Association Alexey Shvakov, expressed by him at a meeting of the Council of the Minsk City Bar Association, which took place on February 9, 2021: "A lawyer is limited by very large <...> moments. What some blogger or political scientist, someone on television can say, a lawyer simply has no right to say. <...> I think that a lawyer should not be engaged in politics"; "<...> unfortunately, the lawyer is so limited that <...> any citizen is much freer."<sup>12</sup>

## V. PLEASE PROVIDE DETAILED INFORMATION ON THE NUMBER OF LAWYERS THAT HAVE BEEN SUBJECT TO CRIMINAL, ADMINISTRATIVE OR DISCIPLINARY PROCEEDINGS IN THE LAST FIVE YEARS FOR ALLEGED VIOLATIONS OF STANDARDS OF

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<sup>11</sup> Human Rights Centre "Viasna", "Will Senator Chaichits teach lawyers humility?": <https://spring96.org/ru/news/102401>

<sup>12</sup> Human Rights Centre "Viasna", "Protection of opponents of the government in Belarus: how the lawyer was dealt with by the hands of the bodies of lawyer self-government": <https://spring96.org/ru/news/105324>



## PROFESSIONAL CONDUCT. HOW MANY OF THEM WERE FOUND GUILTY? HOW MANY OF THEM WERE ULTIMATELY DISBARRED?

Since August 2020, according to the resource [defenders.by](https://defenders.by), a total of 36 lawyers have been deprived of licenses and 3 lawyers are being prosecuted.<sup>13</sup>

### VI. PLEASE PROVIDE INFORMATION ON ANY CASE WHERE LAWYERS IN YOUR COUNTRY HAVE BEEN SUBJECT TO INTIMIDATION, HINDRANCE, HARASSMENT OR IMPROPER INTERFERENCE, WHETHER FROM STATE AUTHORITIES OR NON-STATE ACTORS, FOR ACTION TAKEN IN ACCORDANCE WITH THEIR RECOGNIZED PROFESSIONAL DUTIES. PLEASE ALSO DESCRIBE THE MEASURES THAT STATE AUTHORITIES HAVE TAKEN TO INVESTIGATE AND BRING PERPETRATORS TO JUSTICE. \*

- **Ludmila Kazak, Maria Kolesnikova's lawyer<sup>14</sup>**

On 24 September 2020, she was abducted by unknown individuals in Minsk, and she was later taken to the Central District Department of Internal Affairs of Minsk, where documents and items covered by attorney–client privilege were seized from her. A report on commission of the administrative offence was filed against Kazak under Art. 23.4 of the Administrative Code (disobedience to a lawful order of the authorities' representatives). Prior to the trial, she stayed in the Okrestina detention centre, despite having three children. Lawyers were not allowed to visit her for 20 hours after she had been detained. The court imposed a penalty of 30 basic units under Art. 23.4 of the Administrative Code. Human rights activists recognise the persecution to be politically motivated, directed against the professional duties of a lawyer to protect political opponents of the current government.

On 19 February 2021, the Qualification Commission on Advocacy of the MoJ decided to deprive Kazak of the law licence due to the fact that "Ludmila Kazak disobeyed a lawful order of a police officer, thereby committing an administrative offence under Art. 23.4 of the Administrative Code".

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<sup>13</sup> Defenders.by, Persecution of lawyers in Belarus after the elections in 2020: [https://defenders.by/persecutionoflawyers\\_2020](https://defenders.by/persecutionoflawyers_2020)

<sup>14</sup> Defenders.by, Persecution of lawyers in Belarus after the elections in 2020: [https://www.defenders.by/persecutionoflawyers\\_2020#kazak](https://www.defenders.by/persecutionoflawyers_2020#kazak)

- **Maxim Znak, Viktor Babariko's lawyer**<sup>15</sup>

In May 2020, together with Iliya Salei, Znak joined the election campaign of the presidential candidate Victor Babariko, providing legal assistance to his headquarters. After the election, he appealed the election results as Svetlana Tikhanovskaya's lawyer; on her behalf he participated in establishing the Coordination Council and became a member of the Presidium of the Coordination Council. Znak was taken into custody on 9 September 2020, and is currently being held in SIZO № 1 in Minsk. He was charged with crimes under Part 3 of Art. 361 of the Criminal Code (calls for actions aimed at harming the national security of the Republic of Belarus). To demonstrate his opposition to the accusations, the lawyer initiated a hunger strike.

On 10 February 2021, Znak was charged with conspiracy to take state power in an unconstitutional way (Part 1 of Art. 357 of the Criminal Code), and with creating and leading an extremist group (Part 1 of Art. 361-1 of the Criminal Code). Those accusations are in addition to the ones that were posed in September 2020 (public calls for actions aimed at harming national security (Part 3 of Art. 361 of the Criminal Code)). On September 6, 2021, the court sentenced Maxim Znak to 10 years in a maximum security colony.

- **Dmitry Laevsky, lawyer of Viktor Babariko, Maxim Znak**<sup>16</sup>

On July 8, 2021, the Disciplinary Commission of the Minsk City Bar made a decision to exclude one of the defenders of the ex-persidential candidate Viktor Babariko, Dmitry Laevsky, from the bar.

The reason for the disciplinary proceedings was Dmitry's speech in the debates in the criminal case against Viktor Babariko. V. Babariko's defense, among other things, was based on the innocence of other people involved in the same case. Such an assessment of the actions of other people, in the opinion of the disciplinary commission, is unacceptable and violates the Rules of Professional Ethics.

Dmitry Laevsky actively criticized new amendments to the legislation on the legal profession.

Detailed information about all cases of harassment and interference in the activities of Belarusian lawyers is available on the resource [defenders.by](https://defenders.by).<sup>17</sup>

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<sup>15</sup> Defenders.by, Persecution of lawyers in Belarus after the elections in 2020: [https://www.defenders.by/persecutionoflawyers\\_2020#znak](https://www.defenders.by/persecutionoflawyers_2020#znak)

<sup>16</sup> Defenders.by, Persecution of lawyers in Belarus after the elections in 2020: [https://www.defenders.by/persecutionoflawyers\\_2020#laevsky](https://www.defenders.by/persecutionoflawyers_2020#laevsky)

<sup>17</sup> Defenders.by, Persecution of lawyers in Belarus after the elections in 2020: [https://defenders.by/persecutionoflawyers\\_2020](https://defenders.by/persecutionoflawyers_2020)

**VII. WHAT ACTIVITIES DOES YOUR ORGANIZATION CARRY OUT TO PROMOTE THE INDEPENDENCE OF THE LEGAL PROFESSION? DO YOU CO-ORDINATE WITH OTHER ORGANIZATIONS WITH SIMILAR FUNCTIONS IN OTHER COUNTRIES OR REGIONS? ARE YOU PART OF A NETWORK FOR THIS PURPOSE? PLEASE GIVE EXAMPLES.**

In order to promote the independence of the legal profession, the Belarusian Helsinki Committee constantly monitors violations of the Basic Principles on the Role of Lawyers, reporting this to various international procedures, using OSCE mechanisms and UN Special Procedures.

In particular, a number of cases were sent to the Special Rapporteur on the Independence of Judges and Lawyers by the Belarusian Helsinki Committee, some of which were included in the communication of the Special Rapporteur with the Belarusian government.<sup>18</sup>

**VIII. TO WHAT EXTENT HAS, THE LEGISLATION AND/OR MEASURES ADOPTED IN YOUR COUNTRY BECAUSE OF THE COVID-19 PANDEMIC, AFFECTED THE EXERCISE OF THE INDEPENDENCE OF THE LEGAL PROFESSION OR SECURITY OF LAWYERS. PLEASE EXPLAIN. \***

There were many examples of lawyers not being allowed into places of forced detention (pre-trial detention centers, IVS, offender isolation centers) to communicate with their clients with reference to Covid-19. At the same time, in our opinion, taking into account the general state policy of ignoring coronavirus infection, which, among other things, was expressed in keeping an excessive number of detainees in cells designed for a smaller number of people, lawyers were not allowed to clients not to prevent the transmission of infection, but to ensure that detainees were completely isolated from the outside world.

**IX. PLEASE DESCRIBE THE MEASURES AND POLICIES YOU WOULD SUGGEST TO BETTER PROTECT AND GUARANTEE THE FREE EXERCISE OF THE LEGAL PROFESSION. \***

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<sup>18</sup> 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, 18 May 2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glid=26362>

The legislation on the legal profession, as well as the practice of its application, need serious reform:

- to bring the legislation of the Republic of Belarus regulating the activities of the legal profession in line with international standards;
- to increase the role of lawyers and the legal profession among state bodies and society as a whole;
- to provide lawyers with genuine guarantees and conditions for the independence and unhindered exercise of their professional duties without intimidation or pressure;
- to ensure genuine equality of the rights of a lawyer and public prosecution in criminal proceedings, competitiveness in civil proceedings;
- to provide lawyers with freedom of expression;
- to minimize the role of the MoJ in the activities of the bar by excluding from the Law “On the Legal Profession and Legal Advocacy” the powers that constitute interference in the activities of bar associations.