



“I Swear to Fulfill the Duties of Defense Lawyer Honestly and Faithfully”

Politically Motivated Crackdown on Human Rights Lawyers in Belarus





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Politically Motivated Crackdown on Human Rights Lawyers in Belarus

Summary	1
Recommendations	6
To the Belarusian Government	6
To the Belarusian Republican Bar Association and Regional Bar Associations	7
To United Nations Member States, Council of Europe, Organization for Security and co-operation in Europe, and the European Union	8
To Bar Associations and Lawyers’ Associations in Europe, Canada, and the US	9
Methodology	10
Key Terms and Acronyms	12
I. Background	13
Repression Following Peaceful Protests in 2010	13
Repression Following Peaceful Protests in 2017	15
New Levels of Repression Following Peaceful Protests in 2020	16
II. Undermining the Right to Legal Counsel	18
The Critical Role of Lawyers in Politically Motivated Cases	18
Interference with Legal Representation	21
Non-Disclosure Notices and Closed Trials	21
Undermining “Equality of Arms”	26
Access to Clients and Confidentiality	26
Access to Legal Services Following Verdicts	31
III. Persecution of Lawyers as a Form of Reprisal	35
Arbitrary Detention and Administrative Prosecution	35
Criminal Prosecution	39
Maksim Znak	40

Aliaksandr Danilevich	44
Vital Brahinetz	47
Anastasiya Lazarenka	50
Yuliya Yurhilevich	53
Other Cases	56
Threats and Harassment	59
 IV. Dismantling the Independence of the Legal Profession – the Façade of Self-Governance	 62
Justice Ministry Control over Self-Governing Bodies	62
Role of the BRBA and Regional Bar Associations	64
Crackdown on Freedom of Expression	65
Failure of the Bar to Represent and Protect the Interests of Lawyers	69
Repression Initiated by the Bar	70
State Control over Organizational Forms of Lawyers’ Work	72
 V. Politically Motivated and Arbitrary License Revocation	75
Termination of Lawyers’ Licenses Following Ministry of Justice Attestation Procedures	75
Termination of Lawyers’ Licenses by the Justice Ministry as a Licensing Body	80
Politically Motivated Disbarment by Regional Bar Associations	81
 VI. International Human Rights Standards	85
Roles, Rights, and Responsibilities of Lawyers	85
Protection from Retaliation for Discharging Professional Duties	85
Independence of the Legal Profession and the Principle of Non-Interference	87
Freedom of Expression	90
Right to a Lawyer, Fair Trial, Effective Access to Legal Services	92
 Acknowledgments	95

Summary

These days, a defense lawyer understands that by defending political prisoners they are not only potentially losing the right to exercise their profession, but can also lose their freedom.... You don't know whether you will make it to your car in the morning or get detained on your way.

— Defense lawyer involved in politically sensitive cases, September 2023

In August 2020, peaceful protests in Belarus began with hundreds of thousands of people gathering in the streets of Minsk and across Belarus following the contested electoral victory of Aliaksandr Lukashenka, who had already served as president for more than 26 years. Belarusian authorities responded with unprecedented brutality, using excessive force, arbitrarily detaining thousands of peaceful protesters, and subjecting them to ill-treatment and torture in detention before conveyor-belt administrative and criminal trials.

Since then, Belarusian authorities have unrolled widespread and systematic repression of any form of dissent. Government critics have been forced into exile or thrown behind bars on politically motivated charges. The number of political prisoners swelled and at time of publication exceeded 1300, according to Human Rights Center “Viasna,” the prominent Belarusian human rights organization. The term “political prisoner,” for the purpose of this report, includes anyone detained, imprisoned or otherwise deprived of their liberty by Belarusian authorities for peacefully exercising their rights and freedoms or defending human rights and fundamental freedoms.

February 2023 and March 2024 reports of the Office of the UN High Commissioner for Human Rights found that some violations committed by Belarusian authorities in the run-up to the 2020 presidential election and in its aftermath “may amount to crimes against humanity” including the “crime of persecution.”

In the face of these grave and widespread rights violations, some lawyers stepped up to represent clients in politically motivated cases. In addition to fulfilling their obligations as defense lawyers to best represent and protect their clients, these lawyers also played a crucial role in shedding light on abuses in detention, including torture and lack of access to healthcare, exposing egregious violations of the right to fair trial, and serving as the only link

between political prisoners and their families and supporters. To further isolate those prosecuted for peacefully exercising their rights and freedoms and stifle information about abuses, the authorities doubled down on their efforts to subjugate the legal profession and targeted those lawyers who refused to play by their increasingly draconian rules.

This report examines the Lukashenka government's retribution against lawyers who represent government critics and its nearly complete takeover of the legal profession in Belarus. The authorities have subjected lawyers in politically motivated cases, as well as lawyers who criticize state abuses, to harassment, arbitrary revocation of their licenses, detention and administrative charges, and politically motivated criminal prosecution. Behind bars, lawyers along with other politically-targeted detainees and convicts, experience retaliatory ill-treatment. The authorities have left no space for earnest and efficient discharge of lawyers' duties in politically motivated cases. At the time of writing, very few lawyers, if any, were willing to take on such cases, which has severely undermined the right to a fair trial, due process, and access to remedy in Belarus.

The report shows that while governmental crackdown on lawyers in times of political unrest in Belarus is not new, the scale and severity of this wave of repression is unprecedented. For the first time in the history of modern Belarus, lawyers have become political prisoners themselves for their work on behalf of clients.

At the time of writing, six lawyers—Maksim Znak, Aliaksandr Danilevich, Vital Brahamets, Anastasiya Lazarenka, Yuliya Yurhilevich, and Aliaksei Barodka—were serving sentences on politically motivated charges ranging from six to ten years. Such charges included providing legal aid to political opposition figures and activists or giving interviews to and sharing information with independent media labelled “extremist” by the authorities.

In addition to politically motivated prosecution, lawyers also have faced politically motivated disbarment. Since 2020, more than 140 lawyers have been disbarred by the regional bar associations or faced arbitrary license revocation by the Justice Ministry following decisions of its Qualification Commission because they supposedly breeched some regulations or were not sufficiently qualified to work as lawyers. These grounds are often easily exposed as flimsy pretexts: on average, those “unqualified” lawyers had more than 13.5 years of experience; many had successfully worked in the legal field for two to

three decades, or more, and some of them were previously recognized by bar associations for their excellence.

State intimidation and persecution of lawyers in Belarus have a detrimental effect on the rights of their clients and are part of a larger set of measures taken by the authorities to undermine the right to legal counsel in politically motivated cases. Authorities often force lawyers in such cases to sign overly broad non-disclosure notices and have held trials on politically motivated charges behind closed doors without justification, preventing lawyers from disclosing information of public importance on the cases and hindering their ability to mount defenses by engaging experts and witnesses. Authorities have severely undermined the access of detainees and convicts to their lawyers, hindered lawyers' access to and communication with clients, and routinely violated the confidentiality of lawyer-client communications.

The report also examines how the Belarusian government has established all-encompassing control over the legal profession in the country by controlling the admission of lawyers into the profession, regulating the way they discharge their duties, and exercising other broad controlling functions including but not limited to revoking lawyers' licenses and essentially stripping lawyers' self-governing bodies of independence.

In November 2021, a set of amendments into the Law on the Bar and Practice of Law in the Republic of Belarus (Law on the Bar) entered into force, which banned lawyers from working individually or opening law firms, requiring them to join legal consultation offices created and supervised by regional bar associations in coordination with the Justice Ministry. The amendments also significantly expanded the Justice Ministry's control over the self-governing bodies of the bar and eased the conditions for obtaining a lawyer's status for ex workers of law enforcement and judiciary.

In recent years, and in complete inversion of international norms on the independence of the legal profession, Belarusian authorities, including Aliaksandr Lukashenka himself, have repeatedly characterized the task of lawyers as that of "statesmen" carrying out duties assigned by the state, with an explicit obligation to protect the interests of the state. Authorities have sanctioned lawyers for criticizing the government, forced them to actively promote state ideology on historical and geopolitical issues, and publicly express support for the state, government officials, and administration policies.

The Belarusian Republican Bar Association (BRBA) and regional bar associations generally have failed to represent and protect the rights of their members and withheld support from lawyers facing obstacles in discharging their duties, which in recent years have come to include harassment, arbitrary detention, and criminal prosecution. Moreover, bar association executive bodies have become vehicles for the agenda of state officials, triggering sanctions against and disbaring lawyers deemed undesirable by the authorities. In light of the control exercised by the state over the formation of the Belarusian bar's executive bodies and their work, these associations cannot be considered genuinely independent self-governing bodies representing the interests of all lawyers in Belarus.

Some lawyers described the current state of the Belarusian justice system and bar as a “total collapse of the legal system” and many felt “disarmed” in the face of systematic and widespread violations of due process, fair trial, and rule of law.

Yet, lawyers noted, that it is their duty to discharge their functions to the highest professional standard, notwithstanding the political motivation of their clients' cases and the unprecedented pressure from the state:

“I swear to fulfill the duties of defense lawyer honestly and faithfully” - is the oath every lawyer takes before starting their professional journey. Taking this oath under current circumstances, when faithful and honest discharge of duties is impossible, is especially disheartening.

By systematically undermining lawyers' guarantees in politically motivated cases and violating the rights of their clients, Belarusian authorities have made a mockery of the administration of justice in courts of law, depriving Belarusians of their right to fair trial and equal protection under the law. International standards underscore the importance of an independent legal profession to the protection of human rights and fundamental freedoms.

The Belarusian government should immediately stop politically motivated prosecutions, end all harassment and attacks on lawyers, and ensure they can discharge their duties without interference or fear of reprisal. The Belarusian bar should end politically motivated retaliation against its members, protect the interests of lawyers and their clients, and uphold the independence of the legal profession. International actors should call on

Belarusian authorities to adhere to their international obligations, stop using the judiciary as a repressive tool, release all political prisoners, and ensure that Belarusian lawyers face no obstacles in carrying out their professional duties in the best interests of their clients.

Recommendations

To the Belarusian Government

- Immediately end the systematic detention and prosecution of anyone who peacefully exercises their rights and freedoms, release all political prisoners, provide effective remedies for victims and survivors of human rights abuses, and carry out prompt and impartial investigations into all alleged human rights violations;
- Immediately end the ill-treatment of prisoners and ensure the protection of their rights and freedoms in confinement, including by ending the pervasive practice of incommunicado detention; grant lawyers and families unhindered access to detainees, and ensure all prisoners receive adequate medical assistance;
- End all harassment of, attacks on, and interference with lawyers, particularly those representing clients in politically motivated cases and exercising their freedom of expression in line with international standards;
- Ensure all courts adhere to fair trial standards. Allow lawyers to effectively perform their professional functions in accordance with the guarantees provided for in article 14 of the International Covenant on Civil and Political Rights (ICCPR) and the UN Basic Principles on the Role of Lawyers, including by instructing law enforcement and state agencies on the protected role and function of lawyers;
- Repeal and amend national legislation to bring domestic law in compliance with international standards to ensure the independence and self-governance of the legal profession in Belarus;
- Restore the licenses of all lawyers who have been disbarred or lost their licenses as a result of discharging their professional duties in accordance with international standards or for exercising their freedom of expression (including those lawyers who lost their license over arbitrary and state-controlled procedures at the Justice Ministry's Qualification Commission);
- Guarantee the independence of disciplinary proceedings against lawyers, which should be carried out by lawyers' self-governing bodies in a fair and objective manner;
- Curtail the Justice Ministry's authority to interfere with independence of the legal profession, including the ministry's authority to issue regulations on the work of lawyers, admit them into the profession, revoke licenses, carry out certification

procedures, initiate disciplinary proceedings, and shape the selection of executive bodies of bar associations;

- Void existing policies undermining the independence of legal profession and ensure separation of the bar from the state, including by abolishing the pervasive practice of forcing lawyers to express support for the government's agenda and interests;
- Respect the right to legal assistance, including by removing arbitrary obstacles to lawyers' access to clients, safeguarding lawyer-client privilege, stopping the practice of making lawyers sign arbitrary and overly broad non-disclosure obligations, and ensuring fair and public trials and full equality of arms in courts of law;
- Promptly comply with repeated requests by the UN special rapporteur on the human rights situation in Belarus to conduct a country visit.

To the Belarusian Republican Bar Association and Regional Bar Associations

- Immediately end retaliation against members for carrying out professional duties or legitimately exercising their freedom of expression, and ensure lawyers targeted on such grounds have access to an effective remedy;
- Repeal internal regulations that undermine the unhindered provision of legal assistance;
- Advocate resolutely with the Belarusian government in support of the above recommendations and for Belarus's adherence to international standards on the role of lawyers and the right to a fair trial;
- Take measures to actively protect the interests of lawyers, defend the right of all accused to an effective defense regardless of the charges, and emphasize that lawyers cannot be identified with or punished for the alleged crimes of their clients;
- Push back consistently and in principled fashion against the ongoing severe erosion of the bar's professional autonomy and integrity, and the state's overarching control of the bar;
- Encourage regional bar associations to draw up rosters of lawyers to visit prisons to provide free legal advice and assistance to prisoners.

To United Nations Member States, Council of Europe, Organization for Security and Co-operation in Europe, and the European Union

- Refrain from any cooperation with the Belarusian Republican Bar Association and regional bar associations until they become independent self-governing bodies representing the interests of Belarusian lawyers;
- Call on the government of Belarus and the Belarusian bar to respect the rights of lawyers and to end arbitrary arrests, harassment, retaliation, and attacks against them;
- Develop and fund programs to support lawyers who have faced retaliation for their professional activities or exercise of freedom of expression and examine ways of integrating Belarusian lawyers in exile into the legal profession in host countries;
- Recognize Belarusian lawyers who have faced retaliation for their professional activities in defending clients in politically motivated cases as human rights defenders and afford them the requisite protection, including assistance with access to visas, funding and protection in exile and protection from transnational repression;
- Consider imposing coordinated, targeted sanctions against the Justice Ministry officials and leaders of the Belarusian bar responsible for the systematic and widespread abuses against lawyers working on politically motivated cases and exercising their freedom of expression;
- Recognize the Belarusian Association of Human Rights Lawyers as a key independent organization of Belarusian lawyers, and support its efforts to promote and protect the human rights of lawyers deprived of their right to exercise their profession in retaliation for discharging their duties and exercising their freedom of expression, and to improve the provision of legal aid in Belarus;
- Express solidarity with and provide support to Belarusian human rights defenders working to deter politically motivated repression and document cases of grave rights violations for future accountability;
- Support independent information sources providing independent coverage of events in Belarus and promoting universal human rights principles.

To Bar Associations and Lawyers' Associations in Europe, Canada, and the US

- Advocate for the above recommendations, in particular , for Belarusian authorities, and bar, to uphold international human rights standards, ending politically motivated persecution, ensuring independence and guarantees for legal profession.
- Privately and publicly express concern at the interference of the government in the work of lawyers in Belarus;
- Support Belarusian lawyers who have experienced or face retaliation for their legitimate professional activities, including by monitoring politically motivated cases against lawyers and, when relevant, providing third party interventions to courts and international agencies;
- Refrain from any cooperation with the Belarusian Republican Bar Association and regional bar associations until they become independent self-governing bodies representing the interests of Belarusian lawyers.

Methodology

This report was researched and drafted by Human Rights Watch in collaboration with Belarusian Association of Human Rights Lawyers and Right to Defence (defendersbelarus.org), an independent Belarusian project providing informational support to lawyers and human rights defenders.

Research for the report included Human Rights Watch remote or in-person interviews with 19 lawyers from several regions of Belarus. All lawyers interviewed provided verbal informed consent to participate and received no compensation. In many instances, the details of lawyers' cases are withheld and their names are disguised with initials (which do not reflect real names) to protect their identities but are known to the authors of the report. Human Rights Watch also interviewed representatives of seven international and Belarusian human rights organizations working on protecting lawyers' rights and documenting politically motivated repressions in Belarus.

Based on information available in the public domain and interviews with delicensed lawyers, the authors of the report analyzed 145 cases in which the Justice Ministry revoked lawyers' licenses, following arbitrary attestation proceedings, unwarranted disciplinary proceedings, in many instances following their defense of clients against politically motivated prosecution or after they themselves spoke out on human rights issues.

The report also draws on analysis of other primary and secondary sources, including relevant legislation and by-laws; information publicly available on the websites of the Justice Ministry and other state bodies, as well as on websites of the Belarusian Republican Bar Association (BRBA) and regional bar associations; independent media reports; and reports and official statements carried on social media channels.

The report also draws on numerous publications by Right to Defence and on "The Crisis of the Belarusian Bar: How to Restore the Right to Defence," a joint report by Right to Defence, Center for Constitutionalism and Human Rights, and Helsinki Foundation for Human Rights.

Human Right Watch wrote to the Belarusian Justice Ministry and the Belarusian Republican Bar Association in April 2024 seeking their response to a summary of the report findings. At the time of writing no response had been received.

Key Terms and Acronyms

BRBA	Belarusian Republican Bar Association
GUBOPiK	Interior Ministry's Main Directorate for Combating Organized Crime and Corruption
KGB	State Security Committee
Legal consultation offices	A form of organization of lawyers' work; created and supervised by regional bar associations in coordination with the Justice Ministry.
Political prisoner	For the purpose of this report, the term "political prisoner" includes anyone deprived of their liberty by the authorities for their beliefs or peaceful exercise of their rights and freedoms; or for defending human rights and fundamental freedoms; or based on their protected characteristics such as gender, race, language etc. This definition is spelled out in the "Guidelines on the Definition of Political Prisoners" created by a working group of human rights defenders from Azerbaijan, Belarus, Georgia, Lithuania, Poland, Russia, and Ukraine. ¹
Qualification Commission	A body under the Justice Ministry tasked with carrying out admission examination ("qualification examination") mandatory for obtaining lawyers' license, re-certification of lawyers and other decisions regarding lawyers' license.
Re-certification of lawyers	A procedure to evaluate a lawyer's knowledge of law, compliance with the law, professional and personal qualities, as well as to determine whether a lawyer can continue carrying out their duties in case there is an indication that they might lack qualification. Such re-certification can be periodic (every five years) or extraordinary (ad hoc).
SIZO	A pre-trial detention facility

¹ "Guidelines on the Definition of Political Prisoners," III Belarusian Human Rights Forum, October, 2023, https://spring96.org/files/misc/politprisoner-guidelines-final_en.pdf, (accessed May 14, 2024).

I. Background

Aliaksandr Lukashenka has held the office of the President in Belarus since its establishment in 1994, he is now serving his sixth consecutive term. Throughout his rule, Lukashenka and his government have ruthlessly suppressed dissent in the country.

In 1997, Lukashenka issued a decree granting the Justice Ministry authority to license and regulate the work of lawyers in order to “increase the quality of the legal services.” This marked the beginning of the ministry’s three-decades-long journey towards total control over the legal profession in Belarus.²

The key milestones in the governmental crackdown on lawyers and control of the legal profession took place in the context of broader politically motivated repression in response to public discontent.

Repression Following Peaceful Protests in 2010

In December 2010, around 30,000 people took to the streets of Minsk, the national capital, to protest Aliaksandr Lukashenka’s contested victory in the presidential election. Belarusian authorities responded by brutally suppressing the protests, arresting hundreds, and charging dozens with “organizing or participating in riots,” including five former presidential candidates.³ Human rights organizations, including Human Rights Watch, documented widespread denial of legal assistance to detainees, including denial of private meetings with or calls to a lawyer, both in administrative and criminal cases.⁴

² Decree of the President of the Republic of Belarus No. 12 of May 3, 1997, “On measures to improve the exercise of the professions of advocates and notaries” (Декрет Президента Республики Беларусь от 03.05.1997 № 12 «О некоторых мерах по совершенствованию адвокатской и нотариальной деятельности в Республике Беларусь») which, amongst other measures, requires every advocate to be a member of a bar association.

³ Human Rights Watch, *Shattering Hopes: Post-Election Crackdown in Belarus* (New York: Human Rights Watch, 2011), <https://www.hrw.org/report/2011/03/14/shattering-hopes/post-election-crackdown-belarus>, (accessed May 14, 2024).

⁴ Ibid.

Between January and August 2011, the Justice Ministry revoked the licenses of at least nine lawyers in retaliation for representing clients in politically motivated cases following the December protests.⁵

In January, the Justice Ministry initiated “inspections” of all lawyers and all legal consultation offices operated by the Minsk City Bar Association after its presidium (leadership body) had repeatedly refused to initiate disciplinary proceedings against specific lawyers identified by the ministry. The “inspections” were conducted jointly with the State Security Committee (KGB), which has no mandate for such engagement.⁶

The Justice Ministry’s Qualification Commission, which amongst other tasks organizes and administers the professional legal entry exam, admissions process and re-certification of lawyers, used minor errors in paperwork and other bureaucratic pretexts to revoke the licenses of Aleh Aheyau, Tatsiana Aheyeva, Uladzimir Tolstik, and Tamara Harayeva for “grave violations of law incompatible with the title of a lawyer.” All of these lawyers were known for representing clients in politically motivated cases.⁷

In July 2021, the UN Human Rights Committee found that by arbitrarily revoking the license of Aleh Aheyau, who represented a defendant in a politically motivated case and spoke to the media about violations of the rights of his client, Belarusian authorities had violated Aheyau’s freedom of speech and right to a fair trial.⁸

In March 2011, following the submission of the Justice Ministry on alleged violations, the Minsk City Bar Association disbarred Pavel Sapelko, another prominent lawyer representing defendants in politically motivated cases.⁹

⁵ UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Belarus, Miklos Haraszti, A/HRC/23/52, April 18, 2013, <https://www.ohchr.org/en/documents/country-reports/ahrc2352-report-special-rapporteur-situation-human-rights-belarus-miklos>, (accessed May 14, 2024).

⁶ The Observatory, Paris Bar, HRC “Viasna,” *Belarus: Control Over Lawyers Threatens Human Rights*, p. 16, <https://www.fidh.org/IMG/pdf/rapport-belarus-ve.pdf>, (accessed May 14, 2024).

⁷ Ibid.

⁸ UN Human Rights Committee, “Views Adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2862/2016, CCPR/C/132/D/2862/2016, July 15, 2021, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/132/D/2862/2016&Lang=en, (accessed May 14, 2024).

⁹ “Belarus: Disbarment of human rights lawyer Mr. Pavel Sapelka,” Viasna news release, March 15, 2011, <https://spring96.org/en/news/41732>, (accessed May 14, 2024).

In mid-June 2011, the Ministry of Justice initiated an “extraordinary re-certification” of all lawyers in Belarus to “increase [their] accountability and quality of professional duty performance.” Hanna Bakhtsina, Darya Lipkina, and Iryna Burak, all lawyers in politically motivated cases, did not “pass” the re-certification. Following an appeal to the ministry’s Qualification Commission, the decision in their cases was reversed. However, in August, the Qualification Commission did not certify Tamara Sidarenka, also a lawyer in a politically motivated case.¹⁰

The Ministry of Justice also removed “undesirable” lawyers from the Qualification Commission, and the Minsk City Bar Association removed them from its presidium. The authorities also pushed through parliament a set of legislative amendments to increase the Justice Ministry’s control over the legal profession in Belarus.¹¹

Repression Following Peaceful Protests in 2017

In March 2017, a wave of large-scale peaceful protests took place against Presidential Decree No. 3, imposing an unemployment tax on citizens. The protests were brutally suppressed, and hundreds of peaceful protesters were arbitrarily detained.¹²

Days before the planned protests, authorities arrested 35 people in the “Patriot” case, also known as the “White Legion” case, alleging that they had created an anti-government “unlawful armed unit.” Among those arrested were public officials and activists from the unregistered NGO “Malady Front” [Young Front] and members of the social-democratic party Narodnaya Gromada.¹³ In November 2017, the Investigative Committee closed the case, dropping all charges against the 35.¹⁴ However, in September 2017, eight of the 16 lawyers representing the defendants in the “White Legion” case were subjected to an

¹⁰ UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in Belarus, Miklos Haraszti, A/HRC/23/52, April 18, 2013, <https://www.ohchr.org/en/documents/country-reports/ahrc2352-report-special-rapporteur-situation-human-rights-belarus-miklos>, (accessed May 14, 2024).

¹¹ The Observatory, Paris Bar, HRC “Viasna,” *Belarus: Control Over Lawyers Threatens Human Rights*, p. 10, <https://www.fidh.org/IMG/pdf/rapport-belarus-ve.pdf>, (accessed May 14, 2024).

¹² “Belarus: ‘Freedom Day’ Crackdown,” Human Rights Watch news release, April 4, 2017, <https://www.hrw.org/news/2017/04/04/belarus-freedom-day-crackdown>, (accessed May 14, 2024).

¹³ The Observatory, Paris Bar, HRC “Viasna,” *Belarus: Control Over Lawyers Threatens Human Rights*, p. 7, <https://www.fidh.org/IMG/pdf/rapport-belarus-ve.pdf>, (accessed May 14, 2024).

¹⁴ “Belarus Drops Charges Against Group Authorities Had Accused of Plotting Riots,” Radio Free Europe Radio Liberty Belarus Service, December 1, 2017, <https://www.rferl.org/a/belarus-white-legion-drops-charges-riots/28890964.html>, (accessed May 15, 2024).

extraordinary re-certification procedure at the Justice Ministry's Qualification Commission. Lawyer Hanna Bakhtsina did not “pass” and consequently lost her license, and seven other lawyers were declared only “partially compliant with legal requirements.”¹⁵

New Levels of Repression Following Peaceful Protests in 2020

On the night of August 9, 2020, following the highly contested victory of Aliaksandr Lukashenka in the presidential election, hundreds of thousands of peaceful protesters took to the streets of Minsk and other cities across Belarus. In the run-up to the election, authorities had jailed several opposition politicians aspiring to put their names on the ballot.¹⁶ The elections were neither free nor fair and there were credible reports of massive ballot rigging.¹⁷

The protesters faced unprecedented levels of police brutality on the streets, mass arbitrary detentions, as well as torture and ill-treatment behind bars.¹⁸ In the next few months, Belarusians continued protesting peacefully despite this intense repression.¹⁹

In the three and a half years following the announcement of the election results, tens of thousands of people, including opposition figures and their supporters, independent journalists, human rights defenders, artists and writers, trade unionists, activists, and peaceful protestors, were arrested or imprisoned on politically motivated charges.²⁰ Behind bars, those detained, prosecuted and convicted in politically linked cases faced ill-

¹⁵ The Observatory, Paris Bar, HRC “Viasna,” Belarus: Control Over Lawyers Threatens Human Rights, p. 13, <https://www.fidh.org/IMG/pdf/rapport-belarus-ve.pdf>, (accessed May 14, 2024).

¹⁶ Human Rights Watch, “Belarus: Activists, Journalists Jailed as Election Looms,” Human Rights Watch news release, <https://www.hrw.org/news/2020/05/22/belarus-activists-journalists-jailed-election-looms>, (accessed May 14, 2024).

¹⁷ Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus, <https://www.osce.org/files/f/documents/2/b/469539.pdf>, (accessed May 14, 2024).

¹⁸ “Belarus: Systematic Beatings, Torture of Protesters,” Human Rights Watch news release, September 15, 2020, <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>, (accessed May 14, 2024).

¹⁹ “Belarus: Unprecedented Crackdown,” Human Rights Watch news release, <https://www.hrw.org/news/2021/01/13/belarus-unprecedented-crackdown>, (accessed May 14, 2024).

²⁰ UN Human Rights Council, “Situation of the human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath,” Report of the United Nations High Commissioner for Human Rights, A/HRC/52/68, February 3, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5268-belarus-run-2020-presidential-election-and-its-aftermath-report>, (accessed May 14, 2024).

treatment often amounting to torture, and prolonged isolation and incommunicado detention, some detentions constituting enforced disappearances.²¹

Those charged with offenses have faced systematic violations of the rights to due process and a fair trial. Judges not only failed to protect the rule of law and uphold fundamental rights in their courtrooms and the processes they oversaw, but themselves facilitated violations, due to their lack of independence and tight control enjoyed by the government. Regrettably, judges in Belarus have too often become an instrument of repression rather than a tool for holding authorities accountable for violations.

²¹ “Belarus must release all detainees held on political grounds and protect their rights: UN experts,” United Nations press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024); UN Human Rights Council “Situation of the human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath,” Report of the United Nations High Commissioner for Human Rights, A/HRC/52/68, February 3, 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5268-belarus-run-2020-presidential-election-and-its-aftermath-report>, (accessed May 14, 2024); UN Human rights council, “OHCHR examination of the human rights situation in Belarus, Background and mandate,” <https://www.ohchr.org/en/hr-bodies/hrc/ohchr-belarus/index>, (accessed May 14, 2024).

II. Undermining the Right to Legal Counsel

The Critical Role of Lawyers in Politically Motivated Cases

All the lawyers interviewed for this report, as well as colleagues and family members of political prisoners interviewed by Human Rights Watch and other rights groups, attested to the vital role of lawyers in politically motivated cases in Belarus.²² The right to independent legal counsel lays the foundation for the right to a fair trial, access to a remedy, justice, and rule of law.

In Belarus, political prisoners face violations of their rights and freedoms during preliminary investigations, in court, and following the verdict and transfer to penitentiary institutions. Such violations include the restriction of communications and denial of access to lawyers, ill-treatment, isolation cells, and, in the worst cases incommunicado detention and torture.²³ Placement of political prisoners into even harsher conditions than the general prison population is the norm.²⁴ One of the lawyers interviewed by Human Rights Watch said:

The participation of a lawyer is important to anyone, but in a situation where authorities can severely limit all your rights purely for political motive, it is even more valuable.²⁵

Since 2020, thousands of individuals have become political prisoners in Belarus.²⁶ According to Justice Ministry statistics, the overall number of lawyers in the country decreased from 2,200 in January 2020 to 1,602 in January 2024, leaving roughly one lawyer

²² HRC “Viasna,” *Political Prosecution for Political Reasons: Belarus 2020-2021*, (HRC “Viasna,” Minsk, 2021), p. 33, https://spring96.org/files/book/en/criminal_prosecution_for_political_reason_20-21.pdf, (accessed May 14, 2024).

²³ “Belarus must release all detainees held on political grounds and protect their rights: UN experts,” United Nations press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024).

²⁴ Ibid.

²⁵ Human Rights Watch interview with lawyer Liudmila Kazak via phone, October 8, 2023.

²⁶ “Human Rights Situation in Belarus: October 2023,” HRC “Viasna” news release, April 11, 2023, <https://spring96.org/en/news/113244>, (accessed May 14, 2024).

per 5,700 residents.²⁷ Between the generally low number of lawyers in Belarus, the qualifications required in politically motivated cases, and the risks involved, only a limited number of lawyers step up to represent clients in such cases. Due to continuous repression and the intimidation of lawyers representing political prisoners, finding a lawyer ready to take on a politically motivated case and provide effective legal counsel has become extremely difficult, if not impossible.²⁸

In a situation in which there is no prospect of a fair trial, lawyers say that presenting a defendant's position on the case, even with no hope for acquittal, is crucial to the dignity of their clients and essential if there is to be any hope of safeguarding their fundamental rights.²⁹ In addition to representing and defending clients in court, lawyers representing political prisoners file complaints about violations of their clients' rights and bring the violations to public attention when competent authorities refuse to address them. These include violations of the rights of political prisoners already serving their sentences in penitentiary institutions and suffering ill-treatment and other abuses.

When authorities restrict the communications of political prisoners with the outside world, lawyers become the only channel through which they can share and receive information. A trusted defense lawyer provides critical support for clients in politically motivated cases who are often isolated and nearly always under pressure from authorities.³⁰ As one lawyer told us:

²⁷ "Who became a lawyer in 2023," Right to Defence news release, February 21, 2024, <https://defendersbelarus.org/kto-stanovilsya-advokatom-v-2023-godu>, (accessed May 14, 2024).

²⁸ American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, p. 35, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

²⁹ Human Rights Watch interviews with lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer Liudmila Kazak via phone, October 8, 2023; lawyer Tatsiana Lishankova via phone, September 19, 2023; lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer B.M. via phone (name withheld at their request), September 21, 2023; lawyer F.R. via phone (name withheld at their request); September 25, 2023, lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; and lawyer I.E. in person (name withheld at their request), September 26, 2023.

³⁰ Human Rights Watch interview with lawyer Liudmila Kazak, October 8, 2023; lawyer Tatsiana Lishankova, September 19, 2023; lawyer B.M. via phone (name withheld at their request), September 21, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; and lawyer I.E. in person (name withheld at their request), September 26, 2023.

For [my client, who is a political prisoner], I was a huge source of support. She knew I was fighting for her. My presence helped when she talked [during the trial] about being tortured [in detention]. It is always very important ... for people to know that there is someone 100 percent on their side. And that this person will do everything to show that what is happening to them is unlawful and unfair.³¹

Several lawyers emphasized the distressing effect that their abrupt exit from cases following their politically motivated disbarment had on their clients.³² In addition to the detrimental effect it has on the defense, it violates the right of a defendant to have a lawyer of their choosing.³³ One lawyer told Human Rights Watch that he had to take over a case following the disbarment of his colleague and signed the contract with the family member of a political prisoner. When the lawyer came to the colony to see his new client, the client was deeply distressed, and it took a while to convince the client that the lawyer was in fact sent by the family and could be trusted.³⁴

Since February 2023, Belarusian authorities have subjected at least six high profile political prisoners to arbitrary isolation in punishment cells and denied them any communication with the outside world, including with their lawyers, for more than a year.³⁵ Such prolonged detention facilitates the perpetration of torture and other cruel, inhuman, and degrading treatment, as well as constitutes such treatment on its own, and carries risk of enforced disappearance.³⁶

³¹ Human Rights Watch interview with lawyer Tatsiana Lishankova, September 19, 2023.

³² Human Rights Watch interview with lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer Tatsiana Lishankova, September 19, 2023; lawyer G.F. in person (name withheld at their request), September 26, 2023; Human Rights Watch interview with lawyer H.N. in person (name withheld at their request), September 26, 2023.

³³ International Covenant on Civil and Political Rights, art. 14, para. 3 (b).

³⁴ Human Rights Watch interview with lawyer P.A. via phone (name withheld at their request), April 21, 2024.

³⁵ See sections “Interference with Legal Representation” and “Criminal Prosecution” below in this report.

³⁶ UN Office of the High Commissioner for Human Rights, “Torture and other cruel, inhuman or degrading treatment or punishment,” Commission on Human Rights resolution 2003/32 para. 14.

<https://www.refworld.org/legal/resolution/unchr/2003/en/39170>, (accessed May 16, 2024);

“Belarus must release all detainees held on political grounds and protect their rights: UN experts,” United Nations press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024); UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, December 16, 2014, [https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2FGC%2F35&Language=E&DeviceType=Desktop&LangRequest](https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2FC%2FGC%2F35&Language=E&DeviceType=Desktop&LangRequested=False) ed=False, (accessed May 16, 2024); UN Human Rights Council (HRC), Working Group on Arbitrary Detention (WGAD),

Interference with Legal Representation

Non-Disclosure Notices and Closed Trials

Under Belarusian law, the state investigator in charge of a case is entitled to request that defendants, their lawyer and other participants in pre-trial proceedings sign non-disclosure clauses.³⁷ Disseminating information about a pre-trial investigation after signing a non-disclosure notice constitutes a crime, unless authorized by the investigator.³⁸

After 2020, investigators increasingly forced lawyers in politically motivated criminal cases to sign overly broad non-disclosure notices.³⁹

One lawyer told Human Rights Watch that public scrutiny is especially important in politically motivated cases when human rights violations are committed against detainees by the authorities.⁴⁰ Another lawyer said that overly broad and arbitrary non-disclosure notices became widespread starting in 2020, and seemed purposefully designed to silence lawyers in politically motivated cases:

Before 2020, non-disclosure notices were only used in certain categories of criminal cases. But the need to communicate with mass media arose specifically after the intensification of [politically motivated] repression and the authorities acted to stifle such communications.⁴¹

“Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14-18 November 2022,” A/HRC/WGAD/2022/84, para. 87, <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session95/A-HRC-WGAD-2022-84-AEV.pdf>, (accessed May 16, 2024); UN General Assembly (sixty-eighth session, 2014), “Resolution adopted by the General Assembly on 18 December 2013,” A/RES/68/156, para. 27. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F68%2F156&Language=E&DeviceType=Desktop&LangRequested=False>, (accessed May 16, 2024).

³⁷ Criminal Procedure Code № 295-3 of 1999 (amended in July 2023), art. 198.

³⁸ Criminal Code № 275-3 of 1999 (amended in December 2022), art. 407.

³⁹ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to Return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>, (accessed May 14, 2024); Human Rights Watch interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

⁴⁰ Human Rights Watch interview with lawyer I.E. in person (name withheld at their request), September 26, 2023.

⁴¹ Human Rights Watch interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

In most cases we examined, investigators did not explain the grounds for issuing a non-disclosure notice and often did not specify which information was subject to the notice.⁴² A lawyer recalled:

When asked to explain, what [information] specifically fell under the non-disclosure notice, investigators replied “decide for yourselves.”⁴³

Belarusian authorities arbitrarily have used “breach of non-disclosure notice” as a pretext for the prosecution of lawyers in politically motivated cases and the revocation of their licenses.⁴⁴

As a result, lawyers are forced to self-censor their public communications and refrain from disclosing any information about the case to third parties, including the client’s family members and any external experts they want to engage in the defense.⁴⁵ One lawyer said:

Say, I want an expert to testify or provide written analysis. Due to the non-disclosure notice, I cannot show them the findings of the previous experts or share the details of the case.⁴⁶

Meanwhile, law enforcement officials are at liberty to make false public statements claiming to have established the guilt of defendants in politically motivated cases, which undermine the protections of the rules on presumption of innocence and equality of arms that should exist in the adversarial system.⁴⁷

⁴² Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

⁴³ Human Rights Watch interview with lawyer I.E. in person (name withheld at their request), September 26, 2023.

⁴⁴ See sections on Politically Motivated and Arbitrary License Revocation and Persecution of Lawyers as a Form of Reprisal in this report.

⁴⁵ Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023, Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

⁴⁶ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

⁴⁷ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>, (accessed May 14, 2024).

The practice of closed trials in politically motivated cases has also become widespread over the past three years.⁴⁸

In line with the fair trial rights, Belarusian criminal law stipulates that “transparency” is one of the core principles of court proceedings.⁴⁹ A judge can, however, close a trial to the public to prevent the dissemination of protected information such as state secrets, information about a trial participant’s private life, or information that could be degrading to them. Court hearings can also be closed to the public in the interests of the safety of trial participants and those close to them, as well as in cases where defendants are younger than 16. Lawyers can be held criminally liable for dissemination of information about closed trials.⁵⁰

In politically motivated cases, judges increasingly have closed trials to the public in absence of any legal grounds, violating the defendants’ right to a fair trial.⁵¹ Lawyers told us that the severe restrictions on dissemination of information entailed by closed trials undermine their ability to build a defense. When engaging external independent experts during closed trials, for example, lawyers cannot share relevant case files or explain important details of the case to them.⁵²

Lawyers interviewed for this report said that once a hearing is closed, fair trial standards are more likely to be violated and judges are more inclined to dismiss motions made by

⁴⁸ Barys Zvozkau Belarusian Human Rights House, Belarusian Association of Human Rights Lawyers, Belarusian Helsinki Committee, DIGNITY – Danish Institute Against Torture, Human Constanta, International Committee for the Investigation of Torture in Belarus, Federation for Human Rights, Legal Initiative, REDRESS, Respect – Protect – Fulfill, Right to Defence, HRC “Viasna,” World Organisation against Torture, *Systemic Issues That Prevent the Exhaustion of Local Remedies in Belarus, and the Inability to Demonstrate Information About Exhaustion to the UN Human Rights Committee*, September, 2023, <https://redress.org/wp-content/uploads/2023/10/Systemic-ISSUES-THAT-PREVENT-THE-EXHAUSTION-OF-LOCAL-REMEDIES-IN-BELARUS-3.pdf>, (accessed May 14, 2024).

⁴⁹ Criminal Procedure Code № 295-3 of 1999 (amended in July 2023), art. 23.

⁵⁰ Criminal Code № 275-3 of 1999 (amended in December 2022), art. 407.

⁵¹ Barys Vozkau Belarusian Human Rights House, Belarusian Association of Human Rights Lawyers, Belarusian Helsinki Committee, DIGNITY – Danish Institute Against Torture, Human Constanta, International Committee for the Investigation of Torture in Belarus, Federation for Human Rights, Legal Initiative, REDRESS, Respect – Protect – Fulfill, Right to Defence, HRC “Viasna,” World Organisation against Torture, *Systemic Issues that Prevent the Exhaustion of Local Remedies in Belarus, and the Inability to Demonstrate Information About Exhaustion to the UN Human Rights Committee*, September, 2023, <https://redress.org/wp-content/uploads/2023/10/Systemic-ISSUES-THAT-PREVENT-THE-EXHAUSTION-OF-LOCAL-REMEDIES-IN-BELARUS-3.pdf>, (accessed May 14, 2024); Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023.

⁵² Human Rights Watch interview with lawyer H.N. in person (name withheld at their request), September 26, 2023.

the defense.⁵³ Maryia Kolesava-Hudzilina, lawyer who represented clients in politically motivated cases, said:

When the courtroom's doors get shut, human rights violations are most likely committed behind those doors. [The court] does not give proper consideration to the defense's plea to disqualify the judge, ... or any [other] motions, and does not call on our witnesses.⁵⁴

Human rights lawyer Siarhei Zikratski, who represented independent journalists in politically motivated cases, said:

A judge in an open versus a closed hearing are two different people. The judge feels much freer [to violate fair trial principles] without public scrutiny.⁵⁵

Mikhail Kiryliuk, a lawyer who represented political prisoners, told Human Rights Watch that when he asked the KGB investigator what kind of evidence he intended to present, the investigator responded, "we do not need any proof, the hearing will be closed."⁵⁶

In closed trials, the prosecution often classifies evidence, including information regarding the grounds for indictment and the identity of witnesses.⁵⁷ Lawyer Tatsiana Lishankova, who has represented numerous rights defenders and other political prisoners, said:

A closed trial complicates the defense. For example, in these types of cases the [prosecution's] experts can be made classified. You aren't able to verify their credentials, they are not called to testify, ostensibly to ensure their security, even though the trial is closed. You cannot inquire about their

⁵³ Human Rights Watch interview with lawyer H.N. in person (name withheld at their request), September 26, 2023; Human Rights Watch interview with Maryia Kolesava-Hudzilina in person, September 21, 2023; Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023; Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

⁵⁴ Human Rights Watch interview with Maryia Kolesava-Hudzilina in person, September 21, 2023.

⁵⁵ Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023.

⁵⁶ Human Rights Watch interview with lawyer Mikhail Kiryliuk via phone, September 21, 2023.

⁵⁷ Human Rights Watch interview with Maryia Kolesava-Hudzilina in person, September 21, 2023; Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

methodology or ask questions. Also, for people [on trial], it's very important to know that someone came to support them in the court room.⁵⁸

Human rights organizations have found that restrictions on information sharing imposed by non-disclosure notices and closed trials also hinder the ability of victims to seek remedy for human rights violations and make individual complaints at the international level, such as to the UN Human Rights Committee, which oversees compliance with the International Covenant on Civil and Political Rights (ICCPR). This is because sharing documents related to the proceedings at the national level can lead to the lawyers' prosecution for breaching non-disclosure notice.⁵⁹ One lawyer said:

Following a closed trial, you cannot disclose the substance of the verdict even to [the client's] relatives. How is one supposed to file a complaint with the [UN] Human Rights Committee? You cannot even attach the verdict.⁶⁰

Additionally, due to the state policy of labelling independent media and human rights groups as “extremist” and “terrorist,” lawyers increasingly fear sharing information, fearing prosecution for aiding terrorist or extremist activities.

Lawyers also said they were not allowed to make copies, including by taking photos, of the prosecution's voluminous case files, which undermines their ability to prepare a defense.⁶¹

⁵⁸ Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

⁵⁹ Barys Vozkau Belarusian Human Rights House, Belarusian Association of Human Rights Lawyers, Belarusian Helsinki Committee, DIGNITY – Danish Institute Against Torture, Human Constanta, International Committee for the Investigation of Torture in Belarus, Federation for Human Rights, Legal Initiative, REDRESS, Respect – Protect – Fulfill, Right to Defence, HRC “Viasna,” World Organisation against Torture, *Systemic Issues That Prevent the Exhaustion of Local Remedies in Belarus, and the Inability to Demonstrate Information About Exhaustion to the UN Human Rights Committee*, September, 2023, <https://redress.org/wp-content/uploads/2023/10/Systemic-ISSUES-THAT-PREVENT-THE-EXHAUSTION-OF-LOCAL-REMEDIES-IN-BELARUS-3.pdf>, (accessed May 14, 2024).

⁶⁰ Human Rights Watch interview with Maryia Kolesava-Hudzilina in person, September 21, 2023.

⁶¹ Human Rights Watch interviews with lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer Liudmila Kazak via phone, October 8, 2023; with lawyer H.N. in person (name withheld at their request), September 26, 2023; lawyer I.E. in person (name withheld at their request), September 26, 2023; lawyer Tatsiana Lishankova via phone, Maryia Kolesava-Hudzilina in person, September 21, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023.

Undermining “Equality of Arms”

Lawyers interviewed for this report noted that in politically motivated trials, their treatment by courts is distinctly different and inferior to the treatment of prosecutors.⁶² As one of them pointed out, the treatment leaves defense lawyers feeling “disarmed.”⁶³ Judges in such cases have become increasingly unresponsive to lawyers’ pleas to access the full case materials of the preliminary investigation or the testimonies of “classified” witnesses or independent experts.⁶⁴ Additionally, lawyers struggle to mount an effective defense, as the specifics of the alleged crimes for which their clients are charged are often too vague: for example, a client is charged with “aiding extremism” but the authorities do not spell out which particular episode, activities, or publications the charge stemmed from.⁶⁵

The equality of parties before the court is a crucial element of the right to a fair trial.⁶⁶ Adversarial elements of the proceedings and the ability to mount an effective line of defense cannot be relegated to a formality in the court of law.

Access to Clients and Confidentiality

The Belarusian authorities have introduced several policies that limit the accessibility of individuals facing politically motivated charges under either criminal or administrative law, as well as the confidentiality of their communications. These policies directly erode defendants’ right to unhindered access to legal counsel and severely undermine lawyers’ ability to discharge their professional duties in line with fair trial standards.

Following the unprecedented spike in politically motivated administrative charges after the 2020 mass protests, detention facilities routinely have denied lawyers access to their clients before, during, and after trial. Authorities also arbitrarily have cited measures introduced in response to the Covid-19 pandemic, lack of available meeting rooms and

⁶² Human Rights Watch interviews with lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer Siarhei Zikratski via phone, September 19, 2023; Maryia Kolesava-Hudzilina in person, September 21, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023.

⁶³ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

⁶⁴ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

⁶⁵ Human Rights Watch interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

⁶⁶ UN Human Rights Committee, “General Comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial,” CCPR/C/GC/32, August 23, 2007, para. 34, para. 13, <https://undocs.org/CCPR/C/GC/32>, (accessed May 14, 2024).

other pretexts to deny access, while state investigators and police officers still have unhindered access to detainees.⁶⁷

Court hearings on politically motivated administrative charges typically take place via Skype with the lawyers physically present in the courtroom and their clients connecting from a detention center.

When the lawyer is not next to you, defense tools cannot be fully utilized and it's a big stress for the client. From my own experience, when your lawyer is not [physically] next to you, you don't feel that you have a defender who is 100 per cent on your side."⁶⁸

In those instances when lawyers were allowed to speak with their clients via Skype before a court hearing, they were not given enough time. For instance, one lawyer was given three minutes to consult with the client.⁶⁹ Lawyers stress that these conversations were not confidential, as the court clerk remained in the room with the lawyer and the detention facility convoy guard was next to the client. Sometimes, other individuals awaiting trial were also present in the same room with the client.⁷⁰

Belarusian law enforcement authorities increasingly have begun to open criminal cases against individuals initially placed under administrative arrest and used that time to question them in detention facilities without a lawyer, and put pressure on them.⁷¹

In politically motivated criminal cases, authorities increasingly have demanded that lawyers obtain the state investigator's permission to visit their clients in jail. When asked about the legal grounds for obtaining such permission, officials at detention facilities have told lawyers these are "internal regulations."⁷²

⁶⁷ Human Rights Watch interview with lawyer A.O. via phone (name withheld at their request), November 3, 2023.

⁶⁸ Human Rights Watch interview with lawyer F.R. via phone (name withheld at their request), September 25, 2023.

⁶⁹ Human Rights Watch interview with lawyer P.A. via phone (name withheld at their request), April 21, 2024.

⁷⁰ Human Rights Watch interviews with lawyer Tatsiana Lishankova via phone, September 19, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

⁷¹ Right to Defence, *Administrative arrest as a prelude to a criminal case: what the state violates*, February 19, 2024, <https://defendersbelarus.org/admin-arest-kak-preludija-k-ugolpovnomu-presled>, (accessed May 14, 2024).

⁷² Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

Lawyers also have experienced denial or severe restriction of access to their jailed clients, including in the pre-trial detention facility (SIZO) of the KGB in Minsk; SIZO N1 on Valadarskaha street in Minsk; the prison (also used as a SIZO) in Žodzina, a town near Minsk; and a SIZO in the city of Homieľ.⁷³

Lawyers said that detention facility authorities have artificially created long queues for lawyers visiting clients by restricting the number of rooms available for meetings and limiting visitation hours.⁷⁴

They also flagged that as of the autumn of 2020, authorities began introducing special rooms at pre-trial detention facilities for lawyer to meet with clients in political cases.⁷⁵ These rooms are set up in ways that directly violate lawyer-client confidentiality. Human rights lawyer Liudmila Kazak described the experience of meeting with her client, Maria Kalesnikava, a prominent opposition figure prosecuted on politically motivated grounds, in SIZO N1 on Valadarskaha street in Minsk:

There were two rooms [for meetings with certain clients in high profile politically motivated cases] with thick plexiglass partitions with small holes to allow for breathing. To somehow converse with the client, I had to raise my voice, of course. Naturally, this was done so that conversations between lawyers and their clients could be easily overheard. Often, we could hear someone moving behind the wall, apparently, listening [to us]. These “extremely dangerous criminals” like Kalesnikava were also accompanied by a special convoy. And convoy officers stood right behind the door with an open window above it. The arrangement of these rooms did not allow for confidentiality.⁷⁶

⁷³ Human Rights Watch interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

⁷⁴ Human Rights Watch interviews with lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer I.E. in person (name withheld at their request), September 26, 2023.

⁷⁵ Human Rights Watch interviews with lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; lawyer I.E. in person (name withheld at their request), September 26, 2023.

⁷⁶ Human Rights Watch interview with lawyer Liudmila Kazak via phone, October 8, 2023.

According to Kazak, who had also worked with two clients on death row, the two rooms in SIZO N1 previously had been designated for lawyers' meetings with clients sentenced to capital punishment. The rooms were then equipped with a mesh wire netting separating the lawyer from the client as a security measure with a slot for passing documents from lawyer to client. Around October 2020, however, these rooms were repurposed for lawyers' meetings with high profile political prisoners, and that was when the plexiglass with no slot for documents was installed.

By January 2021, similar remodeling of meeting rooms had taken place in Prison N8 in Żodzina, where many political prisoners were held in pre-trial detention. In early 2022, the SIZO in the city of Homieĺ was also equipped with a meeting room split by two glass partitions and bars, which forced lawyers and their clients to have to yell to each other during meetings to be heard.⁷⁷

Many lawyers who work on politically motivated criminal cases also shared concerns about audio and video recording of their meetings with clients in pre-trial detention facilities.⁷⁸

Lawyer Kiriľuk, who represented a client in a politically motivated case, said that during a confidential meeting with the client in a pre-trial detention facility, law enforcement officers ordered him to put his mask back on, and the officers were not hiding the fact that they could see and hear the conversation.⁷⁹

In April 2021, state TV channel ONT broadcasted a video of jailed opposition politician Siarhei Tsikhanouski with his lawyer Natallia Matskevich filmed at SIZO N1 in Minsk during their supposedly confidential meeting. Their conversation was audible on the video.⁸⁰

One lawyer said:

⁷⁷ Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

⁷⁸ Human Rights Watch interviews with lawyer Mikhail Kiriľuk via phone, September 21, 2023; lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer Liudmila Kazak via phone, October 8, 2023; lawyer Tatsiana Lishankova via phone, September 19, 2023; Maryia Kolesava-Hudzilina in person, September 21, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

⁷⁹ Human Rights Watch interview with lawyer Mikhail Kiriľuk via phone, September 21, 2023.

⁸⁰ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>, (accessed May 14, 2024).

Before 2020, we could only guess [that conversations with the clients were listened to and recorded], but we could not even think they would admit to it so openly on TV. There is a CCTV camera in the SIZO KGB room [for meetings with lawyers]. But if you ask about it, they respond, “We can see you but cannot hear you, where did you get this idea from? The sound recording is turned off.”⁸¹

Another practice that became common in politically motivated criminal cases after 2020 is requiring lawyers to pass documents to their clients via pre-trial detention facility authorities. Lawyers said that authorities not only violate confidentiality by reading the documents, but also censor them.⁸²

Several lawyers who faced arbitrary detention said that when they were subjected to searches and detention by law enforcement, officers seized documents related to their clients’ cases and looked through their phones and other devices, in violation of both confidentiality and the right to privacy.⁸³

Lawyers also reported violations of confidentiality of their conversations with clients in penal colonies.⁸⁴ Lawyers who represented prominent political prisoners said that conversations with convicted clients took place in no-contact visitation rooms that were divided by a partition, with the client sitting on one side and the lawyer on the other side.⁸⁵ Conversations took place over the phone while penal colony staff members were present and listened in via a separate phone which can connect to any conversation in the room. One lawyer said that a staff member was also taking notes.⁸⁶ Human rights lawyer Lishankova recollected:

⁸¹ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

⁸² Human Rights Watch interviews with lawyer Liudmila Kazak via phone, October 8, 2023; lawyer A.O. via phone (name withheld at their request) November 3, 2023; Maryia Kolesava-Hudzilina in person, September 21, 2023.

⁸³ Human Rights Watch interviews with lawyer Tatsiana Lishankova via phone, September 19, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023.

⁸⁴ Human Rights Watch interviews with lawyer B.M. via phone (name withheld at their request), September 21, 2023; Maryia Kolesava-Hudzilina in person, September 21, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interview with Maryia Kolesava-Hudzilina in person, September 21, 2023.

It was obvious they were listening [to us] in penal colony. Only the two of us were in the visiting room with the [partition, talking via] phone, and a colony staff member was sitting there, also with the phone [that can connect to any conversation in the room], shamelessly listening to us.⁸⁷

One lawyer noted that penal colony authorities allow lawyers to meet with their clients only in such rooms, even though other rooms with better conditions for maintaining confidentiality often are available.⁸⁸

Access to Legal Services Following Verdicts

UN experts and Belarusian rights groups have documented the widespread and systematic discriminatory placement of political prisoners in Belarus into harsher conditions than faced by other prisoners.⁸⁹ Authorities subject them to prolonged incommunicado detention, denial of adequate and timely medical care, other forms of ill-treatment, and denial of communication with the outside world, including family.

In this context, lawyers noted, access to their clients after a verdict is important not only to preserve their clients' right to legal assistance but also to safeguard other rights such as freedom from torture and other forms of ill-treatment, the right to life, the right to information, and the right to privacy.

Some lawyers representing political prisoners said that while penitentiary institutions were mired in lawlessness, the likelihood of ill-treatment was less if a political prisoner had an active lawyer.⁹⁰

One of the lawyers noted that assisting clients with writing complaints about rights violations serves as a check on prison authorities and discourages prison staff from

⁸⁷ Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

⁸⁸ Human Rights Watch interview with lawyer B.M. via phone (name withheld at their request), September 21, 2023.

⁸⁹ "Belarus Must Release All Detainees Held on Political Grounds and Protect their Rights," OHCHR press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024).

⁹⁰ Human Rights Watch interviews with lawyer B.M. via phone (name withheld at their request), September 21, 2023; lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; lawyer I.E. in person (name withheld at their request), September 26, 2023.

“putting pressure on political prisoners... all these things they can do so easily if the prisoner is all alone without assistance.”⁹¹

Lawyers have found access to their clients in politically motivated cases even more challenging following their transfer to penitentiary institutions after verdicts and sentencing.

Article 62 of the Belarusian Constitution grants everyone the right to legal assistance at any time for the realization and protection of their rights and freedoms. It also prohibits hindering the provision of legal aid.⁹²

Since around February 2023, authorities arbitrarily have subjected high profile political prisoners, such as members of the political opposition, including Maria Kalesnikava, Viktor Babaryka, Siarhei Tsikhanouski, and Mikalai Statkevich, to incommunicado detention in penitentiary institutions, which, among other things, has prevented them from accessing their lawyers. According to Belarusian rights groups, other political prisoners are often denied meetings with their lawyers.⁹³

According to the Belarusian Penal Executive Code, convicted prisoners have a right to meet with their lawyers but need to file relevant meeting requests.⁹⁴ Lawyers said that penitentiary authorities increasingly pretend that no meeting request has been filed or, contrary to past practice (see below), insist on written requests in ways that stymie access to counsel.⁹⁵

One lawyer explained:

⁹¹ Human Rights Watch interview with lawyer I.E. in person (name withheld at their request), September 26, 2023.

⁹² Constitution of the Republic of Belarus of 1999 (amended in March 2022), art. 62.

⁹³ “Belarus Must Release All Detainees Held on Political Grounds and Protect their Rights,” OHCHR press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024).

⁹⁴ Criminal Executive Code № 365-3 of 2000 (amended in June 2022), art. 83, part 6.

⁹⁵ Human Rights Watch interviews with lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer H.N. in person (name withheld at their request), September 26, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

In the past, a few years back, if a lawyer came [to a penitentiary institution] and there was no request filed, the authorities could ask the inmate whether they wanted to have a meeting. If so, [the client] would put a request in writing and have a meeting with lawyer [straight away]. I believe that now all those [political prisoners] we have no contact with certainly know they need to write the requests; they know they need to file them in advance. In this situation it is unclear what's the reasoning behind denying lawyers meetings with clients under the pretext of no request filed. Possibly, the requests either get buried or the prisoners are in no position to write and file them. Today, the most notable figures [political prisoners] are incommunicado.⁹⁶

Another lawyer said:

Since February 2023, [prison management] does not let lawyers in to see some political prisoners under the pretext that there was no [written] request filed by the client. Penal authorities interpret legal norms in their own way. They insist that the request should be in written form, and that it should be filed for each meeting separately.⁹⁷

One lawyer noted inmates in punishment cells are denied pen and paper, making it all but impossible for isolated inmates to make written request while in isolation, a violation of the right to legal assistance.⁹⁸

⁹⁶ Human Rights Watch interview with lawyer A.O. via phone (name withheld at their request), November 3, 2023.

⁹⁷ Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

⁹⁸ Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

International standards require that all prisoners have access to effective legal aid.⁹⁹ Prisoners should, in particular, have access to legal aid for filing requests related to their treatment and the conditions of their imprisonment.¹⁰⁰

Belarusian law does not provide for mandatory legal representation following a conviction, which means that in order to receive legal aid, a convict must have a preexisting contract with a lawyer or sign one via their lawful representatives, such as family members. In cases where lawyers are abruptly disbarred on political grounds, their clients are left with no access to legal aid for a protracted time period while their family or supporters looks for a new lawyer willing to take on a politically motivated case which is extremely difficult in a situation when very few lawyers are willing to take on such cases.¹⁰¹

Lawyers say that when visiting clients in penal colonies, they often are asked by authorities to show all the documents they have with them, are prohibited from bringing in documents, and in some cases face body searches.¹⁰²

⁹⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners, (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, rule 61; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principle 18; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted December 20, 2012, G.A. Res. 67/187, principles 7, 11, and 61; UN 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, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), principle. 8.

¹⁰⁰ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 6.

¹⁰¹ See the section on “Politically Motivated and Arbitrary License Revocation” of this report.

¹⁰² American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

III. Persecution of Lawyers as a Form of Reprisal

Arbitrary Detention and Administrative Prosecution

According to our research, law enforcement authorities have subjected at least 23 lawyers to arbitrary administrative arrests since autumn 2020 after they represented clients in politically motivated cases or publicly spoke out on rights abuses or other issues deemed sensitive by the government. The charges included “disobeying police,” “disseminating extremist materials,” “petty hooliganism,” and “violating the regulations on public gatherings.” Authorities also subjected some lawyers to arbitrary detention and interrogation and then released them without charges.

Lawyers interviewed for this report said that authorities increasingly have employed politically motivated administrative charges against them and their colleagues as a tactic to quickly suspend them from representing their clients in politically motivated cases or in reprisal for their work or public stand on human rights issues.¹⁰³

On March 20, 2023, officers from the Interior Ministry’s Main Directorate for Combating Organized Crime and Corruption (GUBOPiK) arbitrarily detained six lawyers representing clients in high-profile politically motivated cases.¹⁰⁴ The GUBOPiK officers questioned the lawyers, searched their homes and offices, and seized their electronic devices. Three lawyers, namely, Darya Lipkina, Uladzimir Statskevich, and Ivan Chyzhyk, were then released. Two others, Yury Kozikau and Artsiom Semianau were sentenced to one and two consecutive 15-day administrative arrests, respectively. The sixth lawyer, Inesa Alenskaya, was given an administrative fine after three days in detention awaiting the court hearing. All six lawyers then lost their licenses or left the bar.¹⁰⁵

¹⁰³ Human Rights Watch interviews with lawyer Liudmila Kazak via phone, October 8, 2023; lawyer Tatsiana Lishankova via phone, September 19, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer G.F. in person (name withheld at their request), September 26, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

¹⁰⁴ American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

¹⁰⁵ Ibid.

On February 28, 2024, KGB officers carried out a raid against lawyers, detaining at least 12. At the time of writing, the details of the detentions were unknown.¹⁰⁶ Halina Parkhimchyk, one of the lawyers, spent a week in pre-trial detention for alleged participation in the 2020 protests and providing financial aid to victims of repressions via Facebook donations. She was then released on her own recognizance as a suspect in the case and fled the country. Other lawyers arrested in February 2024 were also released.

In 22 cases of administrative prosecution between September 2020 and March 2023, lawyers were stripped of licenses following decisions of bar associations or the Justice Ministry specifically citing their administrative prosecution as grounds. In some cases, law enforcement officers seized lawyer ID cards from the detainees, preventing those lawyers from carrying out their duties immediately after release.¹⁰⁷

Lawyers also said that arbitrary detention and administrative prosecution have served as a means of intimidation, sending a chilling signal to anyone defending political prisoners.¹⁰⁸

[This was done] so that other lawyers would hesitate to defend the interests of political prisoners in Belarus because they could face the same things we did – detention and disbarment.¹⁰⁹

Out of 19 lawyers interviewed for this report, seven had experienced arbitrary detention and five of those seven served short-term administrative arrest sentences.

In some cases, during detention and interrogation, lawyers have experienced beatings, other ill-treatment and torture, including threat of sexual assault, by a variety of law enforcement officials, including riot police, KGB officers, and officers at local police precincts.¹¹⁰

¹⁰⁶ “At least 12 imprisoned: What is known about the KGB raid of lawyers,” HRC “Viasna,” news release, February 29, 2024, <https://spring96.org/ru/news/114606>, (accessed May 14, 2024).

¹⁰⁷ Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

¹⁰⁸ Human Rights Watch interviews with lawyer A.O. via phone (name withheld at their request), November 3, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

¹⁰⁹ Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

¹¹⁰ Human Rights Watch interviews with lawyer Liudmila Kazak via phone, October 8, 2023; lawyer O.U. via phone (name withheld at their request), September 19, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer M.R. via phone (name withheld at their request), September 29, 2023.

On September 24, 2020, in the middle of the day, three plainclothes law enforcement officers in Minsk grabbed human rights lawyer Liudmila Kazak under her arms and dragged her towards a car. Kazak has almost 20 years of experience as a lawyer and represented clients in high-level politically motivated cases and capital punishment cases.

Since this did not look like a [formal] detention to me and [...] no one told me “You are being detained” and why, I started screaming “Help! I am being kidnapped!” They took me to the Central district police department [of Minsk]. I complained about my health, asked for an ambulance but they would not call it. The head of the police department did not only know what was going on [with me] and did not interfere, he did not accept my written complaint and ordered to get me out of his cabinet.¹¹¹

Kazak’s family and lawyer were only informed about her detention late that evening, around eight hours after the fact, and the lawyer was only allowed to see her next morning, at around 11.

Kazak was fined for “disobeying a lawful order of request of an official” and subsequently had her license revoked.

On the evening of November 29, 2022, in Minsk, plainclothes GUBOPiK officers forced human rights lawyer Lishankova out of a taxi and into their vehicle and took her to the GUBOPiK headquarters. Lishankova had practiced law for 10 years and represented several clients in politically motivated cases. Following her arbitrary detention, a court in Minsk sentenced Lishankova to short term arrest on bogus charges of “petty hooliganism” and Minsk City Bar Association subsequently disbarred her citing “commitment of misdemeanors incompatible with the title of a lawyer.”

Lishankova was then sentenced to administrative arrest for “petty hooliganism” and subsequently had her license revoked.

Another lawyer, who asked to withhold his name for security reasons, also spoke about the ill-treatment he experienced in the hands of the law enforcement: “They used brutal

¹¹¹ Human Rights Watch interview with lawyer Liudmila Kazak via phone, October 8, 2023.

force against me [to get my phone’s password]. Naturally, I could not be sure how this was going to end for me. But I realized at that moment I was not tough enough to experiment, so I gave in.”¹¹²

One lawyer said the law enforcement beat them and threatened with taser, forcing them to share passwords to access their devices.¹¹³

Lawyers said that law enforcement officers, sometimes forcefully, accessed their phones following detention and extracted data from their social media chats. Authorities also seized their documents and devices – those they had on their person at the time of detention and those from their homes during searches. In addition to personal information, authorities seized documents and other data containing client-lawyer privileged communications, materials from closed trials, and data protected by non-disclosure agreements.

In Belarus, penitentiary authorities intentionally create worse detention conditions for detainees charged with administrative misdemeanors in politically motivated cases and separate them in “political” cells.¹¹⁴ Three lawyers who served their administrative arrest also reported being confined in cells intended for political prisoners in detention centers.¹¹⁵

In “political” cells, the inmates typically are refused mattresses and bedding, and are forced to sleep on a bare metal bed frame. The cells have bright lights on all night and the guards repeatedly wake the inmates up for roll calls. They are not allowed food parcels, denied books, and pens and paper, which prevents them from writing complaints about detention conditions. Lawyers say the cells are cold but detainees are not allowed warm

¹¹² Human Rights Watch interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

¹¹³ Human Rights Watch interview with lawyer O.U. via phone (name withheld at their request), September 18, 2023.

¹¹⁴ HRC “Viasna,” *Politically Motivated Administrative Cases in Belarus: Standards and Reality in 2021-2022*, (HRC “Viasna,” Minsk, 2022), https://spring96.org/files/book/en/politically_motivated_administrative_cases.pdf, (accessed May 14, 2024).

¹¹⁵ Human Rights Watch interviews with lawyer Tatsiana Lishankova via phone; lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer E via phone (name withheld at their request), September 25, 2023.

clothing, shoes, or hats.¹¹⁶ “Political” cells are often severely overcrowded and have worse sanitary conditions than regular cells.

One lawyer who served a short-term arrest sentence provided the following description of the detention conditions:

Your “regular” inmate is allowed to bring outerwear into cells—jackets, hats—so, if a person walks into [a cell] without any warm clothing it’s immediately clear they’re “political.” Before the trial took place, I was in a standard “political” cell. No mattress. We had all of it there: lights on [round the clock], wake-up calls twice a night for checks, water constantly running from the tap, absence of writing supplies, books, and what not.¹¹⁷

Human rights lawyer Lishankova spent several hours of her short-term arrest sentence in a “political” cell and was then transferred to a regular cell. The next day, she overheard a detention center staff member saying that she was “doing too well” implying they should make detention conditions even worse for her.¹¹⁸

Two lawyers we spoke with served part of their administrative arrest sentence in regular “non-political” cells. They both attested to the better detention conditions there, such as being allowed to sleep through the night and with dimmed lights, having mattresses and some bed linen, as well as books, pens, paper, etc. They also said the “regular” cells were less overcrowded than the “political” ones to which they were eventually transferred.¹¹⁹

Criminal Prosecution

At time of writing, at least six lawyers were behind bars on politically motivated charges ranging from “aiding extremist activity” and “calling for sanctions” to “conspiring to seize

¹¹⁶ Human Rights Watch interviews with lawyer Tatsiana Lishankova via phone; lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer F.R. via phone (name withheld at their request), September 25, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer E via phone (name withheld at their request), September 25, 2023.

¹¹⁷ Human Rights Watch interview with lawyer M.R. via phone (name withheld at their request), September 29, 2023.

¹¹⁸ Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, lawyer Siarhei Zikratski via phone, September 19, 2023.

¹¹⁹ Ibid and interview with lawyer J.M. via phone (name withheld at their request), September 27, 2023.

power” in reprisal for providing legal aid to political opposition and activists or giving interviews to and sharing information with independent media labelled “extremist” by the authorities.¹²⁰ At least six other lawyers have faced politically motivated criminal prosecution since 2020 and were sentenced to a fine, served their sentence in part or fully, or fled the country.¹²¹

Authorities have subjected the lawyers in confinement to ill-treatment reserved for political prisoners, such as restricting their rights to receive and send correspondence or to meet with their family members and lawyers; putting them on a list of “persons involved in terrorism” which restricts their financial transactions and leads to heightened supervision by penitentiary staff; arbitrary isolating them in punishment cells; and keeping them in prolonged incommunicado detention, which amounts to torture and may constitute enforced disappearance.¹²²

According to international standards, “lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions” and shall not suffer sanctions for any action taken in accordance with recognized professional duties, standards, and ethics.¹²³ International human rights law forbids discrimination on political grounds.¹²⁴

Maksim Znak

Maksim Znak is a former lawyer of the Minsk Regional Bar Association and a former professor of law at the Belarusian State University.

In May 2020, Znak joined Babaryka’s team to provide legal assistance to the aspiring contender for the 2020 presidential elections. In June 2020, law enforcement officers arbitrarily detained Babaryka and his son Eduard, who also worked for the campaign, when they were on their way to submit Babaryka's supporters’ signatures to the Central Election Commission.¹²⁵

¹²⁰ Right to Defence, *Criminal Prosecution of Lawyers in the Republic of Belarus*, updated February 7, 2024 https://www.defendersbelarus.org/criminal_prosecution_2020, (accessed May 14, 2024).

¹²¹ Ibid.

¹²² See below.

¹²³ UN Basic Principles on the Role of Lawyers, principles 8 and 16.

¹²⁴ See for example, International Covenant on Civil and Political Rights, arts. 2 (1) and 26.

¹²⁵ “Viktar Babaryka and his sone arrested. They are in a KGB SIZO.” HRC “Viasna,” news release, June 18, 2020, <https://elections2020.spring96.org/ru/news/97664>, (accessed May 14, 2024).

Ten days later, Znak filed a petition on behalf of Babaryka for the official registration of his candidacy and represented his interests during the registration procedure, including by appealing the refusal by authorities to register Babaryka's candidacy with the Supreme Court of Belarus.¹²⁶

In July 2021, Babaryka was sentenced to 14 years in prison for “laundering money obtained via criminal acts” and “receiving bribes.”¹²⁷ In July 2023, his son was sentenced to eight years in prison for “organizing or preparing activities gravely violating public order,” “tax evasion,” and “inciting hatred.”¹²⁸

On August 10, 2020, the day after the official announcement of the victory of Aliaksandr Lukashenka in the presidential elections, Znak contested the election results while representing Sviatlana Tsikhanouskaya, a presidential candidate in the elections and wife of jailed presidential contender Tsikhanouski. Later that month, Znak filed an appeal on behalf of Tsikhanouskaya to deem the elections invalid. Znak also joined the presidium of the Opposition Coordination Council, established to facilitate democratic transfer of power in Belarus.¹²⁹

In September 2020, officers of the Investigative Committee, the country's chief investigation agency, arrested Znak at Babaryka's election headquarters on charges of “calls for actions aimed at harming the national interests of Belarus.”¹³⁰ In February 2021, Znak was also charged with “conspiracy to seize power by unconstitutional means” and “creating and leading an extremist formation.” In August 2021, the court began the closed trial of Znak and Kalesnikava, another prominent opposition figure and Znak's client. In

¹²⁶ “Chronicle of events: Criminal Prosecution and detention of lawyer Maksim Znak,” Right to Defence article, updated September 6, 2021, <https://www.defendersbelarus.org/maksim-znak-chronika>, (accessed May 14, 2024).

¹²⁷ European Union External Action, The Diplomatic Service of the European Union, “Belarus: Statement by the spokesperson on sentencing Viktor Babryka and other political trials,” July 6, 2021 https://www.eeas.europa.eu/eeas/belarus-statement-spokesperson-sentencing-viktar-babaryka-and-other-political-trials_en, (accessed May 14, 2024).

¹²⁸ “Eduard Babryka receives 8 years in jail,” HRC “Viasna” news release, July 5, 2023, <https://spring96.org/en/news/112128>, (accessed May 14, 2024).

¹²⁹ “Chronicle of events: Criminal Prosecution and detention of lawyer Maksim Znak,” Right to Defence article, updated September 6, 2021, <https://www.defendersbelarus.org/maksim-znak-chronika>, (accessed May 14, 2024).

¹³⁰ “Lawyer Maksim Znak Arrested,” Reformation, September 9, 2020, <https://reform.news/162451-maksim-znak-verojatno-zaderzhan>, (accessed May 16, 2024).

September 2021, the Minsk Regional Court sentenced Znak and Kalesnikava to 10 and 11 years in prison, respectively.¹³¹

In December 2021, the council of the Minsk Regional Bar Association disbarred Znak due to the court verdict, alleging that Znak was guilty of a premeditated crime.

In May 2022, the UN Working Group on Arbitrary Detention issued an opinion finding that Znak's detention was arbitrary as his detention was based on his peaceful exercise of rights protected by international law, and on discrimination resulting from his political opinion and his status as a lawyer for a political opposition party.¹³² The working group also concluded that the trial against Znak should have not taken place and his right to a fair trial was violated.

In May 2022, the KGB put Znak on its list of individuals involved in terrorist activities, restricting all his financial transactions.¹³³

Authorities at penal colony N3, where Znak is serving his sentence, repeatedly have subjected him to isolation in punishment cells and denied him any contact with the outside world since February 2023, when his family last received a letter from him.¹³⁴ Such prolonged incommunicado detention amounts to torture and carries the risk of enforced disappearance.¹³⁵

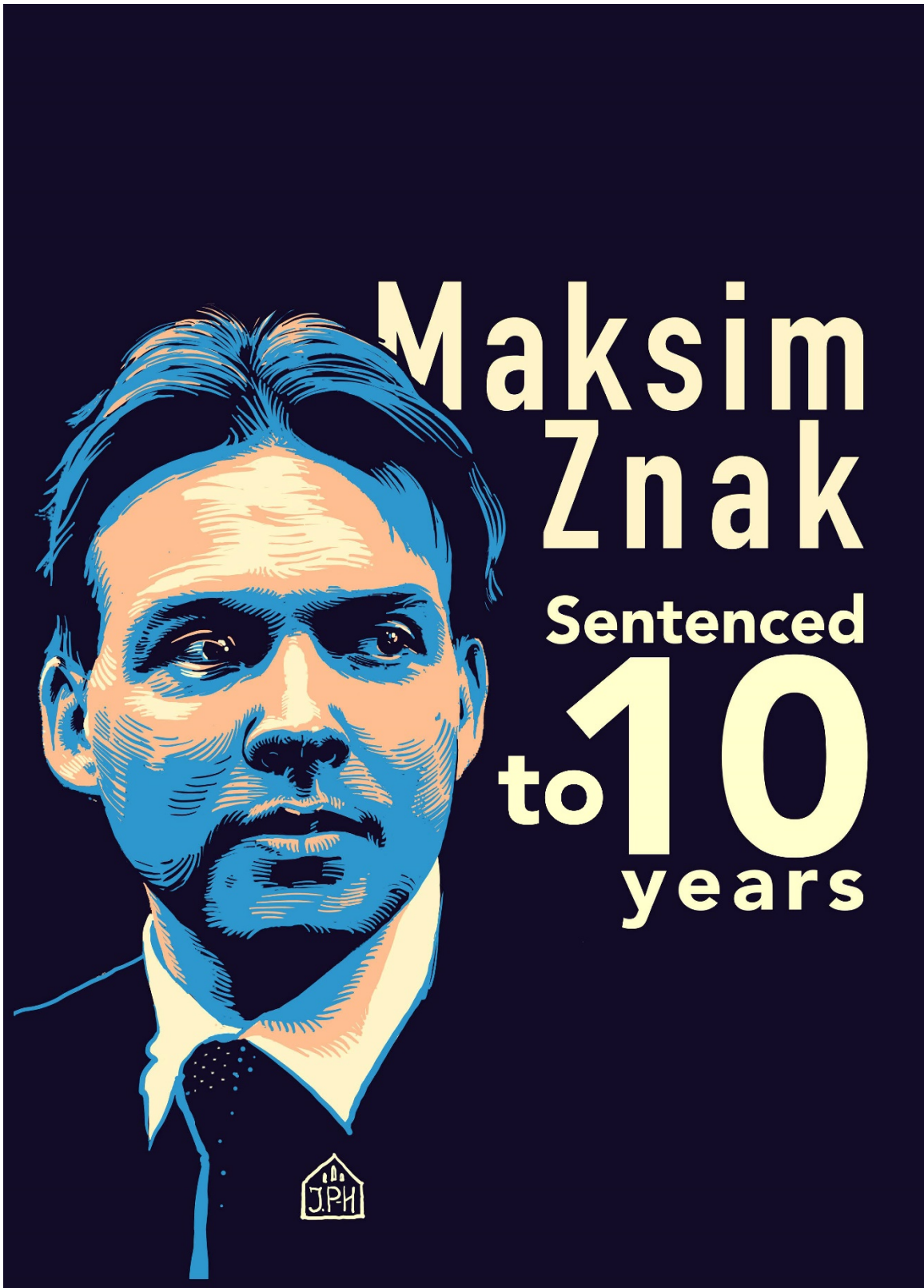
¹³¹ European Union External Action, The Diplomatic Service of the European Union, "Belarus: Statement by the Spokesperson on sentencing Marya Kalesnikava and Maksim Znak," September 6, 2021 https://www.eeas.europa.eu/eeas/belarus-statement-spokesperson-sentencing-marya-kalesnikava-and-maksim-znak_en, (accessed May 14, 2024).

¹³² UN Human Rights Council (HRC), Working Group on Arbitrary Detention, "Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022," A/HRC/WGAD/2022/24, May 25, 2022, <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-24-BLR-AEV.pdf>, (accessed May 14, 2024).

¹³³ Alexandra Boguslavskaya, "Kalesnikava and Znak on the 'list of terrorists.' What does this mean?" DW, May 26, 2022, <https://www.dw.com/ru/kolesnikova-i-znak-v-spiske-terroristov-chem-jeto-grozit/a-61941193>, (accessed May 14, 2024).

¹³⁴ "Maksim Znak," <http://www.maksimznak.org>, (accessed May 14, 2024).

¹³⁵ "Belarus Must Release All Detainees Held on Political Grounds and Protect their Rights," OHCHR press release, May 30, 2023, <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>, (accessed May 14, 2024).



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In March 2023, Tsikhanouskaya, Znak's most high-profile former client who has already long lived in exile, was sentenced to 15 years in absentia under seven articles of the Criminal Code, ranging from "conspiracy to seize power" to "high treason."¹³⁶

In January 2024, the UN Human Rights Committee registered Znak's individual communication against Belarus and then called on Belarus for urgent interim measures, including access to qualified medical assistance and the ability to communicate with his lawyers and family while his case is under review.¹³⁷

Aliaksandr Danilevich

In May 2022, KGB officers detained lawyer Aliaksandr Danilevich in his office.¹³⁸ A renowned specialist in sports law, Danilevich also provided assistance to those detained on administrative charges in connection with the 2020 peaceful protests and signed a petition against Russia's war in Ukraine in February 2022.

In January 2023, the Investigative Committee published a statement saying the investigation against Danilevich was completed and indicting him on charges of "aiding extremist activity" and "aiding the calls for restrictive measures (sanctions) via mass media or online."¹³⁹

According to the statement, Danilevich "actively advised and aided the processes of forming public calls by extremists to incite harm to the national security of Belarus" by strike committee representatives. One of the cited examples of his "criminal activities" was the drafting of letters and documents addressed to a Norwegian company, Yara, a reliable large buyer of potash fertilizers from Belaruskali, one of the largest state-owned

¹³⁶ Delegation of the European Union to the Republic of Belarus, "Belarus: Statement by High Representative Josep Borrell on the sentencing of Sviatlana Tsikhanouskaya and other key figures of the democratic forces in exile," March 7, 2023, https://www.eeas.europa.eu/eeas/belarus-statement-high-representative-josep-borrell-sentencing-sviatlana-tsikhanouskaya-and-other_en?s=218, (accessed May 14, 2024).

¹³⁷ "Human Rights Committee Calls on Belarus to Grant Maksim Znak Access to Lawyers" Right to Defence news release, January 23, 2024, <https://www.defendersbelarus.org/tpost/9uy64orafi-human-rights-committee-calls-on-belarus>, (accessed May 14, 2024).

¹³⁸ "Aliaksandr Danilevich," HRC "Viasna," <https://prisoners.spring96.org/ru/person/aljaksandr-danilevicz>, (accessed May 14, 2024).

¹³⁹ "Threat of National Security, calls for sanctions, attempts to destabilize the economy. Investigation in relation to Lawyer Danilevich has been completed," Investigative Committee of the Republic of Belarus news release, January 10, 2023, <https://sk.gov.by/ru/news-ru/view/ugroza-natsionalnoj-bezopasnosti-prizvyv-k-sanktsijam-popytki-destabilizatsii-ekonomiki-zaversheno-12143/>, (accessed May 16, 2024).

companies in Belarus. “In his ‘letters’ he relayed false information about the political, social, and economic situation in Belarus,” the statement said.¹⁴⁰

Authorities accused Danilevich of providing “advice, guidance, information and other assistance” to his clients, former Olympic swimmer Aliaksandra Herasimenia and political activist Aliaksandr Apeykin, by having drafted six letters addressed to Yara, the International Olympic Committee, and the International Ski and Snowboard Federation.¹⁴¹ In December 2022, Herasimenia and Apeykin, who had both fled Belarus, were sentenced in absentia to 12 years of imprisonment over “publicly calling for sanctions against Belarus, individuals, and legal entities of the republic.”¹⁴²

In addition to those accusations, authorities also charged Danilevich with giving an interview to the leading Belarusian sports media, Tribuna.com, which the authorities had deemed “extremist” in 2021. In the interview about the risks that lawyers working on politically motivated cases face in Belarus, Danilevich spoke about the threat of losing his license over signing a petition against the war in Ukraine and about the police brutality against peaceful protesters in the summer of 2020.¹⁴³

During the trial, Danilevich pleaded not guilty, stressing that the “actions committed by him as a part of his professional duties as a lawyer did not amount to national security threat.” He also stressed that he neither drafted nor edited the letters, but only provided legal advice to his clients after reading the documents.¹⁴⁴

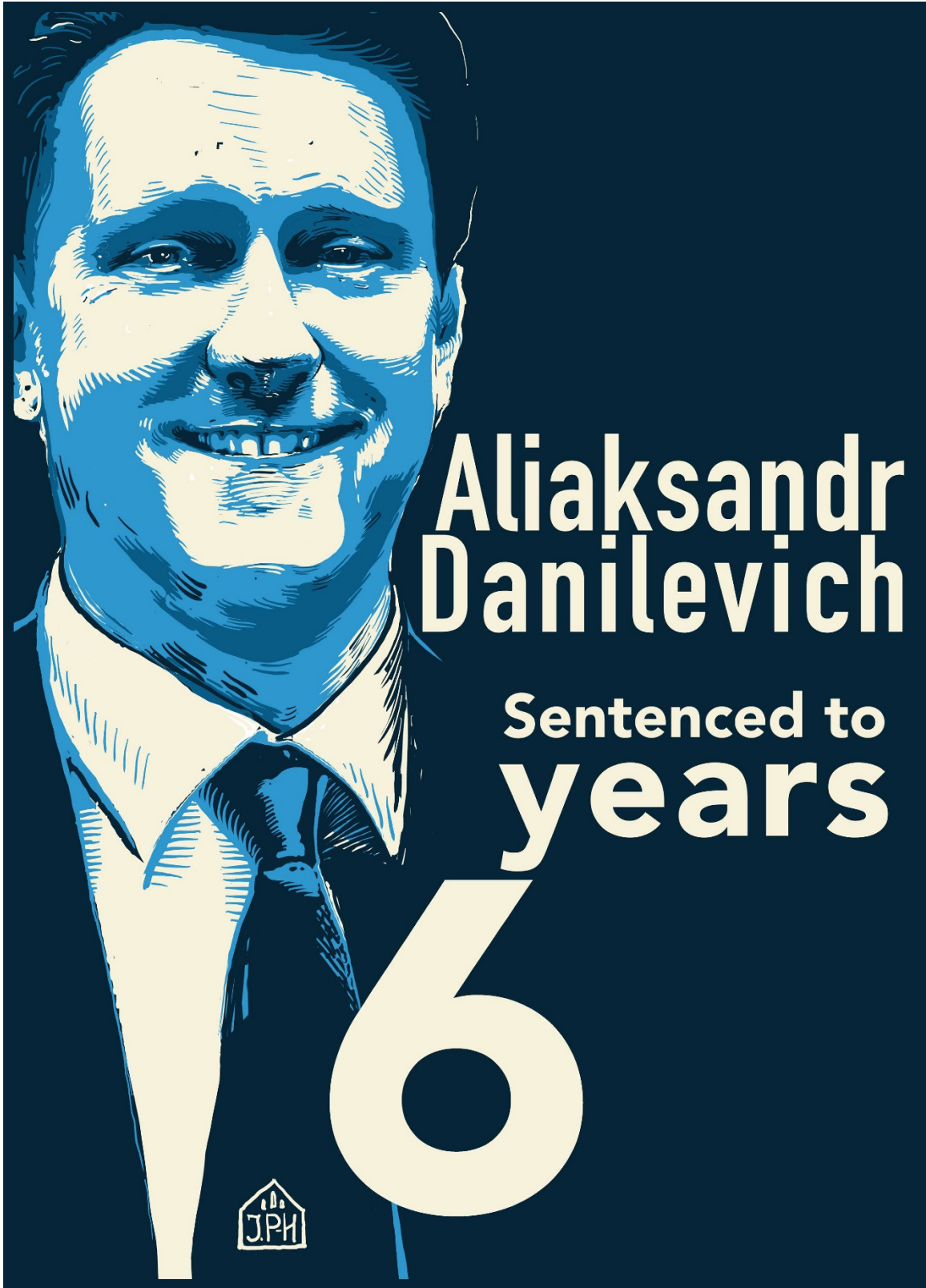
¹⁴⁰ Ibid.

¹⁴¹ “‘He provided support to extremists and adherents of legal nihilism.’ The trial of Aleksander Danilevich has begun,” March 10, 2023, <https://spring96.org/ru/news/111028>, (accessed May 14, 2024).

¹⁴² Ronald Popeski and Lidia Kelly, “Belarus sentences in absentia former Olympian Herasimenia to 12 years in prison – BelTA,” Reuters. December 26, 2022, <https://www.reuters.com/lifestyle/sports/belarus-sentences-absentia-former-olympian-herasimenia-12-years-prison-belta-2022-12-27/> (accessed May 14, 2024).

¹⁴³ “This Lawyer was the head of rugby in Belarus and defended the rowers when they were not allowed into the Olympic Games. After the elections he helped athletes, but now he is ‘guilty’ of not wanting war in Ukraine,” Sport Against War in Ukraine, March 17, 2022, <https://telegra.ph/EHtot-yurist-by-l-glavoj-regbi-v-Belarusi-i-zashchishchal-grebcov-kogda-ih-ne-pustili-na-OI-Posle-vyborov-pomogal-atletam-a-sejch-03-17-2>, (accessed May 14, 2024).

¹⁴⁴ “‘I help people, I don’t have the right to refuse them.’ Said lawyer Danilevich during his sentencing to 10 years in a penal colony,” HRC “Viasna” news release, April 28, 2023 <https://spring96.org/ru/news/111549>, (accessed May 14, 2024).



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**"I SWEAR TO FULFILL THE DUTIES OF DEFENSE
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In April 2023, the Minsk City Court sentenced Danilevich to 10 years in a penal colony with a heightened security regime.¹⁴⁵ In July 2023, the court of appeals reduced Danilevich's sentence to six years in prison.¹⁴⁶ At time of writing, he was serving his sentence in Penal Colony N17 in Škłoŭ.¹⁴⁷

*Vital Brahinet*s

In May 2022, KGB officers detained lawyer Vital Brahinet

s who represented clients in politically motivated cases, including leading Belarusian human rights defender Ales Bialiatski, co-recipient of the 2022 Nobel Peace Prize, and another prosecuted lawyer, Andrei Machalau. Brahinets was taken into custody several days before the opening of Machalau's trial.

Authorities claimed that after he was brought from home to a police station for a "check for involvement in protest activities," Brahinet

s started screaming and tried to escape. He was sentenced to 15 days of arrest for "disobeying the lawful police order." After serving his administrative sentence, he was immediately sentenced to another 15 days on unknown charges.¹⁴⁸

In June 2022, Brahinet

s faced criminal charges and was transferred from administrative detention facility to a pretrial detention center.¹⁴⁹

In early January 2023, Human Rights Center "Viasna" reported that Brahinet

s had been charged with "inciting social hatred and enmity," "calling for restrictive measures

¹⁴⁵ "Lawyer Aliaksandr Danilevich sentenced to 10 years in jail for legal services to opposition," HRC "Viasna" April 10, 2023, <https://spring96.org/en/news/111396>, (accessed May 14, 2024).

¹⁴⁶ American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

¹⁴⁷ "Aliaksandr Danilevich," HRC "Viasna," accessed May 14, 2024, <https://prisoners.spring96.org/ru/person/aljaksandr-danilevicz>, (accessed May 14, 2024).

¹⁴⁸ "'An official vehicle in civilian use' and 'a movement, that smoothly turns to a run:' how lawyer Vital Brahinet

s was brought to administrative culpability," Right to Defence article, May 26, 2022, https://defendersbelarus.org/sud_Brahinets, (accessed May 14, 2024).

¹⁴⁹ UN Human Rights Council, Working Group on Arbitrary Detention, "Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13-17 November 2023," A/HRC/WGAD/2023/64, December 8, 2023, <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session98/a-hrc-wgad-2023-64-belarus-aev.pdf> (Accessed May 16, 2024).

(sanctions),” “creation of extremist formation or participation in such,” and “active participation in actions, gravely violating public order.”¹⁵⁰

On February 2, 2023, the Minsk City Court sentenced Brahinets to 8 years in a penal colony with heightened security regime following a closed-door trial.¹⁵¹

In August 2022, the Qualification Commission of the Justice Ministry revoked Brahinets’s license, following his disbarment by the Minsk Regional Bar Association due to a supposed “misdemeanor, incompatible with the title of a lawyer.”¹⁵² At time of writing, he was serving his sentence in Penal Colony N17 in Škłoŭ.¹⁵³

In December 2023, the UN Working Group on Arbitrary Detention issued an opinion finding that the arrests and subsequent detention of Brahinets were arbitrary, including by virtue of the gravity of the violation of his right to a fair trial, and based on his political opinion and his status as a lawyer for the opposition. The working group called on Belarusian authorities to release Brahinets immediately and accord him an enforceable right to compensation and other reparations.¹⁵⁴

In August 2022, law enforcement detained lawyer Uladzimir Anhel'ski, who, at the time, represented Brahinets. Anhel'ski was sentenced to 14 days of arrest for “disobeying a police order.”¹⁵⁵ In November 2022, the ministry revoked Anhel'ski’s license after he was disbarred following his arrest.¹⁵⁶

¹⁵⁰ Spring: Political prisoners of Belarus, HRC “Viasna” Telegram channel, January 4, 2023, https://t.me/prisoners_spring96/2264, (accessed May 14, 2024).

¹⁵¹ “Lawyer Vitali Brahinets sentenced to 8 years,” Right to Defence news release, February 2, 2023 <https://www.defendersbelarus.org/news/tpost/xygyzcp21-advokatu-vitaliyu-bragintsu-prisudili-8>, (accessed May 14, 2024).

¹⁵² “Another Attestation from the Ministry of Justice. Political prisoner and lawyer Brahinets has his license revoked.” Right to Defence news release, August 5, 2022, <https://defendersbelarus.org/news/tpost/3k11bx3no1-ocherednaya-attestatsiya-minyusta-politz>, (accessed May 14, 2024).

¹⁵³ “Vitali Brahinets,” HRC “Viasna,” accessed May 14, 2024, <https://prisoners.spring96.org/en/person/vital-brahinec>, (accessed May 14, 2024).

¹⁵⁴ UN Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13-17 November 2023,” A/Hrc/WGAD/2023/64, December 8, 2023, <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session98/a-hrc-wgad-2023-64-belarus-aev.pdf> (accessed May 16, 2024).

¹⁵⁵ “Another Lawyer Arrested. This time Uladzimir Anhel'ski,” Right to Defence news release, September 2, 2022, <https://www.defendersbelarus.org/news/tpost/i8k5vnpk31-zaderzhan-esche-odin-advokat-na-etot-raz>, (accessed May 14, 2024).

¹⁵⁶ Ibid.

Vital Brahinets



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Anastasiya Lazarenka

In June 2022, a group of armed GUBOPiK officers in full protective gear stormed the home of lawyer Anastasiya Lazarenka in Minsk, breaking the windows and the entrance door.¹⁵⁷ Lazarenka provided legal aid to several individuals prosecuted on politically motivated grounds following the state crackdown on peaceful protesters in 2020.¹⁵⁸

A video published on GUBOPiK's Telegram channel on June 3, 2020, shows the storming of Lazarenka's house and then cuts to Lazarenka speaking directly to camera, apparently under duress, who says she was detained on suspicion of committing "incitement of hatred or enmity" under article 130 of the Criminal Code for allegedly having leaked the personal data of police officers.¹⁵⁹

In March 2023, rights groups reported that Lazarenka was also charged under article 203-1 for "illegal acts in relation to the information about private life" and part 1 of article 342 for "organizing and preparing actions gravely violating public order."¹⁶⁰

The state prosecution stated that Lazarenka had reached out and shared personal data of two police officers with the creators of the "Black Book of Belarus" Telegram channel, which published the personal details of law enforcement officers, judges, and state officials allegedly involved in rights violations during and after the August 2020 protests.¹⁶¹ They claimed that she had obtained that personal data while acting in her capacity as a defense lawyer. They also charged Lazarenka with participation in a peaceful protest in August 2020 when she was providing legal aid to protesters released from Akrestina

¹⁵⁷ "Lawyer Anastasiya Lazarenka arrested: GUBOPiK, weapons, and a broken window," Right to Defence news release, June 3, 2022, <https://defendersbelarus.org/news/tpost/dicmga4021-zaderzhali-advokata-anastasiyu-lazarenko>, (accessed May 14, 2024).

¹⁵⁸ "Behave with dignity!" – Friend of lawyer Anastasiya Lazarenka speaks about the political prisoner," HRC "Viasna" news release, September 17, 2022, <https://spring96.org/ru/news/109097>, (accessed May 14, 2024).

¹⁵⁹ Belarusian Security officer, Telegram Channel, June 3, 2022, https://t.me/s/belarusian_silovik?q=Оперативники+ГУБОП+в+Минске+задержали+адвоката+за+слив+персональных+данных+в+экстремистские+телеграм-каналы, (accessed May 14, 2024).

¹⁶⁰ "Anastasiya Lazarenka," HRC "Viasna," accessed May 14, 2024, <https://prisoners.spring96.org/ru/person/anastasija-lazarenka>, (accessed May 14, 2024).

¹⁶¹ "Black Book of Belarus" Telegram channel was designated "extremist" by Belarusian authorities.

detention center in Minsk, notorious for its ill-treatment of detainees.¹⁶² Lazarenka pleaded not guilty.¹⁶³

In May 2023, the Minsk City Court sentenced Lazarenka to six years in a penal colony.¹⁶⁴ Shortly before her trial, one of Lazarenka's lawyers was designated as a witness by the prosecution, which prevented him from representing her interests in the case, another tactic used by Belarusian authorities to hinder the defense in politically motivated trials.¹⁶⁵ In November 2023, the KGB also put Lazarenka on its list of "persons involved with terrorist activities," which leads to prohibition of money transfers and heightened supervision by penitentiary institution authorities.¹⁶⁶

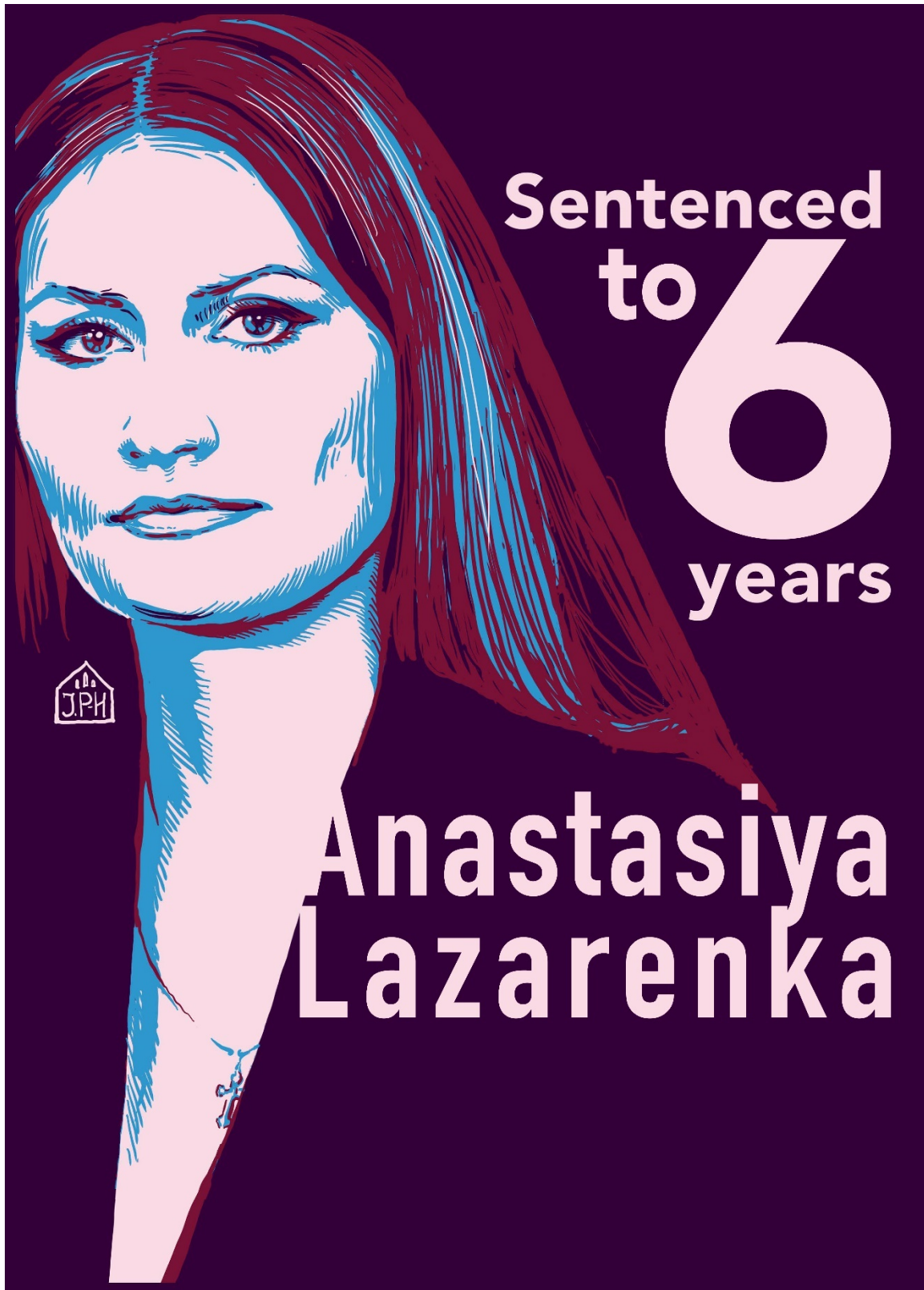
¹⁶² "Belarus: Systematic Beatings, Torture of Protesters," Human Rights Watch news release, September 15, 2020, <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>, (accessed May 14, 2024).

¹⁶³ "Anastasiya Lazarenka," HRC "Viasna," accessed May 14, 2024, <https://prisoners.spring96.org/ru/person/anastasija-lazarenka>, (accessed May 14, 2024).

¹⁶⁴ "Lawyer Anastasiya Lazarenka sentenced to 6 years in a penal colony," HRC "Viasna" news release, May 11, 2023, <https://spring96.org/be/news/111652>, (accessed May 14, 2024).

¹⁶⁵ "Lawyer and Political Prisoner Anastasiya Lazarenka made a witness in her case," Euroradio, May 2, 2023, <https://euroradio.fm/ru/advokata-politzaklyuchennoy-anastasii-lazarenko-sdelali-svidetelem-po-ee-delu>, (accessed May 14, 2024).

¹⁶⁶ "'And now I am a Red-White-Red terrorist.' Answering questions about the 'terrorist list,'" HRC "Viasna" news release, February 7, 2023, <https://spring96.org/ru/news/110674>, (accessed May 14, 2024).



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**"I SWEAR TO FULFILL THE DUTIES OF DEFENSE
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Yuliya Yurhilevich

Yulia Yurhilevich is a lawyer with 18 years of experience, well-known for representing victims of politically motivated prosecutions, including Ales Pushkin, a renowned Belarusian artist known for his criticism of the government.¹⁶⁷

In February 2022, the Hrodna region bar association disbarred Yurhilevich for “systematic violations of the law.” The disbarment was reportedly triggered by a complaint from the Hrodna region deputy prosecutor questioning her “professionalism.” Yurhilevich left the country following her disbarment.¹⁶⁸

In August 2022, when Yurhilevich returned to Belarus from Poland, authorities detained her and raided her apartment. On the same day, they detained Pavel Mazheika, an independent journalist and leader of the local independent group “City life center,” who had also just returned from Poland.¹⁶⁹

In July 2023, the Hrodna Regional Court sentenced Yurhilevich and Mazheika to six years in prison for “aiding extremist activities” under part 2 of 361-4 article of the Criminal Code. Both had pled not guilty.¹⁷⁰

The “extremism” charges stemmed from the fact that Yurhilevich had told Mazheika about her disbarment and shared with him the verdict in the case of Pushkin.¹⁷¹ The prosecution stated that this information was then passed on by Mazheika to Belsat, a Poland-based broadcaster deemed “extremist” by the authorities.

¹⁶⁷ “‘I want to look them in the eyes.’ Remembering the criminal case of lawyer Yulia Yurhilevich, who was imprisoned in Hrodna,” H., September 10, 2022, <https://ru.hrodna.life/articles/jurgilevich-dela/> (accessed May 14, 2024).

¹⁶⁸ Ibid.

¹⁶⁹ Anastasiia Kruope, “Travesty of Justice Reaches New Low in Belarus,” commentary, Human Rights Watch dispatch, <https://www.hrw.org/news/2023/07/11/travesty-justice-reaches-new-low-belarus>, (accessed May 14, 2024).

¹⁷⁰ “Lawyer Yulia Yurhilevich sentenced to six years in prison,” Right to Defence news release, July 26, 2023, <https://www.defendersbelarus.org/news/tpost/td555sahu1-advokatka-yuliya-yurgilevich-prigovorena#:~:text=Новости,Адвокатка%20Юлия%20Юргилевич%20приговорена%20к%20шести%20годам%20лишения%20свободы,виновными%20по%20части%20второй%20ст,> (accessed May 14, 2024).

¹⁷¹ “Second day of the trial of lawyer Yurhilevich: Yulia stated that she was being kept in ‘brutal conditions,’” Right to Defence news release, July 12, 2023, <https://www.defendersbelarus.org/news/tpost/3vnstobeh1-vtoroi-den-suda-nad-advokatko-yurgilevi>.

Authorities claimed that by sharing this information, Mazheika and Yurhilevich collaborated in “extremist activity” and “invalidated the values and goals of [Belarusian] society and the state” by “knowingly spreading false information.”¹⁷² Notification about Yurhilevich’s disbarment and license termination is publicly available on the Justice Ministry website. The details of Pushkin’s politically motivated trial and sentencing can be also easily found on a state media website.¹⁷³

Throughout the duration of their trial, Yurhilevich and Mazheika were held in a plexiglass cage. Yurhilevich wore a prison robe with a label “punishment cell N2” on the back, indicating she was being isolated as punishment during pre-trial detention. Presenting defendants to the court “in a manner indicating that they may be dangerous criminals” contradicts the principle of the presumption of innocence.¹⁷⁴ Placement of Yurhilevich in a punishment cell, if arbitrary, amounts to ill-treatment.

On July 11, while Yurhilevich and Mazheika were still on trial, Pushkin died due to an untreated perforated ulcer in an intensive care unit, to which he had been transferred from Hrodna Prison N1.¹⁷⁵ At time of writing, Yurhilevich was in Penal Colony N17 in Škłoŭ and Mazheika was in Penal Colony N2 in Babrujsk.¹⁷⁶

¹⁷² “In Hrodna Trial Begins of Journalist Pavel Mazheika and lawyer Yulia Yurihelevich. What they are accused of,” Zerkalo, July 10, 2023, <https://news.zerkalo.io/life/43433.html>, (accessed May 14, 2024).

¹⁷³ Anastasiia Kruope, “Travesty of Justice Reaches New Low in Belarus,” commentary, Human Rights Watch Dispatch, July 11, 2023, <https://www.hrw.org/news/2023/07/11/travesty-justice-reaches-new-low-belarus>, (accessed May 14, 2024).

¹⁷⁴ UN Human Rights Committee (ninetieth session, 2007), General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolNo=CCPR%2FC%2FGC%2F32&Lang=en, (accessed May 14, 2024).

¹⁷⁵ “Ales Pushkin, political prisoner and artist dies,” HRC “Viasna,” July 11, 2023, <https://spring96.org/ru/news/112175>, (accessed May 14, 2024).

¹⁷⁶ “Pavel Mazheika,” HRC “Viasna,” <https://prisoners.spring96.org/en/person/pavel-mazheika>, (accessed May 14, 2024).

Yuliya Yurhilevich

Sentenced
to **6**
years



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Other Cases

In September 2020, authorities detained and placed in pre-trial detention Illia Salei, a lawyer providing legal assistance to opposition politicians Babaryka, Kalesnikava, and Tsikhanouskaya on suspicion of “calling for actions aimed at instigating harm to the national security of Belarus.” In October, he was placed under house arrest. In April, a court in Minsk released him on bail. In August 2021, Salei secretly fled Belarus.¹⁷⁷

In June 2022, the Leninsky District Court in Minsk sentenced lawyer Andrei Machalau, who represented political prisoners, including activists and independent journalists, to two years of restriction of liberty (*khimiya*) in an open correctional facility under article 380 of the Criminal Code for supposedly forging the lawyer’s warrant in order to be able to participate in a trial.¹⁷⁸

In May 2021, the Minsk regional bar association disbarred Machalau for publicly commenting on police violence against his client and political prisoner, Volha Zalatar. However, the bar association did not notify Machalau of the final decision made by its council regarding his disbarment. As a result, Machalau showed up at a court hearing in his client’s case without knowing that he was already disbarred and believing that his warrant was still valid. In March 2023, Machalau fled Belarus following his release under an amnesty.¹⁷⁹

In February 2023, the Minsk Regional Court sentenced Dzmitry Pihul, a lawyer who had represented several political prisoners and was then detained by KGB officers in September 2022, to a fine of approximately US\$7,000 on charges of “disclosing information from a preliminary investigation or a closed trial.”¹⁸⁰

¹⁷⁷ “Political prosecution of lawyers in the Republic of Belarus,” “Illia Salei,” Right to Defence article, updated February 7, 2024, https://defendersbelarus.org/criminal_prosecution_2020#salei, (accessed May 14, 2024).

¹⁷⁸ “Political prosecution of lawyers in the Republic of Belarus,” “Andrei Machalau,” Right to Defence article, updated February 7, 2024, https://defendersbelarus.org/criminal_prosecution_2020#mochalov, (accessed May 14, 2024).

¹⁷⁹ “Lawyer Machalau sentenced to two years of chemical treatment: ‘I don’t believe that there are judges, who don’t understand what they are doing,’ Plan B., June 14, 2023, <https://planbmedia.io/important/osuzhdennyj-na-dva-goda-himii-advokat-mochalov-ne-verju-cto-est-sudi-kotorye-ne-ponimajut-cto-oni-delajut.html>, (accessed May 14, 2024).

¹⁸⁰ “Political prosecution of lawyers in the Republic of Belarus,” “Dzmitry Pihul,” Right to Defence article, updated February 7, 2024, https://defendersbelarus.org/criminal_prosecution_2020#pighul, (accessed May 14, 2024).

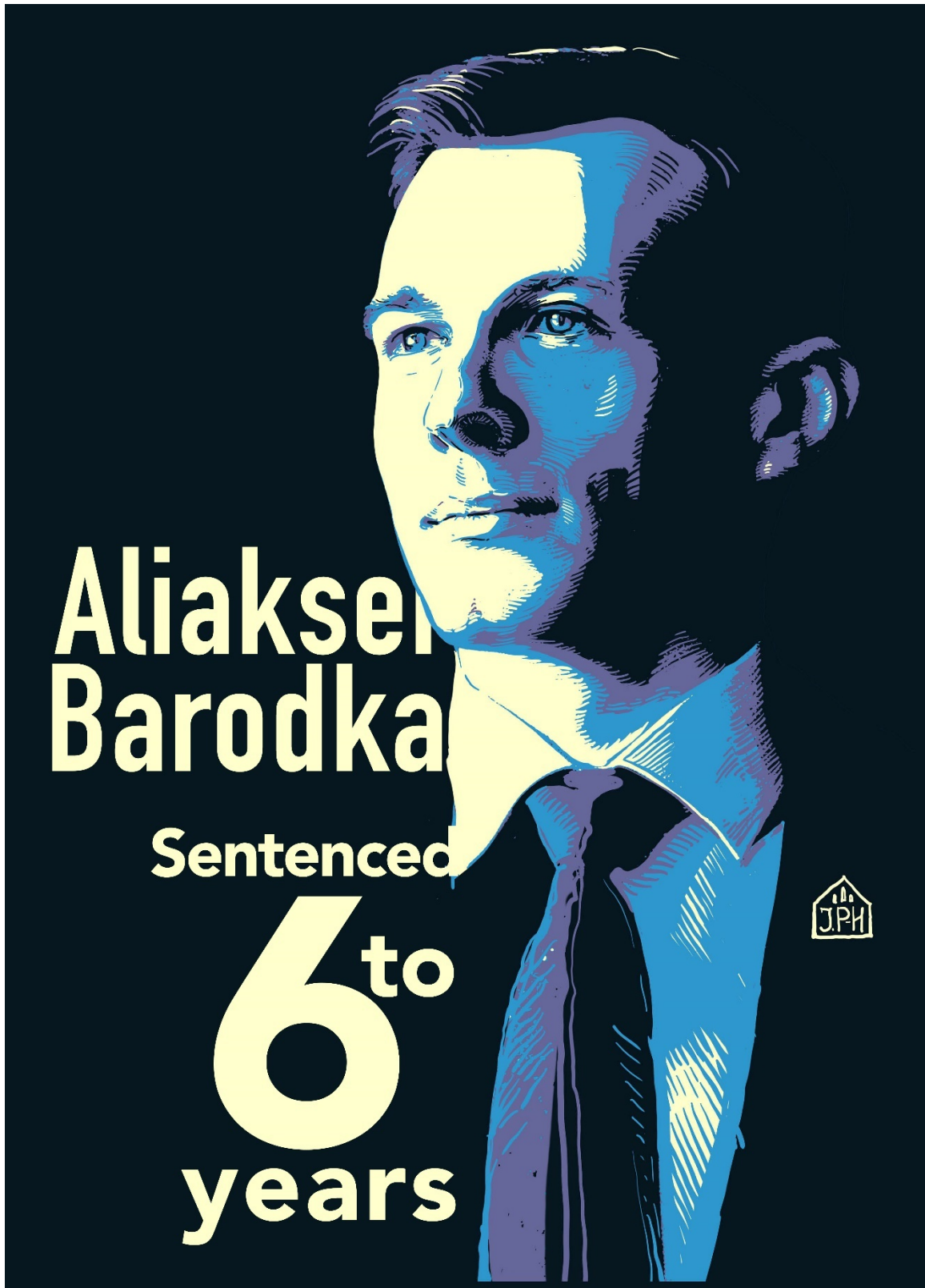
In March 2023, the Leninsky District Court in Minsk sentenced Mikhail Makarau, a lawyer defending several clients in politically motivated cases including anarchist activists particularly targeted by authorities, to one year in prison for “organizing or preparing for acts, gravely violating public order, or active participation in such” under article 342 of the Criminal Code.¹⁸¹

Authorities had first detained Makarau in September 2022, when GUBOPiK officers searched Makarau’s flat, detained him and his wife Viktoryia Hulkova, also a lawyer. On September 14, pro-governmental Telegram channels published videos of Makarau, Hulkova, and Anastasiya Sahanovich, another lawyer representing anarchist activists detained on the same day, showing the three of them confessing to the crime of disseminating information on pre-trial investigations to their clients. A court sentenced Makarau to 15 days of arrest for supposed “dissemination of extremist materials.” He was then transferred to pre-trial detention on criminal charges under article 342. In June 2023, Mikhail Makarau was released from prison after serving his sentence in full.

In June 2023, the Minsk City Court sentenced lawyer Aliaksei Barodka, who represented clients in politically motivated cases, to six years in a penal colony with a heightened security regime on charges of “inciting hatred and enmity.” Barodka was first arrested in January 2023 and has been behind bars since then. The details of his case are unknown as his lawyer could not share relevant information for fear of breaching the non-disclosure notice. Barodka is also on the KGB list of “persons involved with terrorist activities.”¹⁸²

¹⁸¹ “Mikhail Makarau,” HRC “Viasna,” <https://prisoners.spring96.org/ru/person/mikhail-makarau>, (accessed May 14, 2024).

¹⁸² “Political prosecution of lawyers in the Republic of Belarus,” “Andrei Machalau,” Right to Defence article, updated February 7, 2024, https://defendersbelarus.org/criminal_prosecution_2020#mochalov, (accessed May 14, 2024);



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**"I SWEAR TO FULFILL THE DUTIES OF DEFENSE
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Threats and Harassment

Lawyers interviewed for this report spoke about the threats they faced from law enforcement officers, including threats to trump up charges against them and threats of retaliation against their family members.¹⁸³

Some of them also faced smear campaigns in state media and pro-government social media channels.

In November 2020, state-owned TV channel CTV broadcast a so-called “investigation” into the death of Raman Bandarenka, a protest activist who had died shortly after alleged plainclothes law enforcement officers brutally beat him for trying to talk them out of destroying a public mural in a Minsk courtyard.¹⁸⁴ The author of the “investigation,” Ryhor Azaronak, a Belarusian TV presenter, alleged Bandarenka was drunk and died as a result of a “drunken brawl.” Azaronak also used snide and offense language in relation to Bandarenka’s family and their lawyer.¹⁸⁵

That same month, Andrei Mukavozchyk, a journalist with the state-run media outlet “Belarus Today,” wrote a smear piece about a lawyer who, in his words, “engaged in foul business” by representing a musician sentenced to administrative arrest for playing at a peaceful protest.¹⁸⁶ In December, Mukavozchyk wrote another article about “bad apples” among lawyers, namely, those representing arbitrarily detained protesters or who sign public statements, talk to the mass media, or speak out on social media. Mukavozchyk named three lawyers, claiming they were liars, provided advice to terrorists, and acted without integrity.¹⁸⁷

Human Rights Watch interviews with lawyer Tatsiana Lishankova via phone, September 19, 2023; lawyer Mikhail Kiryliuk via phone, September 21, 2023; lawyer J.M. via phone (name withheld at their request), September 27, 2023.

¹⁸⁴ Anastasiia Kruope, “Man Killed for Protecting Symbols of Peaceful Protests in Belarus,” commentary, human rights dispatch, November 13, 2020, <https://www.hrw.org/news/2020/11/13/man-killed-protecting-symbols-peaceful-protests-belarus>, (accessed May 14, 2024).

¹⁸⁵ Igor Seviugin, “‘I don’t know how our personal calls end up with them,’ Sister of deceased Raman Bandarenka on the ‘investigation’ of the state TV channel,” *Nastoyashee Vremya*, November 27, 2020, <https://www.currenttime.tv/a/kak-u-nikh-okazyvautsya-nashi-zvonki/30971032.html>, (accessed May 14, 2024).

¹⁸⁶ “Sometimes you really want to crunch the brains of those who knew. Put them in their place... and then?” *SB.BY*, November 12, 2020, <https://www.sb.by/articles/pismo-v-proshloe.html>, (accessed May 14, 2024).

¹⁸⁷ “‘Hey, Why is the prosecutor on the case? It would be better if there were two lawyers!’ – Singer of old,” *SB.BY*, December 8, 2020, <https://www.sb.by/articles/o-parshivikh-ovtsakh.html>, (accessed May 14, 2024).

At least one lawyer and one lawyer's family member who taught at state universities had their job contracts discontinued after they had spoken out on politically sensitive issues or represented clients in politically motivated cases.

In April 2022, the Belarusian State University did not extend the contract of lawyer Aliaksandr Danilevich, whose subsequent politically motivated prosecution and imprisonment is detailed above, after he had signed a public petition of lawyers calling for an immediate end to hostilities in Ukraine and expressing disagreement with Belarus on allowing Russian troops to use its territory in Russia's war in Ukraine. Prior to ending his contract, the university's management tried talking Danilevich into removing his signature from the petition, but he refused. Danilevich had worked at the university's law school for more than 20 years.¹⁸⁸

In April 2021, the Belarusian State University did not extend the contract of Alena Layeuskaya, the mother of Dzmitry Layeusky, who represented prominent political prisoners Babaryka and Znak. According to Layeusky, his mother was targeted as an act of retaliation for his work as a lawyer.¹⁸⁹ In July 2021, Layeusky was disbarred by the council of the Minsk City Bar Association.

One of the ways for disbarred lawyers to continue working in the legal sphere in Belarus is to obtain a special license for providing legal services which, unlike a lawyers' license, does not allow one to represent clients in court and only extends to legal work for business entities. In 2022, the Justice Ministry introduced a qualifications exam for obtaining such a license. According to the ministry, the license examination, among other things, helps the ministry to "promptly respond to possible facts of destructive behavior [by lawyers]."¹⁹⁰ One lawyer said there was an "unspoken rule" that disbarred lawyers would not be allowed to obtain such a license and remain in the legal profession, albeit in a different capacity.¹⁹¹

¹⁸⁸ "The vice-rector of security insisted," Telegra.ph, April 18, 2022, <https://telegra.ph/Nastoyal-prorektor-po-bezopasnosti-04-18>, (accessed May 14, 2024).

¹⁸⁹ "Chronicle of events: pressure and exclusion from colleagues of lawyer Dzmitry Layeusky," Right to Defence article, updated June 26, 2021, <https://www.defendersbelarus.org/laevsky>, (accessed May 14, 2024).

¹⁹⁰ "Lukashenka: The Legal Profession Must be under Control and Act in Accordance with the Law," Belta, April 21, 2022, https://www.belta.by/president/view/lukashenko-advokatura-dolzha-byt-pod-kontrolem-i-dejstvovat-po-zakonu-497418-2022/?utm_source=belta&utm_medium=news&utm_campaign=accent, (accessed May 14, 2024).

¹⁹¹ Human Rights Watch interview with lawyer N via phone (name withheld at their request), March 1, 2024.

In September 2022, the Ministry of Internal Affairs designated the “Belarusian lawyers” Telegram chat as “extremist.”¹⁹² Created in the wake of the 2020 protests, the chat was used to promptly find lawyers for arbitrarily detained protestors and other critics of the government and to share information and experiences, including best practices, relating to representing clients in politically motivated cases.¹⁹³

In April 2024, the Central district court in Minsk labelled the Telegram channel of the Belarusian Association of Human Rights Lawyers as “extremist materials.”¹⁹⁴

¹⁹² “Telegram Chat ‘Belarusian Lawyers’ recognized as extremist,” Right to Defence news release, August, 31, 2022, <https://www.defendersbelarus.org/news/tpost/dkjlgap4j1-ekstremistskim-priznan-telegram-chat-bel>, (accessed May 14, 2024).

¹⁹³ American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

¹⁹⁴ “Human Rights Lawyers,” Telegram Channel, May 3, 2024, https://t.me/by_HRL/127, (accessed May 14, 2024).

IV. Dismantling the Independence of the Legal Profession – the Façade of Self-Governance

The self-governing bodies did not only withdraw from protecting the lawyers but got directly involved in acts of repression against them.¹⁹⁵

— Belarusian human rights lawyer disbarred for defending political prisoners, September 2023

Since 2020, governmental control over the legal profession has fully crystalized as state policy in Belarus. Government officials present the work of lawyers as tasks assigned to them by the state and assert that included in the mission of lawyers is protecting the interests of the state.¹⁹⁶

In April 2022, Aliaksandr Lukashenka said, “it should be understood that [a lawyer] is a statesman.” He admitted to “actively intervening in and controlling” the work of the bar in Belarus and expressed “hope that the Justice Ministry will not only control but run the processes of the bar.” He also said that “[a lawyer’s] actions should not be based on “some made-up norms like freedom of speech, etc. We are done with this freedom.”¹⁹⁷

Justice Ministry Control over Self-Governing Bodies

The Justice Ministry is tasked with the general management of the bar in Belarus, which includes six regional bar associations and the Minsk City Bar Association, as well as the Belarusian Republican Bar Association (BRBA), which coordinates their work. The scope of the ministry’s control over the leadership and decisions of all bar associations, as well as its systematic interference with their internal processes after 2020, undermines

¹⁹⁵ Human Rights Watch interview with lawyer B.M. via phone (name withheld at their request), September 21, 2023.

¹⁹⁶ The Belarusian Republican Bar Association, “Concept of the development of the legal profession of the Republic of Belarus for the period under 2030,” <https://brka.by/info/development-concept/>, (accessed May 15, 2024) refers in several places to the role of the lawyer in ensuring the interests of the state and society, including in chapter 2 on the objective of the development of the bar: “Protection of the interests of the state and society is a legal duty of a lawyer, and his actions should be aimed at ensuring peace and civil harmony, the well-being of citizens, independence and sovereignty of Belarus”. See also: “The congress of Belarusian Lawyers took place in Minsk,” Belarusian Republican Bar Association News release, July 7, 2022, <https://brka.by/news/sezd-advokatov-belarusi-sostoyalsya-v-minske/>, (accessed May 14, 2024).

¹⁹⁷ “Lukashenka: The Legal Profession Must be under Control and Act in Accordance with the Law,” Belta, April 21, 2022, https://www.belta.by/president/view/lukashenko-advokatura-dolzha-byt-pod-kontrolem-i-dejstvovat-po-zakonu-497418-2022/?utm_source=belta&utm_medium=news&utm_campaign=accent, (accessed May 14, 2024).

international standards and Belarusian legislation, according to which bar associations should be self-governed and independent.¹⁹⁸

Belarusian law grants the Justice Ministry the power to suspend the decisions of bar association governing bodies it deems to have violated the law and to launch “inspections” of regional bar association activities.

The ministry also has control over the election of the regional bar’s chair, which represents and acts on behalf of the association, and is granted critical authority, including the authority to launch disciplinary proceedings against lawyers.¹⁹⁹

Major 2021 amendments to the Law on the Bar significantly expanded the state control over the bar. Already prior to the amendments, the ministry had the power to approve, decline, and suggest its own candidate for chair of the bar, as well as to call for the chair’s dismissal and even dismiss them independently if the bar’s rejection of the ministry’s initial appeal for dismissal was “unfounded.”²⁰⁰ According to the 2021 amendments, the candidate for chair of the bar suggested by the Justice Ministry is automatically selected if the bar twice declines the candidacy.²⁰¹

The Justice Ministry has used its authority to appoint bar chair candidates loyal to the state and to eliminate those considered unreliable.²⁰² One lawyer interviewed for this report recalled that the ministry openly said there was “no point in nominating” certain

¹⁹⁸ UN Basic Principles on the Role of Lawyers, principle 24; Law “on the Bar and Practice of Law in the Republic of Belarus” No 334-3, adopted December 30, 2011, <https://etalonline.by/document/?regnum=H11100334>, (accessed May 14, 2024).

¹⁹⁹ See more in section on Politically Motivated and Arbitrary License Revocation.

²⁰⁰ 2012 amendments to the Law on the Bar and Practice of Law in the Republic of Belarus <https://etalonline.by/document/?regnum=H11200007>, (accessed May 14, 2024).

²⁰¹ 2021 amendments to the Law on the Bar and Practice of Law in the Republic of Belarus. The amendments also tasked the Justice Ministry with approving candidates for a legal traineeship, the completion of which is an obligatory requirement for obtaining the status of a lawyer in Belarus, with no clear criteria for approval spelled out. At the same time, the amended law shortened the length of mandatory traineeship to three months or less for those with background in law enforcement, state prosecution, Ministry of Justice, or judiciary, compared to three to 12 months for candidates with no such background. Such candidates were also allowed to pass the admission examination orally, skipping the written part. <https://etalonline.by/document/?regnum=H12100118>, (accessed May 14, 2024).

²⁰² A former judge Elena Titenkova became the deputy chair of the Minsk Regional Bar Association in February 2023. “New names in the leadership of the Minsk Regional Bar Association,” Right to Defence news release, March 6, 2023, <https://www.defendersbelarus.org/news/tpost/rof1fxh2s1-novie-familii-v-rukovodstve-minskoi-obla>, (accessed May 14, 2024).

candidates as the ministry “wouldn’t approve them in any case” due to the candidates’ position on sensitive issues.²⁰³

Over the past three years, representatives of the Justice Ministry and other authorities consistently have been present at lawyers’ internal gatherings and planning meetings at the Republican and regional bar associations, which puts pressure on lawyers and the bar.²⁰⁴

For instance, during a meeting of the Minsk Regional Bar Association in February 2021, the Justice Ministry representative in attendance said that lawyers who publicly speak out on sensitive topics, “should be gotten rid of like ballast.”²⁰⁵ In September 2022, the deputy justice minister told lawyers of the Homiel Regional Bar Association during their meeting that “a lawyer should fulfill the state’s functions and tasks.”²⁰⁶

In October 2020, the BRBA published a statement saying that various state bodies, including the Justice Ministry, increasingly had filed complaints about lawyers criticizing them.²⁰⁷

Role of the BRBA and Regional Bar Associations

The BRBA and regional bar associations since 2020 systematically have failed to represent and protect the interests of lawyers, particularly those defending clients in politically motivated cases or publicly speaking out on sensitive issues. Moreover, they have initiated disciplinary proceedings and otherwise retaliated against lawyers for earnestly carrying out their professional duties in politically motivated cases. This contradicts international standards on lawyers’ self-governing professional associations and

²⁰³ Human Rights Watch interview with lawyer L.Q. via phone (name withheld at their request), September 27, 2023.

²⁰⁴ Based on review of the BRBA and regional bar associations websites and social media. See, for instance, <https://brka.by/news/zasedanie-soveta-belorusskoy-respublikanskoy-kollegii-advokatov-prokhorit-v-minske/>, (accessed May 14, 2024).

²⁰⁵ “Human Rights Defenders Say that the Minister of Justice is Preparing to Purge Legal Corporations,” Right to Defence news release, February 9, 2021, <https://www.defendersbelarus.org/news/tpost/a7s9hnjae1-pravozaschitniki-soobschayut-chto-minyus>, (accessed May 14, 2024).

²⁰⁶ “An extraordinary reporting and election meeting of members of the Homiel Regional Bar Association was held,” Main Department of Justice of the Homiel Regional Executive Committee, September 26, 2022, <https://homieljust.gov.by/2022/09/26/прошло-внеочередное-отчетно-выборно/>, (accessed May 14, 2024).

²⁰⁷ “On Public Appearances of Lawyers in the Media,” Belarusian Republican Bar Association news release, October 7, 2020, <https://brka.by/news/o-publichnykh-vystupleniyakh-advokatov-v-smi/>, (accessed May 14, 2024).

Belarusian law, according to which the bar should represent and protect the interests of lawyers, including in relations with the authorities.²⁰⁸

Crackdown on Freedom of Expression

Over the past three years, BRBA repeatedly has addressed lawyers in public statements,²⁰⁹ at closed meetings and with phone calls and letters discouraging them from speaking out on violations of the rights of their clients or commenting on politically sensitive issues. The regional bar associations have done the same.²¹⁰ One lawyer said:

Both the Minsk Regional Bar Association and the BRBA repeatedly said we should not talk to mass media, “stay out of politics,” meaning that lawyers should not use all the tools available to them in order to defend their clients. The element of publicity is a particular red flag as far as they are concerned.²¹¹

Lawyers have faced pressure from the Republican and regional bar associations after publishing posts and comments on social media, giving comments to independent media, signing petitions, and otherwise speaking out.²¹²

For instance, the BRBA published statements prohibiting lawyers from speaking about the political motivations behind prosecution of their clients, claiming that the term “political prisoner” raises questions about the professionalism of those lawyers and is damaging to the reputation of the legal profession.²¹³ The BRBA also stressed that lawyers should

²⁰⁸ UN Basic Principles on the Role of Lawyers, articles 24 and 25; Law on the Bar and Practice of Law in the Republic of Belarus <https://etalonline.by/document/?regnum=H11100334>, (accessed May 14, 2024).

²⁰⁹ “Appeal from the Council of the Belarusian Republican Bar Association to Lawyers,” Belarusian Republican Bar Association news release, July 14, 2020, <https://brka.by/news/obrashchenie-soveta-belorusskoy-respublikanskoy-kollegii-advokatov-k-advokatam/>, (accessed May 14, 2024); Audio from the MGCA conference has presumably appeared online, justifying pressure on lawyers,” Right to Defence news release, March 15, 2021, <https://defendersbelarus.org/news/tpost/kp47rxojd1-v-seti-poyavilos-predpolozhitelno-audio>, (accessed May 14, 2024).

²¹⁰ Human Rights Watch interviews with lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer L.Q. via phone (name withheld at their request), September 27, 2023; lawyer I.E. in person (name withheld at their request), September 26, 2023.

²¹¹ Human Rights Watch interview with lawyer B.M. via phone (name withheld at their request), September 21, 2023.

²¹² Human Rights Watch interviews with lawyer J.M. via phone (name withheld at their request), September 27, 2023; lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer K via phone (name withheld at their request), September 27, 2023; lawyer L.Q. via phone (name withheld at their request), September 27, 2023.

²¹³ “These are not our fields!,” Belarusian Republican Bar Association news release, July 17, 2021, <https://brka.by/news/eto-ne-nasha-niva/>, (accessed May 14, 2024).

“under no circumstances” talk about the fact that their clients face politically motivated charges.²¹⁴

In July 2022, BRBA chair Aliaksei Shvakau asserted that “protecting the interests of the state and the society is a lawyer’s duty.”²¹⁵ The BRBA warned lawyers it would not be able to protect them if they commit “discrediting” acts such as criticizing state bodies and officials without confirmation by “court rulings or other trustworthy sources.”²¹⁶ In another statement, the BRBA said it was “unacceptable” to talk about systematic failures based on violations by some law enforcement officers.²¹⁷ In June 2022, Shvakau claimed that “problems arise when lawyers comment on events that fall outside of their professional activities, engaging in populism and politicking.”²¹⁸

On several occasions, Shvakau stated that bar associations cooperate and “work closely together” with state bodies to identify unwanted publications by lawyers on social media “which allows them to deal with this tendency.”²¹⁹

In September 2022, the Minsk City Bar Association held a meeting on “discipline and public safety” due to the “unacceptable behavior of certain lawyers violating the Rules of Professional Ethics.” During the meeting, Shvakau stressed that communications with persons and entities involved with extremist activities or dissemination of extremist

²¹⁴ “Senator Chaichyts will teach lawyers humility?” HRC “Viasna,” March 15, 2021, <https://spring96.org/ru/news/102401>, (accessed May 14, 2024).

²¹⁵ “The Congress of Belarusian Lawyers Took Place in Minsk,” Belarusian Republican Bar Association news release, July 7, 2022, <https://brka.by/news/sezd-advokator-belarusi-sostoyalsya-v-minske/>, (accessed May 14, 2024).

²¹⁶ “On Public Appearances of Lawyers in the Media,” Belarusian Republican Bar Association news release, October 7, 2020, <https://brka.by/news/o-publicnykh-vystupleniyakh-advokatorov-v-smi/>, (accessed May 14, 2024).

²¹⁷ “Report on the activities of the Bar Association of the Republic of Belarus from 2020-2021,” Belarusian Republican Bar Association news release, January 10, 2022, <https://brka.by/news/otchet-o-deyatelnosti-advokatury-rb-za-2020-2021-gody/>, (accessed May 14, 2024).

²¹⁸ “Chairman of the BRKA: A Lawyer in Thoughts and Behavior Must Align with the Profession. Interview with A.I. Shvakau BELTA,” Belarusian Republican Bar Association news release, June 27, 2022, <https://brka.by/news/predsdatel-brka-advokat-myslyami-i-povedeniem-dolzhen-sootvetstvovat-professii-intervyu-a-i-shvakov/>, (accessed May 14, 2024).

²¹⁹ Telekanal [TV channel] Belarus 1, “Aliaksei Shvakau: ‘Being a Lawyer is a creative profession!’,” video clip, YouTube, February 21, 2023, <https://www.youtube.com/watch?v=j7niPKbSZRc> (accessed May 14, 2024); “Shvakau: we will cope with the tasks assigned to the legal profession and earn the trust of Belarusian Society. Interview with the Chairman of the BRKA A.I. Shvakau to the newspaper ‘Belarus Segodnya,’” Belarusian Republican Bar Association news release, June 22, 2022, <https://brka.by/news/shvakov-my-spravimsya-s-postavlenymi-pered-advokatury-zadachami-i-opravdaem-doverie-belorusskogo-o/>, (accessed May 14, 2024).

materials is unacceptable for lawyers.²²⁰ In Belarus, all major independent media outlets and human rights organizations have been declared extremist by the authorities.²²¹

Moreover, lawyers said that the former chair of the BRBA, Viktor Chaichyts, encouraged some of them to write loyalist posts on social media to appear “law abiding” ahead of their re-certification procedure at the Justice Ministry’s Qualification Commission, implying that this would improve their chances.²²² For instance, one lawyer was advised to describe mass peaceful protests as illegal and to call on peaceful protestors to stop their activities in order to show they “were ready to educate [the public] and think the right way.”²²³

Regional bar associations are required by Belarusian law to be members of the BRBA, which has a great degree of control over them, including the power to suspend the decisions of regional bars’ self-governing bodies, dismiss their chairs, and hold disciplinary proceedings against chairs and members of the regional bar associations’ councils.²²⁴

The BRBA chair repeatedly has put pressure on the councils of the regional bar associations to “continuously monitor publications by lawyers online”²²⁵ and take preventative actions to ensure that lawyers do not speak to independent media or otherwise step out of line.²²⁶

In March 2021, at the Minsk City Bar Association’s conference, the then BRBA chair Chaichyts praised the bar for “doing a lot” to “indoctrinate” and “stop lawyers from

²²⁰ “A meeting with the heads of legal consultations on issues of discipline and public safety took place today at the Moscow State Civil Aviation Administration,” Belarusian Republican Bar Association news release, September 16, 2022, <https://brka.by/news/soveshchanie-s-zaveduyushchimi-yuridicheskikh-konsultatsiy-po-voprosam-distsipliny-i-obshchestvennoy/>, (accessed May 14, 2024).

²²¹ Belarusian Association of Journalists, *Extremism and Media*, January 26, 2024, <https://baj.media/en/analytics/extremism-and-media>, (accessed May 14, 2024).

²²² Human Rights Watch interview with lawyer Liudmila Kazak via phone, October 8, 2023.

²²³ Ibid.

²²⁴ Law “on the Bar and Practice of Law in the Republic of Belarus,” No 334-3, adopted December 30, 2011, <https://etalonline.by/document/?regnum=H11100334>, (accessed May 14, 2024).

²²⁵ Belarusian Republican Bar Association, “On Publications of Lawyers Online,” No 01-20/1119, adopted on December 14, 2020, https://drive.google.com/file/d/18_pVLo_tMnht579Up5-fskuU4x6Wg9V/view, (accessed May 14, 2024).

²²⁶ Belarusian Republican Bar Association, “on Media Publications,” No 01-20/163, adopted on March 11, 2021, <https://drive.google.com/file/d/1LIAQtErosG2LM1nFZCxRuo4Au5HTisZy/view>, (accessed May 14, 2024).

making these political statements, political slogans” and called on lawyers to avoid signing public petitions.²²⁷

During the conference at the Minsk Regional Bar Association in January 2022, the BRBA deputy chair said that bar association self-governing bodies and lawyers were “guilty of failing to stop certain colleagues from wrong actions.”²²⁸

In June 2022, the head of the Minsk City Bar Association, Vera Areshka, claimed that “recalling the events of 2020, some publications and statements of certain colleagues turned out to be false.”²²⁹ She also claimed that some lawyers “overstepped the boundaries of their profession by openly expressing their position [on 2020 events].”²³⁰

Chairs of other regional bar associations, for instance, the chair of Hrodna Regional Bar Association, told lawyers to “avoid radical political statements in mass media,” make comments based only on “law, official statistics, or court rulings” and claimed that the quieter a lawyer is in politically motivated cases, the better.²³¹

Both the BRBA and regional bar associations increasingly transmit state ideology on historic and geopolitical issues, such as justifying and supporting Russia’s full-scale invasion of Ukraine and expressing approval of Aliaksandr Lukashenka’s policies.²³²

²²⁷ “Senator Chaichyts will teach lawyers humility?,” HRC “Viasna,” March 15, 2021, <https://spring96.org/ru/news/102401>, (accessed May 14, 2024).

²²⁸ “Reporting and election conference of members of the Minsk Regional Bar Association,” Belarusian Republican Bar Association news release, January 29, 2022, <https://brka.by/news/otchetno-vybornaya-konferentsiya-chlenov-minskoy-oblastnoy-kollegii-advokatov/>, (accessed May 14, 2024).

²²⁹ Telekanal Belarus 1, “Vera Areshka: ‘A real lawyer is a 24/7 lawyer!’,” video clip, YouTube, December 21, 2022, <https://www.youtube.com/watch?v=2U4pVLRgMK8>, (accessed May 14, 2024).

²³⁰ “Vera Areshka: a lawyer should be outside of politics. Interview with Chair of the MRBA V.G. Areshka Sputnik Belarus,” Belarusian Republican Bar Association news release, June 17, 2022, <https://brka.by/news/vera-oreshko-advokat-dolzhen-byt-vne-politiki-intervyu-predsedatelya-moka-v-g-oreshko-sputnik-belaru/>, (accessed May 14, 2024).

²³¹ “Lawyers need to not only honor the rules of professional ethics, but also develop them,” Belarusian Regional Bar Association news release, May 18, 2021, <https://brka.by/news/pravila-professionalnoy-etiki-advokatam-neobkhodimo-netolko-svyato-chtit-no-i-razvivat/>, (accessed May 14, 2024).

²³² American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

Furthermore, lawyers are forced by the bar to take part in events in support of the state and give lectures that promote the state agenda.²³³ If lawyers refuse to take part in such events or attend lectures, they may be flagged by the head of their legal consultation office or bar association and face disciplinary sanctions.²³⁴

Failure of the Bar to Represent and Protect the Interests of Lawyers

Lawyers said that while the BRBA took some limited actions to address some of the lawyers' rights violations in the first months following the 2020 protests, the BRBA generally has failed to react in a meaningful way to abuses of lawyers' rights and the rights of their clients.²³⁵

In December 2020, officers of the Department of Financial Investigations searched the home of Ala Sharko, journalist and program director at Belarus Press Club, an independent organization working to protect press freedoms. When her lawyer Siarhiei Zikratski arrived at the scene, officers pushed him away, preventing him from entering the apartment. A journalist, also present at the scene, wrote about the incident.

Two days later, the BRBA published a statement saying that publicly exposing supposed violations of lawyers' rights could lead to "negative consequences" for the lawyer, including potential disbarment, as well as harm to the lawyer's client and the legal profession as a whole.²³⁶

²³³ Based on review of BRBA and regional bar associations websites. See for example: "The results of the joint work were summed up by Hrodna lawyers and the regional committee of the Belarusian Republican Youth Union," Belarusian Republican Bar Association news release, February 11, 2023, <https://brka.by/news/itogi-sovmestnoy-raboty-podveli-grodnenskie-advokaty-i-oblastnoy-komiteta-brsm/>, (accessed May 15, 2024); "Lawyers discussed the topic of genocide of the Belarusian people during the war," Belarusian Republican Bar Association news release, May 17, 2023, <https://brka.by/news/advokaty-obsudili-temu-genotsida-belorusskogo-naroda-v-gody-voyny/>, (accessed May 15, 2024).

²³⁴ Human Rights Watch interview with lawyer N via phone (name withheld at their request), March 1, 2024.

²³⁵ Human Rights Watch interviews with lawyer Siarhei Zikratski via phone, September 19, 2023, lawyer I.E. in person (name withheld at their request), September 26, 2023.

²³⁶ "Belarusian Republican Bar Association sees no grounds for proceedings against barring a lawyer from a search based on information on the Internet," Right to Defence news release, December 24, 2020, <https://www.defendersbelarus.org/news/tpost/m6phsvojx1-brka-ne-vidit-osnovanii-dlya-razbiratels>, (accessed May 14, 2024).

Other lawyers said that the BRBA and regional bar associations failed to react to lawyers' appeals regarding serious violations of their rights, such as denial of access to clients, breach of confidentiality, smear campaigns, or politically motivated prosecution.²³⁷

In May 2022, the disciplinary commission of the Minsk regional bar association decided to disbar lawyer Andrei Machalau, who represented political prisoners, because he spoke to the media about the police severely beating his client. The commission told Machalau that, as stipulated by the law, his status as a lawyer would continue to be in force for a month or so, until the Minsk City Bar made the final decision on his disbarment. However, when Machalau showed up at his client's trial three weeks later, he was told that the council had already made the final decision, albeit they had not notified him. Soon after, authorities opened a criminal case against Machalau for "forging" his lawyer's warrant.

During Machalau's trial, Iryna Smirnova, the former chair of the Minsk regional bar association, and Maksim Tserashkou, the then current chair, testified against Machalau, claiming that his warrant had been invalid once the disciplinary commission had taken its decision, and that Machalau therefore knowingly showed up with invalid warrant. The chairs' testimonies led to the court's decision to sentence Machalau to two years of restriction of liberty (*khimiya*).

Repression Initiated by the Bar

Since 2020, the BRBA has increasingly initiated ad hoc re-certification procedures through the Justice Ministry's Qualification Commission.²³⁸ The re-certifications have come at the initiative of the regional bar associations after they claimed to have found violations during their inspections of a lawyer's work. One lawyer said:

²³⁷ Human Rights Watch interviews with lawyer Siarhei Zikratski via phone, September 19, 2023, lawyer I.E. in person (name withheld at their request), September 26, 2023; "Chairman of the BRBA on violation of confidentiality: 'I have no reason to deal with this issue,'" Right to Defence news release, April 30, 2021, <https://www.defenders.by/news/tpost/ptpe9dijn1-predsdatel-brka-o-narushenii-konfidents>, (accessed May 14, 2024).

²³⁸ Human Rights Watch interviews with lawyer B.M. via phone (name withheld at their request), September 21, 2023; lawyer L.Q. via phone (name withheld at their request), September 27, 2023; "Two more lawyers, defending political prisoners, were summoned for extraordinary re-certification," Right to Defence news release, November 16, 2022, <https://www.defendersbelarus.org/news/tpost/tbthntjhfi-esche-dva-advokata-zaschischayuschih-pol>, (accessed May 14, 2024).

The regional bar associations were made aware [by the government] of the fact that now they should be the ones initiating the disbarment procedure. At hoc re-certifications used to take place following inspections by the Justice Ministry, now the bar associations initiate inspections themselves. Then they pass information on to the BRBA which formally launches the re-certification. This is a way to get rid of “undesirables”.²³⁹

Lawyers noted that the “violations” found during inspections are usually very minor and are used as a formal pretext for launching re-certification. Such violations have included, for instance, using the word “visit” instead of “meeting” with a client in the lawyers’ warrant.²⁴⁰

Regional bar associations also have targeted lawyers with disciplinary proceedings for signing public petitions against the war in Ukraine or publicly criticizing the amendments to the Law on the Bar.²⁴¹ For instance, the Minsk City Bar Association found lawyer Aliaksandr Danilevich guilty of violating the Rules of Professional Ethics after he signed a letter condemning Russia’s war in Ukraine and Belarus’s role in it, and issued a reprimand for “spreading false information.”²⁴²

The Belarusian Republican and regional bar associations should play a key role in advocating for and supporting the rights of lawyers and their clients without discrimination and should not take actions against them based on political considerations. Moreover, they should be promoting the role of lawyers as central to the right to a fair trial and the protection of human rights.

²³⁹ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

²⁴⁰ Human Rights Watch interview with lawyer H.N. in person (name withheld at their request), September 26, 2023.

²⁴¹ Council of Bars and Law Societies of Europe, Letter from The President to Chairmen of the Belarusian Republican Bar Association, Minsk City Bar Association, and Minsk Regional Bar Association, “Concerns regarding the use of disciplinary proceedings against lawyers,” March 24, 2022, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Belarus_-_Bielorussie/2022/EN_HRL_20220324_Belarus_Concerns-regarding-the-use-of-disciplinary-proceedings-against-lawyers.pdf, (accessed May 14, 2024); “They are closing our mouths,” We Spoke with Dzmitry Layeuskyy about Pressure on Lawyers, the Babaryka Defense, and Plans,” Zerkalo, July 19, 2021, <https://news.zerkalo.io/life/501.html?c>, (accessed May 14, 2024).

²⁴² “The Vice-Rector for Security insisted,” Telegra.ph, April 18, 2022, <https://www.sb.by/articles/senator-chaychits-ob-advokature-obshchestve-i-gosudarstve.html>.

State Control over Organizational Forms of Lawyers' Work

Before the Law on the Bar was amended in 2021, lawyers could carry out their work individually in private practice, join a law firm, or join a legal consultation offices created and supervised by regional bar associations in coordination with the Justice Ministry. Since November 2021, when the major amendments to the law entered into force, lawyers no longer can work individually or open a law firm—they are only allowed to work as part of legal consultation offices.

In June 2021, justifying the amendments into the Law on the Bar, the then chair of the BRBA had said in an interview to a state media that “certain lawyers, mostly those practicing individually or in law firms, put themselves in opposition to other lawyers and, moreover, put their political ambitions above their professional duties.”²⁴³

Unlike in legal consultation offices, which are not separate legal entities and have their finances managed by regional bar associations, lawyers working independently in an individual practice or law firm have more control over organizing their work and finances.²⁴⁴ The abolition of individual practice and private law firms has led some lawyers to abandon the profession.²⁴⁵

In January 2022, the deputy head of the Justice Ministry's department on the bar and licensing of legal activities, Tatsiana Sashcheka, said that the abolition of individual practice and law firms came as a consequence of “certain lawyers getting involved in politics and thus showing the bar in a negative light.”²⁴⁶

Lawyers said that following the abolition of other organizational forms of lawyers' work, the BRBA and regional bar associations instructed lawyers via internal communications to consult with clients only in legal consultation offices, as opposed to meeting elsewhere.

²⁴³ Ibid.

²⁴⁴ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>.

²⁴⁵ “Katsiaryna Barysevich's Lawyer Left Belarus,” *Reformation*, May 13, 2021, <https://reform.news/224735-advokat-kateriny-borisevich-uehal-iz-belarusi>, (accessed May 16, 2024).

²⁴⁶ “Reporting and election conference of the Homieĺ Regional Bar Association,” Belarusian Republican Bar Association news release, January 31, 2022, <https://brka.by/news/otchetno-vybornaya-konferentsiya-Homieĭskoy-oblastnoy-kollegii-advokatov/>, (accessed May 14, 2024).

They were also told to store all documentation pertaining to their work in the office.²⁴⁷ One lawyer expressed a well-founded concern that soon after the implementation of this rule, many offices in Minsk and Minsk region were equipped with surveillance technology installed by the KGB.²⁴⁸

Heads of legal consultation offices have broad supervisory and administrative authority over the work of the lawyers.²⁴⁹ As of 2017, the Justice Ministry is endowed with the power to approve the candidates for the heads of legal consultation offices, who are appointed by bar association councils. The ministry also issues regulations on the leadership of legal consultation offices and regulates the work of the offices together with the BRBA.²⁵⁰

In January 2022, both Sashcheka and Deputy Justice Minister Mikalai Staravoitau stated that the ministry was working on a reform to strengthen the role of leaders of legal consultation offices in “governing the legal community.”²⁵¹ Lawyers told us that authorities increasingly fire “unreliable” heads of legal consultation offices and substitute them with those considered more loyal.²⁵²

The authorities have endowed legal consultation office leadership with increasing powers.²⁵³ In December 2022, the Justice Ministry granted them authority to give obligatory

²⁴⁷ Human Rights Watch interview with lawyer N via phone (name withheld at their request), March 1, 2024.

²⁴⁸ Ibid.

²⁴⁹ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>, (accessed May 14, 2024).

²⁵⁰ Decree of the Ministry of Justice of the Republic of Belarus, “On Approval of the Regulation on the Head of Legal Consultation” No. 29, adopted February 1, 2012, <https://normativka.by/lib/document/500163200/rev/2023010100>, (accessed May 14, 2024).

²⁵¹ “Reporting and election conference of the Homiel Regional Bar Association,” Belarusian Republican Bar Association news release, January 31, 2022, <https://brka.by/news/otchetno-vybornaya-konferentsiya-Homieŭskoy-oblastnoy-kollegii-advokatov/>, (accessed May 14, 2024); “Reporting and election conference of the Brest Regional Bar Association,” Belarusian Republican Bar Association news release, January 31, 2022, <https://brka.by/news/otchetno-vybornaya-konferentsiya-brestskoy-oblastnoy-kollegii-advokatov/>, (accessed May 14, 2024).

²⁵² Human Rights Watch interview with lawyer N via phone (name withheld at their request), March 1, 2024.

²⁵³ The Belarusian Republican Bar Association, “Concept of the development of the legal profession of the Republic of Belarus for the period up to 2030” <https://brka.by/info/development-concept/>, (accessed May 14, 2024).

orders pertinent to lawyers' work, control lawyers' public statements, including on social media, and ensure that "gaps" in their work are addressed.²⁵⁴

²⁵⁴ Decree of the Ministry of Justice of the Republic of Belarus, "On Approval of the Regulation on the Head of Legal Consultation" No. 29, adopted February 1, 2012, <https://normativka.by/lib/document/500163200/rev/2023010100>, (accessed May 14, 2024).

V. Politically Motivated and Arbitrary License Revocation

Human Rights Watch, the Belarusian Association of Human Rights Lawyers, and Defendersbelarus.org—drawing on publicly available information and 19 interviews with lawyers—identified and examined 140 cases between August 2020 and May 2024 in which the Justice Ministry revoked lawyers’ licenses as a result of arbitrary re-certification procedure or in which the evidence strongly suggests political grounds for license revocation, such as representing clients in politically motivated cases or speaking out on human rights issues.

In Belarus, a lawyer’s license can be revoked by the Justice Ministry for three reasons: failure to pass periodic or ad hoc re-certification (“attestation”) by the Justice Ministry’s Qualification Commission; violation of the law on licensing and licensing terms and conditions; and disciplinary proceedings by bar associations.

Termination of Lawyers’ Licenses following Ministry of Justice

Attestation Procedures

In the majority of the 140 cases we examined, lawyers’ licenses were revoked following certification/attestation procedures overseen by the Justice Ministry.

According to Belarusian law, the purpose of certification is to evaluate a lawyer’s knowledge, compliance with the law, and personal and professional ethics, and to determine whether a lawyer can continue carrying out their professional duties when there is an indication that they might not be sufficiently qualified.²⁵⁵

The ministry’s Qualification Commission is tasked with conducting the admission examination (“qualification examination”) mandatory for obtaining lawyers’ license, as well as with periodic re-certification every five years which may be delegated to bar associations. The Qualification Commission is also empowered to hold ad hoc re-

²⁵⁵ Decree of the Ministry of Justice of the Republic of Belarus, February 2, 2012 No.34 “On the Approval of the Instruction on the Procedure for the Certification of Lawyers,” https://etalonline.by/document/?regnum=w21225070#load_text_none_1_, (accessed May 14, 2024).

certification if they have grounds to believe that a lawyer has “improperly performed their duties” or when two or more complaints are filed in any given 12-month period about a lawyer’s conduct. Ad hoc re-certification can be initiated by the Justice Ministry or the Belarusian Republican Bar Association.

The certification procedure is regulated by a Justice Ministry regulation that stipulates that “a lawyer’s knowledge of the law can be checked by the Qualification Commission in an oral interview.” The regulation does not spell out what kind of questions can be asked as part of this oral examination, which makes it easy for the authorities to misuse and abuse the procedure. During the oral examination lawyers are not allowed to use any sources and are expected to quote norms from memory. Negative decisions by the commission can be appealed in court but the process is deeply flawed because the questions asked and the answers given as part of the certification procedure are not recorded.

Lishankova, a lawyer with 10 years of experience, easily passed her regular re-certification in early 2017. However, a few months later, she and seven other lawyers representing clients in the “White Legion” case were called in for an ad-hoc recertification. The “White Legion” case is a bogus armed insurgency case that had been launched by the authorities against 35 people accused of instigating the mass protests that took place in spring 2017.²⁵⁶

It was evident from [the members of the Qualification Commission’s] demeanor that there was an order from above to put pressure on certain lawyers. Based on the kind of grueling questions they asked, it was clear they were aiming to fail me. After the seventh question, I started struggling. In the end, they said I was not sufficiently qualified and scheduled another re-certification in six months.²⁵⁷

In 2018, after authorities closed the “White Legion” case, Lishankova came for her repeat certification, her experience was very different:

²⁵⁶ See more in Background section of this report.

²⁵⁷ Human Rights Watch interview with lawyer Tatsiana Lishankova via phone, September 19, 2023.

I came and they only asked me one question from the Rules of Professional Ethics... and even hinted at the answer – then, said, “that’s all, goodbye.” So, an absolutely different kind of treatment.²⁵⁸

Lawyers told Human Rights Watch that during oral interviews, the Qualification Commission expected them to quote legal norms by heart and pointedly asked questions from legal fields outside of their area of expertise, apparently fishing for wrong answers.²⁵⁹

According to the law, the Qualification Commission should be comprised of the chair of the Belarusian Republican Bar Association, representatives of regional bar associations, representatives of the Supreme Court, the General Prosecutor Office, and other state bodies, five representatives of the Ministry of Justice, and two representatives from academia.²⁶⁰ While there usually are 21 or more members of the commission, only eight of them represent the bar; the rest represent the interests of the state and state institutions.²⁶¹

While the composition of the commission is supposed to guarantee some degree of independence, in reality, it is fully controlled by the Justice Ministry. The commission is chaired by the deputy justice minister and its membership is subject to approval by the ministry.

All the lawyers interviewed for this report who lost their licenses following the certification procedure said that Deputy Justice Minister Staravoitau was in charge of the attestation procedure, asking most of the questions, while the BRBA chair simply expressed approval of Staravoitau’s actions, and other members of the commission did not have a say.²⁶²

²⁵⁸ Ibid.

²⁵⁹ Human Rights Watch interviews with lawyer Siarhei Zikratski via phone, September 19, 2023; lawyer Tatsiana Lishankova via phone, September 19, 2023.

²⁶⁰ Law on the Bar and Practice of Law in the Republic of Belarus, art. 14, <https://etalonline.by/document/?regnum=H11100334>, (accessed May 14, 2024).

²⁶¹ “Regulation of Lawyer Activities in the Republic of Belarus,” Right to Defence article, December 1, 2020, <https://www.defendersbelarus.org/regulation-of-lawyers>, (accessed May 14, 2024).

²⁶² Human Rights Watch interviews with lawyer Liudmila Kazak via phone, October 8, 2023, lawyer Siarhei Zikratski via phone, September 19, 2023, lawyer B.M. via phone (name withheld at their request), September 21, 2023, Maryia Kolesava-Hudzilina in person, September 21, 2023, lawyer H.N. in person (name withheld at their request), September 26, 2023, lawyer L.Q. via phone (name withheld at their request), September 27, 2023.

In March 2021, the Ministry of Justice notified Zikratski, who represented clients in politically motivated cases, of an upcoming extraordinary re-certification in connection with five commentaries he had given to mass media and published on his social media account, which, in the ministry's opinion, amounted to "improper performance of duties [as a lawyer]."

The declared composition of the Qualification Commission is a farce. As a matter of fact, the attestation is conducted by the deputy minister of justice with full support of the BRBA chair. Imagine, the attestation takes place in the ministry's meeting room. The deputy minister and BRBA chair sit at the head of the table, with the secretary by their side. The lawyer sits across the table. Everyone else [from the commission] sits in "parterre," in the back of the room, without taking any part in the procedure.²⁶³

Another lawyer said:

[Deputy justice minister Mikalai] Staravoitau was fully in charge. Even [BRBA Chair Aliaksei] Shvakau kept his head down. [Staravoitau] was asking questions, while tracing the [legal texts] with his finger. He asked questions about the activities that require a license, but not about the licensing for lawyers; [he asked about] other licensable activities – something like veterinary, real estate brokers, gambling...²⁶⁴

Another lawyer recalled his ad hoc re-certification hearing in 2022:

It was in the Justice Ministry's building in Minsk. Staravoitau was the only one talking to me, he was practically having a dialogue with me. He was picking on the fact that I mixed up the word order when quoting laws by heart. He asked me a question about intellectual property, and when I asked a clarifying question, it was obvious that he did not know himself

²⁶³ Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023.

²⁶⁴ Human Rights Watch interview with lawyer H.N. in person (name withheld at their request), September 26, 2023.

what [he was asking about] ... I thought, God, why all this circus? Honestly, it's revolting.²⁶⁵

Since October 2020, the Qualification Commission under the Justice Ministry has found at least 73 lawyers “unqualified.” On average, the “unqualified” lawyers had more than 13,5 years of experience, with many serving in the legal field for over two or even three decades.²⁶⁶

One lawyer with more than 20 years of experience attested to the unquestionably high professional qualifications and unblemished reputation of many colleagues who failed to pass the re-certification procedure:

As far as I can tell, after 2020 it's been mostly the lawyers working on politically motivated cases that get called in for the Justice Ministry's re-certification, and this had nothing to do with disciplinary violations. It's obvious to me, that the Justice Ministry would not “pass” those colleagues who did their job with professional dignity, whose high qualifications were beyond a shadow of a doubt. Based on those who had already failed the attestation, namely, my active, principled, dedicated colleagues, I knew I was not going to pass. When it's all about their [the authorities] aim to refuse certification, a pretext can always be found. For example, failure to quote the law by heart in its entirety. It's absurd.²⁶⁷

In some cases, the Justice Ministry as well as the BRBA and regional bar associations previously had bestowed awards and honorary certificates recognizing the outstanding work of the very lawyers having their licenses revoked. Among those suddenly “unqualified” were renowned law professors and members of bar association disciplinary commissions and councils. Leading experts in their fields, these lawyers had authored articles, including for the Belarusian Republican Bar Association, and had provided their

²⁶⁵ Human Rights Watch interview with lawyer L.Q. via phone (name withheld at their request), September 27, 2023.

²⁶⁶ Based on Human Rights Watch's open source research and analysis of 73 cases where lawyers lost their license as “unqualified” following planned or ad hoc re-certification procedures at the Qualification Commission. The years of experience were calculated based on the publicly available data in the Uniform Licenses Registry.

²⁶⁷ Human Rights Watch interview with lawyer A.O. via phone (name withheld at their request), November 3, 2023.

expert opinion to the media, including state outlets and TV channels. Dozens of them had volunteered to provide free legal aid to medical workers during Covid-19 pandemic.²⁶⁸

The Qualification Commission's typical grounds for calling for ad hoc re-certification include allegedly inappropriate commentaries given by lawyers to mass media, supposed complaints about their work, reprimands from the deputy justice minister, and supposed violations found after arbitrary inspections conducted by the Justice Ministry or bar associations.²⁶⁹

Termination of Lawyers' Licenses by the Justice Ministry as a Licensing Body

Belarusian law grants the Justice Ministry the power of a licensing body in relation to a lawyers' activities. As a licensing body, the ministry can independently terminate an issued license if a licensee supposedly commits a grave violation of the law on licensing, licensing terms and conditions.²⁷⁰

Since October 2020, the Belarusian Justice Ministry has stripped at least 16 lawyers of their licenses on these grounds.²⁷¹ In most of the cases, the ministry's Qualification Commission found that lawyers had committed actions incompatible with the title of a lawyer. In one case, the commission found a lawyer guilty of repeated violations of the law.

In at least 12 of these cases, the lawyers had represented clients in politically motivated cases, spoke out against government abuses, were arrested during 2020 peaceful protests, or spoke out in support of Ukraine after Russia's full-scale invasion in February 2022.

When terminating lawyers' licenses, the Justice Ministry has full control over the timing of the proceedings, reviewing the cases, and making final decisions regarding license termination.

²⁶⁸ Based on analysis of open sources. See, for instance: "Lawyers of the Minsk City College Joined the Campaign to Provide Free Legal Assistance to Medical Workers Who Directly Work with Patients With COVID-19," Minsk City Bar Association news release, April 9, 2020, <https://www.advokat.by/news/advokaty-minskoy-gorodskoy-kollegii-prisoedinilis-k-aktsii-po-okazaniyu-besplatnoy-yuridicheskoy-pom/>, (accessed May 15, 2024).

²⁶⁹ See more about bar associations and BRBA launching repressions against lawyers in "Dismantling the Independence of the Legal Profession – the Façade of Self-Governance."

²⁷⁰ According to the law "On Licensing" and preceding Presidential Decree No. 450 "On licensing certain types of activities."

²⁷¹ See "Methodology" section for details on how these numbers were derived.

Politically Motivated Disbarment by Regional Bar Associations

It should be known that the repression also comes at the hands of our colleagues.

— Maksim Palavinka, expert of Right to Defence project, March 2023²⁷²

In addition to obtaining a Justice Ministry license, all lawyers are required by law to be members of their regional bar associations.²⁷³ Regional bar associations are empowered with the authority to disbar lawyers as a disciplinary sanction, which then automatically leads to the termination of their license by the Justice Ministry.

Disciplinary proceedings can be launched by regional bar associations or the Justice Ministry, triggered by a complaint from a private party, state body, official, or a court. Lawyers can be disbarred for violations of the law and regulations, for instance, systematic (two or more over 12 months) violations of the law; conviction of a premeditated crime; and infractions incompatible with the title of the lawyer, listed in the Rules of Professional Ethics.

The 2021 amendments to the Law on the Bar tasked the Justice Ministry with developing the Rules of Professional Ethics in cooperation with the Belarusian Republican Bar Association without consulting the broader legal community. In addition to outlining grounds for disbarment, the Rules on Professional Ethics lay the foundation for the work of lawyers, regulating their conduct in detail.

In 2021, the Rules of Professional Ethics were unilaterally amended by the Justice Ministry to include some new regulations and limitations that had been previously used by the authorities as a pretext for banning lawyers from the profession on politically motivated grounds. For instance, the new rules oblige lawyers to “preserve honor and dignity” not only in their professional, but also in their personal life, which has led to self-censorship on personal social media accounts. The revised rules also ban lawyers from expressing opinions on the innocence of defendants they do not represent and have severely limited

²⁷² Human Rights Watch interview with Maksim Palavinka, expert of Right to Defence project, in person, March 23, 2023, Warsaw, Poland.

²⁷³ As far back as 1997, the government used this requirement to filter out independent lawyers. Human Rights Watch, *Republic of Belarus: Crushing Civil Society*, August 1997, https://www.hrw.org/legacy/reports/1997/belarus/Belarus-07.htm#P592_106946, (accessed May 14, 2024).

the ability of lawyers to publicly speak out on politically sensitive issues and about the cases they are involved in.²⁷⁴

When the Justice Ministry initiates disciplinary proceedings at the bar association on its own, the ministry has the power to independently suspend lawyers from discharging their duties for the duration of such proceedings.²⁷⁵ Since October 2021, at least three lawyers have faced such suspension.

One lawyer interviewed for this report said that the Justice Ministry has used its power to suspend lawyers' licenses to "swiftly kick them out of [criminal] proceedings" in order to worsen the situation of their clients in politically motivated cases.²⁷⁶ Another lawyer said:

Their goal is to kick [a lawyer] out of the case. I am sitting in court all day and later in the evening I am told – that's it, there are disciplinary proceedings against you, and you won't be in court tomorrow.²⁷⁷

In March 2021, the Deputy Justice Minister Staravoitau admitted that the ministry "understood perfectly well and was aware of the fact" that by suspending lawyers' licenses the ministry "was not quite nice to the [lawyers'] clients" but claimed without further explanation that the ministry had no other choice.²⁷⁸

Before the adoption of the 2021 amendments to the Law on the Bar, disciplinary proceedings against lawyers were carried out by disciplinary commissions comprised of lawyers – members of the bar association – and the composition was regulated by the regional bar associations.

²⁷⁴ This rule was introduced after the disbarment of Dzmitry Layeusky, who represented political prisoner and contender for 2020 presidential elections Viktor Babaryka, for saying that his client, as well as other defendants in the case, were innocent. https://lawyersforlawyers.org/wp-content/uploads/2021/08/EN_20210802_Belarus_lawyers_Laevski-Statement_Segnees.pdf, (accessed May 14, 2024).

²⁷⁵ Law "on the Bar and Practice of Law in the Republic of Belarus," art. 13, <https://etalonline.by/document/?regnum=H11100334>, (accessed May 14, 2024).

²⁷⁶ Human Rights Watch interview with lawyer I.E. in person (name withheld at their request), September 26, 2023.

²⁷⁷ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023.

²⁷⁸ "Deputy Minister of Justice Staravoitau on lawyers: Do they Understand What Fate Awaits Them?," HRC "Viasna" news release, March 22, 2021, <https://spring96.org/ru/news/102526>, (accessed May 15, 2024).

The 2021 amendments abolished disciplinary commissions, passing their responsibilities to the bar's council, which is a collegial executive governance body. Although the council is elected by the bar members, since 2021, the Justice Ministry approves the candidates for election. The ministry also has the power to decline all the candidates suggested by the bar and propose its own candidates instead. If the bar twice declines the ministry's candidates, those candidates then become council's members regardless of the results of the vote.

Unlike the bar councils in their latest iteration, disciplinary commissions at least maintained some degree of independence and could sometimes push back against repressions.²⁷⁹ One lawyer said:

Disciplinary commissions were abolished because they wouldn't carry out repressive functions. They did not want to make politically motivated decisions because there still were reasonable lawyers in them.²⁸⁰

Before the abolition of the disciplinary commissions, the Justice Ministry had asserted pressure on their members to disbar lawyers on politically motivated grounds and retaliated against those who refused to comply.²⁸¹

Since March 2021, regional bar associations have disbarred close to 60 lawyers.²⁸² In some instances, lawyers were disbarred as a result of pressure from the Justice Ministry and/or law enforcement authorities.²⁸³ One lawyer said in an interview to an independent news outlet that the chair of the BRBA openly admitted that the decision on their disbarment

²⁷⁹ Center for Constitutionalism and Human Rights, Human Constanta, Right to Defence, Helsinki Foundation for Human Rights: *Crisis of Belarusian Bar: How to return the Right to Defense*, September, 2022, <https://cchr.online/wp-content/uploads/2022/09/Report-The-crisis-of-the-Belarusian-legal-profession-how-to-return-the-right-to-defense.pdf>, (accessed May 14, 2024).

²⁸⁰ Human Rights Watch interview with lawyer Siarhei Zikratski via phone, September 19, 2023.

²⁸¹ Human Rights Watch interviews with lawyer I.E. in person (name withheld at their request), September 26, 2023; interview with lawyer K via phone (name withheld at their request); September 27, 2023, lawyer Siarhei Zikratski via phone, September 19, 2023.

²⁸² Based on the data analyzed for the report.

²⁸³ Human Rights Watch interview with lawyer G.F. in person (name withheld at their request), September 26, 2023; "A big interview was released with Andrei Machalau, a lawyer excluded from the Bar Association," Right to Defence news release, June 26, 2021, <https://www.defendersbelarus.org/news/tpost/j8hhgvzg1-vishlo-bolshoe-intervyu-s-isklyuchennim>, (accessed May 14, 2024).

was made by the Justice Ministry.²⁸⁴ Several lawyers said that the bar launched disciplinary proceedings against them following a complaint from law enforcement.²⁸⁵

In February 2022, the Hrodna Regional Bar Association disbarred human rights lawyer Yurhilevich who had represented several political prisoners. The disbarment apparently followed a complaint by the deputy Hrodna regional prosecutor, Andrei Skurat, who expressed doubts about Yurhilevich's professionalism.²⁸⁶ Yurhilevich, who had been practicing law for over 18 years, was later prosecuted on bogus criminal charges.²⁸⁷

Decisions to disbar lawyers, apparently in order to abruptly remove them from legal proceedings of clients in politically motivated cases, sometimes have been made without even the pretense they had committed infractions that warrant disbarment. For instance, lawyers have been disbarred for commenting on the apparent innocence of other defendants in a case, criticizing the legal arguments of other lawyers, or interrupting other parties during court hearings.²⁸⁸

Regional bar associations have become a reliable tool of the state and shown themselves more than willing to participate in politically motivated retaliation against lawyers by the authorities.²⁸⁹

²⁸⁴ "A big interview was released with Andrei Machalau, a lawyer excluded from the Bar Association," Right to Defence news release, June 26, 2021, <https://www.defendersbelarus.org/news/tpost/j8hhgvzg1-vishlo-bolshoe-intervyu-s-isklyuchennim>, (accessed May 14, 2024).

²⁸⁵ Human Rights Watch interview with lawyer P.A. via phone (name withheld at their request), April 21, 2024.

²⁸⁶ "Lawyer Yulia Yurhilevich expelled from Hrodensky Bar Association," Right to Defence news release, February 23, 2022, <https://www.defendersbelarus.org/news/tpost/fmtcgbyxj1-advokata-yuliyu-yurgilevich-isklyuchili>, (accessed May 14, 2024).

²⁸⁷ See "Criminal Prosecution" section in this report.

²⁸⁸ "The disciplinary commission of the Minsk City Bar Association decided to expel D. Layeuskyy from the bar (news updated)," September 7, 2021, <https://www.defendersbelarus.org/news/tpost/937vlnp1-distiplinarnaya-komissiya-minskoi-gorod>, (accessed May 14, 2024); "Defender of political prisoners Babryka and Znak Yauhen Pylchanka were expelled from the Minsk City Bar Association," *Nastoyashee Vremya*, October 29, 2021, <https://www.currenttime.tv/a/pylchenko-isklyuchili-iz-kollegii-advokatov/31534898.html>, (accessed May 14, 2024); "Natalya Matskevich: 'Today is a bad time for lawyers, but it is just the beginning,'" Right to Defence news release, November 19, 2021, <https://www.defendersbelarus.org/news/tpost/ryealnkd1-natalya-matskevich-segodnya-plohie-vreme>, (accessed May 14, 2024).

²⁸⁹ American Bar Association, *Belarus: The Crisis of the Legal Profession Continued Repressions 2022-2023*, January, 2024, https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-belarus-legal-profession-continued-repressions-report.pdf, (accessed May 14, 2024).

VI. International Human Rights Standards

As shown in this report, Belarusian authorities hindered lawyers' access to their clients, and violated the confidentiality of privileged lawyer-client communications. They restricted defenders' access to case files, including refusing clients or lawyers to take photos of voluminous files, and otherwise undermined their ability to mount an effective defense by arbitrarily prohibiting disclosure of information about the case including to potential witnesses, and depriving them of the ability to counter official statements asserting their clients' guilt. State bodies routinely ignored lawyers' motions to address the obstruction of their work. At the same time, the authorities took control over the legal profession.

Justice Ministry and bar associations arbitrarily delicensed lawyers, including in retaliation for representing clients in politically motivated cases and exercising freedom of expression. The authorities subjected lawyers to arbitrary detentions, searches, and administrative and criminal liability.

All these and other abuses against lawyers documented in this report grossly violate the guarantees envisaged in international standards to ensure the functioning of lawyers and Belarus's international human rights obligations.

Roles, Rights, and Responsibilities of Lawyers

The 1990 UN Basic Principles on the Role of Lawyers lay the foundation for the protections and responsibilities of lawyers that governments should strive to implement on the national level, in both legislation and practice. The UN Basic Principles and UN experts highlight the vital role of independent legal profession for the protection of human rights and fundamental freedoms, including right to a fair trial and right to effective remedy, and access to justice.

Protection from Retaliation for Discharging Professional Duties

The UN Basic Principles stipulate that “governments should ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and “shall not suffer, or be threatened with, prosecution or

administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”²⁹⁰

On the regional level, the Organization for Security and Co-operation in Europe (OSCE)’s Guidelines on the Protection of Human Rights Defenders call on states to “protect, in law and practice, human rights defenders who are engaged in litigation from retaliatory charges, arbitrary prosecutions and other legal actions in response to cases that they file.” Moreover, “lawyers engaged in human rights work should not face intimidation or reprisals, such as the threat of disbarment, for their defense of human rights, which includes the right to a fair trial.”²⁹¹

Lawyers who “promote, protect, or strive for the protection and realization of human rights and freedoms” in their work also enjoy protections and guarantees under the UN Declaration on Human Rights Defenders.²⁹² Article 9(3)(c) of the Declaration specifically recognizes the right “to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.” Article 12 of the Declaration stipulates that governments “shall take all necessary measures to ensure effective protection against retaliation, discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the right to participate in peaceful activities against violations of human rights and fundamental freedoms.”²⁹³

Principle 18 of the UN Basic Principles explicitly states that “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.” This offers protection to ensure that clients have access to legal assistance no matter the type of case.²⁹⁴

According to the 2016 Report by the UN Special Rapporteur on the independence of judges and lawyers, when lawyers face stigmatization and persecution in reprisal for representing

²⁹⁰ UN Basic Principles on the Role of Lawyers, principle 16,

²⁹¹ Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the Protection of Human Rights Defenders*, (OSCE/ODIHR, 2014), <https://www.osce.org/files/f/documents/c/1/119633.pdf>, (accessed May 14, 2024).

²⁹² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms)

²⁹³ UN Declaration on Human Rights Defenders, art. 12.

²⁹⁴ UN Basic Principles on the Role of Lawyers, principle 18.

specific clients from law enforcement agencies and the judiciary, “such actions ... may create a chilling climate in which lawyers may eventually refuse to represent clients connected to politically sensitive issues out of fear of becoming the target of judicial harassment or criminal charges, this severely compromising the universal right to legal representation. [...] Where attacks on the liberty of lawyers are frequent or systematic, they may undoubtedly have a chilling effect on the whole category of legal practitioners.”²⁹⁵

In 2014, the UN Special Rapporteur on the independence of judges and lawyers called on governments “to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients.” The rapporteur also expressed “concern at cases in which lawyers have been sanctioned because of political activities, advocacy work, confusion between the lawyer’s cause and his/her client’s cause, and involvement in the legal representation of clients in sensitive cases.”²⁹⁶

Belarusian authorities directly initiated or instigated acts of retaliation, including prosecution, arbitrary arrests, and license revocation, and identified lawyers with their clients or their clients’ causes. In doing so they violated their obligation to protect lawyers from intimidation, hindrance, harassment when discharging their duties.

Independence of the Legal Profession and the Principle of Non-Interference

The principle of independence lays at the center of the legal profession and judicial system, as well as the rule of law. A 2016 report by the UN Special Rapporteur on the Independence of Judges and Lawyers stresses that “lawyers should be guaranteed independence from State authorities and non-State actors, which may also put them at risk. While States are under the duty to protect lawyers from undue interference from authorities, they should also remove third party’s obstacles to the independence of lawyers.” According to the Special Rapporteur, “the best guarantee of such independence

²⁹⁵ UN General Assembly (seventy-first session), “Report of the Special Rapporteur on the independence of judges and lawyers,” A/71/348, August 22, 2016, <https://documents.un.org/doc/undoc/gen/n16/264/93/pdf/n1626493.pdf?token=6txyowXTGti3Fb4ytk&fe=true>, (accessed May 14, 2024).

²⁹⁶ UN Human Rights Council (HRC), Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, A/HRC/26/32, April 28, 2014, <https://documents.un.org/doc/undoc/gen/g14/139/18/pdf/g1413918.pdf?token=jmYqrUvc1sgMBYhjV2&fe=true>, (accessed May 14, 2024).

is a self-governing body, understood as an organization independent from the State or other national institutions.”²⁹⁷

The UN Basic Principles emphasize the importance of professional associations’ vital role, including in protecting their members from persecution and improper restrictions and infringements.

Principle 24 of the UN Basic Principles envisages that “lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.”²⁹⁸

According to the Special Rapporteur, “bar associations should foster democratic standards and should also enforce them internally,” including by being able to make their own decisions, following clear and transparent structures and procedures, and representing their members’ interests. Furthermore:

A bar association should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession, but should operate as a professional association, working to protect the rights of its members and, in so doing, fostering the rule of law. Situations where the State, in particular the executive branch, controls all or part of a bar association, or its governing body, and where membership in such an organization is compulsory, are clearly incompatible with the principle of the independence of the legal profession.²⁹⁹

The Special Rapporteur also expressed concerns over the situation of lawyers in countries “where bar associations are controlled by the State” as they often become the target of

²⁹⁷ UN General Assembly (seventy-first session), Report of the Special Rapporteur on the independence of judges and lawyers, A/71/348, August 22, 2016, <https://digitallibrary.un.org/record/841927?ln=en&v=pdf>, (accessed May 14, 2024).

²⁹⁸ UN Basic Principles on the Role of Lawyers, principle 24.

²⁹⁹ UN General Assembly (seventy-first session, 2016), Report of the Special Rapporteur on the independence of judges and lawyers, A/71/348, August 22, 2016, para. 85-86, <https://digitallibrary.un.org/record/841927?ln=en&v=pdf>, (accessed May 14, 2024).

attacks from the very organizations that should be protecting them.” “Silencing and/or controlling bar associations not only poses great risks to the legal community, but also has far-reaching consequences as it erodes the rule of law and the ability of ordinary people to defend their human rights.”³⁰⁰

The UN treaty bodies repeatedly noted that subordination of lawyers to the control of the Justice Ministry in Belarus and obligatory membership in state-controlled bar associations restricts the independence of lawyers and directly contradicts the UN Basic Principles.³⁰¹

The principle of independence also extends to the disciplinary proceedings against lawyers, which “shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”³⁰²

A 2014 Report by the UN Special Rapporteur on the Independence of Judges and Lawyers emphasized that “the accountability mechanisms put in place for the legal profession should be independent from all branches of the State.”³⁰³

In disciplinary proceedings, lawyers have the right to a fair trial by a competent, independent and impartial tribunal, as set out in article 14 of the International Covenant on Civil and Political Rights. This is especially applicable to the cases of disbarment due to the gravity of the sanction, which “should only be imposed in the most serious cases of misconduct ... and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”³⁰⁴ The right to lawfully exercise one’s

³⁰⁰ Ibid. para. 87

³⁰¹ See, for example: UN General Assembly (Twenty-fifth session, 2000-Twenty-sixth session, 2001) *Report of the Committee against Torture*, A/56/44, May 18, 2001, para. 45 (g) <https://digitallibrary.un.org/record/450921?ln=en&v=pdf>; UN Human Rights Committee (sixty-first session, 1997), “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant,” CCPR/C/79/Add.86, November 19, 1997, <https://undocs.org/Home/Mobile?FinalSymbol=CCPR%2F79%2FAdd.86&Language=E&DeviceType=Desktop&LangRequested=False>, (accessed May 16, 2024).

³⁰² UN Basic Principles on the Role of Lawyers, para. 28.

³⁰³ UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/26/32, April 28, 2014, para. 75, <https://documents.un.org/doc/undoc/gen/g14/139/18/pdf/g1413918.pdf?token=jmYqrUvc1sgMByhjV2&fe=true>, (accessed May 14, 2024).

³⁰⁴ UN General Assembly (seventy-first session), Report of the Special Rapporteur on the independence of judges and lawyers, A/71/348, August 22, 2016, para. 85-86, para. 9, <https://digitallibrary.un.org/record/841927?ln=en&v=pdf>, (accessed May 14, 2024).

occupation or profession is protected by article 11 of the UN Declaration on Human Rights Defenders.

In 2021, the UN Human Rights Committee published the views on the case of Belarusian lawyer Aleh Aheyev, who represented a client in a politically motivated case and publicly spoke about his rights' violations. As a result, Aheyev's license was suspended by the Justice Ministry's Qualification Commission in 2011. The Committee found that by revoking Aheyev's license in such a manner, Belarusian authorities committed "a grave and unjustifiable interference by the State party's authorities with the fundamental principle of the independence of the legal profession." Furthermore, based on analysis of Aheyev's case by an independent body, "such procedures were clearly arbitrary, biased and in violation of the principle of the independence of the legal profession, and thereby incompatible with the fundamental guarantees set out in article 14 (1) of the Covenant, which require accused persons to receive a fair hearing by a competent, independent and impartial tribunal established by law."³⁰⁵

Freedom of Expression

Paragraph 23 of the UN Basic Principles stipulates:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights ..., without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.³⁰⁶

According to the UN Human Rights Committee, the restrictions on the freedom of expression "may never be invoked as a justification for the muzzling of any advocacy of multi-party

³⁰⁵ UN Human Rights Committee, "Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2862/2016," CCPR/C/132/D/2862/2016, August 23, 2021, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/132/D/2862/2016&Lang=en, (accessed May 16, 2024).

³⁰⁶ UN Basic Principles on the Role of Lawyers, para. 23.

democracy, democratic tenets and human rights.”³⁰⁷ Nor can an attack on a person for exercising their freedom of opinion or expression be compatible with the International Covenant on Civil and Political Rights. The Committee specifically stressed that “persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers” are frequently subjected to threats, intimidation, and attacks because of their work.³⁰⁸

In the opinions adopted in Aleh Aheyau’s case, the Committee found that by revoking the license of a lawyer for speaking to the media about his clients’ rights violations, Belarusian authorities restricted his right to freedom of expression.³⁰⁹

Moreover, the UN Basic Principles encourage the promotion of programs informing the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Assisting clients in every appropriate way and taking legal action to protect their interests is the direct responsibility of a lawyer.

Additionally, UN Basic Principles provide that lawyers should enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Belarusian authorities failed to put in place effective measures to protect lawyers against attacks aimed at silencing those exercising their right to freedom of expression. Authorities systematically sanctioned lawyers for their participation in public discussion – via social and mass media – on matters concerning law, justice, and human rights. By equating lawyers’ statements on democratic governance, rights violations, and their criticism of the failing justice system to violations of professional ethics, Belarusian authorities restrict their freedom of expression in a way that cannot be considered necessary in a democratic state and that violates international law.

³⁰⁷ UN Human Rights Committee (102nd session, 2011) General Comment No. 34, CCPR/C/G/34, September 12, 2011 <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed May 14, 2024).

³⁰⁸ Ibid.

³⁰⁹ UN Human Rights Committee, “Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2862/2016,” CCPR/C/132/D/2862/2016, August 23, 2021, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/132/D/2862/2016&Lang=en, (accessed May 16, 2024).

Right to a Lawyer, Fair Trial, Effective Access to Legal Services

Lawyers' ability to exercise their functions freely and independently is central to the right to a fair trial enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR). Lawyers need access to their clients and to be able to give prompt, unhindered and confidential legal advice to ensure the right to fair trial.

According to the 2016 report of the UN Special Rapporteur on the Independence of Judges and Lawyers, “the right of access to a lawyer is a right in itself and an essential precondition for the exercise and enjoyment of a number of other rights, including the right to liberty and security of person, the right to a fair trial, and the right to an effective remedy.”³¹⁰

According to the UN Basic Principles, “governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction” without any discrimination, including based on political opinion.³¹¹

All persons, including those imprisoned, have the right to effective access to legal services provided by an independent legal professional for adequate protection of human rights and fundamental freedoms.³¹² Any detainee or prisoner is entitled to have the assistance of, and to communicate and consult with, legal counsel.³¹³ No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client. Governments shall ensure that lawyers are able to travel and to consult with their clients freely.

Everyone is entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them throughout all stages of criminal proceedings. Moreover, everyone is entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them.

³¹⁰ UN General Assembly (seventy-first session), “Report of the Special Rapporteur on the independence of judges and lawyers,” A/71/348, August 22, 2016, para. 85-86, para.19, <https://digitallibrary.un.org/record/841927?ln=en&v=pdf>, (accessed May 14, 2024).

³¹¹ UN Basic Principles on the Role of Lawyers, principle 2.

³¹² UN Basic Principles on the Role of Lawyers.

³¹³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 17 and 18.

The UN Human Rights Committee's General Comment No. 32 emphasized the importance of private, confidential communications between lawyers and their clients and the ability to advise and represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.³¹⁴

According to the UN Basic Principles, "all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time, and facilities to be visited by and to communicate and consult with a lawyer without delay, interception, or censorship, and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."³¹⁵

The UN Special Rapporteur on the Independence of Judges and Lawyers stressed that state authorities should guarantee physical spaces that allow for privacy and confidentiality for detained clients. The principle of confidentiality refers to all types of communications between lawyer and client.³¹⁶

Furthermore, the UN Basic Principles stipulate that competent authorities have the duty to ensure lawyers have appropriate information, files, and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.³¹⁷

Belarusian authorities routinely violated the right of access to a lawyer by denying detainees and prisoners in politically motivated cases meetings with their lawyers. By arbitrarily suspending license of lawyers working in politically motivated cases, authorities undermined their clients' right to a lawyer of their choosing and a lawyer that has competence commensurate with the nature of the assigned offence. Authorities also denied confidentiality of privileged communications between lawyers and their clients and

³¹⁴ International Covenant on Civil and Political Rights (CCPR), Human Rights Committee (ninetieth session, 2007), General Comment No. 32, Article 14, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 34, <https://undocs.org/CCPR/C/GC/32> (accessed March 16, 2019).

³¹⁵ UN Basic Principles on the Role of Lawyers, principle 8.

³¹⁶ UN General Assembly (seventy-first session), "Report of the Special Rapporteur on the independence of judges and lawyers," A/71/348, August 22, 2016, para. 85-86, para .51, <https://digitallibrary.un.org/record/841927?ln=en&v=pdf>, (accessed May 14, 2024).

³¹⁷ UN Basic Principles on the Role of Lawyers, principle 21.

hindered lawyers' access and ability to copy the case files. All these practices violate the right to a fair trial protected under international law.

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Left:
Series of posters dedicated to convicted Belarusian lawyers by Yuliya Pesenka-Hramatneva, Belarusian graphic artist, human rights defender; technique: digital graphics.
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Front Cover:
Maksim Znak, former lawyer of the Minsk Regional Bar Association and former professor of law at the Belarusian State University, currently imprisoned following a politically motivated trial, stands in a cage during a court hearing in Minsk, Belarus, on September 6, 2021.
© 2021 Ramil Nasibulin/BelTA pool photo via AP

“I Swear to Fulfill the Duties of Defense Lawyer Honestly and Faithfully”

Politically Motivated Crackdown on Human Rights Lawyers in Belarus

Belarusian authorities are systematically targeting and often detaining and prosecuting human rights lawyers who represent clients in politically motivated cases and shed light on rights abuses, part of a wider, brutal crackdown on dissent in the country. The targeting of lawyers severely undermines the right to a fair trial, due process, and access to compensation or other remedy in Belarus.

In “*I Swear to Fulfill the Duties of Defense Lawyer Honestly and Faithfully*” Human Rights Watch, the Belarusian Association of Human Rights Lawyers and the Right to Defence project, document how Belarusian authorities retaliate against human rights lawyers by obstructing their work, harassing them, arbitrarily revoking their licenses, and subjecting them to politically motivated detentions and prosecution, and retributive ill-treatment behind bars.

The report shows the government’s near complete takeover of the legal profession in Belarus and subversion of international norms on the independence of the legal profession. It also documents how the Belarusian Republican Bar Association and regional bar associations not only have failed to represent and protect the rights of their members but have become vehicles for state repression.

The authors call on Belarusian authorities to immediately end all politically motivated prosecutions and ill-treatment of lawyers behind bars, and to reverse all measures that have undermined the independence and integrity of the legal profession. The United Nations, Council of Europe, Organization for Security and Co-operation in Europe, and European Union member states should support Belarusian lawyers who have faced retaliation and consider imposing coordinated, targeted sanctions against those most responsible for the ongoing crackdown.