



# The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense



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## Introduction

Constitutional guarantees *"to have the right to legal assistance to exercise and defend rights and freedoms, including the right to make use, at any time, the assistance of lawyers and other representatives in court, in other state bodies"*<sup>1</sup> and the right of everyone to *"protection of the rights and freedoms by a competent, independent and impartial court"*<sup>2</sup> in Belarus are also de jure in the amended Constitution. In practice, they are not always provided.

It is difficult to find a lawyer in Belarus. Especially when it comes to defense in "political" cases.<sup>3</sup> It has become customary that court hearings take place in an atmosphere of systematic derogation from fair trial standards.<sup>4</sup> The right to defense operates selectively, which means that guarantees for the defense of rights are threatened or do not exist at all in the sense that is laid down by the Constitution.

Lawyers — those who remain in the profession — are forced to self-censor their activities or not to take on cases where the accused are people who are in a dispute with the authorities — legal, political, economic. All such cases are classified as so-called "sensitive" cases, that is, cases in which there is initially an increased risk and the threat of a rebound of actions on the part of the state. Fear stops lawyers and/or makes them work as defense lawyers in a "light" format, that is, they think about their safety, and not about the rights and interests of the client. Such an approach is a violation of the foundations of the lawyer's ethics, and for many lawyers this situation leads to moral dissatisfaction. And lawyers who continue to work on "sensitive" cases on the basis of professional imperatives cannot but be influenced by their understanding of the existence of a permanent risk of losing their status, discrediting their name or other consequences. These risks, while real, harm both lawyers and their clients. Meanwhile, intimidation, harassment and inappropriate interference are the very factors that the government must eliminate in order to ensure an atmosphere free from such factors.<sup>5</sup>

More than 90 lawyers — those who did their duty without regard to previous warnings, including those from the leadership of the bar — were deprived of their status and were forced to stop practicing law in Belarus. The reason for this was not their free choice — leaving the profession was forced, due to exclusion from the bar for the "violations" that they allegedly committed.

The time from August 2020 to the present day is called "legal default" in Belarus.<sup>6</sup> This default is experienced by everyone. But for those lawyers who have remained faithful to the profession, monitoring the state of the defense in the country passes through the prism of a number of components — assessing the cases in which lawyers have worked and are working, assessing themselves, finally, their role as a defense lawyer and those decisions

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1 Constitution, part 1 of article 62.

2 Constitution, part 1 of article 60.

3 HRC Concluding Observations on the Fifth Periodic Report of Belarus (2018), paras 41, 42.

4 HRC Concluding Observations on the Fifth Periodic Report of Belarus (2018), paras 41, 42.

5 Basic Principles on the Role of Lawyers, paragraph 16(a).

6 Default — failure to fulfill the obligations of the debtor to pay the debt - both interest on it and the principal amount borrowed; "legal default", respectively, may mean the failure of the state to fulfill its obligations to implement human rights and administer justice. The concept was introduced by Maxim Znak, a lawyer who was arrested and convicted in September 2020 for his professional activities aimed at protecting and promoting the right to participate in the government of his country (see, for example: <https://www.currenttime.tv/a/belarus-advocates/30880595.html>).

that deprived defense lawyers of the right to practice law. It is clear that the interpretation of the rules by the national authorities, bar associations or courts will still be assessed based on legal standards. As practice shows, judicial decisions challenged using Article 61 of the Constitution<sup>7</sup> are assessed for compliance with the law and practice of the country with international legal obligations. Even if by the time such decisions are made, the perpetrators leave their positions, the Republic of Belarus remains a party to the dispute, which is considered by an international body in order to answer the main question — whether the right has been violated.

Meanwhile, even today, without waiting for the decisions of international bodies, every lawyer voluntarily or involuntarily identifies the state of the profession and compares the current crisis with ideals. For a lawyer, thinking about professional reality is part of his responsibility for the future: legal default should not become the norm. The part that concerns the willingness of people and the legal system itself to return to values, as well as what they are — the ideals / standards of professional guarantees and how to return them to the country is also important.

In the hands of the reader of these lines is the **“The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense”** report, which has become not only a unique collection of examples of violations of the fundamentals of the right to defense and examples of the dedication of lawyers, but also the evidence of the role that the Belarusian bar, headed by the Republican Bar Association, could play for the institution of defense and for those who provide it — lawyers — but never played.

The report draws attention to itself by the fact that readers will find in it not only facts that have become evidence of the courage of lawyers, but also examples of deviations from principles on the part of the bodies of bar associations. All these examples deserve to go down in history as pages of honor and as tragic pages. The report is also important because the authors recreate the essence of professional imperatives, thus fixing the "norm" of the profession and paving the way for future reforms.

For those who still practice within the bar, the information in the report, in my opinion, will be the truth that everyone needs to check their actions with the letter and spirit of legal and ethical standards.

Who authorized the authors for this work?

Their own desire and will to advance the ideals of the profession, thereby protecting the rule of law, access to justice and the right of anyone in need of defense to receive this protection from a qualified lawyer committed to the client and justice. The same desire and will that motivated many lawyers to stand next to the victims of human rights violations in the late summer of 2020.

What new can this report give, given how many critical reports on the state of the legal profession in Belarus have appeared in recent years?<sup>8</sup>

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<sup>7</sup> Constitution, Article 61: *“Everyone shall have the right in accordance with the international treaties ratified by the Republic of Belarus to apply to international organizations in order to defend their rights and freedoms, provided all available domestic remedies have been exhausted.”*

<sup>8</sup> The following reports can be singled out as being relevant to the problem of the realization of the right to protection in the country.

The report is not a statement of violations, it is a book of memory and, at the same time, a roadmap for the necessary changes. The authors of the report have the moral and professional authority to be the working group to prepare such changes.

The strength of the lawyers' solidarity and their readiness to work for the future will surely give results and restore the meaning and letter of what will become the right to defense of everyone in Belarus.

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Belarus, Moldova, Russia and Ukraine), prepared by the Human Rights Houses Network, September 2015 (<https://humanrightshouse.org/noop-media/documents/22729.pdf>).

Joint report of the Observatory for the Protection of Human Rights Defenders in cooperation with the Paris Bar Association “Belarus: control of lawyers — a threat to human rights”, June 2018 (<https://www.fidh.org/IMG/pdf/rapport-belarus-ru-7-2.pdf>).

HRC Concluding Observations on the Fifth Periodic Report of Belarus (2018).

Report of the Helsinki Foundation for Human Rights in cooperation with the World Organization against Torture “Independence of the Bar. Right to Protection (Article 14 of the International Covenant on Civil and Political Rights), November 2019 ([https://www.hfhr.pl/wp-content/uploads/2019/11/HFHR\\_OMCT\\_UPR\\_Belarus\\_ru.pdf](https://www.hfhr.pl/wp-content/uploads/2019/11/HFHR_OMCT_UPR_Belarus_ru.pdf)).

Report of the OSCE Rapporteur to the Moscow Mechanism on Reported Human Rights Violations in the Context of the 9 August 2020 Presidential Election in Belarus, October 2020 (<https://www.osce.org/files/f/documents/7/9/469542.pdf>; <https://www.osce.org/files/f/documents/2/b/469539.pdf>).

## Summary

This report was initiated by the Center for Constitutionalism and Human Rights of the European Humanities University in partnership with the "Right to Defense" project (defenders.by), human rights organization "Human Constanta", the Polish Helsinki Foundation for Human Rights as a work to promote and achieve the practical implementation of the guarantees of independent legal professions that form the basis for effective access to legal assistance for everyone who needs and receives such assistance.

The Center and partners did not remain indifferent to the events of the period 2020–2022, when the crisis of the legal system that arose during and after the 2020 presidential elections was aggravated in Belarus. The legal system was losing its representatives most committed to the rule of law and human rights, and changes in legislation and increased interference by the state in the sphere of activity of the legal profession led to the destruction of the bar as an institution, and at the same time to the actual deprivation of citizens of free access to assistance from independent lawyers.

In preparing the report, its authors set themselves the following tasks:

- understanding the experience of the legal profession in Belarus by analyzing specific examples of negative practices and the general trend;
- comprehension of non-compliance of the legislation on the bar and practice of law enforcement practice with international legal standards;
- proposing a program of actions that should be taken by the state, the professional association of lawyers and those lawyers who take responsibility for the future of the profession, in order to restore the legal profession and return to its inherent status and purpose.

Chapter I of the report presents international standards that define the functions and role of a lawyer, the institution of the legal profession and its interaction with the state. The relationship between the standards of the bar and the obligation of the state to ensure the right to access to justice and to a lawyer is shown. This chapter puts into context the situation with the right to defense in Belarus, it describes the features and historical peculiarities of the Belarusian experience in the field of advocacy: from the early period of independence to the establishment of state control over this institution.

Chapter II is devoted mainly to the events of 2020–2022. It talks about the problems that exist for the legal profession in Belarus in general and for lawyers and the bar in particular, starting with the system of legal education and ending with the actual absence of the institution of free legal aid for citizens.

This chapter deals with issues of restricting admission to the legal profession, violations of procedural rights (access to a client; confidentiality of lawyer-client communications; access to information and materials) and professional guarantees (the right to represent your client; prohibition of identification with a client, intimidation, harassment and threats for the exercise of professional activity; freedom of expression and immunities) of lawyers. It also analyzes the defects in existing procedures that lead to illegal actions against lawyers, up to and including deprivation of status. Chapter II, in addition, includes an assessment of legislative regulations and actions of professional associations (Bars) of lawyers, indicating their failure to fulfill their functions.



The report contains conclusions that the current situation of the bar and lawyers in Belarus does not meet the international standards of this institution and the right to legal assistance, which, in fact, became the reason for the loss of independence by the bar, violations of professional and procedural guarantees of the bar, and as a result, an almost insurmountable obstacle to the realization of the right to defense in Belarus. Due to the actions of the state aimed at subordinating the legal profession, repressions against many lawyers and the creation of an atmosphere of uncertainty and fear in the implementation of this activity, the institution of the law practice is leveled and cannot fulfill its function of ensuring the right to legal assistance from independent lawyers — a fundamental human right, which is included in the system of international obligations of the state and is a constitutional guarantee.

As a result, the report proposes a program of actions — a kind of roadmap for future changes that are necessary to restore the right to the profession of lawyers who have been wrongfully deprived of their status, to build the institution of the bar based on its essential characteristics and standards, to properly ensure the right to legal assistance for those who need it.

The authors of the report express the hope that this concept, designed for a wide range of actors — the state, civil society, professional associations and lawyers themselves — will not remain on paper, but will be implemented as the situation develops in Belarus and in the whole region.

## Methodology

The report is based on data obtained as a result of a survey of lawyers who have been deprived of their status or left the bar, data from open sources, the results of summarizing information and research of the defenders by project, statements and assessments of institutions of international organizations, Belarusian, foreign and international non-governmental organizations and bar associations, as well as on the awareness of the situation from the inside and on the own experience of the authors of the report — lawyers with extensive professional experience, including those who worked in the period 2020–2022, with education in the field of international human rights standards and research competencies.

The participants in the creation of this report were, in fact, many lawyers, including those who experienced the illegal practices described in it and were deprived of the right to a profession, and those acting lawyers who are in conditions of continuing repression try to defend people, following their professional duty and the standards of the independent exercise of the profession.

The report includes a summary of international standards relevant to the topic of each block, an analysis of legislation, specific cases and practical examples for compliance with international standards, which allows drawing reasonable conclusions and suggesting ways to overcome those negative trends that have led the legal profession and the right to defense to the current state.

# Chapter I

## Lawyers: standards, history and future of the right to defense in Belarus

The purpose of this part of the report is to provide an introduction to the context of the situation in Belarus and, more specifically, to the context of the right to defense in the country whose legal system has been operating for at least two decades on the basis of an imbalance of executive, judicial and legislative powers. Meanwhile, the experience of the Belarusian lawyers is worth describing it not in terms of criticism or self-abasement. On the contrary, the history of creation, mistakes, disappointments, but also victories — over oneself, over fear, over routine — makes this experience unique and requires one to take it into account when thinking about the future.

This part will outline the features and historical features of the Belarusian experience, briefly present international standards regarding the right to access to a lawyer and justice, the author turns the pages of the past and present of the Belarusian legal profession to show what the potential is based on, which is necessary to restore the principles and imperatives of professional defender activities.

The chapter is proposed to begin with those standards that define the functions and role of a lawyer, the institution of the bar and its interaction with the state.

### Standards: the right to a lawyer

The right to a lawyer derives from the right to a fair trial, which is enshrined in international treaties<sup>9</sup> and the national constitution.<sup>10</sup>

Understanding the place of the bar in the justice system and the activities of a lawyer as one of the elements of legal protection is embedded in the conclusions of the World Conference of States (1993), which prescribe the obligation *“to provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development”*.<sup>11</sup>

Over the last half century the condition of removing barriers to justice and effectively being able to benefit from legal services provided by an independent legal profession<sup>12</sup> has come to be recognized as an obligation inherent in and arising from the very nature of the general obligation to ensure the realization of human rights and freedoms. In the last decade, this commitment has been reaffirmed by most states within the framework of the Sustainable

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9 Covenant, article 14; European Convention on Human Rights, Rome 4 November 1950, Article 6.

10 Constitution, articles 22, 25, 26, 27, 60, 61, 62.

11 Vienna Declaration and Program of Action, adopted at the World Conference on Human Rights in Vienna on June 25, 1993, part 1, paragraph 27.

12 Basic Principles on the Role of Lawyers, preambular paragraph 8.

Development Goals (2015–2030) and is formulated as follows: *"provide access to justice for all and build effective, accountable and inclusive institutions at all levels"*.<sup>13</sup>

Thus, there was a consolidation of the consensus of states regarding the content of the concept of "access to justice", which today is understood as a system of institutions and procedures, including the institution of access to a lawyer/obtaining legal assistance,<sup>14</sup> which means "effective and equal" access to a lawyer and legal aid for everyone.<sup>15</sup> A consensus has also been formed regarding the individual right to a lawyer as a right that is a condition for the realization of other human rights and an element of effective remedies.<sup>16</sup>

### "Lawyer — Bar — State"

The profession of a lawyer is characterized by duality: on the one hand, lawyers are "essential agents of the administration of justice",<sup>17</sup> on the other hand, lawyers are called upon to fulfill their main role, which is defined as "always loyally respect the interests of their clients".<sup>18</sup> Balancing between these two requirements, a lawyer can perform his functions only being independent and with the support of both a self-governing and self-regulating professional association and the state. In a state governed by the rule of law, the bar association is entrusted with the task of ensuring the formation of conditions for the free and independent practice of law, the promotion of the goals of justice, the protection of human rights, in particular, procedural law and the right to a fair trial.<sup>19</sup> At the same time, the government *"shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers"*.<sup>20</sup>

A feature of the role of a lawyer in a trial is the mandatory and simultaneous presence of two basic conditions: (1) guarantees of confident relations between a lawyer and a client, which implies the confidentiality of their communication and a number of immunities/guarantees of a lawyer, (2) the real independence of a legal representative, that is, the autonomy of a lawyer, which means freedom from interference by the state represented by all its bodies in the activities of lawyers and respect for the established guarantees and immunities.<sup>21</sup>

Without ensuring these principles, the right to be defended by a lawyer would be illusory. If a lawyer is subjected to direct administrative influence and/or pressure, which leads to a violation of his professional autonomy in making decisions within the framework of the tasks performed to defend clients, this creates a real threat both to the right to a fair trial for a particular person, and to the entire justice system.

The UN Special Rapporteur on the Independence of Judges and Lawyers describes this interdependence: *"...lawyers have to commit to the independence of their profession and recog-*

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13 Transforming Our World: The 2030 Agenda for Sustainable Development, adopted by UN General Assembly Resolution 70/1 of September 25, 2015, Goal 16.

14 The two-tier system is based on an analysis of the provisions of the Basic Principles on the Role of Lawyers, taking into account the development of the provisions of this document in the practice of the Special Rapporteurs on the independence of judges and lawyers (see the report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayan, dated 23 March 2020 on the Independence of Judges and Lawyers, A/HRC/44/47).

15 Core Principles on the Role of Lawyers, Section on Access to Lawyers and Legal Services.

16 Report of the Special Rapporteur on the independence of judges and lawyers, A/71/348 (2016), para. 26.

17 Basic Principles on the Role of Lawyers, paragraph 12.

18 Basic Principles on the Role of Lawyers, paragraph 15.

19 Basic Principles on the Role of Lawyers, preambular paragraph 10, paragraph 25.

20 Basic Principles on the Role of Lawyers, paragraph 2.

21 Basic Principles on the Role of Lawyers, section "Guarantees for the performance of lawyers' duties".

*nize the central role they play in the justice system... The independence of lawyers is as necessary ensuring trust in the process of justice as is the impartiality of judges. Lawyers should use their knowledge to represent and defend their clients, in accordance with professional codes of conduct, avoid any impairment of their independence and be careful not to compromise their professional standards to please their clients, the court or third parties. Their honesty and intellectual and material integrity are crucial in order to ensure that their clients have confidence in them, and also to ensure the trust of society in the legal profession as a whole. Lawyers should be perceived as honest and independent both by their clients and by society at large.”<sup>22</sup>*

In order for a lawyer to be able to fulfill his obligations to defend a client, a system of checks and balances must work in law and in practice, which ensures the rule of law and creates conditions for the independence of the bar in general and lawyers in their work on specific cases. The experts of the Venice Commission point to the following elements of this system:

*“97. The Bar plays a fundamental role in assisting the judicial system. It is therefore crucial that it is organized so as to ensure its independence and proper functioning. This implies that legislation provides for the main features of its independence and that access to the Bar is sufficiently open to make the right to legal counsel effective. Effective and fair criminal and disciplinary proceedings are necessary to ensure the independence and impartiality of the lawyers.*

*98. Professional ethics imply inter alia that “[a] lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation”.<sup>23</sup>*

**The professional association of lawyers** in this system of relations "lawyer — bar — state" performs three most important functions: a) protection of the members of the association — lawyers, b) provision of legal services to all those in need and c) cooperation with government and other institutions in promoting the implementation of the goals of justice, including the provision of everyone's access to a lawyer.<sup>24</sup>

An example from the early history of the Belarus Bar Association illustrates how a bar association can protect association members from undue interference at the institutional level: in the early 1990s, the practice of judges using the provisions of the Code of Administrative Violations to punish lawyers for their statements in court began to spread. In court hearings, there were also threats of arrest against lawyers for their “excessively”, according to the court, active position in court. The Union of Lawyers of the Republic of Belarus, which operated at that time, applied to the Scientific Advisory Council of the Supreme Court, which prepared an opinion on the current international standards regarding immunities and the impossibility of bringing lawyers to administrative responsibility for their actions in courts.<sup>25</sup> The dangerous practice has been stopped.<sup>26</sup>

<sup>22</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), para. 32.

<sup>23</sup> Rule of Law Checklist, adopted at the 106th plenary meeting of the Venice Commission in Venice on 11-12 March 2016, paragraphs 97, 98.

<sup>24</sup> Basic Principles on the Role of Lawyers, preambular paragraph 10, paragraph 25.

<sup>25</sup> See, for example, Basic Principles on the Role of Lawyers, Principle 20: “Lawyers shall 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”.

<sup>26</sup> L. Ulyashina, report “Advocacy in Belarus. Some problematic issues of compliance with international norms on guarantees for the performance duties by lawyers, conference “Professional Legal Assistance” with the support of the German Legal Cooperation Foundation, October 2001, Fischbachau, Germany; report “Provision of legal assistance in Belarus. Problems of Implementation of the Norms of International Law Providing Guarantees for Lawyers and Human Rights Defenders”, Conference “The Role of Lawyers in the Protection of Human Rights”, March 23-24, 2000, Minsk, Belarus.



**The state**, ensuring the right to a lawyer, must take a number of “positive” actions by creating appropriate mechanisms, procedures and guarantees: the provisions of the Constitution and laws that define and protect the institution of the bar;<sup>27</sup> mechanisms and atmosphere in which public authorities show respect and take measures to protect lawyers, their guarantees and immunities;<sup>28</sup> creation of infrastructure, effective procedures and flexible mechanisms for organizing access to lawyers;<sup>29</sup> provision of sufficient financial and other means for the provision of legal services to the poor and, if necessary, to other disadvantaged persons,<sup>30</sup> etc.

The exercise of the individual right to a lawyer and the effective functioning of the institution of access to a lawyer, if they are ensured by the joint efforts of a lawyer, the bar and the state with mutual respect and on the basis of standards of individual and institutional levels, lead to a common goal — ensuring access to justice.

Nonetheless a number of post-Soviet countries inherited the model of the old period, in which the bar did not play a significant role in the judicial and legal system, and the position of a lawyer remained secondary in relation to other participants in justice. Misunderstanding of the essence of the lawyers’ profession and the role of the legal profession in the justice system has become entrenched and still forces state officials to officially declare that lawyers should “defend the interests of the state”,<sup>31</sup> and at the level of the investigation, court, administration, expectations have formed that lawyers should “help” the investigation and court, obey the state interests, which are often understood literally as the duty of lawyers and the bar to follow the instructions of the Ministry of Justice or law enforcement agencies. This cliché still dominates the Belarusian reality.

### Bar Association of Belarus: early period of independence

In the early 90s, the reform of the judicial and legal system began, and in the Concept of Judicial and Legal Reform adopted by the Supreme Council of the Republic of Belarus, the main reason for the need for such a reform was named: *“... the system of justice bodies, formed mainly in the conditions of a political totalitarian state at the turn of the 30s–40s of our century, are not able to perform the functions inherent in justice in a constitutional state. Justice has lagged behind the democratic changes that have taken place in society. A free person needs impartial and qualified judicial protection from arbitrariness, and the court remains with its former purpose and place in the system of power. In its current state, the organs of the justice system are susceptible to the dictates of the prevailing political power and cannot guarantee the impartiality inherent in justice in a constitutional state”*.<sup>32</sup>

A special section of the Concept was devoted to the bar, it was prepared with the involvement of representatives of the bar and was based on the principles formulated on the basis of international standards: *“In a state of law, the bar should have been an independent,*

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27 Basic Principles on the role of Lawyers, preambular paragraph 11.

28 Basic Principles on the Role of Lawyers, paras 16, 17, 21, 22.

29 Basic Principles on the Role of Lawyers, paragraph 2.

30 Basic Principles on the Role of Lawyers, paragraph 3.

31 A. Lukashenko’s [address](#) to the first congress of lawyers on July 7, 2022: *“It is symbolic that in the declared Year of Historical Memory, the domestic bar is celebrating its 100th anniversary. This most important institution was established back in 1922 in order to ensure the protection of the legal interests of the state and society, the rights and freedoms of citizens, and to promote the development of legal culture. Your predecessors — Soviet lawyers — have always been distinguished by devotion to the Motherland, the legal profession, exceptional honesty and decency”*.

32 The concept of judicial and legal reform, adopted by the Decree of the Supreme Council of the Republic of Belarus dated April 23, 1992 № 1611-XII “On the Concept of judicial and legal reform”, section I, part 4.

*professional, self-governing public organization. The tasks, organization and relationship of the bar with state authorities and administration are determined based on the human rights nature of its activities by a special law*".<sup>33</sup>

Adopted already in 1993, the Law "On the Bar"<sup>34</sup> received positive assessments from the Council of Europe<sup>35</sup>, which, according to Professor I. Martinovich, was deserved, since the Law "took into account domestic and world experience, the achievements of legal thought and the need of society in the context of the transition to a market economy and the rule of law".<sup>36</sup> The Law was based on the principles and guarantees to ensure protection against undue restrictions and interference.

Thus, the Law prohibited interference in the professional activities of a lawyer, including by demanding any information constituting the subject of attorney-client privilege, as well as demanding such information from employees of self-government bodies and lawyer's associations (part 2 of Article 16 of the Law). The lawyer was granted the right to defend the interests of individuals and legal entities in all courts, organizations and associations; these bodies could not refuse to recognize the right of a lawyer to represent the interests of a person who applied for legal assistance (part 3 of Article 17). Guarantees of civil immunity in the exercise by a lawyer of his professional activities in cases where the statements of a lawyer that do not violate the Rules of Professional Ethics affected the honor and dignity of the party (part 4 of Article 17), the right to unhindered communication with his principal, including those in custody (Article 17, paragraph 5, paragraph 2), the right to request information (Article 17, paragraph 2, paragraph 3), as well as other rights, were reinforced by the provisions of the Law on the duty of the state to ensure the independence of the Bar (Article 29) and the responsibility of the Ministry of Justice to take measures to protect lawyers from prosecution, unreasonable restrictions and encroachments in connection with their professional activities (Article 31). The Bar Association represented by the Union of Lawyers<sup>37</sup> was endowed with the right of legislative initiative (Part 3 of Article 15).

The law also corresponded to the principles of free access to the profession. There were no restrictions on admission to the exams for the right to obtain a lawyer's license, except for the general requirements for persons entitled to practice law.

Problems of admission to the profession, however, existed in practice. Lawyers believed that the number of practicing lawyers should not be too large — and this led to an arbitrary restriction on admission to trainees and, accordingly, to subsequent admission to the lawyers. The Bar's refusal to accept a trainee could not be challenged in court. The procedure was non-transparent and caused a lot of criticism from lawyers trying to get into the bar, as well as from international organizations.

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33 The concept of judicial and legal reform, adopted by the Decree of the Supreme Council of the Republic of Belarus dated April 23, 1992 № 1611-XII "On the Concept of judicial and legal reform", section VI, part 1.

34 Law of the Republic of Belarus dated June 15, 1993 № 2406-XII "On the Bar".

35 Martinovich I.I. Innovations in the Bar Reform in Belarus and Russia in the Post-Soviet Period (Comparative Legal Aspect) // Law and Democracy: Collection of articles. scientific tr. — Minsk: BGU, 2004. — S. 236 — 239.

36 Martinovich I.I. Advocacy and justice // Ship's bulletin. — 1999. — № 1. — P. 59; Martinovich I.I., Pastukhov M.I. Judicial-legal reform in the Republic of Belarus. Jury trial and other innovations in the legislation on the judiciary / Martinovich I.I., Pastukhov M.I. — Minsk: Amalfeya, 1995. — 224 p.

37 The Union of Lawyers of Belarus (1991–1997), which united the lawyers of the country, did a great job of preserving and developing the domestic institution of the bar, which is an integral and very important part of the judicial system. In 1997, the activities of the Union of Lawyers ceased due to the formation of the Republican Bar Association.

Having received a license, lawyers had the right to practice law either by joining a bar association, or through the formation of other lawyer associations, or individually.<sup>38</sup> The role of the professional association, and not the government bodies, was assigned to ensure that professional ethics was observed. Disciplinary proceedings against lawyers were carried out by a body created by the lawyers themselves.

In 1994, the basic principles were enshrined as constitutional guarantees in the first Constitution of the Republic of Belarus, and the right of an individual to apply to international bodies was also enshrined there. Belarus received a "guest quota" to the Council of Europe, recognized the competence of the Human Rights Committee to receive and consider individual complaints.

At that time, they could exercise the right to freedom of speech, peaceful assembly, and association. For example, issues regarding the mandatory membership of all lawyers in a single association, the adoption and implementation of the Rules of Professional Ethics, the material liability of lawyers, insurance of lawyers, the composition and procedure for disciplinary commissions, the introduction of equal taxation conditions were openly discussed at meetings and conferences of lawyers, in the press, public discussions.<sup>39</sup> Lawyers were free to participate in peaceful assemblies, for example, holding a picket near the building of the Belarusian Parliament — the Supreme Council of the Republic of Belarus<sup>40</sup>, in order to draw attention to the problem of the potential bankruptcy of the Bar Association due to the erroneous granting of the status of economic entities.

## Departure from the standards — the restoration of control over the bar

"On the amendments and addenda to the Constitution of the Republic of Belarus as proposed by I: the President of the Republic; II: the Agrarian and Communist groups of parliamentarians Commission". Opinion adopted by the Venice Commission at its 29th Plenary Meeting in Venice, on 15-16 November 1996), CDL-INF(1996)008. Members of the Venice Commission noted that in the proposed version of the Constitution, the President receives influence on all authorities, including the judiciary; the thresholds for overcoming the presidential veto on bills are so high that the latter can actually stop the adoption of any law. Parliament can be dissolved by the President by decision of the Constitutional Court, whose independence is also not convincing due to the procedure for appointing judges (six are appointed by the President, six by the Council of the Republic). The government is also dependent on the President, since he has the power to dismiss members of the government and cancel government acts. The General Prosecutor is appointed by the President and is accountable to him.

Judicial reform wasn't met with great enthusiasm among the officials responsible for the state of the judiciary and the prosecutor's office,<sup>41</sup> and was completely stopped shortly after changes were made to the country's Constitution at the end of 1996. According to the Venice Commission, this resulted in an absolute absence of a system of checks and balances, the analogy of which cannot be found in any Western constitution.

In 2000, the country was visited by the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, who, in his report on the results of the first and only mission of this mandate holder to the Republic of Belarus, wrote: *".. the pervasive manner in which executive power has been accumulated and concentrated in the President has turned the system of government from*

38 Law of the Republic of Belarus of June 15, 1993 № 2406-XII "On the Bar", Article 13.

39 L. Ulyashina, report "Advocacy in Belarus. Some problematic issues of compliance with international norms on guarantees for the performance duties by lawyers, conference "Professional Legal Assistance" with the support of the German Foundation for Legal Cooperation, October 2001, Fischbachau, Germany. I. Aksenchik, Belarusian Business Newspaper, April 10, 1997. M. Volchek, National economic newspaper, 1995, № 41.

40 L. Ulyashina, report "Advocacy in Belarus. Some problematic issues of compliance with international norms on guarantees for the performance duties by lawyers, conference "Professional Legal Assistance" with the support of the German Foundation for Legal Cooperation, October 2001, Fischbachau, Germany.

41 M. Pastukhov "On the Significance of the Concept of the Judicial-Legal Reform of 1992 for the Future of Belarus and its Institutions", speech at the round table "The Path of the Constitutional Development of the Republic of Belarus", Center for Constitutionalism and Human Rights and Law and Democracy Centre, July 29, 2022.

Considering that the President has the right to remove the powers of the Chairman of the Supreme Court, there is a serious distortion of the constitutional model, which should be based on the independence of the judiciary. Considering that the President may, on his own initiative, dismiss the Chairman and members of the Constitutional Court, the Supreme Economic Court and the Central Electoral Commission, the Prosecutor General and the Chairman of the National Bank, his interference in the sphere of other state bodies cannot be stronger. The State Control Committee has broad powers that should only be granted to an independent body. However, it is formed by the President, and is actually part of the presidential administration. A significant part of the legislative functions is transferred to the President, as he is authorized to issue regulations that have the force of law.

*parliamentary democracy to one of authoritarian rule. As a result, the administration of justice, together with all its institutions, namely the judiciary, the prosecutorial office and the legal profession are undermined and not perceived as autonomous and independent. The rule of law is therefore thwarted.*<sup>42</sup> The report gave examples that pointed to the complete destruction of the institution of judicial protection and the lack of independence of judges: *"The executive's control over the judiciary and the manner in which repressive actions are taken against independent judges appear to have produced a sense of indifference among many judges for the importance of judicial independence in the system. Many appeared to be content with the flawed appointment, promotional and disciplinary procedures and*

*service conditions. These procedures violate international and regional minimum standards for an independent judiciary.*"<sup>43</sup>

Departure from the principle of the independence of the judiciary and the rule of law was the result and, in fact, the goal of the executive branch.

In 1997, the membership of the Republic of Belarus in the Council of Europe was suspended due to the fact that the elections that followed the referendum were recognized as undemocratic. Over the past 20 years, the situation in terms of the balance of power has remained the same, the state, having retained de jure its ties with the UN system, de facto declared a rejection of the principle of *pacta sunt servanda* ("agreements must be kept") in their communications with UN bodies, including in cases of consideration of individual applications from persons whose rights and freedoms have been violated in the country.<sup>44</sup>

The Bar, which was the most successful and progressive among the former Soviet republics in the early 1990s, was once again under state control. This happened already in May 1997 in connection with the adoption of the Decree of the President "On some measures to improve the lawyer and notarial activities in the Republic of Belarus", by which many provisions of the Law on the Bar of 1993 ceased to operate.<sup>45</sup> Soon, the Regulations on the Qualification Commission were also introduced, according to which the Minister of Justice

42 Report of the Special Rapporteur on the independence of judges and lawyers, Param Coomaraswamy, 8 February 2001, on a mission to Belarus, E/CN.4/2001/65/Add.1.

43 Report of the Special Rapporteur on the independence of judges and lawyers, Param Coomaraswamy, 8 February 2001, on a mission to Belarus, E/CN.4/2001/65/Add.1

44 See, for example, the statement of the position of the Government of the Republic of Belarus in the HRC Views of 29 October 2012 regarding Communication № 2120/2011, Lyubov Kovaleva and Tatiana Kozyar v. Belarus, CCPR/C/106/D/2120/2011, paragraph 4.3 : *"25 January 2012, the State party stated, regarding this communication, as well as about sixty other communications, that, by becoming a State party to the Optional Protocol, it has recognized the competence of the Committee under article 1, but that recognition of competence has been made in conjunction with other provisions of the Optional Protocol, including those that establish criteria regarding applicants and the admissibility of their communications, in particular articles 2 and 5 of the Optional Protocol. It is of the view that under the Optional Protocol, States parties are not required to accept the Committee's Rules of Procedure and its interpretation of the provisions of the Protocol, which "can only be valid if it is carried out in accordance with the Vienna Convention on the Law of Treaties". The State party submits that "with respect to the procedure for lodging complaints, States parties should be guided primarily by the provisions of the Optional Protocol". It further argues that "every communication registered in violation of the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights will be considered by the State party as inconsistent with the Protocol and will be rejected without comment to the admissibility and merits of the communication." The State party also submits that decisions taken by the Committee on such "dismissed communications" will be treated as "null and void" by its public authorities".*

45 Decree of the President of the Republic of Belarus dated May 3, 1997 № 12 "On some measures to improve the lawyer and notarial activities in the Republic of Belarus".



and, in fact, the Ministry of Justice, were given powers that allowed direct interference in the activities of bar associations, including in the issuance of a license, admission to the profession and deprivation of the opportunity to practice law.<sup>46</sup> In subsequent years, state control over the legal profession only intensified. At the same time, the legal profession was not able to resist the attack on the institution.

Meanwhile, despite the pressure, history knows examples of the actions of lawyers and bar associations in defense of the principles of the profession.

Thus, at the beginning of 2011, the Presidium of the Minsk City Bar Association (MCBA), which for the first time in the history of the modern bar in Belarus was democratically elected at a general meeting of the Bar Association, refused to initiate disciplinary proceedings on the proposal of the Ministry of Justice against lawyers Tamara Sidorenko, Pavel Sapelka, Marianna Semeshko, Vladimir Tolstik for speaking out about violations of the rights of their clients — imprisoned participants in the 2010 presidential election campaign. The Presidium of the Bar concluded that the speeches of lawyers in the media cannot be violations of the law and norms of professional ethics and are not subject to prosecution. After the licenses of lawyers Oleg Ageev, Tatyana Ageeva, Vladimir Tolstik and Tamara Goraeva were revoked in February 2011, the chairman of the MCBA, Aliaksandr Pylchanka, on behalf of the Presidium of the Bar, publicly stated about the threat to the independence of lawyers and the legal profession as a legal institution from the Ministry of Justice.

The wave of repressions against lawyers who defended political opponents of the current government that followed the 2010 presidential election led not only to the deprivation of a number of lawyers of the right to practice, but also to the fact that lawyers fought for their name, the position of a lawyer and the rights of their clients.



Thus, despite pressure from the state and the refusal of national courts to stand up for the defense of the principles of the legal profession, Oleg Ageev, a lawyer deprived of license for his statements in the press regarding the rights of detainees to parcels in the context of the detention of his client — a presidential candidate who was arrested shortly after the past election — went all the way to international protection. In 2016, his complaint about the events of 2011 was registered with the Human Rights Committee, and in 2021 a decision was made, which presents a snapshot of the situation in the Belarusian legal profession, and gives an assessment of the activities of executive and, in fact, the judiciary as institutions that violate the fundamental principle of the independence of the legal profession, as well as the freedom of speech of a lawyer.<sup>47</sup>



Another example is the story of lawyer Pavel Sapelka, who was also deprived of his license at that time, while it was obvious that disciplinary measures were taken as a reaction to his speech in the press due to the inability to receive an adequate response from the authorities investigating the case of another ex-presidential candidate. In his speech at the ceremony of presenting him with the award of the Council of Bars and Law

Retrieved from: <https://www.cbbe.eu/actions/human-rights-portal/human-rights-award>

<sup>46</sup> Regulations on the Qualification Commission on Advocacy in the Republic of Belarus, approved by the Minister of Justice of the Republic of Belarus on June 4, 1997. The circumstances related to interference in the activities of the bar and violations of the rights of lawyers during that period were considered by the Human Rights Committee. See HRC Views of 26 October 2011 on Communication № 1316/2004, Mieczysław Hryb v. Belarus, CCPR/C/103/D/1316/2004.

<sup>47</sup> HRC Views of 15 July 2021 on Communication № 2862/2016, Ageev v. Belarus, CCPR/C/132/D/2862/2016, paras 7.7-7.14.



Societies of Europe (CCBE), P. Sapelka said: *“The Ministry of Justice launched a campaign against those lawyers who defended the presidential candidates. In particular, it accused the lawyers of infringing the law. The reasons for this campaign lied in the public statements of the lawyers who complained about physical sufferings of their clients and about the violation of their rights to due process. In February 2011 the Ministry of Justice disbarred the following lawyers: Oleg and Tatiana Ageev, Vladimir Tolstik, Tamara Goraeva. Both Oleg Ageev and Tatiana Ageeva were members of the Presidency of the Minsk City Bar. Oleg Ageev defended Ales Michalevich, one of the presidential candidates, who after being released from the KGB prison made a shocking statement about the tortures he had suffered. Vladimir Tolstik and Tamara Goraeva defended a journalist Irina Halip. Valentina Busko, a lawyer, was disbarred for participating in a peaceful assembly against the falsification of the election results. Later on, Tamara Sidorenko and Vladimir Bukshytynov, the lawyers of Vladimir Nekliaev, another presidential candidate, were disbarred. Finally, I was disbarred too”*.<sup>48</sup> In conclusion, addressing his colleagues, he said: *“... we have no doubts that we did the right thing when we decided not to give up our principles and to fight against the dictatorship”*.

The principles of the legal profession were defended both by the bar represented by the Minsk City Bar Association and by the lawyers themselves, and they completed the task of documenting the facts, identifying and protecting the profession<sup>49</sup>. The fortitude and devotion of lawyers were not broken, their role in the history of human rights protection is noticeable, inspires the respect of civil society, all members of the legal profession and has become an example for other colleagues.

Unfortunately, it was not possible to defend the democratic principles and independence of the institution of the bar: in 2011, the Ministry of Justice conducted a series of comprehensive inspections of lawyers of the Minsk City Bar Association, as well as an extraordinary attestation of all lawyers in Belarus, as a result of which a number of lawyers lost their status, and the chairman of the MCBA was removed from office.<sup>50</sup>

Against this background, the state introduced new methods to neutralize active lawyers and create filters that would limit access to the bar for people close to the values of human rights. For example, the practice of attestation of lawyers, tested in 2011 by the Ministry of Justice, subsequently became widespread as a method to neutralize active lawyers.

In 2011, a new Law “On the Bar” was adopted, which, on the one hand, according to the expectations of its authors, should finally kill the desire to show independence in lawyers by expanding the powers of the Ministry of Justice, but on the other hand, it included provisions allowing to create “alternative” forms of activity of lawyers. The state thus tried to unite all lawyers under the common umbrella of the Belarusian Republican Bar Association, which, obviously, should have made state control more effective.

## Changes in the legal profession: from the new Law on the Bar until July 2020

The law of 2011 gave unexpected results for the executive power — the growth of professional awareness of the role of the bar and the responsibility of lawyers to society, the request and attempts to implement the requirements of self-government and independence.

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48 Pavel Sapelko's [speech](#) at the award ceremony, December 2012.

49 <https://www.defenders.by/presledovanie-2010>

50 For details on the events in the Belarusian Bar in 2010-2012, see [the review “The Bar of Belarus. Events of 2010–2012: Facts and Comments”](#), prepared by the Belarusian Human Rights House within the framework of the Network of Human Rights Houses program “International Law in Human Rights Activities”.

New forms of organization of lawyers' practice were introduced: along with the traditional Soviet form of association of lawyers in legal advice offices, attorneys bureaus and individual practice appeared, which ensured greater independence of the work of lawyers (for details, see section 5.1 of Chapter II).

As of July 1, 2020, 2,072 lawyers worked in Belarus, and depending on the organizational form and region, the ratio was as follows:<sup>51</sup>

Territorial Bar Association	Lawyers practicing individually	Lawyers practicing in legal advice offices	Lawyers practicing in attorneys bureaus	Number of lawyers in the region
Brest (city and region)	48	154 in 17 LO	30 in 9	232
Gomel (city and region)	27	171 in 25 LO	12 in 5	210
Grodno (city and region)	12	102 in 21 LO	8 in 3	122
Mogilev (city and region)	28	84 in 23 LO	7 in 3	119
Minsk (city)	437	437 in 20 LO	209 in 48	784
Minsk (region)	247	247 in 17 LO	123 in 27	448
Vitebsk (city and region)	19	131 in 25 LO	7 in 2	157
Total	362	1326 in 161 LO	396 in 97	2072

Analysis of statistics allows us to come to the following conclusions.

Belarus has an extremely low number of lawyers per population. So, in the middle of summer 2020, based on data published on the website of the Ministry of Justice, there were two (!) lawyers per 10,000 inhabitants,<sup>52</sup> and in some regions this figure was even lower. It should be stated that the state failed to fulfill the obligation to provide access to a lawyer: the mentioned number of lawyers is not able to satisfy even the minimum request for legal assistance.

<sup>51</sup> The table was prepared on the basis of data presented on the official website of the Ministry of Justice.

<sup>52</sup> Data of the National Statistical Committee of the Republic of Belarus.

[International reviews](#) of the level of justice and the position of lawyers in countries in terms of the rule of law: Belarus was ranked 97th among 139 countries in 2021.

After a new law was adopted in the country and three forms of practicing law were introduced, about 10 years passed, and by 2020 already 761 lawyers (more than a third of the total number of lawyers) worked independently, either in attorneys bureaus or individually. The trend towards lawyers moving from legal advice offices to new entities — attorneys bureaus — or to individual practice indicated positive developments that could solve the problem of the low number of lawyers in the country.

In the case of further development of independent forms of organizing the institution of legal aid, lawyers could solve issues that the state could not solve. But only in the event that the state policy towards lawyers was aimed at strengthening the institution of access to a lawyer and the realization of the individual right to defense, and not at restraining the legal profession. However, the changes to the Law on the Bar that followed soon after exceeded the most pessimistic forecasts: individual practice and attorneys bureaus were eliminated as organizational forms of ensuring access to a lawyer (see [sections 5.1, 5.2](#) of Chapter II).

### Access to lawyers: Increasing Discrimination During a Pandemic

In the first half of 2020, another acute problem was added to the problem of the lack of lawyers. The client's right to have access to a lawyer and, consequently, to receive legal assistance has been threatened: the number of reports of discriminatory restrictive measures with reference to anti-epidemic measures has grown.

Although, as you know, in 2020, unlike other, including neighboring states, the government of Belarus did not declare a quarantine in the country and did not introduce any special rules regarding the work of state bodies, including the judiciary, regarding the guarantee of access to a lawyer; the pandemic and the need for quarantine measures have been used regularly and selectively and, as a rule, for lawyers. Persons who were in conditions of non-freedom could not meet with their lawyers at that time, since the latter were not allowed to see their detained clients, or such meetings were transferred to conditions in which confidentiality was not ensured. The reason for this was the alleged “quarantine situation” and the inability to provide meetings that would meet the conditions of “security” for the detainees.

The discriminatory nature of such restrictions was manifested in the fact that the investigators and persons conducting the preliminary investigation were granted access to those arrested and detained on demand. Investigative actions, including with the participation of lawyers, were carried out without changing the schedule. Meanwhile, lawyers and their clients did not have the opportunity to prepare for such actions, since they were actually denied meetings.

Appeals by lawyers, including to the leadership of the bar associations, with a request to provide their clients with access to legal assistance were ignored.

### Presidential campaign and other events of summer 2020

The 2020 pandemic coincided with the presidential elections in Belarus, as well as the lawsuits that took place in connection with the wave of protests against deep integration with Russia, which began in the fall of 2019.

The general problems of the institution of legal aid in Belarus, described above, have led to even lower efficiency and increased vulnerability of those lawyers who dared to provide

legal assistance to persons involved, directly or indirectly, in the 2020 presidential election.

Obviously, the situation required the bar associations to take a principled position in protecting the guarantees of lawyers and their clients. However, the voice of the bar, which was important to raise in order to provide lawyers with the conditions to perform their professional functions without intimidation, hindrance, harassment or improper interference, was not heard.

Dozens of Belarusian lawyers were at risk during that period, especially representing clients who:

- were brought to criminal/administrative liability for participating in peaceful assemblies (only in the first week after the elections on August 9, 2020, about 13,500 people were detained);<sup>53</sup>
- acted as politically active citizens or were candidates in the 2020 presidential election campaign;
- were intended to or appealed against the decisions of the election commissions at the stage of the pre-election campaign.

Concern about this was expressed by Belarusian lawyers (in the amount of at least 100 people) when they articulated problems in June 2020 in a collective appeal addressed to the chairman of the BRBA. Lawyers stated that state bodies do not create conditions under which justice can be carried out/guaranteed: lawyers are denied access to their clients, complaints procedures are ineffective.

The lawyers referred to Article 62 of the Constitution of the Republic of Belarus and demanded from the leadership of the BRBA to respond to the emerging obstruction to the provision of legal assistance, which is prohibited by the Constitution of the Republic of Belarus; shared disturbing information that there are facts of physical and psychological pressure, as well as ill-treatment of their clients.

The lawyers called on the self-government bodies to demand compliance with national legislation in order to take urgent measures for the timely and equal access of lawyers to all clients, without any difference in political views.

The appeal was met negatively, the chairman of the BRBA, Viktor Chaichits (who was also a member of the upper house of the Belarusian parliament), reacted as follows: he demanded that lawyers “observe subordination”, remain “out of politics” and even warned them, stating that “perhaps some lawyers do not want to continue their practice”.<sup>54</sup>

Thus, instead of helping to protect the members of the Bar from unlawful restrictions, in providing access to legal assistance for all those in need, the chairman of the BRBA actually refused to serve the goals of justice by supporting the efforts of lawyers.

Lawyers were left alone with their problems, the most acute of which were the inability to act effectively due to the denial of justice to clients and the increased vulnerability of lawyers providing legal assistance to them (see sections [2.1](#), [2.2](#), [2.5](#), [2.6](#) of Chapter II), and the denial of lawyers in the right to express an opinion, which manifests itself in various forms (see [section 2.7](#) of Chapter II).

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53 Report of the High Commissioner for Human Rights A/HRC/49/71 (2022), para. 36.

54 The interview of V. Chaichits is not available today, but there are publications that contain statements that reflect the essence of the warnings that sounded from the lips of the head of the bar. See, for example: <https://neg.by/novosti/otkryti/brka-prosit-advokatov-proyavit-sderzhannost/>

On this note, the floor is given to the participants in the events that took place in Belarus after August 9, 2020. The drama and dynamics of events increased. Lawyers are rarely associated with the democratic movement, but the independence of lawyers and the legal profession is associated with real, not paper, self-regulation and self-government. Belarusian lawyers have already proved their knowledge of professional principles and their readiness to follow them in 2020–2021. Is it possible to restore the ideals of the profession today?



## Chapter II

# The destruction of the institution of advocacy in Belarus

### 1. Problems of admission to the legal profession

In the Republic of Belarus, the following requirements have been established regarding admission to the practice of law:

- citizenship of the Republic of Belarus;
- higher legal education;
- preliminary internship;
- exam;
- availability of a special permit (license);
- membership in the territorial bar association.<sup>55</sup>

Formally, the list of criteria established by the Law on the Bar does not differ from analogues in most countries of the world. In accordance with paragraph 10 of the Basic Principles on the Role of Lawyers, the requirement that a lawyer must be a national of the country concerned is not regarded as discriminatory.

At the same time, the Basic Principles allow for the exercise of the functions of a lawyer by persons who do not have the official status,<sup>56</sup> which is consistent with the right of each person proclaimed in the Declaration on Human Rights Defenders, individually and in community with others, to offer and provide professional qualified legal assistance or other appropriate advice and assistance in the protection of human rights and fundamental freedoms,<sup>57</sup> subject to the observance of relevant national and international standards of conduct or ethics.<sup>58</sup>

However, in Belarus, representation of citizens' interests in criminal, civil and administrative courts is a monopoly of lawyers — members of the bar; other lawyers and paralegals do not have such powers.

**At the same time, admission to the profession of a lawyer is a closed and rather discretionary procedure, and the problems of entering this profession are identified both in the field of higher legal education and at each of the steps to obtaining the status of a lawyer (internship, qualification exam, obtaining a license, joining the territorial bar association).**

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55 Law on the Bar, paragraph 1 of article 7.

56 Basic Principles on the Role of Lawyers, preamble: *"These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers."*

57 Declaration on Human Rights Defenders, article 9, paragraph 3(c).

58 Declaration on Human Rights Defenders, article 11.

## 1.1. Disadvantages of higher legal education and advanced training

### Basic Principles on the Role of Lawyers, paragraph 9:

“Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.”

### Recommendation № Rec (2000)21, paragraph 2 of principle II:

“All necessary measures should be taken in order to ensure a high standard of legal training and morality as prerequisite for entry into the profession and to provide for the continuing education of lawyers.”

### Standards for the Independence of the Legal Profession, paragraph 3:

“Legal education shall be designed to promote knowledge and understanding of the role and the skills required in practicing as a lawyer, including awareness of the legal and ethical duties of a lawyer and of the human rights and fundamental freedoms recognized within the given jurisdiction and by international law.”

### Basic Principles on the Role of Lawyers, paragraph 10:

“Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.”

### Recommendation № Rec (2000)21, paragraph 1 of principle II:

“Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of national minority, property, birth of physical disability.”

### Standards for the Independence of the Legal Profession, paragraphs 1, 2:

“1. Every person having the necessary qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination. 2. Legal education shall be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason of race, colour, sex, religion, political or other opinion, national or social origin, property, birth, status or physical disability.”

International Standards

### Mandatory elements of legal education:

- proper legal qualifications and training;
- knowledge of professional ideals and moral obligations;
- knowledge of human rights and fundamental freedoms recognized by national and international law.

Responsibility for providing appropriate education lies with the government, with professional associations of lawyers and, in fact, with educational institutions.

Discrimination regarding the beginning or continuation of professional legal practice is unacceptable, including against citizens who are just getting a legal education.

Human Rights Committee, Concluding Observations on the Fifth Periodic Report on Belarus, 2018: *“The State party should take all measures necessary to ensure that all Covenant rights are given full effect in its domestic legal order, that domestic courts refer to them and interpret domestic law in the light of the Covenant and its interpretation by the Committee, and that specific and adequate training on the Covenant is provided to government officials, judges, prosecutors and lawyers, including by making the Covenant and the work of the Committee part of legal education.”*<sup>59</sup>

### 1.1.1. Lack of attention to human rights during the educational process

On July 21, 2021, the Ministry of Education of the Republic of Belarus approved a model curriculum for the specialties “law” (1–24 01 02), “economic law” (1–24 01 02), which is relevant for most law faculties in the Republic of Belarus. According to the standard curriculum, the current system of higher legal education in the Republic of Belarus implies training for 4 years (8 semesters). The

total number of classroom academic hours spent on training for 4 years is 3774.

At the same time, the issues of the ethical component of the work of a lawyer and human rights are studied only in two disciplines: “Legal Ethics” and “Human Rights Law”. Each of the subjects is designed for only 32 classroom academic hours, and students need to choose which of these two subjects they will be taught (one of them, accordingly, will not be included). Thus, such important issues, expressly recognized as such in the Basic Princi-

ples on the Role of Lawyers, occupy less than 1% of the entire educational process. Subjects relating to the content of the Covenant and the practice of its application by the UN Human Rights Committee are not included in the model curriculum.

Within the framework of other disciplines (“Constitutional Law”, “Criminal Procedure”, etc.), certain aspects of human rights are included, but only as part of national branches of law. The lack of a comprehensive and end-to-end approach to the study of human rights at law faculties of universities does not allow students to appreciate and understand their content, fundamental and universal nature, the system of protection tools and international legal significance. **This subsequently deprives lawyers (including future bar members) of the competence to interpret and apply international human rights law at the national level<sup>60</sup>.**

In addition to the discipline "Legal Ethics", which is an optional subject, there is not a single other subject that, at least in passing, was devoted to ethical problems in the work of a lawyer. **This clearly negatively affects the professional training of future judges, prosecutors and investigators, and, to an even greater extent, future lawyers who do not have an educational base for understanding and self-identifying themselves as specialists in the field of law, for the practical application of the ethical standards of the profession.**

### 1.1.2. The presence of an ideological component in legal education

In legal education, the trend towards the dominance of the state ideology has intensified, which was enshrined in Article 4 of the Constitution of the Republic of Belarus as a result of the republican referendum on February 27, 2022: “*Democracy in the Republic of Belarus is based on the ideology of the Belarusian state, as well as the diversity of political institutions and opinions*”.

**Anna Bakun**, Deputy Dean for Teaching and Educational Work of the Faculty of Law of BSU, who took this position in 2020, is extremely indicative.

*Giving a comment to the Belarusian Telegraph Agency on September 29, 2021, A. Bakun said: “We are witnessing a very important historical event — the constitutional reform. This does not mean that the 1994 Constitution was imperfect. But society has changed. Then all the constitutions were very subjected to the Western European values. In the 90s, each state wanted to assure the world community that it was the most democratic, and therefore indiscriminately adopted constitutional norms and provisions that we didn’t really need.” Now, in her opinion, Belarusians have realized themselves as a nation, as citizens of a sovereign, independent state. “Other values have also become entrenched in society — Eastern Slavic ones, which will certainly be reflected in the new Constitution. We have our own way, our own concept of the development of the state, about which our President constantly speaks. Why should we look back at someone?” — said Anna Bakun, explaining the desire of Belarusians to update their fundamental document, based on their own ideas and values.*

*On March 27, 2021, A. Bakun, in a comment under the publication of the Ministry of Foreign Affairs of the Republic of Belarus on the social network Facebook, noted: “The best statement of the Belarusian Foreign Ministry! Beloved is not sold to the State Department! We are not Litvins!” This comment prompted the creation in March–April 2021 of a collective appeal to the university leadership in order to bring A. Bakun to disciplinary responsibility, which was signed by 95 employees and students of BSU, but was subsequently ignored by the university leadership.*

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60 Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/14/26 (2010), para. 19.

Explicit opposition of some "East Slavic values" "Western European values", which obviously mean human rights, and frankly propaganda statements on social networks by a representative of the leadership of the country's main university demonstrate **that in legal education there prevails an ideology based on the denial of the universal role of human rights and directly calling for the refusal to comply with international principles and standards.**

### 1.1.3. Repressions against students and teachers of law faculties

Since the beginning of the political crisis in Belarus in 2020, students have shown themselves to be one of the most active social groups, and as a result, they have been subjected to large-scale repressions. University professors were no less vulnerable.

According to the "Association of Belarusian Students" ("Zadzinochanne of Belarusian students") published in 2022 report for the period from summer 2020 to January 2022 in Belarus, 1479 people from the academic environment were subjected to repression and pressure. Almost 500 students faced detentions, 52 were prosecuted. More than 260 people were expelled from universities for political reasons, for the same reason at least 150 teachers lost their jobs. Some of them were students and teachers of law faculties of various universities.



*On June 29, 2021, **Ekaterina Vinnikova**, a student of the Faculty of Law of BSU, during her graduation speech, thanked former teachers and graduates of the university who "showed by their example what law is and who a lawyer is", including teachers Elena Basalai and Elena Laevskaya, who were previously dismissed from BSU, as well as the lawyer and teacher Maksim Znak, who was at that moment in custody. On June 30, 2021, E. Vinnikova was summoned to the Leninski district department of internal affairs of Minsk, where she was interrogated and detained. On July 1, 2021, her dorm room was searched, and she herself was sentenced to 15 days of administrative arrest for participating in an unsanctioned mass event.*

With regard to teachers who were subjected to repression, two main methods of dismissal were used, which are still used today:

- coercion to dismiss "by agreement of the parties";
- non-renewal of the employment contract.

Dismissal by agreement of the parties was and is the most convenient way for the employer, since it involves the shortest procedure without subsequent appeal of the dismissal decision in court. It is for this reason that, wanting to exclude any publicity, the heads of institutions of higher education in most cases sought to dismiss an undesirable teacher in this way.



***Ekaterina Deikalo**, PhD, was an Associate Professor of the Department of International Law of the Faculty of International Relations of the Belarusian State University (until 2020 — Head of the Department of International Law). E. Deikalo's employment contract was supposed to end in March 2021, and the faculty management warned her that the rector did not intend to renew the contract with her. A few months before the expiration of the contract, she publicly announced to the university management that she would seek its extension, including, if necessary, by going to court. Early in the morning of January 29, 2021, a search was conducted at E. Deikalo's house as part of an investigation into the mass riots. According to the officers who conducted the search, she was*



only a witness. On the same day, an administrative offense report was drawn up against her (for the white-red-white flag placed earlier in the window). E. Deikalo was detained and spent three days in a temporary detention center in Akrestsina Lane. She was fined by the court. After leaving the temporary detention center at the university, a conversation was held with E. Deikalo, she was forced to agree to the termination of the contract and soon left Belarus.



**Yaroslav Kot** was a senior lecturer at the Department of Criminalistics of the Faculty of Law of the Belarusian State University. Starting from August 2020, he openly expressed his disagreement with the current government, participated in the creation of the BSU Free Trade Union. After some time, pressure began to be exerted on him, his personal data were placed in pro-government telegram channels, he received anonymous calls with threats and demands to leave BSU. As a result, he resigned from his teaching position by agreement of the parties. On February 9, 2021, a search was conducted at Y. Kot's house, after which he was detained. After a video recording under duress in the premises of the GUBOPiK, two reports on administrative offenses (disobedience and petty hooliganism) were drawn up against him, the court imposed an administrative penalty in the form of an administrative arrest, after which Y. Kot left Belarus.

However, it was not always possible for the leadership of higher education institutions to achieve dismissal by agreement of the parties. In this case, the management went to the procedure of non-renewal of the labor contract with the teacher, including in violation of the current legislation.



**Elena Laevskaya**, PhD, who was an associate professor at the Department of Civil Law of the Faculty of Law of the Belarusian State University, having worked as a staff member for more than 21 years, having many professional awards, prizes and diplomas. A month before the expiration of the five-year term of the employment contract in March 2021, E. Laevskaya sent a written notice to the BSU about her desire to continue working and extending the employment relationship. By law, the contract had to be unconditionally extended, since less than 1 year remained before E. Laevskaya reached retirement age.<sup>61</sup> However, on April 16, 2021, E. Laevskaya was fired from BSU. The judicial appeal against the dismissal was inconclusive. The only thing that can explain the reason for the application of this obviously illegal measure is that E. Laevskaya is the mother of a lawyer Dmitri Laevski, who was disbarred in connection with the defense of politician Viktor Babaryka and the public expression of his professional position.



Retrieved from: <https://defenders.by/>

**Aliaksandr Danilevich**, PhD, lawyer of the MCBA, was an associate professor of international law at the Faculty of International Relations of the Belarusian State University, having worked at the university for 20 years, being an authoritative lawyer and teacher, a recognized specialist in the field of international arbitration. In February 2022, A. Danilevich, among many other lawyers and jurists in Belarus, signed an open appeal against the war in Ukraine (see section 2.7.1). On April 17, 2022, it became known that the Faculty of International Relations of the Belarusian State University decided not to renew the contract with A. Danilevich. On May 20, 2022, A. Danilevich was detained and placed in the KGB pre-trial detention center (see section 2.6.2). On May 26, 2022, he was fired from BSU<sup>62</sup>.

61 Labor Code of the Republic of Belarus, part 2 of article 261-1, part 5 of article 261-3, paragraph 3 of part 3 of article 261-5.

62 On July 22, 2022, the court of the Moskovsky district of Minsk dismissed A. Danilevich's claim for reinstatement (for details on the course of the court session: [https://www.defenders.by/sud\\_alexander\\_danilevich](https://www.defenders.by/sud_alexander_danilevich)).



### 1.1.4. Defects in the organization of advanced training for acting lawyers

**Basic Principles, paragraph 24:** "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."

**Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraph 125:** "It is essential that persons who practise and/or are called upon to practise law have access to continuous and adequate training in international and regional standards related to judicial independence, human rights and the fight against corruption".

**Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/20/20 (2012), paragraph 7:** "The primary responsibility for ensuring human rights lies with the State, including the judicial branch. The main actors in the justice system — judges, magistrates, prosecutors, lawyers and public defenders — should therefore be provided with human rights training and capacity-building."

**Recommendation № Rec (2000)21, Paragraph 3 of Principle II:** "Legal education, including programmes of continuing education, should seek for strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice."

**Standards for the Independence of the Legal Profession, paragraph 18 (h):** "The functions of the appropriate lawyers' association in ensuring the independence of the legal profession shall be inter alia: h) to promote a high standard of legal education as a prerequisite for entry into the profession and the continuing education of lawyers and to educate the public regarding the role of a Lawyers' Association."

#### International Standards

Continuing education, especially in the field of human rights, can ensure the proper professional level of lawyers, protect the rights and freedoms of clients and contribute to the maintenance of the proper administration of justice.

Ideally, a body providing continuing legal education for lawyers should be established by, and remain under the auspices of a bar or bar association.<sup>63</sup>

In the Law on the Bar, one of the important requirements for an acting lawyer is the constant improvement of his professional level.<sup>64</sup> However, at present, there is no separate institution directly involved in the training and advanced training of acting lawyers, and their additional education is carried out through:

- professional training organized at the Institute for Retraining and Advanced Training of Judges, Prosecutors, Courts and Justice Institutions of BSU;
- both periodically passing, and targeted and situational (primarily related to changes in legislation) training events in various state bodies and institutions.

The subject of advanced training courses at the Institute is rather narrow. It does not include the study of human rights, international documents and the practice of their application. For example, the sessions held from 25 to 29 October 2021 and from 6 to 10 December 2021 included 36 learning activities (lectures, round tables, discussions, analysis), but none of them dealt with human rights and,

consequently, the actions of international bodies and mechanisms related to human rights. Also, there was not a single event related to legal ethics.<sup>65</sup>

In order to organize regular professional training for lawyers, BRBA has developed methodological recommendations,<sup>66</sup> by which territorial bars of lawyers are instructed to conduct professional training for lawyers on a regular basis (within the framework of the TBA — at least 1 time per quarter, within the framework of legal offices at least 1 time per month). However, such events are mostly of a formal nature and do not include human rights issues or legal ethics.

<sup>63</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/14/26 (2010), paras 55, 60.

<sup>64</sup> Law on the Bar, paragraph 6 of paragraph 1 of Article 18; Rules of professional ethics of a lawyer, paragraph 9.

<sup>65</sup> Schedule of classes for lawyers (2p-2A/21) from 25 to 29 October 2021; Lawyers' class schedule (2p-3A/21) from 6 to 10 December 2021.

<sup>66</sup> Guidelines for the organization of professional training in the territorial bar associations, approved by the Council of the Republican Bar Association № 08/01 of January 15, 2015.

Training activities conducted by other organizations, state institutions (for example, the National Center for Legal Information) relate exclusively to applied issues of the application of national legislation (civil, tax, etc.).

*It should be noted that, being a member of the United Nations, the Republic of Belarus has participated and continues to participate in a number of projects carried out under the auspices of the UN. Thus, in October 2009, the United Nations Development Program project “Promoting the wider application of international human rights standards in the process of administration of justice in the Republic of Belarus” was completed. During the solemn procedure for presenting the results of this project, representatives of the state proudly announced that as a result of the implementation of the project, which was supported by the European Commission and implemented by international organizations together with the Ministry of Justice of Belarus, recommendations were developed to improve legislation and law enforcement practice in the field of administration of justice, and published a four-volume collection of international human rights standards,<sup>67</sup> which was distributed among judges, lawyers, prosecutors, representatives of the legislative and executive authorities, libraries and law schools, public organizations.*

*However, this collection, the third and fourth volumes of which contain more than two hundred cases from the jurisprudence of international bodies, including UN treaty bodies, did not include cases against the Republic of Belarus. Thus, one who gets acquainted with the information from the four-volume book cannot form an objective idea of whether the country's legislation and law enforcement practice comply with the international obligations of the Republic of Belarus in the field of human rights.*

**Thus, in the Republic of Belarus there is no unified system for advanced training of lawyers with an emphasis on human rights in an independent body created by the bodies of the bar.**

## 1.2. Problems of obtaining the status of a lawyer

**Recommendation № Rec (2000)21, paragraph 2 of principle I:** “Decisions concerning the authorisation to practice as a lawyer or to accede to this profession, should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.”

**Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 77:** “The rules for admission to the legal profession should be stipulated in legislation and be transparent and objective. The power to license the practice of law should be delegated to bar associations. If necessary, opportunities should be created for review of the admission decision by an independent court. States should ensure that there is no interference in such admission procedures on any grounds, primarily on grounds of political or other opinion.”

### International Standards

The procedure for admission to the practice of a lawyer, which ensures the principle of independence of lawyers and the legal profession and the quality of legal assistance: — must be carried out by an independent body and subject to judicial review; States should refrain from interfering with procedures for admission to the practice of law, so that bar associations directly and independently control both these procedures and the issuance of licenses to practice law;<sup>68</sup> — should be established by law and admission procedures should be clear, transparent and objective.<sup>69</sup>

<sup>67</sup> Human rights: international legal documents and practice of their application: in 4 volumes/comp. E.V. Kuznetsova. — Minsk: Amalfeya, 2009.

<sup>68</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), para. 120.

<sup>69</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), para. 119.

**Report of the Special Rapporteur on the independence of judges and lawyers A/64/181 (2009), para. 3:** “In the view of the Special Rapporteur, legal professionals are best placed to determine the requirements of the admission procedure and should therefore be responsible for administering and organizing examinations and issuing professional certificates”.

**Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), para. 74:** “Strict, clear and transparent admission procedures for the practice of law are fundamental in order to ensure the quality of the legal services and representation provided by lawyers. Such procedures also contribute to maintaining the integrity of the profession and its credibility both among the general public and within State institutions, including the judiciary. There are different systems for admission to the legal profession throughout the world, and the level of involvement of the legal profession in those systems can vary dramatically from one country to another. In some jurisdictions, the acquisition of a licence to practice law is entrusted to the bar association, whereas in other places licences are issued by a governmental institution, such as the Ministry of Justice or another relevant ministry, or by the Supreme Court of Justice.”

Licensing systems administered by government agencies are contrary to international standards on the independence of lawyers.<sup>70</sup>

International bodies have repeatedly expressed their concern about situations where admission to start or continue the practice of law is determined or controlled by the executive branch and where public bodies too often use their control over the issuance of licenses to lawyers to prevent certain individuals from entering the legal profession or to exclude from it “problematic”, in their opinion, lawyers.<sup>71</sup>

The Law on the Bar establishes a list of conditions under which a person cannot be a lawyer.<sup>72</sup> Among them are the usual barriers to this activity: incapacity, limited legal capacity and a history of intentional crime. Persons previously dismissed from the Bar or dismissed from somewhere due to discrediting circumstances may be admitted to the exam no earlier than three years later, and lawyers in respect of whom it was previously decided to terminate

the license to practice law or provide legal services not on their initiative — not earlier than one year later.

A jurist with a higher education who does not have the above restrictions must complete a mandatory internship in the bar before passing the exam. Previously, the issue of recruiting interns was within the competence of lawyers’ self-government bodies, but after the adoption of amendments to the Law on the Bar in 2021, applicants for admission as a trainee lawyer must be approved by the Ministry of Justice.<sup>73</sup> Moreover, this decision of the Ministry of Justice is taken exclusively discretionary, since there are no clearly defined criteria for approving or refusing to approve candidates, which leads to the practice of arbitrary refusals to accept internships.

The duration of the internship is set:

- up to 3 months, if the trainee previously worked (served) in courts, prosecution bodies, the system of the Ministry of Justice, law enforcement agencies, as well as in structural divisions (secretariats) of such bodies and his candidacy was presented by the head of the relevant republican body;
- from 3 to 6 months, if the trainee has at least three years of work experience in the specialty;
- from 6 months to 1 year, if the trainee does not have work experience in the specialty for at least three years.

Not later than 6 months after the end of the internship, the report on the internship, the conclusion of the head of the internship and other documents confirming the formal requirements for a lawyer are submitted to the Qualification Commission, which checks the documents and allows the applicant to pass the exam.

<sup>70</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), para. 76.

<sup>71</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), para. 75.

<sup>72</sup> Law on the Bar, article 8.

<sup>73</sup> Law on the Bar, paragraph 3 of paragraph 2 of Article 9, paragraph 18 of paragraph 1 of Article 38.

The qualifying exam consists of two stages: a written exam, and in case of successful passing — an oral one. The test is conducted on branches of law, legislative acts on the activities of the bar and the Rules of professional ethics of a lawyer. At the same time, interns from among those who worked (served) in the courts, prosecution authorities, the system of the Ministry of Justice, law enforcement agencies, as well as in the structural divisions (secretaries) of such bodies, whose candidacy is presented by the heads of the relevant republican bodies, pass only an oral exam.<sup>74</sup>

**Thus, for former employees of law enforcement agencies sent to the bar by the leadership of these agencies, an objectively inexplicable advantage has been created when undergoing an internship and passing an exam.**

The exam is taken by the Qualification Commission, which is not an independent body, because:

- 1) is created by and under the Ministry of Justice;
- 2) is headed by the Deputy Minister of Justice, who, in case of equality of votes, has the right of a decisive vote;
- 3) in its composition, lawyers are represented in the minority (8 members: the chairman of the BRBA and one representative from seven TBAs), while the remaining members represent the state (one representative from the Supreme Court, the General Prosecutor's Office, other state bodies; five representatives from the Ministry of Justice; two representatives from scientific organizations (in practice — state ones)).<sup>75</sup>

**Considering that the Qualification Commission has a high degree of discretion in assessing the oral part of the exam, and its decision is not subject to judicial appeal, the procedure for checking the professional qualities of an applicant for the profession of a lawyer cannot be recognized as transparent, independent and impartial, which is contrary to internationally recognized standards.**

If the exam is successfully passed, the Ministry of Justice issues a special permit (license) for the right to practice law, after which the licensee submits an appropriate application to the TBA for its acceptance. Only after joining the TBA, which is formalized by the decision of the Council of the TBA, the licensee becomes a lawyer and gets the right to practice as a lawyer.

Thus, in Belarus there is total control of the state (represented by the Ministry of Justice) over the entire process of admission to the profession of a lawyer.

**Lack of a competitive environment for admission to the bar, including preferential access to the profession of a lawyer for former employees of law enforcement agencies and courts (reduced training period and passing only part of the exam), creating an advantage for a certain group without any justification, leads to discrimination and has negative consequences in the form of a decrease in the quality of legal assistance.**

First, there is an obvious process of replacing principled lawyers who are excluded from the profession for non-existent or insignificant reasons (see sections [2.7.2](#), [2.7.3](#), [2.7.5](#), [3.2](#)) with lawyers sent from government agencies. Having received a recommendation from his former supervisor, such a lawyer will be morally bound by this recommendation.

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74 Law on the Bar, Part 2 of Clause 1 of Article 9.

75 Law on the Bar, paragraph 2 of article 14.

Secondly, the exemption of former security officials and judges from the written exam does not allow one to objectively check the level of their qualifications in accordance with the requirements for advocacy. Moreover, there is a high risk of a more loyal attitude of the Qualification Commission, which for the most part consists of representatives of government agencies, to such candidates.

Thirdly, a shortened internship period in the presence of certain, often non-legal, stereotypes of the previous profession does not give confidence that the “newly converted” lawyers understand ethical standards sufficiently (including the ethics of the relationship between a lawyer and a client, a lawyer and the investigation, a lawyer and the court), as well as the mission of this profession.

## 2. Restrictions on the guarantees for the practice of law and the procedural rights of lawyers as an obstacle to the exercise of the right to legal assistance

Article 62 of The Constitution of the Republic of Belarus guarantees everyone the right to legal assistance for the exercise and protection of rights and freedoms, including the right to use at any time the assistance of lawyers and other representatives in court, other state bodies, other organizations and in relations with officials and citizens. Opposition to the provision of legal assistance in the Republic of Belarus is prohibited.

Article 4 of the Law on the Bar establishes the principle of the independence of lawyers in the exercise of their professional activities. The Law on the Bar and procedural codes contain provisions on certain guarantees for the practice of law and the procedural rights of lawyers. However, in some cases, the legislation does not allow for the effective work of a lawyer, and law enforcement practice (especially in the period 2020–2022) has acquired a strong tendency to level the rights of lawyers and neglect the guarantees for the practice of law, which narrows and undermines the possibility of providing and receiving legal assistance from lawyers.

### 2.1. Lack of independence of lawyers

#### International Standards

The independence of a lawyer is the most important principle that defines the essence of the profession. Adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.<sup>76</sup>

The free practice of the legal profession are indispensable to the rule of law, the protection of human rights and an independent judicial system.<sup>77</sup>

Since the independence of the legal profession is recognized by states as a generally accepted rule of law, states have an obligation not only to create conditions for the independent exercise of their professional duties by lawyers, but also to guarantee them protection in case of violation of their rights as a result of improper interference by the authorities, and also to prevent that the independence of lawyers is hindered by third parties.

<sup>76</sup> Basic principles on the Role of Lawyers, preamble.

<sup>77</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraph 1.



The Law on the Bar proclaims the independence of lawyers in the exercise of their professional activities as one of the principles of the organization of the bar and advocacy.<sup>78</sup> Corresponding to this principle is the principle of inadmissibility of interference in the professional activities of lawyers by the bodies conducting the criminal process, other state bodies, other organizations and officials.<sup>79</sup> Ensuring the independence of the activities of the bar is the responsibility of the state.<sup>80</sup>

In contrast to the broad understanding of the principle of independence laid down in the Basic Principles on the Role of Lawyers, Belarusian law guarantees the independence of a lawyer only in the exercise of professional activity, which is interpreted too narrowly and discriminatorily.

Professional activity is arbitrarily limited only by the sphere of relations between a lawyer and a client and procedural actions, leaving outside it, for example, the freedom of speech of a lawyer, the right of a lawyer to participate in public life, which makes it possible for the state to freely interfere in the activities of a lawyer, which lies beyond his participation in process, and more recently within this framework (see sections [2.7.1](#), [2.7.2](#), [2.7.3](#), [2.7.5](#)).

The exercise of professional duties in conjunction with other rights of a lawyer thus becomes dangerous for a lawyer, since his actions are considered by the state on the basis that the principle of independence does not apply in this part.

It is obvious that the limitation of the lawyer's independence only by the sphere of professional activity in its narrow sense leaves the institutional independence of the lawyer from the Bar and the state represented by the Ministry of Justice beyond the generally recognized standard.

The Belarusian legislation regulating the activities of the bar is designed in such a way that at all stages of its implementation, the Ministry of Justice has practically unlimited powers to interfere in the activities of lawyers and manage it, which indicates a lack of independence at the legislative level.

The amendments made to the Law on the Bar on May 27, 2021 significantly expanded the powers of the Ministry of Justice to manage the institution of the bar, as well as the possibilities of the Ministry of Justice for unreasonable interference in the practice of law.

The Ministry of Justice received such new powers as:

- coordination of candidacies of applicants for admission as interns of a lawyer;
- sending applicants for admission as interns of a lawyer;
- coordinating the formation and termination of the activities of legal advice offices,
- which, together with other “corrected” powers, gives the Ministry of Justice virtually unlimited power over the institution of the Bar (see also [section 4.2](#)).

In addition, under the Law on the Bar and the Regulations on Licensing, the Ministry of Justice has the authority to monitor compliance by a lawyer with licensing requirements and conditions (which are the requirements of the Law on the Bar, the Rules of Professional Ethics of a Lawyer, and other legislative acts regulating the practice of law). Officials of the Ministry of Justice, within the limits of these powers, have the right to request and receive

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78 Law on the Bar, paragraph 5 of article 4.

79 Law on the Bar, paragraph 9 of article 4.

80 Law on the Bar, clause 1 of article 37.

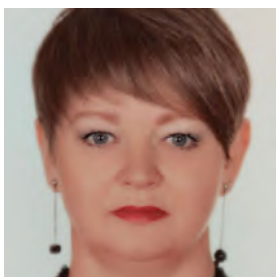
from bar associations, legal advice offices and lawyers information and documents necessary for the exercise of control.<sup>81</sup>

In practice, the licensing control of the Ministry of Justice over the activities of lawyers is carried out in the following forms:

- initiation of disciplinary proceedings against a lawyer by order of the Minister of Justice, submission of proposals to the Bar Association on bringing lawyers to disciplinary liability;<sup>82</sup>
- conducting regular and extraordinary attestations of lawyers (see [section 3.2.2](#));
- conducting scheduled and unscheduled inspections of bar associations, the activities of individual lawyers.

In the course of inspections of Bars, the Ministry of Justice selectively checks the activities of lawyers, whose personal list becomes known shortly before the start of the inspection. Documents confirming the fact that a lawyer provides legal assistance (registration documents, books of registration of contracts for the provision of legal assistance, contracts, warrants), compliance with internal control rules, accounting for financial transactions, etc. are subject of inspection. Identification in the checked documents of even minor violations of the current legislation or technical requirements for the execution of documents (including clerical errors and strikethroughs) entails for the lawyer the inclusion of his name in the inspection report and is subsequently the basis for the appointment of an extraordinary attestation in relation to him. The proposal to conduct an extraordinary attestation of lawyers is submitted to the Qualification Commission by the Minister of Justice or his deputy in charge of lawyers' practice, the chairman of the BRBA or his deputy.<sup>83</sup>

Inspections of bar associations and the subsequent appointment of extraordinary attestations are widely used by the Ministry of Justice not only as a type of licensing control provided for by the Regulations on Licensing, but also as a way of putting pressure on specific lawyers, the end result of which is the termination of a lawyer's license.



*In November 2020, the Ministry of Justice carried out an inspection of Minsk Regional Bar Association (MRBA). It was preceded by the detention in September 2020 of lawyers from this bar, Maksim Znak and Illia Salei, in a criminal case (see [section 2.6.3](#)), failure by the MRBA disciplinary commission to comply with the requirements of the Ministry of Justice to expel lawyer Mikhail Kiryliuk from the bar (see [section 2.7.2](#)), signing of petitions by some MRBA lawyers (see [section 2.7.1](#)). The list of lawyers of the Bar inspected by the Ministry of Justice included, among other things, the signatories of the petitions, as well as the current chairman of the disciplinary commission of the MRBA **Olga Baranchik**, who considered the request of the Minister of Justice in relation to M. Kiryliuk.*

*In December 2020, the inspection was completed. The minor violations of the legislation on practice of law, recorded in the inspection report, were the basis for the appointment of extraordinary attestation in relation to some objectionable lawyers.*

*So, O. Baranchik was called for an extraordinary attestation for a violation in the form of an unspecified correction in the warrant. During the attestation on March 24, 2021, O. Baranchik was recognized as insufficiently qualified to continue her activities (see [section 3.2.3](#)).*

81 Law on the Bar, clause 3 of article 38; Regulation on Licensing, paragraphs 99, 104.

82 Law on the Bar, article 22, paragraph 8 of clause 1 of article 38.

83 Regulation on the procedure for attestation, paragraph 8.



*Lawyer **Alena Shynkarevich** was summoned for an extraordinary attestation on March 3, 2021 for minor violations of the document flow revealed during the inspection. At the attestation she was recognized as insufficiently qualified for further activities.*

The same practice was used in relation to individual attorneys bureaus.

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*Maslov, Hashynski & Partners attorneys bureau actively provided legal assistance to clients in many high-profile politically motivated cases. In October 2020, the Ministry of Justice included the bureau in the inspection plan for the first half of 2021. During the inspection, minor violations were found in the procedure for issuing warrants, which was the reason for calling for an extraordinary attestation of individual lawyers of the bureau. As a result, the license of lawyer **Anton Hashynski** was terminated by the Ministry of Justice in July 2021 due to the systematic violation of the Law on the Bar and the Rules of Professional Ethics of a Lawyer. Lawyers **Evgeniy Maslov** and **Volha Karpushonak**, during an extraordinary attestation in August 2021, were recognized as insufficiently qualified to continue practice of law, their licenses were terminated.*

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*At the same time, pressure on this attorneys bureau was carried out by law enforcement agencies. In connection with the initiation of a criminal case on the fact of disclosure of the secrets of the preliminary investigation in one of the high-profile criminal cases, a search was carried out in the bureau.*

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*The Ministry of Taxes and Duties conducted in-house inspections of all lawyers of this bureau for compliance with income and expenses.*



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Thus, the powers in the field of licensing control over the practice of law are widely used by the state for arbitrary interference in the professional activities of lawyers.

**As a result, the legislation on legal practice in Belarus and the practice of its application are a vivid example of comprehensive state control over lawyers, which is incompatible with the principle of their independence.**

It is significant that in the rhetoric of both representatives of the state and the management of the Bar, lawyers are called “state people”, and their task is to protect the interests of the state (see [section 4.6](#)).

## 2.2. Barriers to a lawyer's access to a client

### Basic Principles on the Role of Lawyers, paragraph 8:

"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".

**General Comment № 32, paragraph 34:** "Lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter."

**General Comment № 35, paragraph 35:** "States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."

**General Comment № 35, paragraph 46:** "To facilitate effective review [of a case for release from illegal or arbitrary detention], detainees should be afforded prompt and regular access to counsel."

**General Comment № 35, paragraph 58:** "Prompt and regular access should be given to independent medical personnel and lawyers and, under appropriate supervision when the legitimate purpose of the detention so requires, to family members."

**General Comment № 35, paragraph 59:** "Certain conditions of detention (such as denial of access to counsel and family) may result in procedural violations of paragraphs 3 and 4 of article 9."

**General Comment № 20, paragraph 11:** "The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members."

**General Comment № 32, paragraph 34:** "The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."

**Basic Principles on the Role of Lawyers, paragraph 7:** "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."

**General Comment № 35, paragraph 33:** "In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances."

85 Constitution of the Republic of Belarus, part 1 of article 62.

86 Code of Criminal Procedure, paragraphs 6, 7 of part 2 of article 41, paragraphs 5, 6 of part 2 of article 43.

87 PICoAP, paragraphs 5, 6 of part 1 of article 4.1 .

88 Code of Criminal Procedure, part 2 of article 45, paragraphs 2, 4 of part 1 of article 48; PICoAP, part 5 of article 4.5, part 8 of article 4.5.

### International Standards

The State has an obligation to ensure that all persons deprived of their liberty (including both those detained and in custody awaiting trial and those serving sentences) have unimpeded access to lawyers<sup>84</sup>. The fulfillment by the state of this obligation is both a guarantee of the right of the accused to a fair trial and a guarantee of protection from arbitrary detention and prevention of torture.

Detainees should be given prompt access to lawyers (The Basic Principles on the Role of Lawyers and the Human Rights Committee define the term of access to a lawyer as 48 hours from the time of arrest or detention).

The Constitution of the Republic of Belarus, guaranteeing the right to legal assistance, provides for the possibility of using the assistance of lawyers at any time.<sup>85</sup> In procedural legislation, the right to have a defense lawyer and communicate with him in private and confidentially without hindrance is guaranteed to suspects and accused in criminal proceedings<sup>86</sup> and to persons subject to administrative proceedings,<sup>87</sup> from the moment of detention and at any subsequent stage of the process. The corresponding right of defenders to participate in criminal and administrative proceedings and communicate freely with the defendants is also provided from the moment of detention.<sup>88</sup>

However, there is no time limit in domestic law within which a lawyer must be given unconditional access to a detainee, nor there is a duty on the State to ensure prompt access. In judicial practice, approaches to this issue have not been developed, moreover, the courts and the prosecutor's office, when they indicate in complaints about unlawful restrictions on access to a client, refuse to see violations in this and in their decisions either completely ignore these facts or indicate that access was provided afterwards.

84 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18 paragraphs 1-3 : "A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order".



### 2.2.1. Opposition to immediate access of lawyers to detainees

In practice, immediate access of lawyers to detained clients is not ensured, and the possibility of communication is significantly limited.

Immediately after detention, a lawyer's access to a client is often hindered by the fact that neither the body that carried out the detention nor the location of the client is known. State authorities, despite their obligation to notify the relatives of the detainee,<sup>89</sup> either do not do this or postpone the moment of notification until the end of the period provided (for example, at the 12th hour after the arrest, when the working day is over and the lawyer's access to the client is effectively excluded). The detainee is not given the opportunity to notify relatives on his own, as well as the opportunity to notify a lawyer (the latter is not provided for by the criminal procedure legislation at all). There is no public register of persons in custody.<sup>90</sup> The lawyer's appeals to all existing investigative and internal affairs bodies by phone or appearing there in person, as a rule, are not effective, since the body that made the arrest refuses to provide any information or even directly denies that the client was there. Thus, for a long time the location of the client remains unknown to the lawyer.

If the body that made the arrest is known, the lawyer who arrived there is still denied an immediate meeting with the client (mainly under the pretext that there are no special rooms in the buildings of the investigating authorities for conversations between lawyers and clients). In fact, the first meeting and the opportunity to communicate with the client appears during the first interrogation or when visiting him in pre-trial detention center.

*On June 18, 2020, the DFI (Department of Financial Investigation) officers detained the presidential candidate Viktor Babaryka and took him to the DFI building in Minsk. Less than an hour after the arrest, the lawyers of V. Babaryka — **Dmitri Laevski** and **Aliaksandr Pylchanka** — tried to get inside the DFI building to see a client, but the door was closed, and the guard refused to let them through, referring to the "exercises" being held there; also, the lawyers were denied acceptance of a complaint about the detention of V. Babaryka, which, in accordance with the law, is filed through the body that carried out the detention. Notifications demanding access to the client, sent by lawyers to the DFI by e-mail, remained unanswered. All this time, V. Babaryka was in the building of the DFI, and at the same time, from the moment of detention, he repeatedly stated that lawyers should be allowed to see him immediately, made a note in his own hand about this in the protocol of a personal search, and during the detention, contracts with lawyers were confiscated from him. Nevertheless, throughout the day on June 18, lawyers were not allowed to see V. Babaryka and were able to meet with him only on June 19, when his first interrogation was carried out.*



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*On June 18, immediately after being denied access to the DFI building, lawyers D. Laevski and A. Pylchanka appealed to the Prosecutor General's Office that V. Babaryka's detention was illegal, including on the grounds that they had been unlawfully denied access to the client, and demanded that they be provided with immediate access. Based on the response sent only on June 29,*

89 Code of Criminal Procedure, part 1 of article 115; PICoAP, part 3 of article 8.2.

90 The HRC considers the maintenance of such a registry as a guarantee of protection against arbitrary detention and violation of personal integrity: "Detainees should be held only in facilities officially acknowledged as places of detention. A centralized official register should be kept of the names and places of detention, and times of arrival and departure, as well as of the names of persons responsible for their detention, and made readily available and accessible to those concerned, including relatives" (General Comment № 35, paragraph 58).



*the General Prosecutor's Office did not see any violations during the detention, indicating that "the right of the suspect V. Babaryka to defence during the initial investigative actions was observed in accordance with Article 41 of the Code of Criminal Procedure."*

### 2.2.2. Arbitrary procedure for "admission" of a lawyer to participate in the case

The legislation does not establish any procedure for a lawyer to enter a criminal case, with the exception of the obligation to notify the body conducting the criminal process of the acceptance of the defense and provide a warrant.<sup>91</sup> Nevertheless, some investigating authorities practice the procedure of "admission to participate in a criminal case" that is not provided for by law.

*The KGB provides a lawyer with the opportunity to participate in the case, including visiting a client in a pre-trial detention center, after "admission to participate in a criminal case": the detainee is brought to the investigator and a lawyer who intends to defend him is invited, a written statement about the participation of this lawyer in the case is taken from the detainee. This procedure is not carried out immediately after the lawyer has notified the KGB about the acceptance of the client's defense, but refers to a time convenient for the investigator (often "admission to participate in the case" occurs only when the investigator needs or wants to interrogate the detainee).*

Despite the fact that the legislation provides for a number of circumstances excluding the participation of a lawyer in a criminal case (they are associated with a possible conflict of interest),<sup>92</sup> there are cases when the investigator refused the lawyer the right to participate in the case on grounds not provided for by law.



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*On July 1, 2020, lawyer **Uladzimir Sazanchuk** took over the defense of blogger Dmitri Kozlov. Before issuing permission to visit the client in the pre-trial detention center, the investigator demanded that U. Sazanchuk sign a non-disclosure agreement on the data of the preliminary investigation. U. Sazanchuk refused to give a signature, to which the investigator refused to grant him permission to visit D. Kozlov, and also said that he did not allow the lawyer to participate in the case.<sup>93</sup>*

This practice constitutes unlawful interference by the state in the relationship between a lawyer and a client, as it is contrary to the generally recognized nature of the confidentiality and trust of these relations.

Pre-trial detention centers of the Ministry of Internal Affairs require that a lawyer present a written permission from the investigator to visit the client in the detention center. Obtaining such a permit is not provided for by the criminal procedure legislation;<sup>94</sup> the list of documents presented by a lawyer for visiting a pre-trial detention center does not contain a permit. Nevertheless, in its absence, the pre-trial detention center may deny the lawyer access to the client with reference to some internal regulations. The very process of obtaining permission may be delayed due to the fault of the investigator, which gives rise to unreasonable delays in visiting the client.

91 Code of Criminal Procedure, part 5 of article 44, paragraph 1 of part 6 of article 46.

92 Code of Criminal Procedure, part 1 of article 86.

93 <https://www.bbc.com/russian/features-53393566>  
<https://www.facebook.com/I.Rynkevich/posts/3754517337897455>

94 Internal regulations of pre-trial detention centers of the Ministry of Internal Affairs, paragraph 195.

### 2.2.3. Restrictions on the access of lawyers to pre-trial detention centers

The possibility of having the assistance of a lawyer at any time is guaranteed by the Constitution, but this is not ensured in practice. In particular, the visits by lawyers to clients are limited by the working hours of pre-trial detention centers: as a rule, from 8–9 am to 5–6 pm, and only on weekdays. Due to the insufficient number of rooms, which are also used by investigators (often on a priority basis), queues form in some pre-trial detention centers for many hours. In this regard, even during the time allotted for visits, a meeting with a client is not guaranteed.

*The pre-trial detention center of the KGB is equipped with only two rooms for meetings with lawyers and investigators, while the detention center is designed to hold about 50–60 people (the number of prisoners can be increased by putting people in already full cells). From 2020, appointments are provided only in one office. No more than 3–4 lawyers manage to get to the pre-trial detention center per day. Such working conditions have led to queues that begin to line up on the street in front of the pre-trial detention center a few hours before its opening, and during periods of mass detentions — around the clock. From the summer of 2021, visits by lawyers to the KGB pre-trial detention center are carried out by appointment, the list is maintained by a KGB employee. Places to visit are usually scheduled several weeks in advance. In such conditions, the detainee has the opportunity to meet with a lawyer only a few weeks after the arrest.*

From time-to-time pre-trial detention centers restrict lawyers' access to their clients for arbitrary reasons that have no legal basis.

*Since the beginning of the COVID-19 pandemic in the spring of 2020, the KGB pre-trial detention center has completely banned meetings between lawyers and clients due to the epidemiological situation (at the same time, quarantine was not introduced in the Republic of Belarus). For three months, the lawyers met with their clients only in the course of investigative actions (it is significant that the epidemiological situation was not an obstacle to investigative actions).*

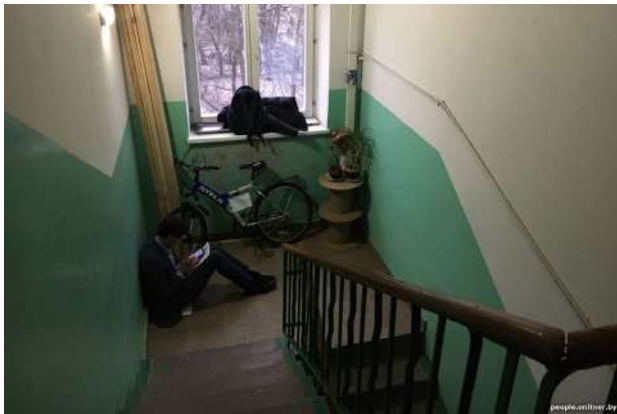
*After the detention of Viktor Babaryka on June 18, 2020, his lawyer **Dmitri Laevski** for three days — June 22, 23, 24 — had made attempts to visit his client in the KGB pre-trial detention center, but he was refused "because of the coronavirus". The General Prosecutor's Office, where D. Laevski appealed against the refusals, did not see violations of the right to defense in these facts, however, from June 25, 2020, after the lawyer's reports in the media and the emergence of resonance around the problem, the KGB pre-trial detention center again allowed meetings with lawyers "due to the improvement of the epidemiological situation".*

*During the week from August 10 to 14, 2020, the pre-trial detention center of KGB, citing "technical reasons", canceled all visits by lawyers to detained clients. From the next week visits were resumed. The General Prosecutor's Office hadn't considered complaints of the lawyer D. Laevski about the unlawfulness of such a restriction, filed on each fact of his non-admission to the detention center to Viktor Babaryka on August 11–14.*

The time during which the lawyer does not have access to the detained client is used by investigators or operatives to induce the detainee to confess guilt (which is accompanied by writing "sincere confessions") or to give evidence that is advantageous for accusing others. In the absence of a defense lawyer investigators or operatives may also take "explanations" from the detainee, which in fact is equivalent to his interrogation, but formally is not the same procedure and doesn't require the participation of a lawyer; such explanations are subsequently accepted by the courts as a source of evidence and can form the basis of a sentence.

## 2.2.4. Refusal to involve a lawyer in investigative and procedural actions

The Code of Criminal Procedure provides for the right of the defense lawyer to participate both in interrogations and in other investigative actions in relation to the client<sup>95</sup>. However, if in practice investigative actions during which the accused testifies (interrogations, confrontations, verification of testimony on the spot) are carried out mainly in the presence of a defense lawyer, then other investigative actions (for example, a search, inspection, etc.) are often carried out in the absence of a defender and without even notifying him of this. In the event that the lawyer becomes aware of the conduct of such an investigative action and independently appears during it, the investigator may still refuse admission under the pretext that the investigative action has already begun and the composition of its participants cannot be changed.



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*On December 22, 2020, DFI officers searched the apartment of the program director of the Belarusian Press Club, journalist Alla Sharko. She managed to inform her lawyer Siarhej Zikratski about the ongoing investigative action, who immediately appeared to provide her with legal assistance. However, officers of the DFI did not allow S. Zikratski to enter the apartment, threatening him with detention for disobeying the lawful demand of the official. Until the end of the search, S. Zikratski had to wait for the client in the stairwell. After the search ended and the DFI officers took A. Sharko out of the apartment to take her to*

*the place of detention, S. Zikratski was not given the opportunity to talk to her, including by physically pushing him away from the client.<sup>96</sup>*

The Code of Criminal Procedure does not directly provide for the participation of a lawyer in a pre-investigation inspection to provide legal assistance to both the person in respect of whom the inspection is being carried out and the victim of the crime. In this regard, the bodies conducting the inspection refuse to allow lawyers to participate in actions against their clients, citing the following reasons: at the stage of pre-investigation inspection, the right of a person to use legal assistance is not provided; there is no obligation of the body conducting the inspection to allow a lawyer to participate in it; there is no procedural status in which a lawyer could participate in the inspection; there is no such type of legal assistance as participation in the inspection; the cases, procedure and forms of providing legal assistance to a citizen in respect of whom an inspection is being carried out are determined by law enforcement agencies. Similarly, due to the absence of a direct rule and with similar motives, lawyers are denied the opportunity to provide legal assistance to persons in respect of whom operational-search measures are being taken.

*After the presidential elections on August 9, 2020 and subsequent mass protests from August 9 to 12, 2020, accompanied by mass detentions and the use of force by law enforcement agencies, the Investigative Committee began pre-investigation inspections on the statements of hundreds of citizens on the facts of illegal actions (violence) by law enforcement officers. At*

<sup>95</sup> Code of Criminal Procedure, paragraphs 2, 4 of part 1 of article 48.

<sup>96</sup> <https://www.defenders.by/news/tpost/4vv89ttfm1-advokata-vitolkali-iz-kvartiri-klienta-v>  
<https://people.onliner.by/2020/12/22/bazh-k-odnomu-iz-rukovoditelej-press-kluba-prishli-siloviki>



Retrieved from: <http://onliner.by/>

*the same time, the most voluminous material of the inspection was in the production of the investigators of the central office of the Investigative Committee and concerned the events that took place during this period in the temporary detention center and the isolation center for offenders of the the main department of internal affairs of the Minsk City Executive Committee, located in Akrestina Lane in Minsk. In the course of this inspection, which lasted for about 1 year, the right of citizens to legal assistance of a lawyer was repeatedly violated by refusing to consider any appeals sent by a lawyer (complaints, petitions, re-*

*quests). According to the investigators, the role of the lawyer at the inspection stage consisted only in "presence" during the inspection activities directly with the participation of the client. Numerous complaints about the actions of the investigators, addressed to both the leadership of the Investigative Committee and the Prosecutor General's Office, only confirmed that the opinion of the investigators coincides with the opinion of the heads of these bodies. In addition, the Constitutional Court, when applying there for the presence of a significant gap and legal uncertainty in the legal regulation of the status of a lawyer at the stage of pre-investigation inspection, did not reveal "defects in legal regulation of constitutional and legal significance".*

Previously, in this way, lawyers were not allowed to provide legal assistance to persons interrogated as witnesses during the preliminary investigation. Since 2018, the Code of Criminal Procedure has been amended with norms defining the status of a lawyer for a witness. At the same time, the right of a witness to the assistance of a lawyer is still limited: since the presence of a lawyer is not mandatory for a witness, if the lawyer cannot appear at the appointed time, the interrogation is not postponed and is carried out without him. In addition, there is an obviously unlawful practice when a citizen is actually detained and brought to the investigative body, however, the detention is not documented, and the citizen is interrogated as a witness or there is a non-procedural conversation with him. If a lawyer arrives at the place of interrogation, he is not allowed to see the client on the grounds that the interrogation of the witness has already begun and cannot be interrupted, or because no procedural actions are being carried out at all.

**As a result of these restrictions, the right to defense and the constitutional guarantee to be assisted by a lawyer at any time, as well as the generally recognized principle of the lawyer-client relationship, according to which only they determine the time and amount of legal assistance needed, are defiantly violated.**

### 2.2.5. Barriers to participation of lawyers in administrative proceedings

Despite the fact that the PICoAP guarantees the right of persons subject to administrative proceedings to have a defense lawyer and communicate with him freely<sup>97</sup>, starting from 2020 lawyers are actually deprived of access to clients who are in the status of administrative detainees or who are serving administrative arrest.

The internal affairs bodies, where the detainee is initially taken for questioning and drawing up a protocol on an administrative offense, as a rule, refuse access to lawyers (including

97 PICoAP, paragraphs 5, 6 of part 1 of article 4.1.



reporting false information that the client is not there).

*On September 24, 2020, at about 2 pm, on the street, unknown people in unmarked masks detained lawyer Liudmila Kazak on her way to the court. Neither the relatives nor the lawyer, whose name she mentioned, were notified of the detention. From 18:00 to 19:00, L. Kazak's lawyers **Svetlana Gorbatok** and **Viktar Matskevich** (and even earlier, from 17:00, L. Kazak's husband) were near the building of the Central District Department of Internal Affairs of Minsk, trying to find out if L. Kazak was there and to gain access to her or file a complaint about kidnapping. Lawyers were not allowed into the building of the district department of internal affairs, the employees of the department refused to accept the complaint about kidnapping, the officer said that L. Kazak was not in the department. However, as it turned out later, L. Kazak was taken to the Central District Department of Internal Affairs immediately after the arrest and stayed there until approximately 21:00.*

*Only at 20 pm in the media, the press secretary of the main department of internal affairs of the Minsk City Executive Committee for the first time announced the information that L. Kazak "was detained for committing an administrative offense and is in one of the territorial departments of internal affairs of Minsk." At about 22:00, the pre-trial detention center of the main department of internal affairs of the Minsk City Executive Committee provided information that L. Kazak was there. The lawyers were able to meet with L. Kazak only the next day, on September 25, in the pre-trial detention center, while for the first three hours they were denied access with reference to epidemiological measures (see also 2.6.2).*

Since the beginning of the COVID-19 pandemic in the spring of 2020, temporary detention centers and isolation centers for offenders have banned visits by lawyers to clients held there under the pretext of anti-epidemic measures (at the same time, for example, administrative detainees in Minsk are placed together with detainees on criminal cases, and they have access to lawyers).

The detainees are not delivered to the courts and participate in the court session via the Internet via videoconferencing, while remaining in the isolation center. Lawyers are directly in the courtroom and can communicate with clients only via videoconferencing, if the court gives them time for this.

Thus, lawyers are deprived of access to the client in the internal affairs body during the preparation of a case on an administrative offense and in the detention center until the trial. The first and the only opportunity for a lawyer to see a client is in court, but only remotely. After a court order is issued, the opportunity to meet with a client serving an administrative penalty is also excluded for lawyers.

*During the period of mass detentions of protesters against the officially announced election results in August 2020, lawyers were not able to participate in the administrative process at all its stages. In addition to the above-mentioned violations (concealment of information about which body detained the client and where he is; not allowing the lawyer to see the client immediately after detention in the internal affairs body and subsequently in the detention center), the lawyers also could not obtain information about in which court the case on administrative offense is and when it is considered. The courts did not post the schedule of hearings, did not inform about their conduct by phone, did not respond to written requests from lawyers who notified that they had accepted the defense of specific clients. In the first week after the elections, when, according to official figures, 6,700 people were detained from 9 to 12 August (and according to the estimates of the UN High Commissioner for Human Rights,*



from 9 to 14 August — about 13,500 people),<sup>98</sup> court sessions were held in fact behind closed doors on the territory of detention centers, where lawyers were not allowed.<sup>99</sup>

Denials of admission to administrative detainees since the beginning of this practice in the spring of 2020 have been repeatedly appealed by lawyers on an individual basis. Some lawyers have publicly stated in the media and social networks about the systematic violation of their rights and the rights of clients.<sup>100</sup> However, no action was taken on these complaints, while the officials who considered the complaints referred to the need to comply with the anti-epidemic regime. Bodies of the Bar, being aware of the current situation, did not react to it in any way, and in some cases accused the lawyers themselves of non-compliance with the requirements of professional ethics.

On June 19, 2020, lawyer **Siarhej Zikratski** initiated a collective appeal of lawyers to the chairman of the BRBA with a demand to take measures to respond to numerous cases of unlawful denials of access to clients (the reason for the appeal was the resonant case of lawyers Dmitri Laevski and Aliaksandr Pylchanka being denied access to their client Viktor Babaryka, who was detained by the DFI on June 18 (see section 2.2.1) BRBA responded to this appeal by publishing a material on the official website entitled “Appeal to lawyers on the issue of subordination”, in which, among other things, it indicated: “Unfortunately, some lawyers act contrary to the recommendations of BRBA: they are not trying to resolve issues in accordance with the Rules of Professional Ethics, escalate the situation around them on the Internet and in the media. Please note that such actions will at least not lead to the desired result and will not benefit either the lawyer, or his client, or the entire bar as a whole”. In addition, BRBA demanded that all lawyers, who supported the collective appeal (about 100 people), provide explanations about what reasons prompted them to sign this appeal and whether they personally encountered violations of professional rights. In one of his subsequent interviews, the chairman of the BRBA, Viktor Chaychits, stated that 99% of the signatories could not confirm that they had personally encountered violations, and signed the appeal “for the company”. At the same time, materials were repeatedly published on the official website of the BRBA, in which lawyers were actually required to renounce public criticism of state bodies: “It is unacceptable to say, for example, that if one of the law enforcement officers committed a violation, then the whole system works wrong.”

At the same time, under the influence of the lawyer community, which especially intensified during the period of mass detentions of protesters after the elections on August 9, 2020, BRBA made several attempts to resolve the issue of lawyers’ access to clients and applied in writing to the Prosecutor General’s Office, to the internal affairs bodies in whose jurisdiction were temporary detention centers and isolation centers for offenders, to courts and other state bodies. As a result of these appeals, there were no changes in the procedure for access to administrative detainees, the internal affairs authorities directly refused to allow lawyers to temporary detention centers and isolation centers for offenders, and by mid-autumn 2020, BRBA stopped all actions to resolve the situation.

At the same time, the practice of remote consideration of cases of administrative offenses

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98 Report of the High Commissioner for Human Rights A/HRC/49/71 (2022), paragraph 36.

99 Details on the trials against protesters after the elections: the report “Belarus, August 2020: “justice” for the protesters”, prepared by the Human Rights Center “Viasna” and experts from the the Barys Zvozkau Belarusian Human Rights House with the support of the the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT) (<https://www.defenders.by/news/tpost/d5cma25u31-pravozaschitnikami-podgotovlen-doklad-be>).

100 <https://advstreet.ru/interview/advokaty-v-belarusi-nachinayut-chuvstvovat-sebya-soobshchestvom/>  
<https://novayagazeta.ru/articles/2020/11/16/87975-ataki-na-zaschitu>

was enshrined at the legislative level: the new PICOAP, which entered into force on March 1, 2021, provides for the possibility of interviewing a person subject to administrative proceedings via videoconferencing.

### 2.2.6. Restrictions on the access of lawyers to places of deprivation of liberty at the stage of execution of the sentence

The right of the convict to use the legal assistance of a lawyer is directly provided for by the penal legislation<sup>101</sup> and, in accordance with Article 62 of the Constitution, is not subject to restrictions. In practice, however, lawyers' access to clients serving sentences in penal colonies is arbitrarily restricted.

As a reason for refusing to admit a lawyer to the colony, the norm of part 6 of Article 83 of the Penal Code is used, which provides for a meeting with a lawyer "at the request" of the convict. The administrations of the colonies unlawfully interpret the concept of "request" solely as a written application of the convict, and if such an application is not submitted by the convict in advance (or a specific lawyer is not indicated in the submitted application), the lawyer who arrived in the colony may be denied a meeting. The administration refuses to receive an application from the convict immediately upon the lawyer's arrival at the colony.

In some cases, the administration of the colony refers to the fact that the convict himself refused to see a lawyer. The administration of the colony does not provide a lawyer with a personal meeting with the convict to ascertain the reliability of the refusal and its reasons.

Meetings of the convict with a lawyer, despite the right guaranteed by the Constitution to use legal assistance at any time, are provided by the administrations of the colonies in accordance with the Rules of internal order of correctional institutions approved by the Ministry of Internal Affairs: only during non-working hours and during the hours from wake up to lights out.<sup>102</sup> In addition, among the reasons for denial of admission may be the lack of free places for communication (in most colonies, lawyers are provided with a room for conversations for short visits, where on certain days there are no free places due to the large number of relatives who came to visit; administration refuses to provide some other room to lawyers).

In 2020–2022, the practice of denying access to a client who was placed in a punishment cell appeared. The basis is the norm of the PEC, according to which, when placed in punishment cell, a convict is deprived of long and short visits<sup>103</sup> (the administrations of the colonies illegally include visits of lawyers in the latter, contrary to the rule that meetings with lawyers are not counted among visits provided for by law).<sup>104</sup>

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101 PEC, part 8 of article 10.

102 Rules of internal order of correctional institutions, paragraph 183.

103 PEC, part 1 of article 114.

104 Rules of internal order of correctional institutions, paragraph 183

## 2.3. Interference with the confidential relationship between lawyer and client

**General Comment № 32, paragraph 34:** "Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications".

**Basic Principles on the Role of Lawyers, paragraph 8:** "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".

**The Nelson Mandela Rules, rule 61, paragraph 1:** "Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff".

**The Nelson Mandela Rules, rule 120, paragraph 2:** "An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider".

**Body of Principles for the Protection of All Persons under Detention or Imprisonment, Principle 18, paragraph 4:** "Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official".

### International Standards

Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.<sup>105</sup>

The principle of confidentiality is intended to protect verbal and written communications between lawyers and between lawyers and their clients.<sup>106</sup>

Any censorship of correspondence between lawyers and prisoners is prohibited, and conditions must be provided for oral communication under which the administration can see the lawyer and the prisoner, but not hear them.

Confidentiality of lawyer-client relations is a universally recognized principle of international law. It should be ensured both by enshrining in national legal systems the concept of "attorney-client privilege" and establishing special guarantees aimed at maintaining such privilege (prohibition to interrogate lawyers and demand from them information related to the provision of legal assistance, a special procedure for searching lawyers and lawyers' formations), and the obligation of the state to create conditions for citizens that allow them to confidentially

use the assistance of a lawyer. However, in Belarus this principle is not adequately ensured either at the legislative level or in practice.

### 2.3.1. Violation of confidentiality in places of isolation of a person

The Law on the Bar provides for the right of a lawyer to freely and confidentially communicate in private with his client<sup>107</sup> and the requirement to ensure that all persons deprived of their liberty have full confidentiality of meetings and consultations with lawyers.<sup>108</sup>

At the same time, the legislation does not contain norms obliging the state to ensure the confidentiality of communications between lawyers and all the clients (not only detained), and the norm prohibiting interfering with confidential communication<sup>109</sup> is formulated in such a way that it concerns only communication with the defendant in criminal or administrative cases.

At the same time, the legislation does not specifically stipulate that confidentiality require-

<sup>105</sup> Basic Principles on the Role of Lawyers, paragraph 22.

<sup>106</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraph 99.

<sup>107</sup> Law on the Bar, paragraph 7 of clause 2 of article 17.

<sup>108</sup> Law on the Bar, paragraph 3 of article 6.

<sup>109</sup> Law on the Bar, paragraph 5 of article 16.

ments should also apply to correspondence between a lawyer and a client. Despite the fact that these provisions follow from the general rule on the lawyer's right to confidential communication, the absence of their direct indication in special legislation in practice often leads to infringement of the rights of lawyers and clients. In addition, there are numerous examples of arbitrary violation of this right, even in the part that is unequivocally and unambiguously regulated in the legislation.

Confidentiality, as a condition for lawyers to communicate with their clients, is established both by criminal procedure legislation<sup>110</sup> and by legislation regulating the conditions of detention pending trial.<sup>111</sup> However, privacy is not universally enforced.

In the investigative bodies and police stations, where a detainee is initially brought and where his first conversation with a lawyer often takes place, the possibility of confidential communication is not provided. There are no specially equipped premises for communication between a lawyer and a client in the buildings of these bodies. The opportunity to talk in private is provided only in the investigator's office with the door open, near which the investigator himself is located. In a number of cases, the convoy workers who delivered the detainee refused to leave him for the duration of the conversation with the lawyer.

Communication between lawyers and clients in custody in pre-trial detention centers takes place in private rooms specially designed for this. Nevertheless, the conditions created in some of these offices do not allow us to say about compliance with the confidentiality standard.

*From the second half of 2020, in the pre-trial detention centers of the Ministry of Internal Affairs (in Minsk, Zhodzina, Gomel), they began to equip special rooms for lawyers to communicate with clients. A solid partition made of transparent plastic is installed in the offices, separating the lawyer and the client. This drastically reduces audibility and forces you to raise your voice when communicating, which makes conversations between a lawyer and a client audible, including outside the office (in SIZO № 3 in Gomel, in addition, both the lawyer and the client must sit at a distance of two meters from the partition, which makes communication even more difficult). In addition, it is impossible to transfer any documents through the partition; and if in SIZO № 1 in Minsk a document can be attached to the partition so that the client can read it, then in Homel there is not even such an opportunity — the lawyer can only read the document aloud.*

*The rooms described are equipped specifically for specific prisoners. So, in 2020–2022, for lawyers to communicate with defendants in the most high-profile cases (for example, with Sergey Tihanovski, Maksim Znak, Maria Kalesnikava, Viktor and Eduard Babaryka, Marfa Rabkova, Nikolai Dedok, Igor Losik and others), only such offices were provided — even if there were other free rooms.<sup>112</sup>*

There have been cases when lawyers have been communicating systematically with clients for a long time not in private offices, but in conditions that clearly do not meet the established standard.

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110 Code of Criminal Procedure, paragraph 7 of part 2 of article 41, paragraph 6 of part 2 of article 43, paragraph 2 of part 1 of article 48.

111 Law of the Republic of Belarus of June 16, 2003 № 215-Z “On the procedure and conditions for keeping persons in custody”, part 2 of article 25.

112 [https://defenders.by/chronology\\_confidentiality](https://defenders.by/chronology_confidentiality)



*In the spring of 2020, with the onset of the COVID-19 pandemic, SIZO № 1 in Minsk provided not special rooms for conversations between lawyers and clients, but a room for short-term visits. It is a room divided lengthwise by a glass partition, with clients on one side and lawyers on the other. It is possible to have five dates at the same time. The places occupied by the client and the lawyer are not fenced off from neighboring places by a solid wall. Thus, lawyers on one side of the glass can hear what each other is saying, as can clients on the other side. At the same time, the lawyer's conversation with the client takes place via a handset, that is, this conversation can be controlled by the SIZO staff. An employee of the SIZO is also present in the very room where the meeting takes place. Such conditions of communication existed in the pre-trial detention center until July 2020.*

The content of the concept of "confidentiality" is not disclosed in the legislation, but the rules of internal order of pre-trial detention centers, which provide for the conditions of communication,<sup>113</sup> reflect international standards. At the same time, these conditions are not ensured: there are facts indicating that the SIZO administration not only observes visually, but also controls the content of conversations between lawyers and clients.



Retrieved from: <http://ont.by/>

*On April 28, 2021, the state television channel ONT showed a video recording of a conversation between lawyer **Natallia Matskevich** and her client, one of the leaders of the opposition movement **Sergey Tihanovski**, in SIZO № 1 in Minsk. The video recording, in addition to the image, included a sound recording, from which the content of the conversation between the lawyer and the client is clearly audible. On this fact, the lawyer filed a complaint with the General Prosecutor's Office, which forwarded the complaint to the system of the Ministry of Internal Affairs for inspection.*

*BRBA also addressed this issue to the Ministry of Justice. The results of the inspection on this fact were not provided.*

The exchange of documents between a lawyer and a client in a pre-trial detention center directly (from hand to hand during meetings) is not allowed, since it is regarded by the administration of the pre-trial detention center as a violation of the norm prohibiting the transfer of any items to a prisoner. The instructions approved by the Ministry of Justice on the behavior of a lawyer in places of detention and correctional institutions expressly prohibit a lawyer from handing over to a defendant documents and records intended for third parties or received from them, documents containing information "obstructing the establishment of the truth in a criminal case or facilitating the commission of crimes and other offenses", as well as to remove from the premises where the meeting took place, records made by a person in custody during the meeting.<sup>114</sup> In this regard, the transfer of documents is carried out through the administration of the pre-trial detention center in accordance with the general procedure established for the correspondence of the detainee,

<sup>113</sup> Rules of internal order of pre-trial detention centers of the Ministry of Internal Affairs, paragraph 194: "Meetings of detainees with a defense lawyer are carried out in private and confidentially without limiting the number and duration of conversations. Meetings are held in conditions that allow the SIZO officer to see the detainee and his lawyer, but not to hear them." Similar norms are contained in the Rules of internal order of pre-trial detention centers of the state security bodies (paragraph 190) and the Rules of internal order of temporary detention centers (paragraph 166).

<sup>114</sup> Instructions on the behavior of a lawyer in places of detention and correctional institutions, approved by the Decree of the Ministry of Justice of the Republic of Belarus dated May 18, 2005 № 22, paragraph 5.



which implies its censorship,<sup>115</sup> and also allows the transfer of documents to the body conducting the criminal process.<sup>116</sup>

*In September 2020, lawyer **Dmitri Laevski** twice, through the administration of the KGB detention center, handed over to his client Viktor Babaryka draft complaints aimed at refuting false information spread about V. Babaryka in the media. The client had to sign the complaints and send them to the court. However, the head of the pre-trial detention center handed over these documents not to V. Babaryka, but to the investigator, who returned them to the lawyer, indicating that he allegedly did not have the authority to provide such legal assistance to the client. In addition, the investigator turned to the Ministry of Justice with a request to "explain the law to the lawyer." As a result of the inspection, the Ministry evaded recognizing the actions of the investigator as unlawful, although it did not see violations on the part of the lawyer and did not question his right to provide appropriate legal assistance. The prosecutor's office did not take any measures in response to the lawyer's complaints about the actions of the investigator.*

Persons subject to administrative proceedings have the same guarantees of confidential communication with lawyers, as suspects and accused in a criminal process<sup>117</sup>. At the same time, as noted above, starting from the spring of 2020, lawyers in the overwhelming majority of cases do not have access to administratively detained clients either in the internal affairs bodies or in temporary detention centers, which completely deprives them of the opportunity to communicate in any conditions. In courts where detainees are not brought and where their participation is ensured by videoconferencing, lawyers, if a request for communication is made, are given the opportunity to talk to the client — also via the Internet. Such communication is limited in time (on average, the court provides about 10 minutes), and confidentiality is not ensured: an employee of the detention center is present in the premises of the detention center from which the client contacts, and in the courtroom where the lawyer is located, there is a secretary of the court session, who refuses to leave the room for the duration of the conversation.

The penitentiary legislation, recognizing the right of the convict to visit a lawyer<sup>118</sup>, does not establish the conditions for these visits, including their confidential nature. Despite the fact that the general rule of the Law on the Bar, which obliges to ensure the confidentiality of meetings and consultations<sup>119</sup>, applies in this case, the administrations of correctional institutions prefer to refer to the rules of internal order, which, unlike similar rules of pre-trial detention centers, do not stipulate the condition according to which the administration can visually control the conversation, but is not entitled to hear it.

In this regard, in correctional colonies, as a rule, there are no rooms specially designed for

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115 Rules of internal order of pre-trial detention centers of the Ministry of Internal Affairs, paragraph 97; Rules of internal order in pre-trial detention centers of state security bodies, paragraph 102; Internal regulations of temporary detention facilities, paragraph 86.

116 Rules of internal order of pre-trial detention centers of the Ministry of Internal Affairs, paragraph 104: "Letters containing information that may prevent the preliminary investigation of a criminal case or its consideration by a court, as well as contribute to the commission of a crime, including escaping from custody, driving or inciting suicide, inciting racial, national, religious or other social hatred or discord, or any other offense committed in secret writing, cipher, containing state secrets or other secrets protected by law, are not sent to the addressee, are not handed over to persons in custody and are transferred to the body conducting criminal process". Similar norms are contained in the Rules of internal order of the pre-trial detention centers of the state security bodies (paragraph 109) and the Rules of internal order of temporary detention centers (paragraph 87).

117 PICOAP, paragraph 6 of part 1 of article 4.1.

118 PEC, part 6 of article 83.

119 Law on the Bar, paragraph 3 of article 6.

conversations between lawyers and clients. Meetings of lawyers with clients take place in rooms for short visits, in which other convicts can communicate with relatives or lawyers at the same time. Places for communication usually are not isolated from each other, which allows others to hear the content of the conversation between lawyer and client; the actual communication with the client takes place through the handset, which allows the prison officer to control the content of the conversation. In rare cases, when a visit with a client is provided in a separate administrative office, a colony employee is present in the same office and refuses to leave the premises due to official instructions and security requirements.

**Thus, the violation of constitutional guarantees and international obligations to ensure the right to defense in Belarus becomes the “norm”, which is ignored by law enforcement agencies, condoned by the courts, and lawyers in their efforts to resist this illegal practice do not find support from the bar associations.**

### 2.3.2. Infringement on attorney-client privilege

The content of the concept of “attorney-client privilege” is defined in the Law on the Bar and includes a wide list of information received from the client, and the essence of the consultations given to him.<sup>120</sup> Previously, until 2012, the regime of attorney-client privilege extended to the very fact that a client applied to a lawyer.<sup>121</sup> However, after the entry into force of the Law “On the Bar and Practice of Law in the Republic of Belarus” dated December 30, 2011 and the Rules of Professional Ethics of a Lawyer, approved by the Decree of the Ministry of Justice of the Republic of Belarus dated February 6, 2012 № 39, the fact of contacting a lawyer was excluded from the list of information protected by attorney-client privilege, and despite the discussion in the legal community about the need to return it to the list of such information, the relevant changes to the legislation have not been made.

A guarantee of the preservation of attorney-client privilege is the prohibition to interrogate a lawyer about the circumstances that became known to him in connection with the provision of legal assistance.<sup>122</sup> At the same time, there are cases when the investigating authorities call lawyers as witnesses for questioning about the circumstances of a criminal case. Often the purpose of such actions is to artificially create grounds for removing a lawyer from defense (a lawyer who testified as a witness is not entitled to participate in the proceedings;<sup>123</sup> at the same time, to recognize a lawyer as interrogated, the mere fact of drawing up a protocol is sufficient — even if this protocol contains only a refusal from testifying with reference to attorney-client privilege).

Despite the establishment of special guarantees prohibiting the demand from a lawyer of any information protected by attorney-client privilege and using it as evidence,<sup>124</sup> state bodies in practice have access to lawyers' materials containing such information.

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120 Law on the Bar, paragraph 4 of Article 1: “Attorney-client privilege protects information about the issues on which the client applied for legal assistance, the essence of consultations, clarifications, certificates received by the client from the lawyer, information about the client’s personal life, information received from the client, about circumstances of the commission of a crime in a criminal case in which the lawyer defended the rights, freedoms and interests of the client, as well as information constituting the trade secret of the client”.

121 Rules of professional ethics of a lawyer, approved by the Decree of the Ministry of Justice of the Republic of Belarus dated June 27, 2001 № 15, paragraph 18.

122 Law on the Bar, clause 4 of article 16; Code of Criminal Procedure, paragraph 3 of part 2 of article 60; PICoAP, paragraph 3 of part 2 of article 4.6.

123 Code of Criminal Procedure, paragraph 2 of part 1 of article 87.

124 Law on the Bar, clauses 2, 3 of article 16.

*There is no provision for a special search procedure for lawyers and lawyers' formations, which would ensure the preservation of attorney-client privilege. In 2018, the Constitutional Court adopted a decision,<sup>125</sup> which, in order to "establish additional guarantees for ensuring attorney-client privilege", recognized "it is necessary to make changes to the Criminal Procedure Code of the Republic of Belarus that determine the specifics of the inspection, search and confiscation of lawyer's documents" and instructed the Council of Ministers to prepare a draft of such changes and submit it to the House of Representatives. However, after A. Lukashenko<sup>126</sup> publicly criticized this decision, the Constitutional Court fundamentally changed it,<sup>127</sup> proposing the Council of Ministers to "conduct a comprehensive study of the issue of improving the legislative regulation of public relations in the field of ensuring and protecting legally protected secrets in criminal proceedings and, if necessary, in agreement with interested parties and state authorities to prepare a draft law on amending the Code of Criminal Procedure". No changes were made to the Code of Criminal Procedure.*

There are numerous cases of personal searches of lawyers, searches and confiscations in lawyers' formations where they carried out their activities. During these events, representatives of state bodies had access to the materials not only of a particular lawyer, but also of others working in the same legal offices.

*On September 24, 2020, lawyer **Liudmila Kazak** was detained, taken to the Central district department of internal affairs of Minsk and subjected to a personal search there (see sections [2.2.5](#), [2.6.2](#)). Despite her lawyer's objections, during the search, technical equipment and documents that contained information subject to attorney-client privilege were confiscated from her.*

Lawyers are subject to requirements in various state bodies, the fulfillment of which threatens the preservation of attorney-client privilege. Lawyers and their belongings may be searched in courts, investigative bodies, and detention centers (prosecutors and investigators are not subjected to such searches), there is a requirement to hand over phones and any sound recording equipment to special cells.

*Lawyer **Lizaveta Matsveyeva** came to the Frunzensky district department of the Investigative Committee in Minsk together with her client for interrogation. The investigator, having gone out into the hall of the building and seeing that L. Matsveyeva had a mobile phone with her, demanded to hand it over to the cell at the entrance. After L. Matsveyeva refused to do it, the investigator went to her office, and after half an hour said by phone that she would not conduct an interrogation. At the same time, as L. Matsveyeva found out during this time, there were no cells for storing things in the building.*

*Subsequently, the Council of the MCBA received an application from the investigator, in which it was alleged that the lawyer L. Matsveyeva frustrated the investigative action by refusing to hand over the phone. Disciplinary proceedings on this application were not initiated, largely due to the fact that at that time L. Matsveyeva herself had already appealed against the actions of the investigator as illegal.*

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125 Decision of the Constitutional Court of the Republic of Belarus dated September 26, 2018 No. P-1144/2018 "On legislative regulation of ensuring attorney-client privilege in criminal proceedings".

126 [A. Lukashenko at a meeting](#) with the leadership of the Presidential Administration on October 18, 2018: "... recently they reported to me: the Constitutional Court has nothing else to do — they began to defend lawyers ...do you want to make them in some part untouchable? How are they different from you, from other government employees? How do they differ from judges, representatives of the prosecutor's office, and investigative bodies?"

127 Decision of the Constitutional Court of the Republic of Belarus dated June 5, 2019 № R-1170/2019 "On the decision of the Constitutional Court of the Republic of Belarus dated September 26, 2018 "On the legislative regulation of ensuring attorney-client privilege in criminal proceedings".

The Ministry of Justice, as a licensing body, has virtually unhindered access to lawyers' documents. The Ministry is empowered to request information and documents<sup>128</sup> from a lawyer or a lawyer's office, and also conducts scheduled and unscheduled inspections of bar associations (see [section 2.1](#)), during which they read legal assistance contracts of individual lawyers, their financial reports, lawyer files, containing, among other things, case files and information about the client.

## 2.4. Obstruction of lawyers' access to information

International Standards

It is the duty of the competent authorities to ensure lawyers access to 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.<sup>129</sup>

### 2.4.1. Refusal to provide information on a lawyer's request

The Law on the Bar gives a lawyer the right to request documents from state bodies and organizations,<sup>130</sup> but does not establish any mechanisms for exercising this right. Although the norm of the Law on the Bar states that bodies and organizations are obliged to issue the requested documents or copies to the lawyer, liability for refusal to provide them or for the lack of a response to the request is not provided. Lawyers are not named among the subjects having the right to receive information, the dissemination and (or) provision of which is limited (for example, banking or medical secrecy, personal data of an individual, etc.). Thus, this right exists only as a declaration and is in fact equivalent to the right of any individual citizen to appeal to state bodies.

In practice, lawyers are denied information, regardless of its nature. In addition to the absence of a specifically stipulated right to receive certain types of information, the lack of authority to represent the interests of the client and the requirement to provide a power of attorney are also indicated as grounds. The latter shows that the lawyer is not considered as an independent subject of obtaining information, but only as a representative of a certain person (which also limits the lawyer in obtaining information that is not personally related to the client).

Appeal of refusals to the prosecutor's office and the courts does not entail the satisfaction of complaints. The courts, in particular, refuse to initiate civil cases on such complaints, pointing out that the demand for information is possible by filing a petition in civil or criminal proceedings.

### 2.4.2. Prohibition of copying and disclosure of case materials

Materials of criminal cases and cases of administrative offenses, as a rule, are provided to lawyers for review without significant obstacles, however, in most cases, lawyers (as well as clients) are denied copying or photographing materials of politically motivated cases. Such denials are usually made without any justification and are arbitrary.

128 Law on the Bar, paragraph 1 of article 38.

129 Basic Principles on the Role of Lawyers, paragraph 21.

130 Law on the Bar, paragraph 5 of clause 2 of article 17.

*According to the results of a survey conducted by the Internet portal defenders.by, 91.20% of the respondents, who conducted 202 criminal cases and 363 cases of administrative offenses, faced a ban on photocopying. 51.40% of the respondents reported this restriction to the bodies of the bar, 42.90% appealed in a procedural manner. None of these appeals had a positive result.*

At the legislative level, the possibility of copying case materials is not properly regulated. The Code of Criminal Procedure gives the defense counsel the right to copy materials, but conditions the possibility of copying with the permission of the investigator or the court<sup>131</sup> and does not indicate the criteria on which permission may be denied. In the administrative process, the possibility of copying case materials is also made dependent on the permission of the body conducting the process.<sup>132</sup>

There are also unmotivated refusals to copy civil cases that have a political aspect, while in civil proceedings the restriction on copying materials is provided only for cases containing state secrets<sup>133</sup>.

In 2020–2022, the number of cases where lawyers have signed a non-disclosure agreement on preliminary investigation data has significantly increased<sup>134</sup>. Investigators do not provide specific grounds for the need to withdraw such a measure, and the circle of information not subject to disclosure includes any information related to the case, including the numbers of articles of the Criminal Code under which charges were brought, the procedural status of the client, the fact that the lawyer participated in investigative actions, the name of the investigator, etc. Judicial hearings in such cases are held, as a rule, behind closed doors with the same range of information not subject to disclosure. As a result, lawyers are significantly limited in their ability to collect evidence (for example, it is forbidden to transfer case materials to a specialist for giving an opinion on them), which directly affects the effectiveness of legal assistance. In addition, this violates the principle of competitiveness of the parties, because the investigating authorities and prosecutors are not bound by such restrictions.

In 2020–2022, the practice spread that, during the investigation period and during the trial, the investigating body transferred investigation materials to the state media and they were broadcast on television and published in the press with comments undermining the presumption of innocence. At the same time, lawyers bound by non-disclosure agreements have no opportunity to refute this information in the public space.

*Based on the results of a survey by the Internet portal defenders.by, 68.6% of respondents faced the problem of selecting a non-disclosure measure for preliminary investigation data. As a rule, the investigating authority did not explain the range of such data (45.2%) and the reasons for the withdrawal (76.1%). Only a small part of the lawyers, after the explanations of the investigator, considered the volume of information not subject to disclosure understandable (6.5%) and this restriction itself justified (3.4%). The procedural appeal did not yield any results, however, 3.8% of the respondents indicated that after applying to the bodies of the bar, the problem was resolved.*

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131 Code of Criminal Procedure, paragraph 11 of part 1 of article 48, article 285.

132 PICoAP, paragraph 6 of part 6 of article 4.5.

133 Civil Procedure Code of the Republic of Belarus, articles 56, 57-1.

134 Code of Criminal Procedure, part 2 of article 198.



### 2.4.3. Unavailability of materials of operational-search activity

In the criminal process, materials of operational-search activity are used as a source of evidence. These materials are submitted to the criminal case by the body carrying out such activities, to the extent that this body deems necessary (for example, only a part of the audio recordings obtained during the hearing control may be transferred). Thus, the evidence base is formed selectively, and the defense is deprived of the opportunity to fully study the materials in relation to the client, among which there may be information justifying him. In addition, during the trial, judges may request materials of operational-search activities that are not contained in the criminal case for independent study, without familiarizing the defense with them. Subsequently, information from these materials is used in sentencing.

A similar approach is applied to documents marked “for official use”. Courts, including in civil proceedings in disputes with state bodies, do not provide lawyers with the opportunity to familiarize themselves with the content of such documents, but they make such documents the basis of their decisions.

## 2.5. Depriving lawyers of the right to represent the client in courts and administrative bodies

International Standards

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 unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.<sup>135</sup>

### 2.5.1. Denying lawyers the right to represent their clients

The Constitution guarantees the right of a citizen to use the assistance of a lawyer in any state bodies and at any time.<sup>136</sup> There are no exceptions to this rule. However, in practice, the right of a lawyer to represent a client and provide him with legal assistance is provided by state bodies only in cases where this right is expressly provided for in the relevant national legal acts regulating the activities of such a body (mainly this concerns legislation in the field of criminal, administrative, civil, economic processes).

In a number of cases, lawyers are directly refused to represent their clients both arbitrarily, in the absence of legal grounds for this, and with reference to the absence of a direct indication of the right of a lawyer to represent a client in a particular act of legislation.

*On July 15, 2020, lawyer **Maksim Znak**, under the power of attorney from his client Viktor Babaryka, filed a complaint with the Supreme Court against the decision of the Central Commission for Elections and Republican Referendums (CEC) to refuse to register V. Babaryka as a candidate for the presidency of the Republic of Belarus. On July 16, the Supreme Court refused to initiate a civil case on the complaint on the grounds that the Electoral Code does not directly provide for the filing of such a complaint under the power of attorney. At the same time, consideration of a complaint against a CEC decision is carried out in a civil process, and*

135 Basic Principles on the Role of Lawyers, paragraph 19.

136 Constitution, part 1 of article 62.

*the Code of Civil Procedure does not contain exceptions to the applicant's right to have a representative authorized by power of attorney to sign and file a complaint.*

*When considering the issue of terminating the license of the lawyer Aliaksandr Pylchanka on October 15, 2020 and the lawyer Liudmila Kazak on February 28, 2021, at the meetings of the Qualification Commission under the Ministry of Justice (see [section 3.2.1](#)), their representatives-lawyers were denied participation in the meeting of the commission and were not allowed to the meeting.*

On participation of lawyers in pre-investigation inspections and investigative actions ([section 2.2.4](#))

### 2.5.2. Exclusion of lawyers from accepting and conducting defense through the application of sanctions

The principle of inadmissibility of interference by state bodies in the professional activities of lawyers is enshrined in the Belarusian Law on the Bar<sup>137</sup>.

Nevertheless, the practice has become more frequent when state bodies take measures aimed at terminating the work of a lawyer in a particular case, which at some point has a devastating effect on their clients' right to defense.

Thus, one of the powers of the Ministry of Justice in accordance with the Law on the Bar is the suspension of a lawyer from the performance of his/her professional duties for the duration of disciplinary proceedings if initiated by the Minister of Justice<sup>138</sup>. This power is used as a mechanism for quickly withdrawing a lawyer from the process or not admitting the lawyer to the process (including even before the lawyer accepts an order for legal assistance).



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*On September 29, 2021, lawyer **Natallia Vantsovich** agreed to accept an assignment to defend a suspect in a high-profile criminal case. There is reason to believe that the telephone conversation with the client about it was intercepted by the special services, since on the morning of September 30, a few hours before the meeting of the lawyer with the client, representatives of the Ministry of Justice sought out N. Vantsovich and reported that disciplinary proceedings had been initiated against her and that she had been suspended from professional duties until consideration of the issue of bringing to disciplinary responsibility (the consideration took place two weeks later — on October 13, 2021)<sup>139</sup>, as a result of which she was deprived of the opportunity to start the defense.*

*On October 12, 2021, by order of the Minister of Justice, lawyer **Natallia Matskevich** was suspended from her professional duties from October 13 due to the initiation of disciplinary proceedings against her. The dismissal took place at the final stage of a months-long trial (shortly before the debate of the parties) in a criminal case in which N. Matskevich was the only continuously participating defender of Sergey Tihanovski<sup>140</sup>. The litigation, however, continued.*

137 Law on the Bar, paragraph 9 of article 4.

138 Law on the Bar, paragraph 12 of clause 1 of article 38.

139 <https://defenders.by/lawyers-persecution-2020#vantsovich>

140 Sergey Tihanovski is a popular Belarusian blogger, author of the Country for Life YouTube channel, dedicated to social and political problems in Belarus. In May 2020, S. Tihanovski announced his intention to run for president in the elections on August 9, 2020, but he was subjected to administrative arrest and was unable to submit documents for



*The lawyer was not able to complete her defense in court, as the disciplinary proceedings ended with the lawyer's expulsion from the bar (see sections 2.7.3, 3.2.3).*

*The fact that the circumstances that served as a pretext for initiating disciplinary proceedings and suspending N. Matskevich from her professional duties occurred six months or more before the moment of suspension leaves no doubt that they were only a reason for removing her from the defense of S. Tihanovski.*

There have been cases where lawyers have been prevented from representing a client, not as a result of restrictions on their activities by the Ministry of Justice, but through arbitrary detention. Meanwhile, the time, circumstances and groundlessness of the detentions give every reason to regard these as deliberate obstacles to the provision of legal assistance to specific individuals.



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*In November 2020, lawyer **Maksim Konan** was detained by police officers at the entrance to the KGB, where he arrived to join the criminal case as the lawyer of journalist Katerina Borisevich<sup>141</sup>. The reason for the detention of M. Konan was the court decision of October 9, 2020, which imposed a penalty in the form of 12 days of administrative arrest for participation in an unauthorized mass event. Despite the fact that the decision came into force on October 22, 2020, it was enforced only at the moment when M. Konan became the lawyer of K. Borisevich.*



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*Lawyer **Vitali Braginets** was detained on May 23, 2022, allegedly for disobeying the lawful demand of a police officer (article 24.3 of the Code of Administrative Offenses). On May 25, the court of the Partizansky district of Minsk imposed an administrative penalty on him in the form of 15 days of administrative arrest. This happened on the eve of a court hearing in which V. Braginets was supposed to defend lawyer Andrei Machalou, who was stripped of his status in 2021 and accused of using forged documents (see section 2.6.3). As a result, on June 6, 2022, when the trial began, the court refused to adjourn the hearing until the expiration of the arrest period for V. Braginets and forcibly assigned A. Machalou a defense counsel through the Bar Association<sup>142</sup> (see section 6.3). V. Braginets was not released at the end of his arrest (see section 2.6.2), which again ruled out his participation in the case of A. Machalou.*

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registration of the initiative group. Later he participated in the election campaign as the head of the initiative group of his wife Sviatlana Tsikhanouskaya. On May 29, 2020, S.Tihanovski was detained in Grodno during a picket to collect signatures. On December 14, 2021, he was sentenced to 18 years in prison. Recognized as a prisoner of conscience.

141 Katerina Borisevich is a Belarusian journalist who, in November 2020, published a report on the circumstances of the death of Roman Bondarenko, who died as a result of violent actions of persons associated with the current government. K. Borisevich's report refuted the information that R. Bondarenko was in a state of alcoholic intoxication at the time of his death. After the publication, K. Borisevich was detained and placed in a pre-trial detention center. On March 2, 2021, she was sentenced to 6 months in prison. During her imprisonment, she was recognized as a prisoner of conscience.

142 The Code of Criminal Procedure explicitly provides that the appointment of a defense counsel is possible only if the defense counsel chosen by the accused cannot appear within three days (paragraph 4 of part 2 of article 46).

## 2.6. Intimidation and harassment of lawyers in connection with their professional activities

International Standards

Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; 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.<sup>143</sup>

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.<sup>144</sup>

Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.<sup>145</sup>

The Belarusian Law on the Bar establishes the obligation of the state to guarantee lawyers the opportunity to practice law and to promote the creation of the necessary conditions for this.<sup>146</sup> Representation and protection of lawyers, including in cooperation with state bodies, fall within the competence of both the territorial<sup>147</sup> and the Belarusian Republican Bar Association.<sup>148</sup>

However, in practice, the state does not provide guarantees for lawyers to perform their functions free from threats and intimidation. On the contrary, the critical situation that has developed in the legal profession from September 2020 to the present indicates that state bodies are pursuing a deliberate policy to intimidate lawyers working on politically motivated cases, to create obstacles for them in the effective performance of their functions, which has the goal not only to deprive specific lawyers of the right to practice, but also to have a deterrent effect on the entire legal community as a whole.

Under conditions of pressure on the legal profession, the bodies of the bar not only abstained from performing the function of protecting their members from interference by state bodies in their activities, but they themselves became a punitive tool that serves as an “auxiliary tool” for suppressing principled lawyers.

As a result, lawyers have faced various forms of intimidation, ranging from psychological pressure to arbitrary detention, administrative and criminal prosecution and sanctions.

### 2.6.1. Psychological pressure

Since 2020, representatives of the Ministry of Justice in their public speeches have repeatedly mentioned examples of the termination of lawyers' licenses by the Ministry of Justice or the exclusion of lawyers from the Bar. At the same time, it was emphasized that the reasons for such decisions were public statements of lawyers in the media and an active

143 Basic Principles on the Role of Lawyers, paragraph 16(a), (c); General Comment N° 32, paragraph 34.

144 Basic Principles on the Role of Lawyers, paragraph 17.

145 Basic Principles on the Role of Lawyers, paragraph 25.

146 Law on the Bar, clause 1 of article 37.

147 Law on the Bar, paragraph 8 of article 42.

148 Law on the Bar, clause 2 of article 46.



position when participating in politically motivated cases.

*On February 5, 2021, at the reporting and election conference of the MRBA, Deputy Head of the Department of Licensing of Legal Practice of the Ministry of Justice, **Elena Radabolskaya**, voiced a direct threat against lawyers who publicly express their opinion: “Those lawyers who publish some kind of incorrect, unethical, illiterate, unprofessional appeals, publications in the media — such lawyers have no place in the bar, and we believe that such, such ballast should be disposed of”.<sup>149</sup>*

*At the reporting and election conference of the MCBA on March 4, 2021, Deputy Minister of Justice **Nikolai Starovoitov** said regarding the public statements of lawyers: “Everything will calm down. We also expect, but, unfortunately, some lawyers have not done it today. That's then — an adequate response to the disgrace that happened and is happening. An adequate response... if you yourself cannot organize yourself or you somehow lack the levers for some kind of self-government, the state will help you with this”. N. Starovoitov also announced that the suspension of lawyers from their professional duties will be used as a lever to influence lawyers, which may lead to a violation of the rights of their clients: “... in most cases of disciplinary penalties, a lawyer will be suspended from performing professional duties for the duration of the disciplinary proceedings. ...we thus do not act very well in respect of his client. We understand this very well and are aware of it. But we are forced to do it now... each evaluation will be accompanied, as a rule, by the suspension for the duration of the disciplinary proceedings.” Regarding the powers of the Ministry of Justice to conduct attestation of lawyers, N. Starovoitov noted that they would send lawyers for attestation “regardless of anything. Previously, the selection criteria were made, who is certified by the qualification commission. Well, as a rule, it is those who break the law. No, now we will work much more, probably more seriously, and we will attest lawyers more. We will test knowledge as well”.<sup>150</sup>*

In the policy of intimidation, the state is actively assisted by the bodies of the bar. At the same time, there are also personal threats of deprivation of the right to practice law.



*On February 9, 2021, before the start of the trial in a high-profile criminal case against politician Viktor Babaryka, a meeting of the council of the MCBA was held, to which V. Babaryka 's defender, lawyer **Dmitri Laevski**, was summoned. The subject of discussion at the meeting of the council was D. Laevski 's public statements about the groundlessness of the criminal prosecution of V. Babaryka and violations of his rights, including violations of the principle of publicity of the trial, which were expressed in the refusal to allow independent media journalists to the court session. Council members threatened D. Laevski to “follow the fate of Aliaksandr Pylchanka [revoked his license for speaking in public, see sections 2.7.2, 3.2.1] because of your publications”; “And here the point is not that we are against, yes, and we do not want, yes. And that you will not be allowed to provide professional assistance to the person for whom you are doing all this”; “We lived quietly, normally, we had enough of everything. Just let us do our job. These people, 700–800 people here... Do not interfere with our work”<sup>151</sup>.*

Attacks on lawyers are also practiced by state media, some representatives of which, with impunity, allow hostile statements in their publications that are aimed at undermining the legitimacy of the work and business reputation of lawyers and contain direct threats of deprivation of the right to practice law.

149 <https://www.defenders.by/news/tpost/a7s9hnjae1-pravozaschitniki-soobschayut-cto-minyus>

150 <https://www.defenders.by/news/tpost/00e1r2t6g1-zamministra-yustitsii-starovoitov-minyus>

151 <https://www.defenders.by/news/tpost/uschccu2v1-luchshe-tihonechko-poluchit-nakazanie-v>



On March 17, 2021 the state media "SB. Belarus Today" published an article by Andrei Mukovozchik titled "If a member of the professional community has finally lost even the concept of corporate ethics, isn't it time for him to give up his lawyer's license?". In the article by A. Mukovozchik, he says that "the lawyer's field, as everyone can see, needs to be cleaned of weeds", "it is necessary to help the normal professional community separate the "wrong lawyers" from the Bar, what can be done by "changes in the law, the continuous systemic activity of the Ministry of Justice and journalists who will substitute their shoulders and point out those who have not yet been noticed, huddled under the plinth and are sick with "white-red-white illness".<sup>152</sup> Earlier, in an article by the same author dated November 12, 2020, about a defense lawyer in a politically motivated administrative process, it was said that she "does a filthy job".<sup>153</sup> It is worth noting that BRBA Chairman Viktor Chaichits reacted rather peculiarly to the latest publication in the state media, noting in his letter dated December 14, 2020 that, on the one hand, BRBA sent corresponding letters to the media editorial office with a demand to publish refutations (as it became known later, the editors refused to do it), and on the other hand, in his opinion, the lawyers themselves made "unethical statements or criticism not supported by reliable evidence" on the Internet, and by making such publications, the lawyers "believe that they have the right to violate the law and norms of morality in response to violations committed by others, or are guided by emotions, and not by an analysis of the possible consequences for themselves and for the entire legal profession as a whole. As a conclusion from his arguments, V. Chaichits suggested that the councils of the territorial bar associations study the publications of lawyers on the Internet, including social networks, for their compliance with current legislation, if necessary, provide assistance in the correct and professional presentation of materials on issues of lawyers' practice."<sup>154</sup>

**Thus, the joint actions of state bodies, state media and the bodies of the bar are aimed at influencing individual lawyers and the lawyers' community as a whole, as they create an atmosphere of fear of losing the right to practice law and concerns for personal safety. At the same time, there is a practice of impunity for actions and statements that clearly violate the law or journalistic ethics.**

### 2.6.2. Arbitrary detentions of lawyers

From September 2020 to February 2023, there were at least 23 cases of deprivation of personal liberty of lawyers. An analysis of such cases shows that lawyers who represented the interests of political opponents of the current regime or publicly expressed their position on issues of the rule of law and human rights were subjected to detentions. In a number of cases, the circumstances that were originally cited as grounds for detention were not confirmed, and the detained lawyers were sanctioned on other charges. At the same time, their persecution was carried out against the backdrop of significant actions and events in the framework of their clients' cases.

**These circumstances together allow us to consider that such lawyers are being maliciously persecuted for the performance of their duties, the exercise of freedom of expression in order to terminate their activities and intimidate the entire lawyer corps. Consequently, their detention is arbitrary within the meaning of international law<sup>155</sup>.**

152 <https://www.sb.by/articles/malenkie-lozhki-degtya.html>

153 <https://www.sb.by/articles/pismo-v-proshloe.html>

154 BRBA Letter № 01-20/1119 dated December 14, 2020.

155 Covenant, article 9; General Comment № 35, paragraph 17: "Arbitrary arrest or detention as a punishment for the lawful exercise of the rights guaranteed under the Covenant, including the right to freedom of opinion and expression (art. 19)."



On September 24, 2020, on suspicion of committing an administrative offense, lawyer **Liudmila Kazak**, who was defending one of the leaders of the protest movement, Maria Kalesnikava, was detained. The detention itself was in the nature of the kidnapping of a lawyer who was going to court, because she was detained by people without identification marks of employees of the internal affairs bodies. The lawyer spent more than a day in a temporary detention center, after which she was found guilty of disobedience to police officers and fined (see also [section 2.2.5](#)).

As police officers explained in court, the initial reason for the detention of L. Kazak was allegedly information about her participation in an unauthorized mass event. However, this act of L. Kazak was never imputed.<sup>156</sup>

Detention without legal grounds, illegal actions of the officers who carried out the detention, in the prescribed manner, were appealed by a lawyer to the Ministry of Internal Affairs and the prosecutor's office. The prosecutor's office refused to consider complaints on the merits with the justification that such complaints are considered before the end of the administrative process. The Ministry of Internal Affairs, having considered the lawyer's complaints, did not establish violations of the law in the actions of its employees.

The fact that L. Kazak was detained two weeks after her client Maria Kalesnikava filed an application with the Investigative Committee for prosecution of officials of the KGB and GUBOPiK, naming specific names and positions of people who exerted psychological pressure on her and expressed threats to life in order to force her to leave the Republic of Belarus and tried to forcibly expel her from the country, clearly indicates that the persecution of the lawyer is not related to the act formally imputed to her, but was aimed at punishing her for her professional activities.



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Lawyer **Vitali Braginets**, who actively defended in politically motivated cases, including accepting the defense of lawyer Andrei Machalou in a criminal case (see sections [2.5.2](#), [2.6.3](#)), was detained in the morning of May 23, 2022 by KGB officers. In the evening of the same day, "to check for involvement in protest activities", he was taken from the KGB department in Minsk to the Partyzanski district department of internal affairs, from where he allegedly tried to escape, for which an administrative offense report was drawn up against him. On May 25, 2022, V. Braginets was found guilty of disobedience to police officers with a penalty of 15 days of administrative arrest.<sup>157</sup> After the expiration of the term of arrest, V. Braginets was not released. As it became known later, a criminal case was opened against him, and on February 2, 2023, he was sentenced to eight years in prison on charges of creating an extremist formation and participating in it (part 1 of article 361-1 of the Criminal Code), calling for sanctions and other actions aimed at causing harm to the national security of the Republic of Belarus (part 3 of article 361) and inciting racial, national, religious or other social hatred or discord (part 3 of article 130). In July 2022, V. Braginets was recognized as a political prisoner.<sup>158</sup>

In December 2021, lawyer **Aleksei Nesterenko** was detained and severely beaten. After that, he was subjected to administrative arrest for 30 days.<sup>159</sup>

156 [https://defenders.by/kazak\\_presledovanie](https://defenders.by/kazak_presledovanie)

157 [https://defenders.by/sud\\_braginets](https://defenders.by/sud_braginets)

158 <https://www.defenders.by/news/tpost/e3r0e2kx81-advokat-vitalii-braginets-priznan-politi>

159 <https://www.defenders.by/page28333978.html#nesterenko>



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Lawyer **Aliaksandr Danilevich** was detained on May 20, 2022 and placed in the KGB pre-trial detention center.<sup>160</sup> As it later became known, he was accused of committing a crime under part 3 of article 361 of the Criminal Code (calls for restrictive measures (sanctions), other actions aimed at causing harm to the national security of the Republic of Belarus). The lawyer provided legal assistance to a number of athletes who openly opposed the authorities, published legal comments on high-profile events. Shortly before his arrest, the MCBA reprimanded him for signing an anti-war petition (see [section 2.7.1](#)), and BSU, where he worked at the Faculty of International Relations for over 20 years, did not renew his contract (see [section 1.1.3](#)).



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Lawyer **Anastasia Lazarenko** was detained on June 2, 2022 on suspicion of committing a crime under Article 130 of the Criminal Code (inciting racial, national, religious or other social hatred or discord), and placed in a pre-trial detention center. The video, published in one of the telegram channels related to law enforcement agencies, shows that during the arrest, law enforcers broke into the lawyer's house from all sides with weapons, knocked out the door and window.<sup>161</sup>

On March 26, 2021, after the official end of the working day, OMON (special police unit) officers broke into the legal consultation office and detained about 20 lawyers who had gathered in the premises. The lawyers were taken to the narcological dispensary for examination. Subsequently, at least 2 lawyers from among the detainees were summoned for an extraordinary attestation to the Ministry of Justice, during which they were recognized as insufficiently qualified to continue practice, their licenses were terminated. Lawyers admit that such a non-standard situation may be caused by wiretapping of the premises of legal consultation offices.<sup>162</sup>

On June 14, 2022, 5 lawyers of the Smalyavichy office of the MRBA were detained. The reason for the detention was allegedly the content of the working chat of the office.<sup>163</sup>

**The lack of a real opportunity for lawyers to protect their rights in a system operating in conditions of legal default, the demonstrative disregard of the duties of the Ministry of Internal Affairs and the prosecutor's office assigned to them by law led to the establishment of a practice of impunity for officials for violating the guarantees of lawyers' practice.**

### 2.6.3. Criminal prosecution for providing legal assistance to clients

In addition to the examples mentioned above, in which the persecution of lawyers and the sanctions applied were not formally related to the provision of legal assistance to specific clients, there are cases where the exercise of professional duties was itself regarded as a crime.

On September 9, 2020, lawyer **Maksim Znak** was detained by the Investigative Committee and taken into custody in a pre-trial detention center. On September 6, 2021, he was sen-

160 <https://www.defenders.by/news/tpost/cc65ohfd21-advokat-aleksandr-danilevich-zaderzhan-i>

161 <https://www.defenders.by/news/tpost/dicmga4o21-zaderzhali-advokata-anastasiyu-lazarenko>

162 <https://www.defenders.by/news/tpost/xtxxy7lvj1-omon-priehal-na-provodi-lishennih-litsen>

163 <https://www.defenders.by/news/tpost/1j54km9zt1-segodnya-utrom-bili-zaderzhani-pyat-adv>





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tenced to 10 years in prison on charges of participating in a conspiracy to seize power by unconstitutional means (part 1 of article 357 of the Criminal Code), creating an extremist formation and participating in it (part 1 of article 361–1), calling for actions aimed at causing harm to the national security of the Republic of Belarus (Part 3 of Article 361)<sup>164</sup>.

Prior to his detention, M. Znak provided legal assistance to the leaders of the opposition movement Viktor Babaryka (see [section 2.5.1](#)), Maria Kalesnikava and presidential candidate Sviatlana Tsikhanouskaya<sup>165</sup>, including on behalf of S. Tsikhanouskaya appealed the results of the elections to the Supreme Court on August 9, 2020. In his public speeches, M. Znak explained to citizens their rights in the electoral process and pointed out the violations committed by the state, which formed the basis of the requirement to declare the elections invalid, and also spoke about the disproportionate use of violence by state bodies against protesters. Such statements were regarded as illegal. In particular, when sending the criminal case against M. Znak to court, the Prosecutor General's Office published a message on its official website, in which M. Znak's criminal actions were called that he "repeatedly, directly and in a veiled form, called for the recognition of the elections as invalid, and acting Head of State — illegitimate".

The Working Group on Arbitrary Detention of the UN Human Rights Council in April 2022 concluded that M. Znak's detention was in violation of articles 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 22, 25 and 26 of the International Covenant on Civil and Political Rights and is arbitrary<sup>166</sup>.



Lawyer **Illia Salei**, who also provided legal assistance to Maria Kalesnikava and participated in the preparation of a complaint on behalf of S. Tsikhanouskaya to the Supreme Court, was detained on September 9, 2020 simultaneously with M. Znak in the same criminal case on suspicion of calling for action aimed at harm to national security. Until October 17, 2020, I. Salei was in custody, then — until April 16, 2021 — under house arrest. In July 2021, I. Salei left Belarus, currently he remains a defendant in this criminal case<sup>167</sup>.



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On May 31, 2021, lawyer **Andrei Machalou** was expelled from the bar by the MRBA Council for reporting in the media about the use of torture against his client Volha Zalatar (see [section 2.7.2](#)). A. Machalou was not notified about the meeting of the council of the Bar and its results and continued to perform professional duties, including on June 18, 2021, he began defending in the criminal case in court. It was only during this court hearing that he learned that he had been deprived of the status of a lawyer. In this process, A. Machalou was supposed to defend the client, who was accused of refusing to rent an apartment to an employee of the prosecutor's office of the Zavadski district of Minsk.

164 <https://defenders.by/maksim-znak-chronika>

165 Sviatlana Tsikhanouskaya was a candidate for the presidency of the Republic of Belarus in the elections on August 9, 2020. During the election campaign, S. Tihanovskaya was supported by the initiative groups of the other two most popular contenders for the presidency — Viktor Babaryka and Valery Tsepkala, who were denied registration as candidates. According to independent observers, S. Tihanovskaya was a real competitor in the elections to the incumbent President A. Lukashenko (according to some estimates, she won more than 50% of the vote). On August 10, 2020, she was forcibly expelled from the Republic of Belarus.

166 <https://www.ohchr.org/sites/default/files/2022-06/A-HRC-WGAD-2022-24-BLR-AEV.pdf>

167 <https://www.defenders.by/lawyers-persecution-2020#salei>

*Subsequently, the prosecutor of the Zavadski district of Minsk initiated a criminal case against A. Machalou himself for allegedly using false documents in the process — a warrant and a lawyer's certificate — while he had already been deprived of the right to practice. The accusation was based on an apparently arbitrary interpretation of the criminal law and the Law on the Bar and is a consequence of the fact that the lawyer was not informed of the termination of his status. Nevertheless, on June 16, 2022, the court of the Leninski district of Minsk sentenced A. Machalou to two years of restriction of freedom and sent him to an open institution.<sup>168</sup>*

*The obvious interest of the prosecutor's office in terminating the defense by the lawyer, as well as the position of the representatives of the leadership of the MRBA, who supported the theses of the prosecution in court, leaves no doubt about the purposeful use of the system of disciplinary liability and criminal prosecution as revenge for the performance of the lawyer's duties.<sup>169</sup>*

#### 2.6.4. Violation of the principle of inadmissibility of identification of lawyers with clients

##### International Standards

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.<sup>170</sup>

The existence of such a guarantee allows lawyers to perform their professional duties freely, independently and without fear of reprisals, and indirectly contributes to ensuring the effective realization of the right to defense. Identification of a lawyer with a client could prevent or limit access to a legal council for those individuals who are accused of particularly heinous crimes.<sup>171</sup>

An analysis of the data on the application of sanctions to lawyers, up to the deprivation of the right to a profession, indicates that the overwhelming majority of repressive measures are aimed at lawyers of those people who are classified as representatives of the political opposition or persons supporting it. Taking into account the context of the events in Belarus in 2020–2022, when on the eve of the presidential elections of August 9, 2020 and after them, political competitors of the incumbent president who declared their intention to participate in the elections, members of their election headquarters and initiative groups protesting against the election results, were persecuted, human rights defenders, representatives of non-governmental organizations, journalists of independent media (in Belarus as of February 2023, more than 1450 people were recognized as political prisoners), it can be said that lawyers who defend these representatives of civil society are identified with their clients on the basis of political views, which leads to repressions against lawyers.

Moreover, in some cases, there is a tendency to consistently deprive all or most of the defenders of certain people of the right to a profession, which leads to the conclusion that this is used as an instrument of pressure on them and deprivation of the right to defense.

168 [https://defenders.by/kak\\_sudili\\_mochalova](https://defenders.by/kak_sudili_mochalova)

169 These conclusions are set out in the appeal of the Belarusian Helsinki Committee to the Special Rapporteurs on the independence of judges and lawyers and on the human rights situation in Belarus.

170 Basic Principles on the Role of Lawyers, paragraph 18.

171 Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 41.



Lawyer **Maksim Znak** represented the interests of Viktor Babaryka<sup>172</sup> in the electoral process in 2020. In September 2020, he was taken into custody on a criminal case, and in September 2021 he was sentenced to 10 years in prison (see [section 2.6.3](#)). Four lawyers who defended V. Babaryka in the criminal process — **Aliaksandr Pylchanka, Dmitri Laevski, Natallia Matskevich, Yauheni Pylchanka** — were disbarred within a year, from October 2020 to October 2021, under one pretext or another (see [sections 2.7.2, 2.7.3, 3.2.1, 3.2.3](#)). As a result, V. Babaryka, at a certain stage, was deprived of the right to receive legal assistance from lawyers chosen by him.

Lawyer **Illia Salei** represented the interests of Maria Kalesnikava<sup>173</sup> and was prosecuted and subsequently forced into exile (see [section 2.6.3](#)). The lawyer **Maksim Znak**, who was convicted along with M. Kalesnikava, was also her lawyer (see [section 2.6.3](#)). Two defense lawyers for M. Kalesnikava in the criminal proceedings, **Aliaksandr Pylchanka** and **Liudmila Kazak**, had their licenses revoked during the investigation in 2020 and 2021 (see [sections 2.7.2, 3.2.1](#)).

The fact that lawyers are considered as direct participants in political actions is also evidenced by the position that is openly broadcast by representatives of state bodies and the leadership of the bar associations.

*At the reporting and election conference of the MCBA on March 5, 2021, Deputy Minister of Justice **Nikolai Starovoitov** said: “... I must frankly say, and I’m not afraid of this, that individual lawyers, they embarked on the path of a struggle for power. Not just some kind of political stuffing there, yes, they did it on the Internet, no. And some have embarked on this path... some, I’m saying that they have embarked on the path of struggle, therefore they have nothing to lose. Do they understand what fate awaits them? Maybe. Maybe they don’t understand...”*<sup>174</sup>

*In an interview with the publication of the presidential administration “SB. Belarus Today” dated June 21, 2022, BRBA Chairman **Aleksei Shvakov**, agreeing with the interviewer’s thesis that “not all Belarusian lawyers unambiguously supported the state after the coup attempt,” said that some lawyers “succumbed to negative influence. Taking advantage of publicity (and a lawyer has such an opportunity, he can speak in courts, express his opinion), they behaved unprofessionally and engaged in politicking”<sup>175</sup>.*

A similar model of attitude towards lawyers who undertake to protect people who oppose state policy can be traced not only among representatives of state bodies and the leadership of the bar, but also among some lawyers who distance themselves from cooperation with their colleagues because of fear for their own careers.

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172 Viktor Babaryka — Chairman of the Board of Belgazprombank in 2000-2020, who left his post in May 2020, announcing his intention to participate in the presidential elections of the Republic of Belarus on August 9, 2020. A month after the start of the election campaign, V. Babaryka was taken into custody, he was denied registration as a candidate for residency. According to many estimates, V. Babaryka was potentially the main competitor of the current president A. Lukashenko. On July 6, 2021 was sentenced to 14 years in prison. Recognized as a prisoner of conscience.

173 Maria Kalesnikava is the coordinator of the campaign headquarters of Viktor Babaryka, and after he was denied registration as a candidate for president, she became one of the leaders of the election campaign of Sviatlana Tihanovskaya, the only opposition candidate who was allowed to stand in the elections and enjoyed wide support in Belarusian society. In August — early September 2020, M. Kalesnikava was one of the leaders of peaceful protests against the election results and became a member of the Presidium of the Coordinating Council, a public body created from representatives of civil society to overcome the political crisis. On September 7, 2020, an attempt was made against M. Kalesnikava to forcibly expel her from the territory of the Republic of Belarus, after which she was detained in a criminal case. On September 7, 2021, she was sentenced to 11 years in prison. Recognized as a prisoner of conscience.

174 <https://www.defenders.by/news/tpost/00e1r2t6g1-zamministra-yustitsii-starovoitov-minyus>

175 <https://rka.by/news/shvakov-my-spravimsya-s-postavlennymi-pered-advokaturuy-zadachami-i-oprav-daem-doverie-belorusskogo-o/>

*On June 19, 2020, the day after lawyer Dmitri Laevski accepted the defense of Viktor Babaryka, lawyer **Raman Yulski** announced his withdrawal from the partners of the Laevski, Yulski and Partners attorneys bureau, and three more employees stopped working in the bureau with him.<sup>176</sup>*

In such an atmosphere, lawyers in Belarus are afraid to take on politically sensitive cases or, while taking on their defense, are under constant threat of reprisals, which ultimately damages the right to effective legal assistance for certain groups: politicians, activists, human rights defenders, journalists.

## 2.7. Undermining professional immunity and interference with freedom of expression and freedom of peaceful assembly of lawyers

### International Standards

Everyone's right to freedom of expression and freedom of peaceful assembly is recognized by the International Covenant on Civil and Political Rights (Articles 19 and 21).

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 and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.<sup>177</sup>

The right of a lawyer to freedom of expression in court is closely related to the right to a fair trial in relation to a client and directly affects the fairness of the court, while the principle of equality of arms and other considerations of fairness presuppose an open and possibly acrimonious exchange of arguments between the parties in the process<sup>178</sup>.

Lawyers shall 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.<sup>179</sup>

An analysis of the practice of applying sanctions against lawyers (see section 3) in 2020–2022 shows that in almost all cases they are directly or indirectly related to the exercise by lawyers of the right to freedom of expression — the expression of a civil and professional position in public space or speeches in courtroom, as well as with participation in peaceful assemblies, that is, actions that are lawful under international law and do not contradict generally recognized norms of professional ethics.

176 <https://advstreet.ru/interview/advokaty-v-belarusi-nachinayut-chuvstvovat-sebya-soobshchestvom/>

177 Basic Principles on the Role of Lawyers, paragraph 23.

178 For example, the judgment of the ECHR of 21 March 2002 in the case of Nikula v. Finland (complaint № 31611/96); ECHR judgment of 28 January 2004 in the case of Steur v. the Netherlands (Steur v. the Netherlands)" (complaint № 39657/98).

179 Basic Principles on the Role of Lawyers, paragraph 20.

### 2.7.1. Punishment of lawyers for participating in open collective appeals

In the period 2020–2022, the lawyers initiated a number of public appeals:

- an appeal to the chairman of the Belarusian Republican Bar Association about violations of the rights of lawyers (issued on June 22, 2020, signed by at least 100 lawyers);
- a petition against the falsification of the presidential elections in Belarus and the use of violence in places of isolation after the elections (issued on August 18, 2020, signed by at least 170 lawyers);
- an open statement by the legal community of Belarus in connection with the detention of lawyers Maksim Znak and Illya Salei (issued on September 9, 2020, signed by 3,120 people);
- a video message expressing solidarity and demanding the release of imprisoned lawyers Maxim Znak and Illia Salei (released on September 16, 2020; 79 lawyers participated);
- a video message in support of lawyer Maksim Znak, recorded by four of his lawyers on the 7th day of his protest hunger strike (released on September 24, 2020);
- a petition for the release of Maksim Znak from custody and the termination of criminal prosecution against him (issued on November 16, 2020, signed by 174 lawyers);
- an appeal by lawyers to the Minsk City Court in connection with the consideration of a complaint against the decision of the court of the Oktyabrsky district of Minsk in the case of an administrative offense against Lyudmila Kazak (issued on October 14, 2020, signed by 69 lawyers);
- the appeal of lawyers of Belarus in connection with the publication in the online publication “SB. Belarus Today” information discrediting the activities of lawyers and the authority of the bar (issued on December 11, 2020, signed by 249 lawyers);
- an appeal in connection with the consideration of the issue regarding lawyers by the Qualification Commission on Advocacy in the Republic of Belarus (issued on February 16, 2021, signed by 159 lawyers);
- an open statement of Belarusian lawyers and lawyers regarding the war in Ukraine (issued on February 28, 2022, signed by 277 lawyers).

Most, if not all, of the lawyers deprived of their status in 2020–2022 signed these appeals or took part in video messages. During the attestation, the signing of petitions was reproached to some lawyers, and this was followed by non-attestation of the lawyer.

*In March 2022, a number of Belarusian lawyers were disciplined for signing an open letter “Appeal of Belarusian lawyers and jurists regarding the war in Ukraine”.*

*In the disciplinary proceedings of the territorial bar associations, they were blamed for the following statement from the appeal: “We do not agree that the territory of Belarus has become a springboard for the deployment of Russian troops fighting in Ukraine, and our country is drawn into this conflict. From our side, rockets, planes and helicopters should not take off to attack Ukrainian territory.” The councils of the TBA considered that the statement about Belarus' participation in Russia's aggression against Ukraine is not true, “in addition, the signing of this appeal contradicts the main tasks of the Bar. ...the bodies of lawyers' self-government did not authorize the lawyer to act on behalf of the lawyers of the Republic of Belarus”.*

All bar members brought to disciplinary responsibility for this petition were reprimanded.

## 2.7.2. Sanctions for media appearances and social media posts



Lawyer **Aliaksandr Pylchanka** was deprived of the status of a lawyer by the Ministry of Justice for his comments to the Internet resource, in which he explained what actions law enforcement agencies should take in connection with numerous evidence of violence in police departments and places of isolation against detainees published in the media at the protests of people after the presidential elections in Belarus on August 9, 2020. The Qualification Commission under the Ministry of Justice regarded these statements as committing a misdemeanor incompatible with the title of a lawyer — actions that discredit the title of a lawyer and the legal profession<sup>180</sup>.



In October 2020, the Minister of Justice initiated disciplinary proceedings against lawyer **Mikhail Kiryliuk** for posting publications on the Internet "containing rude and incorrect expressions against representatives of state bodies." As a result, M. Kiryliuk was reprimanded by the MRBA disciplinary commission for some statements that the commission considered incorrect (see also [section 3.2.3](#)). However, the Ministry of Justice, not satisfied with this measure, terminated his license in November 2020, re-evaluating the same publications as a misdemeanor incompatible with the title of lawyer.

On April 28, 2021, the MRBA Council, as a result of the submission of the GUBOPiK, initiated disciplinary proceedings against lawyer **Andrei Machalou** in connection with the appearance of a video on the telegram channel and on the website of one of the media, in which the lawyer said that his client Olga Zolotar after being detained in March 2021 by GUBOPiK officers was subjected to torture in order to force her to testify against herself. The lawyer said: "I personally witnessed, I saw all these bruises, that is, she was beaten on the head, she was choked, she was forcibly laid down, pressed there with feet to the floor. Accordingly, her buttocks are bruised." "It's been two weeks now and of course the bruising is gone. What will this medical examiner now record? In my opinion, they are thus trying to hide the traces of this crime, which was committed against Olga.

On May 27, 2021, the disciplinary commission of the MRBA, when considering disciplinary proceedings, took into account the information of the GUBOPiK that the investigating body "does not have sufficient data indicating possible facts of unlawful use of physical force by officials of the internal affairs bodies in relation to this citizen." The commission recognized that "reported by lawyer Machalou A.V. media reports at the time of the interview had no official confirmation. From the foregoing, it follows that the lawyer Machalou A.V., providing information to the media, used unreliable information. The disciplinary commission came to the conclusion that these actions were a misdemeanor incompatible with the title of lawyer, discredited the title of lawyer and the bar, and decided to expel him from the bar (see also [section 2.6.3](#)).



On November 4, 2021, the Minister of Justice initiated disciplinary proceedings against lawyer **Sergej Ivanov** and removed him from his professional duties. The posting by S. Ivanov in August–November 2020 on the Facebook social network of information that "undermines confidence in public authorities, the activities of judges, and law enforcement agencies" was regarded as a violation of the rules of professional ethics. On November 11, 2021, the disciplinary commission of the MCBA decided to expel S. Ivanov from the Bar on the grounds that were indicated in the order of the Minister of Justice, recognizing his publications as an act incompatible with the title of lawyer.





Lawyer **Siarhej Zikratski** was sent for an extraordinary attestation by the Ministry of Justice in March 2021. One of the reasons for this measure, in the submission of the Ministry of Justice, was the publication on one of the Internet resources, which contains “a personal assessment of the actions of employees of internal bodies... and incorrect from the point of view of individual actions of employees”, in connection with which the Minsk Regional Bar Association S. Zikratski was strictly told not to express judgments when communicating with the media that could be misleading regarding the illegality of the actions of the internal affairs bodies (at the same time, “strictly indicated” is not a form of disciplinary sanction, that is, the bar did not see a disciplinary offense in the lawyer’s actions). As the second reason for the extraordinary attestation, the Ministry of Justice indicated S. Zikratski’s comment in the media regarding the court’s verdict in the case of journalists: “any cases that are initiated in connection with protests are absolutely illegal, because citizens are exercising their right to peaceful protest.” Also, in the submission of the Ministry of Justice, a publication was mentioned, which contains S. Zikratski’s calls to citizens to continue to go out to peaceful processions. The Ministry of Justice assessed such statements as not based on legislation.

As a result of an extraordinary recertification on March 24, 2021, lawyer S. Zikratski, who was one of the most famous lawyers in the field of media law and defended many journalists, was recognized as insufficiently qualified and deprived of his status.

**In all these cases, public statements of lawyers that dealt with issues of the rule of law and violations of human rights during the period of acute socio-political crisis in the country or contained reasonable criticism of state bodies did not go beyond generally recognized ethical standards and did not pose a threat to public order, national security, morality, rights and freedoms of citizens (conditions for the legitimacy of restrictions on freedom of expression). However, lawyers have been stripped of their status as a result of arbitrary interpretations of ethical standards (see [section 3.1](#)), abuse of them, and disregard for freedom of expression standards, both by the Ministry of Justice, the disciplinary bodies of bar associations, and the courts that have dealt with lawyers’ complaints of deprivation of status (see [section 3.3](#)).**

In 2020–2022, representatives of the Ministry of Justice and the leadership of the bar repeatedly demanded that lawyers limit their public statements and stated that they exercise control over all statements of lawyers, including those posted on the Internet. In July 2022, the practice of such control received regulatory consolidation: by the Decree of the Ministry of Justice of July 27, 2022 № 106, amendments were made to the Regulations on the head of legal advice office, according to which the heads of the legal advice offices are endowed with the function of monitoring “observance by lawyers of the Rules of the professional ethics of a lawyer when distributing information (including through comments, ratings) in the media, the global computer network Internet, maintaining personal accounts in social networks and performing other actions (inaction)”.<sup>181</sup>

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181 Regulations on the head of the legal office, approved by the Decree of the Ministry of Justice of the Republic of Belarus of February 1, 2012 № 29 (as amended on July 27, 2022), paragraph 15 of sub-clause 3.1 of clause 3.



### 2.7.3. Removal of status for statements in the courtroom



Advocate **Dmitri Laevski** was expelled from the MCBA on July 9, 2021 for "systematic violation of the requirements and conditions for the exercise of advocacy." One of the reasons for the expulsion (for which he had previously been reprimanded) was his publication on social networks, in which he criticized the draft amendments to the Law on the Bar with regard to the abolition of such forms of advocacy as attorneys bureaus and individual practice (see [section 4.4.1](#)). The disciplinary commission considered the opinion "information with incorrect and defamatory statements about lawyers and heads of legal advice offices." The second reason that directly led to the deprivation of D. Laevski of his professional status was his speech on June 22–23, 2021 in the court debate in defense of politician Viktor Babaryka, in which, according to the disciplinary commission, he "publicly assessed the speeches and legal positions of the defenders of others accused in the criminal process" (in fact, he expressed to the court a position about their innocence and asked to be acquitted, while these accused pleaded guilty, and their defenders did not ask for acquittal).

On November 2, 2021, his other defender, lawyer **Yauheni Pylchanka**, was expelled from the MCBA for statements during the judicial debate in the trial in the case of Viktor Babaryka. As a disciplinary offense, he was also charged with "public assessment of the speeches and legal positions of the defenders of other defendants in the criminal process".

One of the grounds for the exclusion from the MCBA in October 2021 of the third defender of Viktor Babaryka, lawyer **Natallia Matskevich**, was her objection to the actions of the prosecution witness's lawyer in court.

In the above cases, the statements of lawyers in court, made correctly and in good faith, in the interests of the defense, were qualified by the MCBA bodies as a violation of the general norms of the Rules of Professional Ethics of a Lawyer on respectful attitude towards their colleagues and the provision that a lawyer is not entitled to challenge the actions of another lawyer in the presence of a client.<sup>182</sup> Moreover, these norms were interpreted in a completely unpredictable, arbitrary and absurd way, equating the expression of the position of the defense and procedural polemics in court to a violation of ethical rules.

**As a result, not only are the obligations of the state in the field of freedom of expression of lawyers in public space and in the courtroom violated, but also a disregard for the guarantee of lawyers' immunity. This practice leads to the fact that lawyers must remain silent under the threat of deprivation of status, which has a chilling effect on the ability to protect their clients.**

### 2.7.4. Restriction of freedom of expression in the Rules of Professional Ethics of a Lawyer

The new edition of the Rules of Professional Ethics of a Lawyer, adopted by the Ministry of Justice on September 30, 2021 (entered into force on November 30, 2021) without prior discussion with lawyers and without agreement with the self-governing bodies of the bar,

<sup>182</sup> The rules of professional ethics of a lawyer, approved by the Decree of the Ministry of Justice of the Republic of Belarus of June 27, 2001 № 15, paragraphs 19, 20, 22. In the current Rules of Professional Ethics of a Lawyer, adopted by the Decree of the Ministry of Justice of September 30, 2021 № 180, these norms are preserved and are contained in paragraphs 18, 19, 21.

contains a number of provisions that consolidate the already established practice of prohibitions on free expression of opinions.

Thus, the rule was excluded from the Rules: “Statements of lawyers that affect the honor and dignity of a party to the case, its representative, prosecutor or defense counsel, witness, victim, expert, translator, which do not violate these Rules, are not subject to prosecution.” That is, the guarantee of immunity of a lawyer from liability in the performance of his/her duties, which is formulated in paragraph 20 of the Basic Principles on the Role of Lawyers, was leveled by law.

The new Rules include norms imposing additional restrictions on the expression of professional opinion both in the courtroom and outside it. Thus, a prohibition was introduced to express an opinion on the guilt or innocence of the accused, whom the lawyer does not defend<sup>183</sup> (thus, the unlawful practice previously applied in disciplinary proceedings against lawyer Dmitri Laevski was fixed (see [section 2.7.3](#))).

An innovation of the Rules of Professional Ethics of a Lawyer was also the rules of communication of a lawyer with the media and dissemination of information via the Internet: the requirement to disseminate only “accurate and reliable” information and that information be provided by lawyers “from a position of law”. For lawyers, a ban was established on the public expression of judgments “not supported by accurate facts and case materials”. Lawyers were made responsible for “not presenting his words to a mass audience in a distorted form”<sup>184</sup> (thus, the arbitrary interpretation by the Ministry of Justice of the general norms of the Rules of Professional Ethics of a Lawyer, which was applied by the Ministry of Justice in the case of Aliaksandr Pylchanka (see [section 2.7.2](#)), converted to a specific norm).

The specified formulations of the Rules of Professional Ethics of a Lawyer make it possible to interpret them as broadly and arbitrarily as possible. Thus, the obligation of a lawyer to provide information only “from the standpoint of law” may mean de facto ban on the expression of his/her civil, political and other opinions, which narrows the freedom of expression.

A violation of these Rules can be recognized as statements by a lawyer against the position set forth in the decisions of the investigating body and court decisions, such as statements by a lawyer about the innocence of the client, about the use of torture, if they are not supported by “exact facts and case materials” (which the lawyer often does not have the possibility of proving or presenting by virtue of attorney-client privilege or investigation secrecy).

Given that the interpretation of the norms of professional ethics of a lawyer, enshrined in such formulations, is carried out by the Qualification Commission under the Ministry of Justice or the councils of the TBA and BRBA (see [sections 3.2.1, 3.2.3](#)), which represent the state or are dependent on it, it should be stated that the rules of professional ethics for lawyers impose excessive restrictions on freedom of expression for lawyers that are not justified either by the standards of this right or by the internationally recognized ethical standards of the lawyer's profession.

**Thus, in Belarus such legislative conditions and practices have been created under which lawyers who conscientiously and uncompromisingly perform their duties to defend clients in court or participate in public discussion, publicly express their convictions, are under constant threat of sanctions, up to and including deprivation of status for lawful exercising their right to freedom of expression.**

183 Rules of professional ethics of a lawyer, paragraph 21.

184 Rules of professional ethics of a lawyer, paragraph 65.

### 2.7.5. Punishment for participating in peaceful assemblies

As a misdemeanor incompatible with the title of a lawyer, entailing the termination of the status of a lawyer, the Ministry of Justice and the governing bodies of the bar consider bringing a lawyer to administrative responsibility, including participation in peaceful spontaneous meetings, which are recognized by the legislation of the Republic of Belarus as illegal mass events, and participation in them established administrative liability in the form of a large fine or arrest.



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*On February 19, 2021, the Qualification Commission issued an opinion on the termination of the license of the lawyer **Maksim Konan** for the sole reason — bringing to administrative responsibility under article 23.34 of the Code of Administrative Offenses for participating in a rally without a corresponding decision of the local executive committee (subjected to administrative arrest — see also [section 2.5.2](#)), which is regarded as a misdemeanor incompatible with the title of a lawyer.*

*At the same time, the same decision was made in relation to the lawyer **Kanstantsin Mikhel**.*



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*Based on the conclusion of the Qualification Commission, on February 23, 2021, the Ministry of Justice terminated the licenses of both lawyers.*

*Lawyer **Siarhei Pichukha** was deprived of his license by the Ministry of Justice for participating in a peaceful assembly. At the same time, earlier, on March 5, 2021, the disciplinary commission of the MRBA only reprimanded him for the same actions<sup>185</sup>.*

*Lawyer **Boris Leskovski** was detained and brought to administrative responsibility for participating in the Unity March on September 6, 2020. Subsequently, he was sent for extraordinary certification, which he did not pass on March 24, 2021<sup>186</sup>.*

## 3. Problems of Disciplinary Responsibility and Disciplinary Procedures

### Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraph 64:

“It would be preferable for codes of ethics to respect the fundamental rights of lawyers (such as freedom of expression) and for codes to be developed by the bar associations, and where they are legislated, due consultation should be given by professional lawyers at all stages of the legislative process.”

**ECHR judgment of 25 March 1998 in Kopp v. Switzerland (application 23224/94), § 55:** “The law must be accessible to the person concerned, who must, in addition, be able to foresee the consequences for him of this law, and be compatible with the rule of law.”

**Judgment of the ECHR dated February 6, 2018 in the case Oleksandr Volkov v. Ukraine (complaint no. 21722/11), § 178-179:** “In the context of disciplinary rules, a reasonable approach should be used in assessing the accuracy of the law, since, due to objective necessity, *actus reus* [guilty acts] for such offenses must be formulated in general terms. Otherwise, the

International Standards

Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.<sup>187</sup>

Laws and codes of professional conduct for lawyers should be formulated with sufficient precision so that lawyers can be guided by them in regulating their conduct. They must be interpreted in a manner that is consis-

<sup>185</sup> <https://www.defenders.by/lawyers-persecution-2020#pichukha>

<sup>186</sup> <https://www.defenders.by/lawyers-persecution-2020#leskovsky>

<sup>187</sup> Basic Principles on the Role of Lawyers, paragraph 26; Recommendation № Rec (2000)21, paragraph 1 of principle VI.

law does not allow to resolve issues comprehensively and will require constant review and updating due to numerous new circumstances that arise in practice. This assumption is justified in the presence of "a specific and consistent practice of interpreting the relevant legal provisions."

**Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), para. 82:** "Overly general language can create ambiguity and unpredictability regarding behavior requiring disciplinary action, which violates the principle of legality. With regard to disciplinary matters, the application (*mutatis mutandi*) the principles of legality and predictability of decisions, as well as the principle of strict interpretation of the law, which apply to criminal cases."

**HRC Views of 15 July 2021 on Communication No. 2862/2016, Ageev v. Belarus, CCPR/C/132/D/2862/2016, para. 7.8:** "The Committee is of the view that the very severity of the sanction in the present proceedings, which led to the revocation of the author's license to practice as a lawyer, required scrupulous observance and respect for all guarantees of due process and a fair trial."

**Judgment of the ECHR dated June 25, 2020 in the case Bagirov v. Azerbaijan (complaints № 81024/12 and № 28198/15)** protects the right to personal development and the right to establish and develop relationships with other people and the outside world, including relationships of a professional or business nature."

**HRC Views of 15 July 2021 on Communication No. 2862/2016, Ageev v. Belarus, CCPR/C/132/D/2862/2016, para. 7.14:** "The Committee also notes that neither the State party in the context of this communication nor national authorities considering this issue, including the courts, did not provide any explanation relevant to the justification for the limitation of the author's rights under article 19, paragraph 2, for the purposes of article 19 of the Covenant. In the absence of any justification, the Committee considers that the author's right to freedom of expression, protected by article 19, paragraph 2, of the Covenant, has been unreasonably restricted and violated."

**Basic Principles on the Role of Lawyers, paragraph 29:** "All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles".

**Recommendation No. Rec (2000)21, paragraph 4 of principle VI:** "The principle of proportionality should be respected in determining sanctions for disciplinary offenses committed by lawyers".

were not even formally agreed with any bodies of lawyer self-government. This indicates a violation of the principle of self-regulation of a professional association in the fundamental aspect — the adoption of the norms of professional behavior.

tent, reasonably predictable, predictable for lawyers, and consistent with international standards regarding the role of lawyers.

Disciplinary proceedings against lawyers 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.<sup>188</sup>

The disciplinary procedure must comply with the requirements of a fair trial (article 14, paragraph 1, of the Covenant), including adversarial action, ensuring the right to a defense (to know the allegations and be able to challenge them, the right to be represented by a lawyer) and the right to challenge the decision of the disciplinary body in court.<sup>189</sup>

The application of disciplinary sanctions must be justified in accordance with the standards of restriction of rights — to privacy, freedom of expression, freedom of peaceful assembly, etc.: whether such a penalty is prescribed by law, whether it is necessary to protect legitimate goals and whether it is proportionate to achieve these goals.

During the period 2020–2022, at least 60 lawyers in Belarus were deprived of their status directly by the Ministry of Justice or through the disciplinary procedure of the bar associations.

### 3.1. Defects of the Rules of Professional Ethics of a Lawyer

In accordance with the Law on the Bar, the Rules for the professional ethics of a lawyer are approved by the Ministry of Justice and must be developed in cooperation with the Belarusian Republican Bar Association.<sup>190</sup>

The current Rules of Professional Ethics of a Lawyer were approved by the Decree № 180 of the Ministry of Justice of the Republic of Belarus dated September 30, 2021. Unlike the earlier Rules of Professional Ethics of a Lawyer, approved by the Decree № 39 of the Ministry of Justice of the Republic of Belarus of February 6, 2012, the new Rules were not discussed with lawyers during development and

188 Basic Principles on the Role of Lawyers, paragraph 28.

189 Basic Principles on the Role of Lawyers, paragraph 27; Recommendation No. Rec (2000)21, point 3 of principle VI.

190 Law on the Bar, paragraph 6 of point 1 of article and 38.



The Rules of Professional Ethics of a Lawyer are applied as the basis for sanctions against a lawyer. At the same time, there are many examples of the application of the norms of the Rules, which are not formulated clearly enough, with an arbitrary and unpredictable interpretation of these norms.

*Many of the lawyers were stripped of their status for "actions that discredit the title of a lawyer and the legal profession." At the same time, the Lawyer's Rules of Professional Ethics do not contain criteria by which certain actions can be classified as discrediting. As a result, any actions of a lawyer can be interpreted as "defamatory". As such, the Ministry of Justice and the disciplinary bodies of the colleges recognized the statements of lawyers in the media and participation in peaceful meetings (see sections 2.7.2, 2.7.5), as well as the very fact of bringing a lawyer to administrative responsibility.*

See [section 2.7.3](#) for arbitrary interpretations of ethical norms about relationships with colleagues; on the unlawful restriction of freedom of expression in the Lawyer's Rules of Professional Ethics, see [section 2.7.4](#).

The conclusions of the joint report of the Observatory for the Protection of Human Rights Defenders, the Paris Bar Association and the Human Rights Center "Viasna" "Belarus. Control over Lawyers — a Threat to Human Rights", 2018: "A set of laws and regulations that define the professional activities of lawyers and are contrary to relevant international standards, allows the Belarusian authorities not only to exercise control over lawyers, but also to selectively apply legal norms to put pressure on lawyers involved in protection of oppositionists, demonstrators or persons sentenced to death — these cases are considered politically sensitive by the ruling power.

## 3.2. Forms of Disciplinary Procedures and Violation of Fair Hearing Standards

In Belarus, three types of procedures are used as a tool for imposing sanctions on lawyers, each of which includes an assessment of the professional conduct/competence of a lawyer and may lead to deprivation of his/her status:<sup>191</sup>

- termination of the license directly by the Ministry of Justice on the basis of the conclusion of the Qualification Commission under the Ministry of Justice;
- regular or extraordinary attestation in the Ministry of Justice;
- disciplinary procedure of bar associations.

### 3.2.1. Termination of license of lawyers by the Ministry of Justice

The Ministry of Justice, as a licensing authority, has the right to directly decide on the termination of a lawyer's license, bypassing the disciplinary procedure of the Bar. A preliminary conclusion on the possibility of terminating a license is given by the Qualification Commission, the final decision is made by the collegium of the Ministry of Justice.<sup>192</sup>

By exercising control over the activities of lawyers (see [section 2.1](#)), employees of the Ministry of Justice can initiate consideration of the issue of violation of the law by a lawyer. There is no statute of limitations for this. The position of the bar association is not taken into account in this procedure.

<sup>191</sup> The status of a lawyer in Belarus implies the presence of two conditions at the same time: 1) the availability of a special permit (license) to practice law, which is issued by the Ministry of Justice; 2) membership in a territorial bar association (admission after obtaining a license is carried out by the board of the bar) (Law on the Bar, article 7).

<sup>192</sup> Law on the Bar, paragraph 3 of article 13.



On August 14, 2020, lawyer **Aliaksandr Pylchanka** gave a comment to the Internet resource. In September 2020, the chairman of the MCBA received an explanation from him in connection with this comment. The MCBA did not initiate disciplinary proceedings. But in October 2020, the Deputy Minister of Justice referred the issue of A. Pylchanka's violation of the Rules of Professional Ethics of a Lawyer in this comment to the Qualification Commission for consideration (see also [section 2.7.2](#)).

The Ministry of Justice initiated the termination of the license of the lawyer **Liudmila Kazak** in February 2021, considering the fact that she was brought to administrative responsibility on September 25, 2020 as a misconduct, discrediting the title of lawyer and the bar (see sections [2.2.5](#), [2.6.2](#)). At the same time, the issue of disciplinary liability of a lawyer for the same circumstances was already resolved by the disciplinary commission of the MCBA on November 20, 2020, L. Kazak was reprimanded.

The Qualification Commission for legal practice is created by the Ministry of Justice.<sup>193</sup> In its membership, lawyers are represented in the minority.<sup>194</sup>

The Qualification Commission, which was approved by order of the Minister of Justice dated February 3, 2020 № 20, included 20 members, among whom are the head of the legal support department of the Central Office of the Investigative Committee N. Andreeva and the head of the main department for relations with bodies of legislative and judicial power, issues of citizenship and pardons of the Administration of the President Zh. Tishchenko. By order of the Minister of Justice dated February 22, 2021 № 21, the head of the department of operational and information work of the criminal police of the Ministry of Internal Affairs A. Podhrusha was also included in the commission, as a result of which the number of members of the commission was increased to 21 people. And there were only 8 lawyers in it.

The collegium of the Ministry of Justice, which makes the final decision on the termination of the license based on the conclusion of the Qualification Commission, consists entirely of civil servants — employees of the Ministry and regional departments of justice.

Accordingly, these bodies, which evaluate the actions of a lawyer in terms of their compliance with the law and the Rules of Professional Ethics of a Lawyer and apply sanctions against a lawyer, do not meet the standard of independence and impartiality of the body conducting the disciplinary procedure.

Consideration of the issue of termination of the license occurs with the invitation of a lawyer to a meeting of the Qualification Commission.<sup>195</sup> However, often specific claims about violations of the law are not voiced to a lawyer before a commission meeting, which deprives him of the opportunity to present arguments in his defense.

Lawyer **Aliaksandr Pylchanka**, prior to the meeting of the Qualification Commission, was familiarized with the materials, which contained only his comment to the Internet resource, a publication from the state media with a negative assessment of this comment, and A. Pylchanka's own explanations given to the council of the MCBA. He did not know which one of his

193 Law on the Bar, paragraph 6 of article 14; Licensing regulation, paragraph 107.

194 Law on the Bar, paragraph 2 of article 14: "The Qualification Commission includes: the chairman of the Belarusian Republican Bar Association, one representative from the territorial bar associations; one representative from the Supreme Court of the Republic of Belarus, the General Prosecutor's Office, and other state bodies; five representatives from the Ministry of Justice; two representatives from scientific organizations. The Deputy Minister of Justice is the Chairman of the Qualification Commission".

195 Licensing Regulations, paragraph 85-1.

*statements and why would be considered for violation of the Lawyer's Rules of Professional Ethics (see also section 2.7.4).*

The lawyer's representative cannot participate in the meeting of the Qualification Commission along with the lawyer himself. Thus, the Ministry of Justice interprets the norm of paragraph 81–1 of the Licensing Regulations, according to which the issue of terminating a license is considered in the presence of the licensee or his authorized representative, ignoring the constitutional guarantee to use the legal assistance of a lawyer at any time and in any state body.<sup>196</sup>

*Aliaksandr Pylchanka and Liudmila Kazak were considered by the Qualification Commission, their lawyer representatives, who had powers of attorney to represent their interests, were not even allowed into the building of the Ministry of Justice, offering to choose who would participate in the meeting — either the lawyer himself or his representatives.*

The participation of a lawyer in a meeting of the collegium of the Ministry of Justice, which makes the final decision, is not provided for by law. In practice, the lawyer is not even notified of the date of the consideration of this issue.

Consideration of issues at the Qualification Commission and the collegium of the Ministry is closed, which excludes the publicity of the proceedings.

**Thus, the procedure for terminating a license by the Ministry of Justice lacks fair trial guarantees.**

### 3.2.2. Regular or extraordinary attestations of lawyers by the Qualification Commission under the Ministry of Justice

This procedure is widely used by the state to put pressure on lawyers and deprive them of their status.

From March 1, 2016<sup>197</sup>, a special permit (license) for the right to practice law is valid indefinitely (previously, a lawyer had to renew the license every five years). At the same time, every five years, a lawyer must undergo an attestation, and upon the order of the Ministry of Justice, an extraordinary attestation.<sup>198</sup>

Attestation, as a rule, is carried out by the Qualification Commission under the Ministry of Justice, and only on its behalf, a regular attestation can be carried out by the territorial bar association.<sup>199</sup> The attestation procedure is determined by the Ministry of Justice.<sup>200</sup> It adopted the Instruction on the procedure for attestation of lawyers.

According to the Instruction, an extraordinary attestation is carried out in the event of *“identification of facts indicating insufficient qualifications of a lawyer;*

*revealing the facts of improper performance by a lawyer of his professional duties;*

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196 Constitution, part 1 of article 62.

197 Changes to the Regulations on Licensing Certain Types of Activities were introduced by the Presidential Decree №. 475 of November 26, 2015.

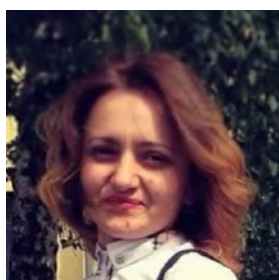
198 Law on the Bar, paragraph 8 of paragraph 1 of article and 38.

199 Law on the Bar, paragraph 6 of article 42.

200 Law on the Bar, paragraph 9 of paragraph 1 of article 38.

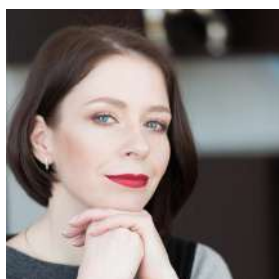
*receipt during the calendar year of two or more appeals (complaints) against the actions (inaction) of the lawyer, indicating a violation by the lawyer of the law, which were duly considered and found to be justified.*<sup>201</sup>

The legislation does not define the concepts and situations that are “facts indicating the improper performance of their duties by lawyers”, as well as the procedure in which such facts can be established. The proposal to conduct an extraordinary attestation is submitted by the Minister of Justice or his deputy,<sup>202</sup> who make this decision on a discretionary basis. In practice, any message received by the Ministry of Justice, the results of the inspection, as well as the fact that a lawyer has been brought to disciplinary responsibility can serve as a reason for appointing an extraordinary attestation.



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*Lawyer **Natallia Nekrashevich** was sent for an extraordinary attestation in December 2021 due to information received by the Ministry of Justice from the Presidential Administration that she allegedly “does not fully understand the specifics of the legislation governing pardons.” This conclusion was made due to the fact that the lawyer filed materials and a petition for pardon for her client (a young man recognized as having limited legal capacity, convicted for participating in protests to imprisonment) to the Presidential Pardon Commission. Subsequently, N. Nekrashevich did not pass the certification and was deprived of the status of a lawyer.*



*Lawyer **Lizaveta Matsveyeva** was sent for an extraordinary attestation in November 2021 because she was brought to disciplinary liability by the MCBA in September 2021.*

*The order to send lawyer **Evgeniy Maslov** for an extraordinary attestation was issued as a result of an inspection by the Ministry of Justice of the attorneys bureau in which he worked. The inspection revealed technical shortcomings in the execution of documents accompanying law practice (see also section 2.1).*



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The lawyer does not have the possibility of a judicial appeal against the submission of a referral for an extraordinary attestation.

*Lawyer **Lizaveta Matsveyeva** appealed against the order of sending her for an extraordinary attestation, first to the Minister of Justice, and then to the court. The lawyer sent an application to the Qualification Commission with a request to postpone the attestation until her complaint was considered by the court. The court of the Moscow district of Minsk refused to initiate a civil case due to the lack of jurisdiction of this complaint to the court. In December 2021, the Minister of Justice initiated disciplinary proceedings against E. Matsveyeva for failing to appear for certification, and the council of the MCBA expelled her from the Bar. Thus, the lawyer was deprived of her status, in fact, because she applied for judicial protection.*

The procedure for attestation of lawyers includes consideration by the Qualification Commission under the Ministry of Justice or the Certification Commission of the TBA (if it is entrusted to hold attestation) of materials on the implementation by the lawyer of the re-

201 Instructions on the procedure for attestation, paragraph 7.

202 Instructions on the procedure for attestation, paragraph 8.

quirements of the law and other materials characterizing his professional activities. The commission has the right to check the lawyer's knowledge of the legislation of the Republic of Belarus in the form of an oral interview.<sup>203</sup>

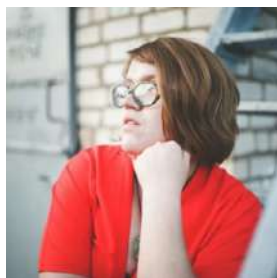
There is neither a list of questions on legislation that can be asked to a lawyer for attestation, nor an attestation program. In practice, the “test of the lawyer’s knowledge of the law” during attestation may have varying complexity and duration: from several questions on the licensing of legal practice and the Rules of the Lawyer’s Professional Ethics to an “examination” in various branches of law, regardless of the lawyer’s specialization, while requiring immediate and verbatim citation of laws.

As a result, the Qualification Commission may take one of the following decisions:

- on the compliance of the lawyer with the requirements of the law;
- on the incomplete compliance of the lawyer with the requirements of the law with a delay in attestation for six months, subject to the recommendations of the Qualification Commission, including the completion of advanced training by the lawyer;
- on the impossibility of the lawyer to perform his professional duties due to insufficient qualifications.<sup>204</sup>

The criteria by which one or another of these decisions is made are not established by law.

According to the Instructions on the procedure for conducting attestation, the decisions of the Qualification Commission must be motivated,<sup>205</sup> however, in practice, they do not reflect either the questions asked, or the lawyer's answers, or an assessment of the reasons for which the decision was made. Considering that protocols and audio recordings of the meeting of the Qualification Commission are not kept, and its decisions are not subject to appeal in court, the lawyer has no opportunity to challenge the objectivity and correctness of the assessment of his qualifications during certification.



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*Based on the results of the regular attestation in April 2022, the Qualification Commission recognized the lawyer **Maria Kolesova-Hudzilina** as “insufficiently qualified” to perform professional duties. At the same time, M. Kolesova-Hudzilina has a PhD and teaches a course at Harvard University, and was also a lecturer at the Belarusian State University.*

When the Qualification Commission, based on the results of the attestation, makes a decision on “the impossibility of the lawyer to fulfill his professional duties due to insufficient qualifications”, the lawyer is excluded from the territorial bar association.<sup>206</sup> Then the Ministry of Justice makes a decision to terminate the lawyer's license due to his exclusion from the Bar.<sup>207</sup>

*From the beginning of 2020 to February 2023, more than 50 lawyers were deprived of their status as a result of the regular or extraordinary attestation procedure. A number of interviewed lawyers who were deprived of their licenses based on the results of attestation in the Ministry of Justice reported that they did not appeal against this decision, since there were no means of protection, although they did not agree with the decision of the Ministry of Justice.*

203 Instructions on the procedure for certification, paragraphs 14 and 25.

204 Instructions on the procedure for certification, paragraphs 13 and 24.

205 Instructions on the procedure for certification, paragraph 35.

206 Law on the Bar, paragraph 9 of paragraph 2 of article 24.

207 Licensing regulation, paragraph 108.



There is a clear trend that those lawyers who defended protesters after the 2020 presidential election, public figures and activists, political opponents, journalists, that is, lawyers who worked on high-profile and politically motivated cases, as well as those lawyers who signed petitions against violence and for new elections, in defense of their colleagues do not pass attestation. Some of them were reminded during the assessment that it was a “wrong position” to sign the petitions. Attestation of lawyers is actually used as a sanction, as an instrument of repression and as a form of persecution for dissent.

*“For the period from 2021 to the present, the Ministry of Justice has made decisions to terminate the licenses of 47 destructive lawyers,”* it was indicated in the message of the Belarusian Telegraph Agency that A. Lukashenko accepted with the report the Minister of Justice on April 21, 2022. This number also included those lawyers who at that time had not passed certification and were deprived of their licenses.

At the same time, this procedure does not meet the standards of fairness, because: it is initiated by the Ministry of Justice; conducted by a body that is not independent; does not have signs of definite criteria and transparency of decision-making; decisions cannot be challenged in court.

### 3.2.3. Disciplinary Procedure of the Bar Association

This is the only procedure carried out by the bar association that could be recognized as an appropriate form of disciplinary control. However, it does not meet the standards of a fair trial.

According to the Law on the Bar, since its adoption in 2011, the right to initiate disciplinary proceedings belongs to the governing bodies of the TBA — the general meeting (conference), the council and the chairman of the Bar, as well as the Minister of Justice — on their own initiative or on the basis of a complaint (representation, ruling).<sup>208</sup> At the same time, if disciplinary proceedings are initiated by the Minister of Justice, the Ministry of Justice has the right to suspend the lawyer from his/her professional duties for the duration of the disciplinary proceedings.<sup>209</sup>

In 2021–2022, the practice of initiating disciplinary proceedings by the Minister of Justice expanded significantly, and the suspension of lawyers from work by the Ministry of Justice, which had not been used before, became a general rule, applied without taking into account the employment of lawyers in processes, the interests of clients and without substantiating the actual need to suspend the activities of a lawyer but contrary to it.

*The Ministry of Justice suspended lawyer **Yauheni Pylchanka** from work on 20 October 2021 due to the initiation of disciplinary proceedings against him by the Minister of Justice (see [section 2.7.3](#)). At that moment, he was the last of the acting lawyers who defended Viktor Babaryka, who was sent to serve his sentence in a colony (Natallia Matskevich was suspended from work on October 13, 2021, Dmitri Laevski was expelled MCBA on July 9, 2021, Aliaksandr Pylchanka was deprived of his license by the Ministry of Justice on October 16, 2020) (see also [section 2.6.4](#)).*



Moreover, the removal of a lawyer is used as a tool to remove him/her from the defense of a particular client (see [section 2.5.2](#)).

208 Law on the Bar, paragraph 1 of article 22.

209 Law on the Bar, paragraph 12 of paragraph 1 of article 38.



It is noteworthy that when disciplinary proceedings are initiated by the governing bodies of the TBA, the lawyer cannot be held disciplinary liable after six months from the date of the disciplinary offense. However, this period is two years if proceedings are initiated by the order of the Minister of Justice, since, as follows from the position of the Ministry of Justice, this is carried out as a result of an inspection.<sup>210</sup>

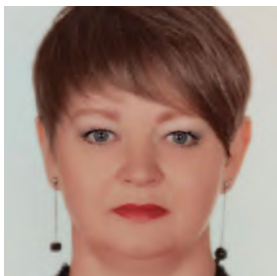


*On October 12, 2021, an order was issued to initiate disciplinary proceedings against **Natallia Matskevich** in connection with the events that took place in June–July 2020 and April 9, 2021, that is, a year and a half and six months before the initiation of disciplinary proceedings. On October 25, 2021, a sanction was applied to her in the form of an exclusion from the MCBA (see sections [2.5.2](#), [2.7.3](#)).*

Before the amendments to the Law on the Bar of May 27, 2021, which entered into force on November 30, 2021, the consideration of a disciplinary case was within the competence of the TBA disciplinary commissions, which consisted of lawyers elected at a general meeting or conference of the Bar.

In 2020–2022, the Ministry of Justice pressured the Disciplinary Commissions of the Bar to hold lawyers accountable on orders from the Minister of Justice. Members of disciplinary commissions, being lawyers, could at any time be sent for attestation to the Ministry of Justice and lose their status. In connection with these risks, the disciplinary commissions became dependent bodies and, in all cases of initiation of disciplinary proceedings by the Minister of Justice, held lawyers accountable, including expelling lawyers from the Bar.

*Lawyer **Olga Baranchik** was the chairman of the disciplinary commission of the MRBA for 8 years. In October 2020, the Minister of Justice initiated disciplinary proceedings against Mikhail Kiryliuk, a member of this bar association, for his statements on social networks.*



*The disciplinary commission decided not to expel the lawyer from the bar (see [section 2.7.2](#)). In the same year, several lawyers of the Bar (Kanstantsin Mikhel, Boris Leskovski, Siarhei Pichukha) were brought to administrative responsibility for allegedly participating in unauthorized rallies. They were not disciplined by the Bar, but the Ministry of Justice terminated their licenses in 2021 (see [section 2.7.5](#)). In March 2021, O. Baranchik was assigned an extraordinary attestation (see [section 2.1](#)). The Qualification Commission recognized her “insufficient qualifications” (as a lawyer who had 26 years of experience and defended political prisoners at that time), and thus she was*

*deprived of her status.*

When amending the Law on the Bar on May 27, 2021, the disciplinary commissions of the TBA and BRBA were liquidated, and from November 30, 2021, disciplinary issues are considered by the councils of territorial bars and BRBA<sup>211</sup>. The composition of the councils is formed in agreement with the Ministry of Justice, and this body is completely dependent on the Ministry (see [section 4.2](#)), including in matters of disciplinary procedure and its use for deprivation of the status of lawyers at the will of the Ministry of Justice.

The range of actions for which lawyers may be subject to disciplinary liability is formulated in the legislation as broadly as possible: actions that are contrary to the Law on the Bar, the Rules for the Professional Ethics of a Lawyer and other acts of legislation on the Bar, as well

<sup>210</sup> Law on the Bar, paragraph 2 of article 23.

<sup>211</sup> Law on the Bar, paragraph 15 of paragraph 9 of Article 43, paragraphs 17, 18 of paragraph 6 of Article 47.

as the statutes of the bar associations, decisions of the BRBA and TBA<sup>212</sup>. In any of these cases, assessed discretionary (with a wide degree of discretion) by bodies and persons that are not independent, a decision may be made to bring the lawyer to disciplinary liability, including deprivation of status. In many cases, such a decision is made on insignificant or fictitious grounds and is contrary to the standards for restricting fundamental rights (see [section 2.7](#)).

### 3.3. Inefficiency of the judicial appeal against the termination of the lawyer's status

The legislation provides for the right of a lawyer to appeal against the application of a disciplinary sanction against him/her to the BRBA Council (until November 30, 2022 — to the BRBA Disciplinary Commission), and then file a complaint against the BRBA decision with the court.<sup>213</sup> At the same time, the very decision of the disciplinary body of the TBA cannot be directly appealed in court and is not the subject of a judicial assessment.

The decision of the Ministry of Justice on the termination of the license for the right to practice advocacy<sup>214</sup> can also be appealed to the court. The conclusion of the Qualification Commission, on the basis of which the Ministry of Justice terminates the license, is not subject to a separate judicial appeal.

According to the rules of civil procedure, the court must check both the legality and validity of the appealed decision. However, in practice, in all known cases of consideration of complaints about the deprivation of the status of a lawyer, the complaints were rejected. At the same time, the courts in their decisions were limited to only indicating that the BRBA or the Ministry of Justice had the appropriate powers and that the procedure prescribed by law had been observed. The courts did not analyze the applicants' arguments that their actions did not constitute a disciplinary offense and did not assess the conclusions of the Qualification Commission or the disciplinary body of the Bar Association. Also, the courts did not evaluate allegations of violation of the basic rights of lawyers (freedom of expression, the right to privacy) and violation of the standards of disciplinary procedure.

*From the decisions of the court of the Moscow district of Minsk:*

*“The applicant’s arguments that the decision of the BRBA Board he contested contradicts the provisions on freedom of expression enshrined in the Constitution of the Republic of Belarus and the International Covenant on Civil and Political Rights cannot serve as a basis for canceling the decision of November 21, 2021, since the court session established that the contested decision was adopted in accordance with the current legislation”.*

*“The court evaluates critically the applicant’s arguments that bringing him to disciplinary liability was carried out according to an unfair procedure and in violation of the principle of the independence of the bar, since disciplinary proceedings were initiated in accordance with the requirements of the current legislation, by an authorized official in compliance with the established procedure.”*

**Thus, a judicial appeal is not an effective remedy in Belarus for a violated right upon deprivation of the status of a lawyer.**

212 Law on the Bar, paragraph 1 of article 20.

213 Law on the Bar, paragraph 1 of article 25.

214 Civil Procedure Code of the Republic of Belarus, article 353.

## 4. Devaluation of the role of Belarusian bar associations

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 38:

“Bar associations should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession; they should operate as professional associations, working to protect the rights of its members”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 23:

“A bar association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, the development and implementation of codes of professional conduct and the right of lawyers to join the association. Government controls, whether direct or indirect, is eliminated or minimized to the greatest extent possible”. Special Rapporteur in this conclusion refers to the International Bar Association “The independence of the legal profession: Threats to the bastion of a free and democratic society” (2016), page 8.

### Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraph 118:

“Bar associations should be independent and self-governing professional associations, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests. Their status and important functions should be recognized and supported by States, which should refrain from interfering in their work and functioning”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 56:

“The Special Rapporteur considers that the legal profession is best placed to determine admission requirements and procedures and should thus be responsible for administering examinations and granting professional certificates (see A/64/181, para. 34)”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 64:

“Codes of ethics should be developed by the legal profession itself”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 26:

“The bar association should be able to set its own rules and regulations, make its own decisions free from external influence, represent its members’ interests and be able to sustain itself”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 112:

“Bar associations should be independent and self-governing professional associations of lawyers, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests”.

### Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 22:

“The general mission of bar associations in all countries that have responded to the questionnaire is the promotion and protection of the independence of the legal profession and its members”.

International legal standards

Lawyers have the right to create and be members of professional associations (bar associations).<sup>215</sup>

Bar associations should meet, at a minimum, the following requirements: (a) independence; (b) a self-governing nature; (c) a general mandate to protect the independence of the legal profession and the interests of its members; and (d) recognition under law.<sup>216</sup>

The independence of the professional association of lawyers is seen as independence from authorities and from the public<sup>217</sup> and includes freedom from external influence, the ability to withstand pressure from outside, the obligation of the state to refrain from interfering in the work and functioning of the bar associations.

Self-government and self-regulation of a professional association of lawyers is ensured by the fact that its executive bodies must be elected by its members and perform their functions without outside interference.

Bar associations should be able to independently admit individuals to practice law, as well as adopt and apply ethical rules, and make decisions independently.

Bar associations have a fundamental role to play in:

- ensuring compliance with professional standards and ethics;
- protection of its members from persecution and unlawful restrictions and encroachments;
- provision of legal services to all those in need;
- promotion of the goals of justice.<sup>218</sup>

Protecting the independence of the legal profession and protecting the professional interests of lawyers is the responsibility of the bar association, for which it must, among other things:

<sup>215</sup> Basic Principles on the Role of Lawyers, paragraph 24: “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”.

<sup>216</sup> Note by the UN Secretary-General on report A/73/365 (2018); Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 88.

<sup>217</sup> Recommendation №. Rec (2000)21, paragraph 2 of principle V.

<sup>218</sup> Basic Principles on the Role of Lawyers, preamble.

**Recommendation № Rec (2000)21, paragraph 1 of principle V:** “Lawyers should be allowed to form and join professional associations <...> which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.”

**Recommendation № Rec (2000)21, paragraph 3 of principle V:** “The role of bar associations or other professional associations of lawyers in protecting their members and defending their independence against any improper restrictions or infringements should be respected”.

**Basic Principles on the Role of Lawyers, paragraph 25:** “Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics”.

**Note by the Secretary General on the report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018):** “Bar associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession and to ensure access to justice and the protection of human rights, in particular due process and fair trial guarantees”.

**Recommendation № Rec (2000) 21, paragraph 5(a), (e) of principle V:** “Bar associations or other professional associations of lawyers should take any necessary action, including defending lawyers’ interests with the appropriate body in case of: a) arrest or detention of a lawyer; e) publication of press reports which require action on behalf of lawyers.”

**Note by the Secretary General to the report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018):** “They [bar associations] protect individual members of the legal profession, particularly in situations where they are not able to adequately defend themselves.”

**Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 105:** “The protection of the individual members of bar associations, particularly in situations where they may not be able to adequately defend themselves, should be at the core of the mandate of any bar associations”.

**Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 50:** “Bar associations could have no greater objective or interest than the protection of the independence of the profession and its individual members and that they are duty bound to rush in aid of their members when they are subject to harassment and intimidation (see E/CN.4/1998/39/Add.4, para. 36).”

**Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022), paragraphs 6 and 101:** “The international principles and standards on the independence of the legal profession and its free exercise, in particular the Basic Principles on the Role of Lawyers, are essential elements that should serve as a guide for those who practice law, as well as for their professional associations, and should also be upheld by State authorities”.

- strengthen professional standards;
- uphold the independence of its members with respect to any unlawful restrictions or infringements;
- ensure that lawyers are able to advise and assist clients without undue interference;
- immediately protect the integrity and interests of lawyers in the event of their individual persecution, including the arrest or detention of a lawyer, publications in the press against a lawyer, threats to a lawyer, intimidation, other encroachments on lawyers or interference in their activities.

Bar associations should be guided by international principles and standards regarding the independence of the legal profession and its free exercise, as embodied in particular in the UN Basic Principles on the Role of Lawyers.

## 4.1. Bar Associations in Belarus: management defects

### 4.1.1. Territorial bar associations

In Belarus, the role of bar associations is performed by bar associations, which are formed on a territorial basis — one bar association in each of the six regions of Belarus and a bar association in the city of Minsk<sup>219</sup> — a total of 7 territorial bar associations.

Membership in the territorial bar association for lawyers is mandatory,<sup>220</sup> since, along with a license, this is one of the prerequisites for practicing law in Belarus.<sup>221</sup>

According to the Law on the Bar, the territorial bar association is recognized as a non-profit organization, operates on the basis of the Statute<sup>222</sup> and was formed “in order to provide legal assistance, represent the interests of lawyers in state bodies and other organizations, monitor the observance by lawyers of the law, including the Rules of Professional Ethics of a Lawyer.”<sup>223</sup>

Thus, the protection of the professional interests of lawyers,<sup>224</sup> counteraction to unlawful interference in the prac-

219 Law on the Bar, Part 2 of Clause 1 of Article 40.

220 [The Statute of the Minsk City Bar Association](#), approved by the conference of members of the MCBA on October 29, 2021, paragraph 1: “Minsk City Bar Association is a non-profit organization based on the mandatory membership of lawyers of a separate administrative-territorial unit, carrying out advocacy on the basis of special permits (licenses) for the right to practice advocacy, issued by the Ministry of Justice.”

221 Law on the Bar, paragraph 1 of article 7.

222 Law on the Bar, paragraph 1 of article 41.

223 Law on the Bar, paragraph 2 of Article 41.

224 Basic Principles on the Role of Lawyers, paragraph 24.



tice of law,<sup>225</sup> as well as the protection of the independence of the legal profession and members of the bar<sup>226</sup> are not declared in the law as the goals and objectives of the bar. "Representation and protection of interests of lawyers of the territorial bar association" in the Law on the Bar is indicated only as one of the powers of the territorial bar.<sup>227</sup>

The supreme governing body of the territorial bar association is the general meeting (conference) of its members, and the executive body is the council of the territorial bar association.<sup>228</sup>

In practice, general meetings of members of bar associations are not held.

*In the Minsk City Bar Association (MCBA), general meetings were not held for more than ten years until 2010. From 2010 to 2012, during the period when Aliaksandr Pylchanka was the chairman of the MCBA, a number of general meetings were held with the participation of the majority of the members. This practice of direct democracy irritated the Ministry of Justice and shortly after the removal of A. Pylchanka from the post of chairman of the MCBA, it was discontinued. From 2012 to February 2023, no general meetings were held at the MCBA.*

Instead of meetings, conferences are held in which delegates from a certain number of lawyers of the bar participate (for example, for the MCBA — at least one representative from five members of the bar).<sup>229</sup> As a result, the majority of members of the bar association are deprived of the opportunity to participate in the resolution of issues submitted to such a meeting.

The mechanism for nominating delegates to the conference is non-transparent and arbitrary. Under the influence of the risk of interference or repressive measures by the Ministry of Justice, over time, a behavior pattern developed within the bar associations, when delegates who adhere to a position loyal to the executive branch were nominated to participate in the conference of the bar association. This excludes the adoption at the conference of any decision that would be objectionable to the Ministry of Justice.

In addition, the solution of a number of issues that are most important for lawyers gradually began to fall not within the competence of the general meeting, but within the competence of the council of the bar association.

The council of the territorial bar association is its collegiate executive body and is elected at a general meeting (conference) of members of the bar association for a period of four years from candidates approved by the Ministry of Justice.<sup>230</sup> It is authorized to carry out admission to and expulsion from the bar association, to conduct disciplinary proceedings. Competences of the council of the territorial bar association include:<sup>231</sup>

- approval of the amount of contributions of bar members to the territorial bar association;

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225 Basic Principles on the Role of Lawyers, paragraph 25; Recommendation № Rec (2000)21, paragraph 3 of principle V.

226 Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 112; note by the Secretary-General on report A/73/365 (2018); Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraphs 22, 50, 105; Recommendation №. Rec (2000)21, paragraphs 1, 3, 5 of principle V.

227 Law on the Bar, article 42.

228 Law on the Bar, article 43, paragraph 1.

229 The Statute of the Minsk City Bar Association, approved by the conference of members of the MCBA on October 29, 2021, paragraph 10 ([https://advokat.by/content/o\\_kollegii/ustav/](https://advokat.by/content/o_kollegii/ustav/)).

230 Law on the Bar, paragraph 2 of article 43.

231 Law on the Bar, paragraph 9 of article 43.

- determining the procedure for distributing and spending funds received in the form of contributions from lawyers, as well as funds received for the provision of legal assistance;
- approval of the size of deductions of the territorial bar association;
- “ensuring that fees for legal aid are consistent with its scope, complexity and quality”.

Thus, **lawyers who are members of the bar cannot directly influence the solution of important issues that affect their interests.**

#### 4.1.2. Belarusian Republican Bar Association

The Belarusian Republican Bar Association (BRBA) is an association of territorial bar associations.<sup>232</sup>

Among the goals and objectives of the BRBA, it is indicated that it *“represents and protects the interests of lawyers in relations with state bodies and other organizations,”*<sup>233</sup> and also *“coordinates the activities of territorial bar associations, takes measures aimed at improving the availability and quality of legal assistance”*.

However, such goals as counteracting unlawful interference in the practice of law and protecting the independence of the lawyer profession, as in the case of territorial bar associations, are not declared in the law as the goals and objectives of the BRBA.

The governing bodies of BRBA are the council and the chairman.

The BRBA council is formed from representatives of the territorial bar associations — two representatives each, who are elected from candidates agreed by the Ministry of Justice.<sup>234</sup> Chairmen of territorial bar associations are members of the BRBA council ex officio.<sup>235</sup>

In practice, the Ministry of Justice approves candidates for the BRBA council of persons who are loyal to the authorities.

**Viktar Chaichits** was the chairman of the BRBA from December 2011 to February 2022<sup>236</sup> and since 2016 he has also been a member of the Council of the Republic of the National Assembly of the Republic of Belarus.

**Aleksei Shvakov** — chairman of the MCBA from 2012 to February 2022, since February 2022 — chairman of the BRBA.

**Maksim Tereshkov** has been the chairman of the MRBA since the end of January 2022.

All of them in public speeches repeatedly directly or indirectly emphasized their support for the existing political regime.

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232 Law on the Bar, paragraph 1 of article 46.

233 Law on the Bar, paragraph 2 of Article 46.

234 Law on the Bar, paragraph 6 of article 43, paragraph 4 of article 47.

235 Law on the Bar, paragraph 1 of article 47.

236 From the biography of V. Chaychits: “He worked as an electrician of SMU No. 1 of the Energostroyontazh trust Belglavenergo (Brest), an electrician of the Brest Production Association Brestrybhoz (Beloozersk), an intern of a people’s judge of the Baranovich District Court, an intern of the People’s Court of Minsk district and the city of Zaslavl, a judge of the people’s court of the Minsk region and the city of Zaslavl, head of the department of general theoretical problems of organizing the work of institutions of justice of the Scientific Research Institute of Problems of Criminology, Forensic Science and Forensic Expertise of the Ministry of Justice of the Republic of Belarus, lawyer of the Minsk Regional Legal Advice Office No. 1, chairman of the Minsk Regional Bar Association.”

**Thus, an assessment of the legal regulation of the management of bar associations indicates that it is incompatible with the standard of independence and self-government of professional bar associations, and also indicates that such management is not democratic.**<sup>237</sup>

## 4.2. Destroying the Independence of the Bar: Powers of the Ministry of Justice

Obstacles to the independence of bar associations, control over them by the state are established in the Republic of Belarus at the level of legislation and are expressed primarily in the powers of the Ministry of Justice. And these powers have been used in practice to interfere in the activities of the governing bodies of the Bar since the adoption of the Law on the Bar on December 30, 2011.

May 27, 2021 amendments were made to the Law on the Bar, which significantly expanded the already almost unlimited powers of the Ministry of Justice in relation to the Bar. In this regard, the Bar in Belarus has lost the remnants of independence, and the pressure and persecution against lawyers has increased significantly.

### 4.2.1. Approval by the Ministry of Justice of candidates for positions in bar associations

The election of the chairmen of the bar associations, and after the amendments to the Law of May 27, 2021, of all members of the council of the bar association must be agreed with the Ministry of Justice. If the proposed candidates are not agreed twice by the Ministry of Justice, it itself submits proposals for candidates. And if the candidates proposed by the Ministry of Justice are not elected twice at a general meeting (conference) of the bar association, they will be considered elected.<sup>238</sup> The heads of the legal advice office, when appointed by the council of the bar association, are also subject to the consent of the Ministry of Justice.

**Thus, the amendments to the Law of May 27, 2021 assigned the Ministry of Justice a decisive role in the formation of all the executive bodies of the bar associations and actually established the procedure for their appointment by the Ministry, which, contrary to the independence standard, is an obvious outside interference in the activities of the bar association and the election of its bodies**<sup>239</sup>.

**Given that the council of the bar association is vested with the power to exercise admission and exclusion from the bar, its actions are of decisive importance for lawyers. And since the members of the council are completely dependent on the Ministry of Justice and loyal to its position due to the fact that their candidatures are agreed with it, this body has become unable to fulfill the main task of bar associations — to defend the independence of the profession and the interests of lawyers. This is especially evident in matters of the disciplinary procedure and its use to deprive the status of lawyers objectionable to the authorities.**

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<sup>237</sup> Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 85: *“Bar associations should foster democratic standards and should also enforce them internally. <...> In other words, the requirements of democracy should be observed within bar associations and should be applied in their external activities”.*

<sup>238</sup> Law on the Bar, article 43, paragraph 2, article 43, paragraph 6.

<sup>239</sup> Basic Principles on the Role of Lawyers, paragraph 24;

Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 86: *“The Special Rapporteur is concerned about instances where State authorities control the bar or attempt to take control over it by adopting legal amendments or decrees, placing lawyers favorable to the government in the governing bodies”.*

### 4.2.2. Ministry of Justice control and disciplinary action against lawyers

The Law on the Bar and the Regulation on Licensing give the Ministry of Justice a number of powers that can be arbitrarily exercised against any bar members, including members of bar councils. Among them:

- obtaining information and documents from bar associations, legal advice offices, lawyers (see [section 2.3.2](#));
- initiation of disciplinary proceedings against the lawyer and removal of the lawyer from the exercise of professional duties for the duration of the disciplinary proceedings (see [section 3.2.3](#));
- submission of proposals to the Qualification Commission on holding an extraordinary attestation of a lawyer to determine the ability of a lawyer to fulfill his professional duties “in case of revealing the facts testifying to his insufficient qualification” (see [section 3.2.2](#));
- suspension and termination of the license for the right to practice law (see [section 3.2.1](#)).

The possibility of implementing these measures puts lawyers who are members of the governing bodies of bar associations in a vulnerable position and exacerbates their dependence on the Ministry of Justice. In this position, they act in the face of fear that for contradicting the positions of the Ministry of Justice they may be subjected to disciplinary sanctions or extraordinary attestation, as a result of which they will lose their profession.

### 4.2.3. Intervention of the Ministry of Justice in the decisions of the governing bodies of the bar associations

The norm of Article 38 of the Law on the Bar allows the Ministry to suspend any decision of the general meeting, conference, council of the bar association, which it considers to be inconsistent with the law or taken in violation of the established procedure. If the suspended decision is not canceled by the bar association itself, the Ministry of Justice has the right to apply to the court with a request to cancel it.<sup>240</sup> In the absence of an independent and competent judiciary, the fact that the Ministry of Justice has such authority creates a real risk that a decision that does not suit the Ministry of Justice may be canceled, which actually creates censorship and deprives the bar associations of independence.

*On October 22, 2011 the general meeting of the MCBA elected **Andrei Sankovich** as its chairman. On October 24, 2011 the Ministry of Justice published on its website information about the suspension of the decisions of the general meeting of members of the MCBA and the conduct of an audit. The Ministry referred to a number of appeals indicating violations of the basic requirements of the General Meeting Regulations. Based on the results of the audit, on December 13, 2011, the Ministry of Justice sent a letter “On holding a general meeting” to the Republican Bar Association, which lists procedural violations regarding the procedure for electing the chairman of the MCBA. At the beginning of 2012, a new meeting of the MCBA was held, at which **Aleksei Shvakov** was elected chairman of the bar association (candidate supported by the Ministry of Justice).<sup>241</sup>*

240 Law on the Bar, paragraph 17 of paragraph 1 of Article 38.

241 [Analytical review](#) G-3 (2011) of the International Monitoring Mission of the Committee for International Monitoring of the Human Rights Situation in Belarus “The situation of lawyers in the Republic of Belarus after the presidential elections of December 19, 2010.”



#### 4.2.4. Early termination of the powers of the chairman of the bar association by the Ministry of Justice

Under the Law on the Bar, the Ministry of Justice is empowered to submit to the general meeting a proposal for the early recall of the chairman of the bar association for, in the opinion of the Ministry, a violation of the requirements of the law or the statute of the bar association. If the general meeting of the bar association refuses to satisfy the submission, the Ministry of Justice has the right to terminate the powers of the chairman of the bar association by its decision based on the conclusion of the Qualification Commission.<sup>242</sup>

*On August 31, 2011, Acting Minister of Justice **Aliaksandr Bileichyk** submitted for consideration by the general meeting of the MCBA a proposal for the early recall of the chairman of the MCBA, **Aliaksandr Pylchanka**. What exactly was the violation of the law on the legal profession by A. Pylchanka himself, was not reported in the submission of the Ministry of Justice. On October 22, 2011, at the general meeting of the MCBA, the powers of A. Pylchanka as the chairman were terminated, **Andrei Sankovich** was elected as the new chairman<sup>243</sup> (see also [section 4.2.3](#)).*

In addition, the Law on the Bar provides<sup>244</sup> for the possibility of terminating the powers of not only the chairman of the bar association, but also members of its council on the proposal of the Ministry of Justice addressed to the general meeting (conference). If the meeting (conference) is not held within a month, then the powers of the governing bodies of the bar association are terminated. If the general meeting (conference) has made a decision to refuse to terminate the powers of members of the council of the bar association, the Ministry of Justice has the right to appeal this decision to the court, and the satisfaction of this complaint (which is most likely in the absence of an independent judiciary) also terminates the powers of the member (members) of the governing bodies of the bar association, in respect of which the presentation was made.

**Thus, the powers of the Ministry of Justice enshrined in the law deprive the bar associations of independence, self-regulation and self-government, and prevent the bar associations from fulfilling the tasks of bar associations. Taking into account the mandatory membership of lawyers in bar associations, the lack of independence and state control of the bar associations suppresses the independence of lawyers.**<sup>245</sup>

#### 4.3. International recognition of the lack of independence of the Bar in Belarus

The lack of independence of the Belarusian bar is recognized at the international level: — The UN Human Rights Committee in 2018 expressed concern regarding Belarus that “the relationship between the bar associations and the Ministry of Justice is undermining the independence of the legal profession”;<sup>246</sup>

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242 Law on the Bar, paragraph 16 of paragraph 1 of Article 38.

243 [Analytical review G-3](#) (2011) of the International Monitoring Mission of the Committee for International Monitoring of the Human Rights Situation in Belarus “The situation of lawyers in the Republic of Belarus after the presidential elections of December 19, 2010.”

244 Law on the Bar, part 3 of paragraph 11 of article 43.

245 Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraphs 38, 101: “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 (see A/71/348, para. 86)”.

246 Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus CCPR/C/BLR/

— The Observatory for the Protection of Human Rights Defenders, in cooperation with the Paris Bar Association, concluded in 2018 that in Belarus “legislation has gradually placed the legal profession under the supervision of the authorities and in particular the Ministry of Justice. In the course of the past few years, the bars have been stripped of their primary function, which is to guarantee independence and ensure the regulation of the profession;”<sup>247</sup>

— The Special Rapporteur on the situation of human rights in Belarus in 2021 noted that “interference with the professional activities of lawyers is systemic in Belarus;”<sup>248</sup>

— The UN High Commissioner for Human Rights in his report “The situation of human rights in Belarus in the context of the 2020 presidential elections” in 2021 stated that lawyers who defend in cases that have received political resonance or cases related to human rights violations are threatened “disbarment or disciplinary sanctions by the Bar Association, which lacks independence;”<sup>249</sup>

— The Council of Bars and Law Societies of Europe (CCBE) issued a statement in August 2021 acknowledging that “key self-governing bodies of lawyers have become the implementers of censorship and political repressions”, and notes that “In practice, the Minsk City Bar Association is a body, functioning within strict legislative limits of complete subordination to the Ministry of Justice and fully dependent on the state’s repressive policies.”<sup>250</sup>

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CO/5 (2018), paragraph 41: *“The Committee is concerned at continuous reports of pressure on and harassment of lawyers, particularly those taking on politically sensitive cases, including through the certification procedure of the lawyers’ certification commission, which may issue a negative assessment of lawyers’ professional knowledge, and regrets the absence of information on the availability of effective appeals against the ensuing revocation of licenses. The Committee is also concerned about the extraordinary inspections reportedly conducted in respect of more than 20 lawyers in September 2017, which especially affected lawyers of the Minsk City Bar Association, and about reports that the relationship between the bar associations and the Ministry of Justice is undermining the independence of the legal profession”.*

247 Joint report of the Observatory for the Protection of Human Rights Defenders in cooperation with the Paris Bar Association “Belarus: Control Over Lawyers Threatens Human Rights”, June 2018: *“In Belarus, lawyers defending cases considered by the authorities to be ‘troublesome’ are generally exposed to retaliatory measures which can culminate in their expulsion, against a background of changes to the legal framework that have gradually placed Belarusian bars, and lawyers themselves, under the direct authority of the Ministry of Justice. In the course of the past few years, the bars have been stripped of their primary function, which is to guarantee independence and ensure the regulation of the profession. Access to the profession and its organisation now fall under the almost exclusive competence of civil servants in the Ministry of Justice. At the normative level, the status of lawyers is governed by a set of texts which have gradually placed the legal profession under the supervision of the authorities and in particular the Ministry of Justice.”* (<https://www.fidh.org/en/issues/human-rights-defenders/belarus-controls-on-lawyers-endangering-human-rights>; <https://www.fidh.org/IMG/pdf/rapport-belarus-ve.pdf>)

248 Report of the Special Rapporteur on the situation of human rights in Belarus, Anais Marin of 4 May 2021, A/HRC/47/49 (2021), paragraph 57: *“The Special Rapporteur regrets that the already existing degree of pressure and harassment of lawyers — an issue addressed by the mandate holder in her recent report to the General Assembly and also by the Human Rights Committee — intensified in 2020 and persists in 2021. Interference with the professional activities of lawyers is systemic in Belarus. The Ministry of Justice reportedly put pressure on lawyers for doing their job, when they defended persons expressing dissenting views, supporters of the opposition, victims of police violence or human rights defenders; lawyers were indeed often denied access to their clients, and faced re-licensing or disbarment, or even detention or arrest.”*

249 Report of the UN High Commissioner for Human Rights of 15 February 2021 “The situation with human rights in Belarus in the context of the presidential elections of 2020”, A/HRC/46/4 (2021), paragraph 59: *“In Belarus, lawyers defending politically sensitive cases or cases involving human rights violations have been under pressure, harassed and intimidated for exercising their professional activities. They face disbarment or disciplinary sanctions by the Bar Association, which lacks independence and over which the Ministry of Justice exercises broad control.”*

250 Joint statement of the Helsinki Foundation for Human Rights (Poland), the World Organization against Torture (Switzerland), the international organization Article 19 (UK) in partnership with the Council of Bars and Legal Societies of Europe (CCBE) dated August 2, 2021 (<https://www.hfhr.pl/en/statement-on-the-mounting-repression-against-belarusian-lawyers-and-the-disbarment-of-dmitriy-laevski/>; [https://ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Statements/2021/EN\\_20210802\\_Belarus\\_lawyers\\_Laevski-Statement\\_Segnees.pdf](https://ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2021/EN_20210802_Belarus_lawyers_Laevski-Statement_Segnees.pdf))

## 4.4. Refusal of bar associations to fulfill their obligations to protect the independence and interests of lawyers

It is recognized internationally that, in fulfilling their mission, bar associations “should advocate for a strong and independent judiciary and legal profession and denounce any abuse of power by State authorities that prevents or limits access to justice.”<sup>251</sup> A study of how bar associations implement their goal of defending the independence of the profession, its representatives and their interests provides examples of what tools are used by associations in different countries.<sup>252</sup>

- creation of committees for the protection of the rights and legitimate interests of lawyers;
- setting up security procedures to protect individual lawyers from threats and harassment;
- providing its members with legal representation and assistance in court in cases of initiation of civil or criminal cases against them;
- establishment of human rights commissions to support lawyers abroad through rapid response mechanisms;
- establishment of fact-finding commissions.

Belarusian bar associations do not consider such measures as ways of their activity.

In 2011, the Minsk City Bar, headed by the only democratically elected chairman in its history, Aliaksandr Pylchanka, made attempts to resist the initiation of groundless disciplinary proceedings against lawyers, and this led to the loss of the powers of this chairman.<sup>253</sup> As a reaction to the events of 2010–2011 in society and the legal profession, the control of the Ministry of Justice over the bar associations and the legal profession was strengthened, including the adoption in 2011 of the Law on the Bar, which is contrary to the Basic Principles on the Role of Lawyers.<sup>254</sup>

In 2020–2022, during the next socio-political crisis, the bar associations demonstrated their complete inability and unwillingness to fulfill the tasks of upholding the independence of the legal profession and protecting their members.

### 4.4.1. Inaction of bar associations in the rule-making process on issues of the Bar

At the beginning of 2021, in an atmosphere of secrecy, the Ministry of Justice developed a draft law on amending the Law on the Bar, which drastically worsened the conditions for legal practice of the bar members.<sup>255</sup> Belarusian Republican Bar Association (BRBA) did not inform the lawyers about the upcoming changes, although, apparently, it participated in

251 Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraph 84.

252 Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018), paragraphs 52, 53.

253 Overview “The Bar of Belarus. Events of 2010–2012: Facts and Comments”, prepared by the Belarusian Human Rights House within the framework of the Network of Human Rights Houses program “International Law in Human Rights Activities” (<https://drive.google.com/file/d/1P5vycuDoEDsFSnsrkHF6meYVw8WG-xPr/view>).

254 Joint report of the Observatory for the Protection of Human Rights Defenders in cooperation with the Paris Bar Association “Belarus: Control Over Lawyers Threatens Human Rights, June 2018 (<https://www.fidh.org/ru/regiony/evropa-i-central-naya-aziya/belarus/belarus-kontrol-za-advokatami-stavit-pod-ugrozu-prava-cheloveka>; <https://www.fidh.org/IMG/pdf/rapport-belarus-ru-7-2.pdf>)

255 In the original version of the draft amendments, it was planned to deprive lawyers practicing in attorneys bureaus and individually of the right to defend people in criminal and administrative cases, as well as to abolish the disciplinary commissions of the bar associations, transferring their functions to the councils of the bar associations, while candidates for the councils of the bar associations had to be agreed by the Ministry of Justice.

the development of the draft of this law, and on March 4, 2021, the chairman of the BRBA, Viktor Chaychits, in a speech at the MCBA conference, told the lawyers “you will be guided by the orders of state authorities” and said that some changes to the Law on the Bar were being prepared.

Only when, on March 10, 2021, the first version of the draft law was published by blogger Anton Motolko on his Telegram channel, BRBA stated that it allegedly did not have this draft and announced that it was collecting proposals from lawyers to correct the draft. The lawyers were given one day to submit proposals. Some lawyers and attorneys bureaus still managed to send their comments, in which they indicated that the changes in the law are contrary to international standards and fundamentally undermine the independence of the legal profession. However, neither BRBA nor territorial bar associations publicly expressed their position with objections to the content of the amendments to the Law on the Bar and the very fact of their development without the participation of the legal community.

Moreover, attempts to publicly criticize the draft law caused opposition from the governing bodies of the MCBA.

*On March 24, 2021, disciplinary proceedings were initiated against lawyer **Dmitri Laevski** for the post he published on social networks “About attorneys bureau and independence,”<sup>256</sup> in which the lawyer indicated that it was important to prevent the adoption of such changes, since they are detrimental to the legal profession and will cause harm to the interests of the defendants. On April 8, 2021 for these statements Dmitri Laevski was subjected to disciplinary liability in the form of a reprimand (see section 2.7.3).*

On May 27, 2022, the law was adopted in even more repressive version than originally proposed, as a result of which attorneys bureaus and individual legal practice were abolished, and the Ministry of Justice was given the authority to play a decisive role in the formation of councils of bar associations.

#### 4.4.2. Self-exclusion of bar associations from resolving issues of mass violations of the professional rights of lawyers

Since the spring of 2020, the practice of violating the rights of people detained and arrested on administrative and criminal charges and the procedural rights of lawyers has been developing: denial of admission to the defendants in the pre-trial detention centers, temporary detention centers, isolation centers for offenders; obstacles in confidential communication with clients in isolation; widespread practice of arbitrary selection of signatures from lawyers on non-disclosure of preliminary investigation data; violations of the right to defense of people detained in connection with protests or the election campaign in the summer and autumn of 2020; violations of the confidentiality of communication with a lawyer; “conveyor” courts in detention centers based on the testimony of police officers, refusals to investigate allegations of torture (see sections 2.2, 2.3, 2.4, 2.7.2).

Under these conditions, the bar associations did not publicly demand to stop these massive and obvious violations and did not take effective measures to stop them, but, on the contrary, condemned the public statements of lawyers about the violation of professional rights.

*When on June 18, 2020 lawyers **Aliaksandr Pylchanka** and **Dmitri Laevski** were not al-*

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256 The post is also published here: <https://telegra.ph/Pro-advokatskie-byuro-i-nezavisimost-03-11>



lowed to enter the DFI building, where their detained client Viktor Babaryka was located (see [section 2.2.1](#)), this caused a great reaction in society and the legal community with indignation against the actions of the state body and with the support of lawyers. However, BRBA criticized the intentions of the lawyers to obtain permission to enter the building, the chairman of the BRBA, Viktor Chaichits, stated that “there was no need to break on the door.”

In December 2020, the investigating authority prevented lawyer **Siarhej Zikratski** from participating in a search of the apartment of his client Alla Sharko (see [section 2.2.4](#)), which became widely discussed in the public space. BRBA stated that as a result of the publication of information, “the bonds of professional cooperation are broken, additional tension is introduced into the legal community.”

#### 4.4.3. The passivity of the bar associations in relation to the facts of persecution of lawyers

The period 2020–2022 is characterized by unprecedented pressure, intimidation and deprivation of the right to practice of lawyers who defended political opponents of the regime, social activists, human rights defenders and journalists, and also expressed their professional and civic position in public space (see [sections 2.6, 2.7, 3.2](#)).

The governing bodies of the bar associations have never raised adequate objections or actions in defense of lawyers: neither in connection with the termination of the license of Aliaksandr Pylchanka for explaining the law in the media (see [sections 2.7.2, 3.2.1](#)), nor in connection with the kidnapping, administrative harassment, deprivation of the license of Lyudmila Kazak (see [sections 2.2.5, 2.6.2, 3.2.1](#)), nor regarding the detention of Maksim Znak, Illia Salei, Aliaksandr Danilevich (see [section 2.6.2](#)), nor in other similar cases.

These and other examples demonstrate **not just passivity, but self-withdrawal of the governing bodies of the bar associations from performing the main tasks and direct duties of the professional association of lawyers, which despite the interests of the profession and the rule of law did not criticize the obvious illegal actions of the authorities due to their dependence on the executive branch. In fact, such actions can be regarded only as an approval of the arbitrariness that has been going on for many years in relation to the legal profession and lawyers.** Under such circumstances, “without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence, especially from State authorities.”<sup>257</sup>

#### 4.5. Bar associations in Belarus as a tool of repression against lawyers

In 2016, the UN Special Rapporteur on the Independence of judges and lawyers voiced the trend that “in places where bar associations are controlled by the State, lawyers often become the target of attacks from the very organizations that should be protecting them. Such attacks most often take the form of groundless or arbitrary suspension to practice or disbarment.”<sup>258</sup>

It is precisely this role — the conductor of repression and intimidation of lawyers who acted as defenders in politically motivated criminal and administrative cases — that the bodies of the Bar have finally assumed by the beginning of 2021.

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257 Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 87.

258 Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 87.

Lawyers face sanctions for showing solidarity with their colleagues — signing open appeals (see [section 2.7.1](#)). In particular, the signers of such petitions, who underwent attestation at the Qualification Commission under the Ministry of Justice, were reproached not only by the employees of the Ministry, but also by the chairman of the BRBA, Viktor Chaichits, and other members of the governing bodies of the bar associations.

Lawyers are sometimes threatened by the governing bodies of the Bar in connection with the defense of clients (see [section 2.6.1](#)).

The disciplinary bodies of the bar associations, both on their own and as a result of the initiation of disciplinary proceedings by the Ministry of Justice, deprive lawyers of their status both for statements in public space (Andrei Machalou, Sergej Ivanov) (see [section 2.7.2](#)) and for their legal position in court (Dmitri Laevski,<sup>259</sup> Yauheni Pylchanka, Natallia Matskevich) (see [section 2.7.3](#)).

In 2022, this trend was intensified by the fact that disciplinary sanctions began to be applied to lawyers for their anti-war position<sup>260</sup> (lawyers Aliaksandr Danilevich, Andrei Belokhvost and others — see [section 2.7.1](#)), and representatives of the governing bodies of the bar began to assist in the criminal prosecution of lawyers (the case of Andrey Mochalov) (see [section 2.6.3](#)).

#### 4.6. Demonstration by bar associations of unity with the state apparatus

Starting in 2021, representatives of the leadership of the bar associations openly demonstrate support for the political regime and intolerance towards those who have a different opinion.

On March 4, 2021, at a conference of the Minsk City Bar Association, chairman of the BRBA Viktor Chaichits demanded that lawyers not speak publicly about the authorities' illegal actions (calling it “keep out of politics”), approved of pressure on lawyers by the authorities for expressing an opinion, and told lawyers “you will be guided by the orders of state authorities,” and Aleksei Shvakov, chairman of the MCBA, ridiculed the lawyers who defended the arrested protesters in August 2020 in administrative cases, demanded that lawyers stop expressing their opinion in the media, told the defenders of political prisoners that they should behave “the quieter the better”, criticized lawyers for signing petitions in support of colleagues and against violence.

In one of the media interviews on March 9, 2021, the chairman of the BRBA, Viktor Chaichits, called on the Belarusians who were subjected to repressions to “repent and support the president.”

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259 On August 4, 2021, a letter was sent from CCBE to MCBA and BRBA, in which CCBE draws attention to the fact that Dmitri Laevski “was disbarred from the Minsk City Bar Association as a result of his professional activities in relation to his work as the defense lawyer in the case of Viktor Babaryka and lawyer Maksim Znak”, and the disbarment was the result of the fact that the lawyers listed in the letter, including Dmitri Laevski, “expressed views contrary to those of the government or represented peaceful protestors or opposition leaders in court” ([https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/Belarus\\_-\\_Bielorussie/2021/EN\\_HRL\\_20210804\\_Belarus\\_Bar\\_Disbarment-of-lawyers-in-Belarus.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Belarus_-_Bielorussie/2021/EN_HRL_20210804_Belarus_Bar_Disbarment-of-lawyers-in-Belarus.pdf)). On the same day, a letter was sent from the CCBE to the Minister of Justice, by which the CCBE expresses its understanding that the lawyers listed in the letter, including Dmitri Laevski, “have been disbarred under the pressure of your Ministry [of Justice] as a result of their legitimate activities as lawyers.” ([https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/Belarus\\_-\\_Bielorussie/2021/EN\\_HRL\\_20210804\\_Belarus\\_Disbarment-of-lawyers-in-Belarus.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Belarus_-_Bielorussie/2021/EN_HRL_20210804_Belarus_Disbarment-of-lawyers-in-Belarus.pdf))

260 <https://www.defenders.by/news/tpost/mvsge4fmx1-ccbe-napravil-pismo-s-prizivam-protivode>  
<https://www.defenders.by/news/tpost/p7hbj1fiz1-bespravnyaya-advokatura-oznachaet-besprav>

In October 2021, V. Chaichits, giving an interview, argued that lawyers should be for the state (in the sense of supporting the current political regime), that lawyers themselves are to blame for strengthening state control of the legal profession, and he said about himself: *"I have never sat under plinth, boldly expressed my pro-government and pro-presidential position,"*<sup>261</sup> meaning that BRBA expects a similar position from lawyers.

Since December 2021, the chairmen of the bar associations have started making weekly reports to the Minister of Justice via video link (so-called "conference meetings"), which is incompatible with the standard on the independence and self-regulation of the bar associations.

In January 2022, publications began to appear on the BRBA Telegram channel in which A. Lukashenko's message was promoted, and a document appeared on the Internet, from which it became known that BRBA had plans to bring this message to citizens by lawyers, which in no way can not be associated with the tasks of the advocacy.

In February 2022, Aleksei Shvakov, who previously held the position of chairman of the MCBA, was approved by the Ministry of Justice for the position of chairman of the BRBA. In his first statement as chairman of the BRBA, he spoke not about protecting the interests of lawyers and not about intentions regarding the legal profession, but about the need for lawyers to participate in the republican referendum, which was initiated by the state authorities.

On April 21, 2022, Alexander Lukashenko, receiving Minister of Justice Sergei Khomenko with a report, stated that "the Bar should be under control, but should act according to the law and should be a real Bar. A lawyer must perform his functions without fear of anything, but at the same time, we must understand that he is a "state person". And his actions should be based on the norms of the law, and not some invented norms — freedom of speech and other freedoms. We have already had enough of this freedom. Thank God, we saw what kind of freedom they bring us here." After that, Minister of Justice S. Khomenko announced that "a lawyer and a notary are state people. These are the people who represent the state."

Thus, persons holding the highest state positions publicly proclaimed that there could be no Bar independent of the state. There were no objections from the bodies of the Bar, which cannot be regarded otherwise than as the consent of the bodies of the Bar to the lack of independence of the profession and a direct renunciation of its main purpose — to protect the independence of the profession.

On July 7, 2022, the congress of advocates of Belarus was held. In his speech to the participants of the congress in the presence of a number of representatives of various branches of state authorities, the chairman of the BRBA, Aleksei Shvakov, stated: "the duty of a lawyer is to protect the interests of the state." Thus, it was publicly demonstrated that the bar associations are united with the state apparatus, which leaves no hope that the governing bodies of the Bar intend to support the position of lawyers when they oppose the actions of the state, protecting their clients in criminal, administrative and a number of civil cases. This not only highlights the vulnerability of lawyers in Belarus, but also undermines the

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261 <https://www.mlyn.by/novosti/2021/10/nekotoryie-postavili-politicheskie-ambiczii-vyishe-dolga-chajchicz-o-novoj-mode-neveroyatnyix-advokatov/?fbclid=IwAR3aR1yb4H6y8XxjS9q31DZA7eKs17Bcw5soRSkDIAiajW-4zXs4k>  
[https://www.rka.by/news/otchet-o-deyatelnosti-advokatury-rb-za-2020-2021-gody/?clear\\_cache=Y](https://www.rka.by/news/otchet-o-deyatelnosti-advokatury-rb-za-2020-2021-gody/?clear_cache=Y)  
Internet cache: <http://web.archive.org/web/20211019133029/https://www.mlyn.by/novosti/2021/10/nekotoryie-postavili-politicheskie-ambiczii-vyishe-dolga-chajchicz-o-novoj-mode-neveroyatnyix-advokatov/>

confidence of citizens in this institution, from which they would expect the protection of their rights and freedoms, including, and above all, from the actions of the state.

**Thus, the guarantees of legal practice were left without the protection of bar associations, which not only did nothing to uphold the principles of the profession, but also punished lawyers for their attempts to fearlessly and conscientiously follow the duty of a defender. Thus, a model of behavior was laid down that lawyers and the legal profession should be meek and lack initiative, and only such a situation is encouraged by the state. Those lawyers who do not share this are forced to remain silent.**

Comparing the described circumstances with international legal standards on bar associations, we have to state that the current bar associations in Belarus do not meet the qualitative characteristics of a professional bar association — they are not independent, self-governing and self-regulating associations, and also do not fulfill the tasks of bar associations to protect the independence of the profession, the interests of lawyers and their immunity. Consequently, **the legal profession as an institution capable of protecting the independence of the profession for the sake of the rule of law is absent in Belarus, which makes it practically impossible to exercise the right to effective legal representation in the protection of human rights and fundamental freedoms, hinders access to justice and the rule of law.**<sup>262</sup>

## 5. Narrowing opportunities to practice law

### 5.1. Elimination of the freedom to choose forms of legal practice

In the Soviet and early post-Soviet times, lawyers in Belarus carried out their activities as part of legal advice offices (not counting a short period in the mid-1990s, when it was allowed to practice law outside the bar associations in private, which was abolished in 1997).

The 1993 Law “On the Bar” at the same time provided for the possibility for lawyers to work in other organizational forms than legal advice offices, by decision of the relevant bar association.<sup>263</sup> In the development of this norm, on August 17, 2010, the Minsk City Bar Association adopted the “Regulations on other organizational forms of legal practice”, and on the basis of an agreement of lawyers, the “Petrashevich and Partners”<sup>264</sup> attorneys bureau had worked from October 1, 2010. The adoption of the position and registration of the attorneys bureaus by the Minsk City Bar Association were perceived by the Ministry of Justice with extreme hostility, the Ministry demanded that the bar association cancel these decisions, however, the leadership of the bar managed to defend the decisions and reach a consensus that the created attorneys bureau would continue its activities in order to test the mechanism of functioning other organizational forms of legal practice.

Adopted on December 30, 2011, the Law “On the Bar and Practice of Law in the Republic of Belarus” secured the possibility for lawyers of their choice to practice law in one of

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262 Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016), paragraph 87: “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.”

263 Law of the Republic of Belarus of June 15, 1993 No.2406-XII “On the Bar” (as amended on December 31, 2009), part 1 of Article 13: “By decision of the relevant bar association and in the manner established by this bar association, legal practice may be carried out as part of legal advice office or in other organizational forms, provided that the functions assigned by law to the bar associations (their legal advice offices) are ensured.”

264 The subject of the agreement was the obligation of the lawyers-partners “to combine their efforts and act jointly without forming a legal entity to provide legal assistance on behalf of all partners by creating an attorneys bureau on the terms provided for in this Agreement.”



three organizational forms:<sup>265</sup>

- legal advice office;
- attorneys bureau;
- individual legal practice.

Individual legal practice was carried out by a lawyer independently without the right to hire other lawyers, but with the possibility of hiring assistants and technical staff. In this form, a lawyer personally provided legal assistance to clients, used an office, independently managed his funds, opened his own bank accounts, and had the right to apply a simplified taxation system.<sup>266</sup>

Attorneys bureau was a non-profit organization with the status of a legal entity, established by partner lawyers. Attorneys bureau had the right to accept other lawyers as partners, hire lawyers on the basis of an employment contract, as well as assistants and other employees. Attorneys bureau independently disposed of its funds, had its own settlement accounts in banks. At the same time, attorneys bureau as an organization was exempt from all taxes, but as a tax agent withheld income tax from the wages of employees and remuneration paid to partners. The contract for legal assistance was concluded between the client and attorneys bureau, which determined any number of lawyers to provide legal assistance and organized their activities. Attorneys bureau was managed by a managing partner, who was elected by the partners without any outside interference.

Legal advice office is created as a separate subdivision of a territorial bar association without the status of a legal entity. By decision of the bar association, lawyers are assigned to a particular legal advice office. Contracts in the legal advice office for legal assistance are signed between a specific lawyer and a client. The legal advice office does not have current accounts and does not manage the funds received for legal assistance — this is carried out by the accounting department of the bar association. The management of the legal advice office is carried out by the head, appointed with the consent of the Ministry of Justice,<sup>267</sup> who has broad control and administrative powers in relation to the lawyers of the relevant legal advice office (check and approve the financial reports of lawyers, check contracts with clients, determine days of duty for lawyers, etc.).

After the adoption of the Law on the Bar of December 30, 2011, many lawyers have chosen attorneys bureau and individual legal practice as forms of carrying out their activities. At the beginning of 2021, the number of such lawyers was more than 30% of all lawyers in Belarus, and there was an upward trend.

On March 4, 2021, criticism was publicly voiced by the Ministry of Justice due to the fact that many lawyers practicing individually and lawyers from attorneys bureaus are defending in administrative cases in connection with the August–November 2020 protests and in politically motivated criminal cases.

On March 18, 2021, at a meeting on ensuring national security and protecting public order,

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<sup>265</sup> Law of the Republic of Belarus “On the Bar and and Practice of Law in the Republic of Belarus” dated December 30, 2011 No. 334-3 (in the original version), paragraph 2 of article 29.

<sup>266</sup> Under such a system, a tax was paid at a rate of 5% of gross revenue, no other taxes were levied, and no accounting was required (only tax accounting in a simplified form in the income and expense book).

<sup>267</sup> There was no coordination of the candidate for the position of the head of the legal advice office with the Ministry of Justice in the original version of the Law on the Bar and was introduced by the Law of the Republic of Belarus dated July 11, 2017 No.42-Z “On Amendments and Additions to the Law of the Republic of Belarus “On the Bar and Practice of Law in the Republic of Belarus”.

A. Lukashenko asked: “What has been done to restore order in the Bar?”<sup>268</sup>

And soon, on May 27, 2021, amendments were made to the Law on the Bar, by which attorneys bureaus and individual legal practice were excluded from the law, a 5-month period (until October 29, 2021) was established, in which individually practicing lawyers and attorneys bureaus were to cease operations and move to legal advice offices.

Thus, as a result of the “reform”, organizational forms (attorneys bureau and individual legal practice) were abolished that were not under the control of the Ministry of Justice to the extent that the Ministry of Justice controls legal advice offices, and in which lawyers had more opportunities for independent practice, ensuring confidentiality, teamwork on major cases and specializations.

More than 100 attorneys bureaus were forced to cease operations by November 2021.

Some lawyers<sup>269</sup> have been allowed to create a legal advice office from lawyers who practiced in attorneys bureaus, and at the same time have a limited liability company, which employs lawyers without the status of bar member and which provides a significant amount of legal assistance to support business, except for representation clients in courts. At the same time, the mechanism for making decisions on the establishment of such legal advice offices by the territorial bar association did not have transparent criteria, and the creation of each new legal advice office and the personal composition of lawyers included in it was coordinated by the Ministry of Justice.

On the other hand, bar associations assigned lawyers from attorneys bureaus to legal advice offices at their own discretion, often without taking into account the desire of lawyers to work in one team or another.

The liquidation of attorneys bureaus and individual legal practice has a number of negative effects on the activities of lawyers, a significant part of which are deprived of the opportunity to organize their work in accordance with their ideas of efficiency and independence. As a result of the liquidation of attorneys bureaus, teams, business ties and well-established mechanisms of interaction between lawyers were destroyed. The prohibition of attorneys bureaus deprives clients of the opportunity to receive various types of legal assistance under a single contract, which could be organized by attorneys bureau through the activities of its lawyers with different specializations. In addition, when receiving legal assistance from lawyers who were forced to move to legal advice offices under the management of a head approved by the Ministry of Justice, clients are deprived of the opportunity to have the degree of confidentiality that attorneys bureau where the managing partner was elected without outside interference allowed to provide.

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<sup>268</sup> <https://www.belta.by/president/view/zakonodatelnye-novatsii-v-sfere-natsbezopasnosti-i-ohrany-obschestvennogo-porjadka-obsuzhdajutsja-u-433194-2021/>

<https://neg.by/novosti/otkrytj/ogranicheniya-shirokogo-spektra/>

<sup>269</sup> For example, the Minsk Regional Specialized Legal Advice Office “Legal Protection. Business and Economy” (Head — Timur Sysuev) and Limited Liability Company “SBH Law Offices” are named as interconnected structures on the same website: <https://sbh-partners.by/kontakty/>, and are located in different offices of the same premises at the address: 220002, Minsk, st. Storozhevskaya, 8-3n.

## 5.2. Mass refusal of bar member status

*“The legislative amendments to the Law “On the Bar and Practice of Law in the Republic of Belarus” that came into force in November 2021 had a negative impact on the independence of bar associations, expanding control over them by the Ministry of Justice,”* — pointed out UN Special Rapporteur on the situation of human rights in Belarus.<sup>270</sup>

As a result of changes in the Law on the Bar, a quarter of the lawyers who practiced in attorneys bureaus (90 lawyers) and 13% of the number of individual practicing lawyers (36 lawyers) left the bar. The reason for the refusal of these lawyers from the status of bar member is clearly (which is confirmed by a selective survey of these lawyers) the unacceptability for them to start working in legal advice offices, where the previous level of business environment and confidential communication with clients cannot be ensured, and additional supervision is carried out by the head approved by the Ministry of Justice.

In 2021, such attorneys bureaus as Stepanovski, Papakul & Partners, Borovtsov & Salei, Vlasova, Mikhel & Partners, Sorainen and others left the bar with almost all of them. At the same time, it should be noted that highly qualified lawyers practiced in these bureaus, who, within the framework of various directions of legal practice in business support occupied leading positions in international rating directories, such as Chambers Europe, Chambers Global, IFLR1000, Legal 500, Who's Who legal.

In addition, a large number of lawyers left the bar (regardless of the form in which they carried out their practice) due to the impossibility of effective defense of clients in the present conditions, namely, a significant restriction of the rights of lawyers (in particular, the right to access a client in places of detention), the lack of reaction of state bodies to obvious facts of violations of the rights of citizens, the deprivation of colleagues of licenses in connection with speaking out against violence and protecting political prisoners, the threat of sanctions against them.

Thus, a fundamental deterioration in the conditions for the practice of advocacy, including changes in the legislation on the bar, the deprivation of lawyers of their status, the daily work of lawyers in an atmosphere of lack of independence and fear of possible sanctions, and latent pressure forcing some lawyers to leave the bar, led to the fact that the total number of lawyers in Belarus from October 2021 (immediately before the entry into force of changes in the legislation on the bar) to July 2022 decreased by 250 lawyers, which is 12%.

As of November 2021, according to official data, more than 2,000 people had the status of a bar member lawyer in Belarus. From January 1, 2022 — only 1868 (according to the Ministry of Justice). At the end of April 2022, there were already only 1818 lawyers in the bar, and as of July 18, 2022 — 1780 lawyers.<sup>271</sup>

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270 Report of the UN Special Rapporteur on the situation of human rights in Belarus Anais Marin of May 4, 2022 “The situation of human rights in Belarus”, A/HRC/50/58, paragraph 85: “At least 50 lawyers have been deprived of the opportunity to practice their profession as a result of expulsion from the bar and revocation of licenses, and this trend continues. Since February 2022, disciplinary procedures have been applied to lawyers who supported a petition against the war in Ukraine, which can lead to the revocation of their license. Legislative amendments to the Law “On the Bar and Practice of Law in the Republic of Belarus”, that came into force in November 2021 had a negative impact on the independence of bar associations, expanding control over them by the Ministry of Justice. Since then, more than 200 lawyers have reportedly quit their practice as bar members”.

271 [https://www.defenders.by/ishod\\_advokatov\\_continues](https://www.defenders.by/ishod_advokatov_continues)

## 6. Problems of free legal aid

International Standards

The International Covenant on Civil and Political Rights guarantees the right of every person accused of a criminal offense to have legal counsel assigned to him, when the interests of justice so require, at no cost to him when he does not have sufficient means to pay for that defense.<sup>272</sup>

The Government shall ensure that sufficient financial and other means are provided for the provision of legal services to the poor and, where necessary, to other disadvantaged persons. Professional associations of lawyers cooperate in the organization and provision of services, facilities and other resources.<sup>273</sup>

Every person, when arrested or detained or charged with a criminal offense, who does not have a lawyer of his choice, is entitled to the assistance of a lawyer whose experience and competence are appropriate to the nature of the offense, appointed for the purpose of providing him with effective legal assistance free of charge, if he does not have sufficient funds to pay for the services of a lawyer.<sup>274</sup>

Legal aid budgetary funds should cover the full range of services provided: special financial resources should be allocated in an appropriate amount to cover the costs of the defense, for example, in connection with the copying of necessary materials and documents, the collection of evidence, the payment of expert witnesses, medical examiners and social workers, and to cover travel expenses.<sup>275</sup>

The Law on the Bar expressly provides that legal assistance in Belarus is provided on a reimbursable basis on the basis of an agreement. Moreover, the essential terms of such an agreement are the types of legal assistance provided, as well as the procedure and amount of its payment.<sup>276</sup> This rule effectively prohibits a lawyer from exempting a client from paying for legal assistance and providing it free of charge (see [section 6.4](#)). At the same time, there are exceptions to this general rule, when the contract is not concluded, and the payment for the services of a lawyer is carried out not by the client, but at the expense of the budget (local or republican) or at the expense of a TBA.

### 6.1. Lack of access to free legal aid guaranteed by the state

During criminal proceedings, legal assistance at the expense of budgetary funds may be provided to the suspect, the accused in the process of inquiry, preliminary investigation, trial when appointing a lawyer through a TBA at the request of the body conducting the criminal process.<sup>277</sup>

The Code of Criminal Procedure expressly provides for the grounds for appointing a lawyer through the TBA at the request of the body conducting the criminal process:<sup>278</sup>

272 Covenant, article 14, paragraph 3 (d).

273 Basic Principles on the Role of Lawyers, paragraph 3.

274 Basic Principles on the Role of Lawyers, paragraphs 5, 6.

275 Principles and Guidelines on Access to Legal Aid, para. 62.

276 Law on the Bar, paragraph 4 of article 27.

277 Code of Criminal Procedure, part 4 of article 17, paragraph 2 of part 1 of article 46.

278 Code of Criminal Procedure, part 2 of article 46.



- at the request of the suspect/accused or the representative of the deceased suspect/accused;
- if the participation of a defense lawyer is mandatory, and the suspect/accused does not have a defense lawyer;
- to receive advice before starting the first interrogation in case of detention;
- if it is impossible for the defendant chosen by the suspect or accused to appear for the first interrogation or if he fails to appear within 24 hours, as well as if it is impossible for the defense counsel to participate in the proceedings for more than 3 days.

In all these cases, payment for legal assistance is made from the local budget. However, only the initial consultation before the first interrogation is really free for a citizen. The costs of paying a lawyer for participating in all further investigative actions and in court hearings, if a guilty verdict has been passed against the client, are recovered from the convicted person to the budget.

The presence of outstanding debts to the budget for the services of a lawyer, in turn, worsens the position of the convict while serving his sentence and may serve as an obstacle to the application of amnesty or parole. That is why, even if a citizen needs a defense lawyer, but is not able to pay for his services on his own, there is a risk of being forced to refuse a defense attorney due to the fact that, with a high degree of probability, in the future he will have to reimburse the state for the funds paid to the lawyer.

**Thus, it should be stated that there is no free legal assistance for persons suspected and accused of a criminal offense. Moreover, lawyers are entrusted with the initiation and control over the recovery from the client in favor of the state of the costs of paying for the assistance of a lawyer, which is incompatible with the nature of a trusting relationship between a lawyer and a client.**

*On August 10, 2021, BRBA, having analyzed a number of cases on the provision of legal assistance on the appointment of a body conducting criminal proceedings, issued a decision binding on all lawyers, according to which:*

- *before concluding a contract for the provision of legal assistance in criminal cases, a lawyer is obliged to explain to the client the need to pay a fee to a lawyer who previously participated in this case in accordance with Article 46 of the Code of Criminal Procedure, except for cases of participation in giving free advice to the suspect/accused before the first interrogation;*
- *a lawyer participating in a criminal case on the basis of a contract for the provision of legal assistance must control the recovery in favor of financial authorities of the costs of paying for legal assistance for the participation of a lawyer in accordance with Article 46 of the Code of Criminal Procedure.*

The possibility of receiving free assistance from a defense counsel in administrative proceedings is not provided for by law at all, and the provision of such assistance by lawyers on a gratuitous basis is actually prohibited by lawyers' self-government bodies.

*On January 30, 2020, the Council of MCBA independently made a decision, according to which "if it is impossible to conclude an agreement with a lawyer due to financial situation and for other reasons, the provision of legal assistance, protection of the rights, freedoms and legitimate interests of an individual in respect of whom administrative process may be carried out with the participation of a defense lawyer. In case of providing legal assistance in a case of an*

*administrative offense at the request of the body conducting the administrative process, if it is impossible to conclude an agreement, payment for participation in the court session is made at the expense of the Bar in accordance with Article 28 of the Law on the Bar. However, this procedure was subsequently criticized in a letter from BRBA dated December 31, 2020, where it was stated that legal assistance in the administrative process can be provided only on the basis of a concluded agreement, that is, only on a reimbursable basis.*

It is obvious that a person detained before trial and/or sentenced to administrative arrest does not have any access to a lawyer unless another person concludes an agreement for his protection. Accordingly, there is no opportunity for him to prepare his defense, to appeal against the detention (which is possible only before a court decision is made), the conditions of detention or the court order on administrative arrest (the time limit for such an appeal is 5 days).

During the protests in the summer and autumn of 2020, the practice expanded when citizens entered into agreements with lawyers in advance — in case of subsequent detention and/or administrative arrest, detention on criminal charges, in order to be guaranteed legal assistance in the future. However, there is an example that the court regarded this as one of the evidence of the guilt of a person who was brought to administrative responsibility.

*On September 10, 2020, the judge of the Zavodskoy District Court of Minsk, **Zhanna Khvoynitskaya**, in the reasoning part of the decision in the case of an administrative offense, indicated that “reported at the hearing by the defense lawyer Alena Shynkarevich information about the presence of her contract with Manko P.Y. signed on August 3, 2020 for the representation of interests in the event of his detention indicates that Manko P.Y. intended to participate in unauthorized actions, which he did on August 27, 2020.”<sup>279</sup>*

Free legal assistance is also not available at the stage of execution of punishment, since this is also not provided for by law. A person serving a prison term in a colony or restriction of freedom with a referral to an open institution, who does not have the means to pay for legal assistance, is actually deprived of it, which deprives him of access to legal remedies for mistreatment of a prisoner, the possibility of effectively appealing the sentence and decision of other legal issues.

**Thus, the organization in Belarus of free (and in fact, in the vast majority of cases, advance) legal aid clearly indicates a failure by the state to ensure access to legal aid by a lawyer for persons who do not have sufficient funds to pay for the preparation and implementation of their defense at all stages of the process — pre-trial, judicial and in the execution of punishment in the form of deprivation of liberty.**

## 6.2. Provision of legal assistance at the expense of the Bar Association

The Law on the Bar provides for a number of grounds under which citizens can receive legal assistance, which is paid for by the Bar Association.<sup>280</sup> These grounds refer either to a certain category of cases (labor disputes for employees — filing a claim and participation in the court of first instance), or to a specific group (participants of the Great Patriotic War, people with disabilities, minors, and others). Basically, only oral consultations are provided free of charge even within these categories. Other persons may also be exempted from payment by decision of the Bar Association.

<sup>279</sup> <https://www.defenders.by/news/tpost/eei963muj1-nalichie-dogovora-s-advokatom-namerenie>

<sup>280</sup> Law on the Bar, paragraph 1 of article 28.

Such an order hardly covers the general need of low-income citizens for legal assistance. In addition, it is obvious that legal assistance in this case is provided not at the expense of the state, which has an obligation to provide effective remedies for the legal protection of rights and freedoms,<sup>281</sup> but at the expense of the lawyers themselves.

### 6.3. Inadequate level of remuneration of lawyers at the expense of the budget and the Bar Association

The legislation establishes the following amount of payment for the services of a lawyer from local budgets when working as assigned in criminal cases:

- 150 percent of the base rate for one day of work when working in the Supreme Court, regional or Minsk city court (as of 2022 — 48 rubles, which is equivalent to about 19 US dollars);
- 110 percent of the base rate for one day of work in all other cases (as of 2022 — 35.2 rubles, which is equivalent to about 14 US dollars).<sup>282</sup>

This amount of payment is at least 10 times less than the average amount of attorneys' fees under the contract established in practice.

At the same time, the actual time of participation of a lawyer in the process on each day is not taken into account; work at night or on weekends is not differentiated. The work of a lawyer spent on preparing for the process, drafting documents, advising the client when visiting the pre-trial detention center, is not paid at all, as well as the most minimal additional costs associated with the collection of evidence, etc. As a result, the quality of the provision of legal assistance on purpose is sharply reduced, and some of its types (for example, consultations when visiting a pre-trial detention center) are insufficient or not provided at all.

The lack of interest of lawyers in the work of appointment is also manifested in the fact that lawyers replace each other during the process without proper preparation, and the courts do not respond to the derogation of the right to defense.

*During the trial in the criminal case on the charge of the lawyer **Andrei Machalou**, who was expelled from the bar (see [section 2.6.3](#)), on June 9, 2022, the court summoned and appointed a defense lawyer for him through the TBA, despite the objections of A. Mochalov that with the appointed lawyer he did not communicate, she is not familiar with the materials of the case, and A. Mochalov concluded a contract for defense with another lawyer (see [section 2.5.2](#)). At the next court hearing on June 10, 2022, by appointment of the court, another lawyer participated, who was also not given sufficient time to study the materials and the client also objected to her participation.<sup>283</sup>*

BRBA delegated the determination of the amount of remuneration for lawyers at the expense of the Bar Association to the territorial Bar Associations with the proviso that this amount cannot be less than the amount established by the state when providing assistance in criminal proceedings at the expense of the budget. For example, the MRBA establishes that this amount is equal to that established when providing assistance in criminal proceedings at the expense of the budget, that is, it is 110 percent of the base value (35.2 rubles as of 2022).

281 Covenant, article 2, paragraph 3 (a).

282 Decree of the Council of Ministers of the Republic of Belarus dated August 8, 2007 No. 1003 "On the procedure for reimbursement of expenses for the remuneration of lawyers at the expense of the local budget", clause 1.2.

283 [https://www.defenders.by/kak\\_sudili\\_mochalova#begin](https://www.defenders.by/kak_sudili_mochalova#begin)

Thus, if we assume that a lawyer will provide only legal assistance during the month at the expense of the budget and at the expense of the TBA, if there are an average of 22 working days per month, the total amount of his fee will be about 774.4 rubles excluding taxes (with average nominal accrued wages in Belarus in the amount of 1,477.8 rubles as of January 2022). From this we can conclude that in Belarus it is almost impossible to have lawyers who specialize exclusively in helping needy low-income citizens.

In addition, such payment conditions do not create an incentive to work and puts the lawyer in a marginal position, which, of course, negatively affects his/her independence and the effectiveness of the legal assistance provided: when the lawyer does not receive adequate remuneration for his/her work when working as assigned paid from the budget, he/she will inevitably pay more attention to the affairs of those clients with whom he/she has an agreement.

#### 6.4. Ban on pro bono legal aid

A common practice among lawyers from other states is to provide legal assistance pro bono (from Latin pro bono publico — "for the sake of the public good"), that is, free of charge or for a symbolic cost. It is generally accepted that legal assistance pro bono is a good confirmation of the social responsibility of lawyers, as well as an opportunity for lawyers to develop a name and practice. The Principles and Guidelines on Access to Legal Aid declare that legal aid pro bono should be supported and stimulated by the state. Such assistance is either coordinated by the bodies of lawyers' self-government, or is provided by a lawyer in this manner on his own initiative.

In Belarus, the Law on the Bar does not provide for the provision of legal assistance pro bono. In addition to the cases mentioned above, legal assistance is provided solely on the basis of a contract, and the amount of payment is its essential condition. Thus, legal assistance should be paid.

The lawyer does not have the right to release the client from payment on his own. This, in addition, is directly enshrined in the Guidelines on the amount of payment for legal assistance, according to which "*a lawyer is not entitled to independently determine the categories of citizens to whom he wishes to provide legal assistance without charging a fee (free of charge).*"<sup>284</sup> At the same time, the head of a legal advice office, who is entrusted with the duty to control the amount of attorneys' fees, "*if circumstances are revealed that indicate that the payment for legal assistance does not correspond to its volume, complexity and quality <...> does not approve the report on the provided legal assistance in this part and submits the necessary documents to the Council of the TBA, which decides whether there are violations of the Rules of the Lawyer's Professional Ethics in the lawyer's actions.*"<sup>285</sup>

Moreover, self-government bodies and the Ministry of Justice demonstrate a negative attitude towards the initiatives of lawyers to provide legal assistance pro bono or for a symbolic cost.

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<sup>284</sup> Methodological recommendations on the amount of payment for legal assistance provided by lawyers to citizens, approved by the resolution of the Council of the BRBA dated July 27, 2022 No. 05/08, paragraph 5.3.

<sup>285</sup> Guidelines on the amount of payment for legal assistance provided by lawyers to citizens, approved by the resolution of the Council of the BRBA dated July 27, 2022 No. 05/08, paragraph 3.14.



*In August 2020, many lawyers, on their own initiative and without any payment, massively provided legal assistance to citizens who suffered on August 9–12, 2020 from the actions of law enforcement agencies. A number of lawyers, wishing to comply with formalities, entered into agreements with such clients with a symbolic fee of 1 ruble. At first, these actions were approved by the lawyers' self-government bodies, but very quickly their rhetoric had changed significantly: on September 4, 2020, the management of the MCBA brought to the attention of lawyers that, despite "great gratitude to all lawyers who provided legal assistance in August 2020 to victims of violence", it is impossible to provide free legal assistance by lawyers on their own decision, which is why a lawyer must either conclude an agreement for the provision of assistance on a fee basis, or clients must apply to the TBA with an appeal for assistance at the expense of the TBA. At the same time, it was especially emphasized that "those citizens who really need it can receive free legal assistance," and, as it was implied from the MCBA letter, only the bodies of lawyer self-government can determine this need, but not the lawyers themselves.<sup>286</sup>*

*At the reporting and election conference of the MCBA on March 4, 2021, Deputy Minister of Justice Nikolai Starovoitov, who also heads the Qualification Commission, spoke in the same vein, accompanying his opinion with clear threats against the legal community: "We are aware of cases, and this was shown by a scheduled inspection in the Minsk Regional bar association, when your colleagues provide such assistance for one ruble. Moreover, this is massive... Naturally, I had a question for the certified [lawyer], the question is natural, what happened, are there really state bodies there that have the right, yes, here, they determined some kind of disability for this person that he could not pay the fee. It turned out — no, not really. This is a doctor who has a permanent job and a constant salary. What is the problem?!.. And now my question arises: if such a situation is financially favorable in the bar associations, then why don't you refuse and reduce the fees. And this is the first question. Second question: if this is not how individual lawyers act, let's maybe equate you to entrepreneurs here! Then there will be another taxation completely. This is how issues are handled. Keep this in mind. You keep this in mind — to introduce the same taxation with entrepreneurs"<sup>287</sup>.*

**Thus, lawyers, when determining the amount of payment for the legal assistance they provide, are confined to strict limits established by law and local acts, and are deprived of the opportunity to independently make a decision on the provision of free assistance under the threat of being subjected to disciplinary liability.**

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286 MCBA letter dated September 4, 2020.

287 <https://www.defenders.by/news/tpost/00e1r2t6g1-zamministra-yustitsii-starovoitov-minyus>

## Conclusions

An analysis of the Belarusian legislation on the bar and practice of law, supported by specific examples, a comparison of legislation and practice with international legal standards, leads to the conclusion that the position of the bar and lawyers in Belarus do not meet the international standards of this institution and the right to legal assistance. As a result of systematic measures taken by the state, which began in the late 90s of the last century and sharply intensified in the period 2020–2022, a legislative framework for the bar was formed that contradicted its principles and essence, as well as the practice of total control by the state of the bar and lawyers. These factors, repressions, the destruction of procedural and professional guarantees for lawyers have led to the fact that the institution of the legal profession is actually destroyed and is not able to fulfill its function of participating in the administration of justice, protecting the rights and freedoms of citizens and the rule of law, ensuring the availability of legal assistance, protecting independence, professional rights and interests of lawyers, namely:

1. Legal education in the Republic of Belarus does not ensure the competence of lawyers in the field of international human rights law and professional legal ethics. An ideology based on the denial of the universal role of human rights and directly calling for the rejection of compliance with international principles and standards has established itself in legal education.
2. In Belarus, there is no unified system for the advanced training of lawyers in an independent institution that would be under the jurisdiction of a bar association. Existing training programs for lawyers do not involve the study of international legal standards and practices of international bodies.
3. Admission to the profession of lawyer is characterized by discriminatory conditions, including priority admission to the bar of persons referred from law enforcement agencies, and a closed, discretionary procedure administered by the Ministry of Justice, which approves trainee candidates for the bar and issues licenses to practice law, which hinders the creation of a fair competitive environment for admission to the bar.
4. Lawyers in Belarus are deprived of independence and are under the control of the Ministry of Justice, which is carried out through inspections, attestations, interference in the disciplinary procedure and the direct termination of a lawyer's license.
5. Violation of the procedural rights of lawyers and the right to defend their clients acquires critical proportions, when one can speak of a complete disregard for the rights of lawyers to access places of isolation, represent the client and participate in the case, confidentiality of relations with the client, access to case materials and information. At the same time, the legislation does not contain sufficient measures to ensure these rights, and the remedies for their violations are not effective.
6. Lawyers in Belarus are subjected to repressive practices that are incompatible with their professional guarantees: removal from defense, intimidation and harassment for the performance of their professional duties, psychological pressure, arbitrary detention and wrongful imprisonment. Lawyers are identified with clients on the basis of political views, punished and deprived of their status for expressing their opinions both in public space and in the courtroom, thereby undermining their professional immunity. Lawyers are de-

nied protection against these violations, both by bar associations and by state authorities and courts, which ignore allegations of violations of generally recognized principles of law and human rights standards.

7. As a result of ongoing reprisals and violations of professional and procedural safeguards, lawyers work in an atmosphere of fear and constant risk of losing their status. Many of them refuse to take on politically sensitive cases and defend politicians, activists, human rights defenders, journalists, and those lawyers who do so are hindered from carrying out their duties independently and effectively.

8. The mechanisms used to terminate the status of lawyers — the procedure for the termination of a license by the Ministry of Justice, attestation in the Ministry of Justice and the disciplinary procedure of bar associations — are not independent and lack the guarantees of a fair trial.

9. Bar associations in Belarus do not meet the essential features of a professional association of lawyers as an independent, self-governing and self-regulating organization due to the actual appointment of bodies of the bar by the Ministry of Justice, which has been formed in recent years in legislation and is being implemented in practice, the position of lawyers — members of these bodies is dependent on the Ministry of Justice, and as well as the implementation by the Ministry of Justice of its powers to interfere in the activities of the Bar.

10. Bar associations do not fulfill their tasks and direct duties to uphold the independence, professional interests and protection of lawyers, neither in the rule-making process, nor in case of violation of the professional rights of lawyers and guarantees of law practice. Bodies of bars not only demonstrate passivity and loyalty to the actions of the state that destroy the independence of lawyers, but have themselves become a tool for suppressing freedom of speech, the principled position of lawyers, punishing lawyers for their professional activities and depriving them of their status.

11. A fundamental deterioration in the conditions for the exercise of practice of law, including changes in the legislation, which excluded such forms of organization of the work of lawyers as attorneys bureau and individual practice, the daily work of lawyers in an atmosphere of lack of independence and fear of possible sanctions, latent pressure, obstacles to the effective implementation of their duties by lawyers, as well as the deprivation of more than 60 lawyers of the right to a profession and discriminatory conditions for admission to the bar led to a reduction in the lawyers' corps by at least 12% in 2020–2022. The number of lawyers in Belarus by July 2022 was 1,780, that is, approximately 1 lawyer per 5,000 people, which is clearly incompatible with the principle of access to legal assistance.

12. In Belarus, there is virtually no system of free legal assistance at the expense of the state: the assistance of a lawyer, provided in certain cases in criminal cases without payment of a fee, is paid from the budget with the subsequent collection of these amounts from convicts; in other cases provided for by law, free legal assistance is provided at the expense of the bar associations, that is, at the expense of the lawyers themselves. At the same time, lawyers are prohibited from independently exempting citizens from paying for their assistance and providing it pro bono.

13. As a result, people in Belarus are actually deprived of the opportunity to receive effective legal assistance from independent lawyers. This problem is exacerbated for those

who are subjected to discrimination and criminal and administrative prosecution based on political beliefs, since repressive practices are applied against their lawyers. This testifies to the state's failure to fulfill its international obligations and constitutional guarantees to ensure the right to legal assistance and the right to defense, the right of access to a lawyer for all persons located on its territory and subject to its jurisdiction, without discrimination on any grounds.



# Action Program for the Restoration of the Institute of Advocacy in Belarus

## Priority measures

1. Release all imprisoned lawyers and stop criminal prosecution of lawyers for the lawful exercise of practice of law, protection of human rights and freedoms.
2. To cancel the decisions of the Ministry of Justice on the termination of licenses for the right to practice law, the decision to expel from the territorial bars in relation to lawyers deprived of the right to practice in violation of the standards of independence of the bar and guarantees of the practice of law, restoring their right to practice law.
3. Until the adoption of a new law on the bar, suspend the use of the powers of the Ministry of Justice to attest, suspend and terminate the license to practice law, as well as initiate disciplinary proceedings and conduct inspections of lawyers.
4. Conduct new elections of self-governing bodies of the bar, ensuring conditions for free expression of opinion by all members of the lawyer community and democratic participation of all lawyers, including those whose right to practice law should be restored (paragraph 2), without any restrictions based on length of work or other grounds.
5. Recognize the activities of bodies of the bars in the period 2020–2022 as violating the principles and guarantees of the bar and law practice, aimed at belittling the authority and prestige of the institution of the bar.

## Legislative change

6. Repeal the Decree of the President on licensing of the law practice and the decrees of the Ministry of Justice regarding the regulation of the bar, leaving in the legislation for the Ministry of Justice only the authority to maintain a register of lawyers.
7. With the participation of the legal profession, develop and adopt a new law on the bar, the provisions of which:
  - 7.1. incorporate the content of international legal standards on the independence of lawyers, practice of law and bar associations, avoiding their narrow interpretation in order to exclude state interference in the lawyer's profession (UN Basic Principles on the Role of Lawyers, Recommendations of the Committee of Ministers of the Council of Europe "On the freedom to exercise the profession of lawyer" No. R(2000)21, recommendations of the UN Special Rapporteurs on the independence of judges and lawyers, on the situation with human rights in Belarus, as well as the UN High Commissioner for Human Rights);
  - 7.2. do not include the powers of the Ministry of Justice to license the practice of law, suspend and terminate the licenses of lawyers, attestation of lawyers, initiate disciplinary proceedings and remove lawyers from their professional duties, suspend decisions of the bar association, demand that general meetings of the bar association be held, terminate the powers of the bodies of the bar associations, approving candidates for the bodies of bar associations, approving lawyers' trainees, conducting inspections on lawyers and bar asso-

ciations, during which employees of the Ministry may have access to information constituting a lawyer's secret, or request such information;

7.3. introduce a rule on the formation of self-governing bodies of the bar by the general meeting of bar associations without any direct or indirect participation or outside interference;

7.4. introduce a rule on the duty of the bar associations to protect the independence of the legal profession and the interests of lawyers, including the development and adoption of legal acts regulating professional activities; resist unlawful restrictions and violations of the professional rights of lawyers; ensure that lawyers are able to advise and assist clients without any interference; immediately protect the integrity and interests of lawyers in the event of their individual persecution, including the arrest or detention of a lawyer, as well as in the event of offensive publications in the press against a lawyer, threats to a lawyer, intimidation, other attacks on lawyers or interference in their activities;

7.5. eliminate the authority of the Ministry of Justice to control access to the legal profession;

7.6. to establish a procedure for the admission of an lawyer's trainee, according to which a lawyer has the right to accept a trainee on his own with the notification of self-government bodies, and also trainees can be accepted by decision of the bars' self-government bodies themselves;

7.7. assign to the exclusive competence of the Bar Association the procedure for obtaining the status of a lawyer by a lawyer, including taking a qualification exam and admission to the legal profession;

7.8. abolish preferential conditions for admission to the bar for former employees of law enforcement agencies and courts, eliminate any other forms of discrimination in admission to the bar;

7.9. determine understandable and objective restrictions on practicing law, the list of which includes the presence of citizenship of the Republic of Belarus, the presence of a higher legal education, legal capacity, the absence of an unexpunged and outstanding conviction for committing an intentional crime;

7.10. determine the content of the qualification examination program based on the reasonable needs of the legal profession with the mandatory inclusion of questions on human rights;

7.11. establish that the qualification body (or bodies, if they are created at the level of each territorial bar association), whose competence includes taking an exam for the right to practice law, should consist of lawyers;

7.12. establish understandable and clear rules for passing the qualification exam, aimed at protecting the candidate from possible unreasonable and subjective actions of individual members of the qualification body;

7.13. introduce a rule on the possibility of appealing against the decision of the qualifying body on failure to pass the qualification exam in court, pointing out the duty of the court to check this decision both procedurally and on the merits;

- 7.14. confer on the professional bar association the exclusive right to adopt a Code of Professional Ethics, which must be developed after deliberation by lawyers, adopted by the highest body of the bar association and in accordance with generally recognized legal standards. The Code of Professional Ethics should specify with sufficient certainty the ethical framework and conduct that may lead to disciplinary action; a sufficient range of sanctions should be provided to allow for the application of liability in a differentiated and proportionate manner;
- 7.15. establish that the disciplinary procedure (initiation and consideration of disciplinary proceedings) in relation to lawyers is the exclusive competence of the Bar Association;
- 7.16. provide for the creation of a disciplinary body of the bar association, separate and independent from the executive body of the bar, formed from lawyers by election by the supreme body of the bar (general meeting) on a competitive basis;
- 7.17. establish a fair procedure for disciplinary matters that meets the standards of a fair trial, including adversarial, the right of a lawyer to know in advance the essence and grounds (motives) of the claims brought against him, ensuring the right to a defense, including the right to have a representative, as well as the right to challenge the decision of a disciplinary body in a judicial proceeding;
- 7.18. establish that the consideration of disciplinary issues in the disciplinary body and the court should be based not only on the Code of Professional Ethics, but also on the principles of respect for human rights (the right to freedom of expression, the right to privacy, etc.) and on the standards of these rights, the application of sanctions must meet the criteria for the legitimacy of restricting human rights;
- 7.19. establish that a judicial review of the application of a disciplinary sanction should include an assessment of not only the legality of the decision of the disciplinary body, but also its substantiation;
- 7.20. provide for the possibility of law practice in various organizational forms (attorneys bureaus, individual practice, etc.);
- 7.21. to consolidate the right of lawyers to create public associations (unions) without the status of bar associations in order to protect the independence of the profession and the interests of lawyers;
- 7.22. include a rule prohibiting the identification of a lawyers with their clients;
- 7.23. include a provision according to which one of the guarantees of the independence of a lawyer is the prohibition to bring a lawyer to criminal or other liability for any actions performed in accordance with recognized professional duties, norms and ethics.
8. Establish in the legislation adequate liability for opposing the provision of legal assistance, including liability for refusing to allow a lawyer to see a client, preventing a lawyer from participating in a case, violating the terms of confidentiality of a lawyer's communication with a client, including by conducting operational-search measures, failure to provide information on request of a lawyer and any other deliberate actions aimed at creating obstacles to the practice of law.

9. Introduce into the legislation norms prohibiting the conduct of operational-search measures against a lawyer in connection with the exercise of his professional activities and ensuring confidentiality of communication with a client, including a ban on hearing monitoring in places where a lawyer communicates with a client, monitoring in telecommunication networks, monitoring postal lawyer's dispatches. Violation of such a prohibition is regarded as an opposition to the provision of legal assistance.
10. Establish in the legislation a ban on conducting a personal search of a lawyer, involving contact with information constituting a lawyer's secret, as well as a ban on requiring a lawyer to hand over his/her own technical equipment when visiting state bodies and institutions.
11. Establish in the legislation a special procedure for searching a lawyer, which ensures the preservation of lawyer secrecy: a search should be carried out only if there is a court decision containing a detailed indication of the subject of the search, and in the presence of a representative of the bar association.
12. Establish in the Criminal Procedure Code, the Executive Procedure Code on Administrative Offenses that a lawyer cannot be detained, and a criminal case cannot be initiated against a lawyer without the prior consent of the lawyer's self-government body.
13. Introduce into the legislation norms providing for the right of a lawyer to freely bring his own technical means to pre-trial detention centers, correctional colonies and other places of isolation and use them when communicating with a client and performing legal proceedings.
14. Introduce into special legislation norms providing for the obligation of state bodies and other organizations to provide information to lawyers at their request to the same extent and under the same conditions as this information is provided to criminal prosecution bodies. With regard to information, the dissemination and (or) provision of which is limited, a general condition for lawyers and criminal prosecution bodies may be provided — the existence of a judicial sanction for obtaining such information.
15. To introduce into the legislation the norms providing for the right of bar associations to exercise independent technical control over the places where lawyers communicate with clients in pre-trial detention centers, temporary detention centers, correctional colonies, prisons and other places of isolation in order to prevent violations of the confidentiality regime.
16. Exclude from the legislation the powers of state bodies to conduct inspections in relation to lawyers and lawyers' formations, during which these bodies may have access to information constituting a lawyer's secret, or request such information.
17. Amend the provisions of the Code of Criminal Procedure governing the obligation not to disclose the data of the preliminary investigation:
  - determine the range of information, the disclosure of which may be prohibited, and the range of actions that may be considered disclosure, while maintaining a balance between the possible interests of the investigation and the right of society to be aware of the activities of state bodies to persecute citizens;
  - establish specific grounds for prohibition of disclosure of information so that the investigator is not endowed with discretionary power to impose such a prohibition;
  - to establish a rule according to which the duty of non-disclosure of the data of the pre-



liminary investigation is equally assigned to both the side of the defense and the body of criminal prosecution;

— establish time limits for the effect of the ban on disclosing the data of the preliminary investigation, determining the end of this ban at the moment of announcing the end of the investigation or at the moment of transferring the criminal case to court.

18. Introduce into the Code of Criminal Procedure a rule providing for the right of the defense party to fully and without time limits to get acquainted with all the materials submitted to the court, including materials of operational-search activities.

19. To exclude from the norms of the Code of Criminal Procedure and the Code of Executive Procedure on Administrative Offenses, which provide for the right to copy case materials, an indication of the need to obtain “permission” from the body conducting the criminal or administrative process, and ensure the possibility of unhindered copying (including photography) by lawyers of the case materials.

20. Remove from Part 6 of Article 83 of the Penal Code the reference to the need to obtain a “statement of the convict” and any other obstacles to the immediate access of lawyers to the provision of legal assistance to convicts in places of punishment.

## Practical Measures

21. Bar associations should:

21.1. take measures to raise the awareness of law enforcement agencies about the guarantees of law practice;

21.2. develop and approve the Rules of professional ethics on the basis of the European codes of ethics (rules) for lawyers in accordance with paragraph 7.14 of these recommendations;

21.3. create a separate educational institution for continuous professional development of lawyers. One of the priority areas in the training of lawyers should be the study of human rights, international principles and freedoms in the context of their interpretation by international bodies and the study of the practice of protecting human rights in such international bodies;

21.4. to establish commissions for the defense of lawyers in bar associations and to create a mechanism for the bar association to quickly respond to restrictions on the rights of lawyers;

21.5. ensure access to the bar for those lawyers who wish to practice on the basis of the rule of law and the ethical values of the legal profession.

22. Government bodies should:

22.1. ensure the right to confidential communication between a lawyer and a client, that is, in the absence of witnesses and without the possibility of being heard by representatives of a state body, as well as to ensure an unhindered direct exchange of documents between a lawyer and a client held in isolation. If necessary, fix this definition of the conditions of confidential communication in the legislation;

22.2. provide the lawyer with immediate access to the detained client, regardless of the client's procedural status, place of detention, living conditions, time of day and any other circumstances, with the obligatory provision of a separate office for confidential communication and the prohibition to require additional documents from the lawyer. If necessary, make appropriate changes and additions to the legislation;

22.3. if it is impossible to provide the lawyer with immediate access to the client on the conditions listed in paragraph 22.2, immediately release the prisoner;

22.4. ensure the direct application of the norms of Article 62 of the Constitution and international treaties of the Republic of Belarus, which provide for the right to use the assistance of a lawyer at any time, regardless of whether it is provided for by a special normative legal act, in particular:

— to recognize the right of a lawyer to represent the interests of a client in any procedures carried out in state bodies (including pre-investigation checks, operational-search activities, etc.);

— to recognize the right of a lawyer to represent the interests of a client, regardless of the procedural status of the client;

— to recognize the right of a lawyer to use the full range of procedural powers belonging to his client or provided for by the Law on the Bar.

23. The state should build an institution of free legal aid on the terms of:

23.1. compliance with the generally recognized principles of accessibility, full provision of the right to defence, sufficient financial security from the state budget;

23.2. financing of all types of free legal aid at the expense of the budget;

23.3. creating a balanced system in which (1) the state provides a legislative framework that meets international standards and sufficient funding for free legal aid, (2) a specially created independent institution organizes the functioning and coordination of the provision of free legal aid, (3) the bar association ensures participation in the free legal aid system legal assistance of a sufficient number of lawyers and is responsible for the observance by members of the association of professional and ethical standards.

24. In the field of legal education, the State should:

24.1. change curricula for higher legal education, in which more attention should be paid to human rights, practice of international bodies in the field of human rights, issues of legal ethics. The training programs should place special emphasis on the priority of international principles and standards over national legislation in accordance with Article 8 of the Constitution of the Republic of Belarus;

24.2. restore academic freedom and guarantee freedom of opinion and expression for students and faculty. No ideology can be mandatory for both teachers and students.

## List of abbreviations

### International Documents

Covenant — International Covenant on Civil and Political Rights, adopted by resolution 2200A (XXI) of the UN General Assembly of December 16, 1966

General Comment No. 20 — Human Rights Committee General Comment No. 20 “Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)”

General Comment No. 32 — Human Rights Committee General Comment No. 32, “Article 14: Right to equality before courts and tribunals and to a fair trial”, CCPR/C/GC/32

General Comment No. 35 — Human Rights Committee General Comment No. 35 “Article 9 (Liberty and security of person), CCPR/C/GC/35

Declaration on Human Rights Defenders — Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by UN General Assembly resolution 53/144 of December 9, 1998

Basic Principles on the Role of Lawyers — Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, on September 7, 1990

Standards for the Independence of the Legal Profession — Standards for the Independence of the Legal Profession adopted by the International Bar Association (IBA) on September 7, 1990 in New York

Recommendation No. Rec (2000)21 — Recommendation No. Rec (2000)21 of the Committee of Ministers on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers of the Council of Europe on October 25, 2000

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment — Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly Resolution 43/173 of 9 December, 1988

Nelson Mandela Rules — The United Nation Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules ), adopted by UN General Assembly Resolution 70/175 of 17 December, 2015

Principles and Guidelines on Access to Legal Aid — The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted by UN General Assembly Resolution 67/187 of 20 December, 2012

Concluding Observations of the Human Rights Committee on the Fifth Periodic Report of Belarus, (2018) — Concluding Observations of the Human Rights Committee on the Fifth Periodic Report of Belarus, adopted by the HRC at its 124th Session (8 October — 2 November 2018) , CCPR/C/BLR/CO/5

Report of the High Commissioner for Human Rights A/HRC/49/71 (2022) — Report of the UN High Commissioner for Human Rights of 4 March 2022 “Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath” A/ HRC/49/71

Report of the Special Rapporteur on the independence of judges and lawyers A/64/181 (2009) — Report of the Special Rapporteur on the independence of judges and lawyers Leandro Despouy of 28 July 2009, “Independence of judges and lawyers”, A/64/181

Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/14/26 (2010) — Report of the Special Rapporteur on the independence of judges and lawyers Gabriela Carina Knaul de Albuquerque e Silva of 9 April 2010, A/HRC/14/26

Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/20/20 (2012) — Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva, dated 20 June 2012 “Advance report on the global thematic study on human rights education and training of legal professionals”, A/ HRC/20/20

Report of the Special Rapporteur on the independence of judges and lawyers A/71/348 (2016) — Report of the Special Rapporteur on the independence of judges and lawyers Monica Pinto of 22 August 2016 “Independence of judges and lawyers”, A/71/348

Report of the Special Rapporteur on the independence of judges and lawyers A/73/365 (2018) — Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayan dated September 5, 2018, A /73/365

Report of the Special Rapporteur on the independence of judges and lawyers A/HRC/50/36 (2022) — Report of the Special Rapporteur on the independence of judges and lawyers Di-ego García-Sayán dated 22 April 2022 “Protection of lawyers from undue interference with the free and independent exercise of their legal profession”, A/HRC/50/36

## Legislation of the Republic of Belarus

Constitution — the Constitution of the Republic of Belarus of 1994 with amendments and additions adopted at the republican referenda on November 24, 1996, October 17, 2004 and February 27, 2022

Law on the Bar — Law of the Republic of Belarus dated December 30, 2011 No. 334-Z “On the Bar and Practice of Law in the Republic of Belarus” (as amended on May 27, 2021)

Rules of professional ethics of a lawyer — Rules of professional ethics of a lawyer, approved by the Decree of the Ministry of Justice of the Republic of Belarus dated September 30, 2021 No. 180

Regulation on Licensing — Regulation on licensing certain types of activities, approved by Decree of the President of the Republic of Belarus dated September 1, 2010 No. 450

Instruction on the procedure for attestation — Instruction on the procedure for attestation of lawyers, approved by the Decree of the Ministry of Justice of the Republic of Belarus dated February 2, 2012 No. 34

Code of Criminal Procedure — Criminal Procedure Code of the Republic of Belarus dated July 16, 1999 No. 295-Z



PEC — Penal Code of the Republic of Belarus dated January 11, 2000 No. 365–3

PICoAP — Procedural and Executive Code of the Republic of Belarus on Administrative Offenses dated January 9, 2021 No. 92–Z

Rules of internal order of correctional institutions — Rules of internal order of correctional institutions, approved by the Decree of the Ministry of Internal Affairs of the Republic of Belarus dated October 20, 2000 No. 174

Rules of internal order of pre-trial detention centers of the system of the Ministry of Internal Affairs — Rules of internal order of pre-trial detention centers of the penitentiary system of the Ministry of Internal Affairs, approved by the Decree of the Ministry of Internal Affairs of the Republic of Belarus dated January 13, 2004 No. 3

Rules of internal order of pre-trial detention centers of state security bodies — Rules of internal order of pre-trial detention centers of state security bodies of the Republic of Belarus, approved by the Resolution of the State Security Committee of the Republic of Belarus dated August 10, 2012 No. 37

Rules of internal order of temporary detention centers — Rules of internal order of temporary detention centers of territorial internal affairs bodies, approved by the Decree of the Ministry of Internal Affairs of the Republic of Belarus dated November 30, 2016 No. 315

## **Bodies and organizations**

HRC — Human Rights Committee

ECHR — European Court of Human Rights

CCBE — Council of Bars and Legal Societies of Europe

BRBA — Belarusian Republican Bar Association

TBA — Territorial Bar Association

MCBA — Minsk City Bar Association

MRBA — Minsk Regional Bar Association

Ministry of Justice — Ministry of Justice of the Republic of Belarus

Qualification Commission — Qualification Commission on Lawyer’s Profession in the Republic of Belarus under the Ministry of Justice

KGB — State Security Committee of the Republic of Belarus

DFI — Department of Financial Investigation of the State Control Committee of the Republic of Belarus

GUBOPiK — Main Department for Combating Organized Crime and Corruption of the Ministry of Internal Affairs of the Republic of Belarus

SIZO — pre-trial detention center

BSU — Belarusian State University