

Belarus

The Crisis of the Legal Profession *Continued Repressions* 2022 – 2023

January 2024

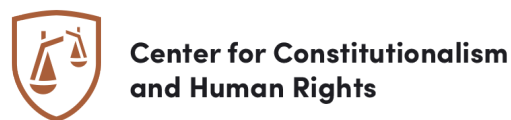


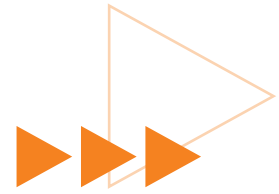
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INTRODUCTION



This report was initiated by the American Bar Association Center for Human Rights (ABA CHR), the Belarusian Association of Human Rights Lawyers, and the Center for Constitutionalism and Human Rights of the European Humanities University. The report was prepared by human rights lawyers who, as a result of repressions, were deprived of their professional status in Belarus, but remain professionals who defend their clients in international bodies and promote the concept of human rights by all available means, making efforts aimed at restoring the legal profession and the right to defence in Belarus.

The report continues to monitor the situation of lawyers and the legal profession in Belarus in the period after the 2020 presidential elections, which was marked by unprecedented repressions by the regime against civil society - representatives of the political opposition, activists, human rights defenders, lawyers, journalists, against any form of protest, dissent, disagreement with government policies.

The period 2020-2023 in Belarus is characterized by the concept of «legal default» – a situation when the state refuses to fulfill its obligations to ensure the rule of law, human rights and the administration of justice¹. In this situation, citizens are not only unlawfully limited in their rights, but, in fact, are completely deprived of the right to freedom of expression, freedom of assembly, and a fair trial, and arbitrary deprivation of liberty and the use of torture have become widespread. The United Nations High Commissioner for Human Rights, in his report “Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath»², concluded that there are sufficient grounds to believe that systematic, widespread and gross human rights violations have been and are being committed in Belarus, and some of the violations may also amount to crimes against humanity.

1 The concept of «legal default» was first formulated by lawyer Maksim Znak. He provided legal assistance in the election process to opposition leaders Viktor Babaryka and Sviatlana Tsikhanouskaya. In September 2020, he was arrested, and in 2021 he was sentenced for his professional activities to 10 years in prison (see, for example, <https://www.currenttime.tv/a/belarus-advocates/30880595.html>).

2 A/HRC/52/68, 3 February, 2023: <https://www.ohchr.org/en/documents/country-reports/ahrc5268-belarus-run-2020-presidential-election-and-its-aftermath-report>

During this period, when the law was not protected by the authorities, courts and other legal institutions, a significant part of the lawyers continued to fulfill their mission of protecting human rights, defending protesters and political prisoners. Many of these lawyers were subjected to repressions: criminal and administrative prosecutions, arbitrary detentions, deprivations of status, threats, intimidations, as a result of which they were forced to leave the country. At the same time, changes in legislation and the establishment of full state control over the Bar have led to the reduction of the legal profession by a quarter; the remaining lawyers are subject to strict censorship and cannot effectively protect human rights. It is difficult, and most often impossible, to find a lawyer for politically motivated cases.

These trends in the crackdown on the legal profession and individual lawyers in Belarus were reflected in the reports of the coalition of international legal organizations in 2021 and 2022³. A comprehensive overview and analysis of the processes taking place in the Belarusian Bar, from the time of its formation in independent Belarus until October 2022, was presented in the report “The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense”, 2022⁴ (hereinafter referred to *the 2022 Report*). The authors of this report – Belarusian lawyers – noted the destruction of the institution of the legal profession and the right to defence and proposed a program of future reforms to restore these institutions in the process of returning the state to democracy and the rule of law.

During the period from the publication of these reports to the present (September 2022 – December 2023), the situation not only has not changed for the better, but on the contrary, along with the strengthening of many negative trends, new types of obstacles to legal practice and restrictions on the independence of lawyers have appeared. These new changes are the primary focus of this report.

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- 3 Belarus: Lawyers Under Threat – Increasing Suppression of the Legal Profession in Belarus. – A coalition of the legal organizations, July, 2021. – https://www.americanbar.org/groups/human_rights/reports/belarus--lawyers-under-threat--increasing-suppression-of-the-leg/ (hereinafter – *Joint report 2021*); Continuous Crackdown on the Legal Profession in Belarus: An Update. – An informal coalition of legal organizations, including Lawyers for Lawyers, the American Bar Association Center for Human Rights (ABA CHR), and the International Bar Association Human Rights Institute, September, 2022. – https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/continuous-crackdown-belarus.pdf (hereinafter – *Joint report 2022*).
- 4 https://cchr.online/wp-content/uploads/2023/03/The-Crisis-of-the-Legal-Profession-in-Belarus_Final.pdf

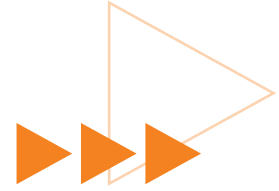
The authors of the report thank the «Right to Defence»⁵ project – an information and educational resource which has been collecting, analyzing and summarizing information related to the work of lawyers in Belarus since 2020. In addition to information from this resource, the report is based on data from open sources, statements and assessments of international organizations, international non-governmental organizations and bar associations, as well as on the own experience and awareness of the report's authors.

The report consists of several sections that provide data, specific examples and draw conclusions regarding how, during the period under review, the practice of law was obstructed through systematic violation of the professional rights of lawyers to access clients, confidentiality of communications with clients, and how lawyers' basic guarantees – non-identification with clients, freedom from threats, harassment and intimidation, freedom of expression of professional opinion – were ignored. In addition, the report notes new trends in the implementation of disciplinary procedures and other methods of repression against lawyers and their removal from the profession. The report traces further regression of professional bar associations in Belarus and the devaluation of their core functions. As a result, the report demonstrates how these processes have affected the provision of legal assistance in Belarus and led to the fact that the right to defence is virtually impossible to realize under the given conditions in the country.

The authors, initiators of the report, and partner organizations continue to monitor the situation of the legal profession in Belarus, record and analyze facts of violations of the law and make efforts aimed at creating the legal prerequisites for reforming this institution and restoring the right to defence in Belarus.

5 https://defendersbelarus.org/right_to_protection

AUTHORS AND PARTNERS OF THE REPORT



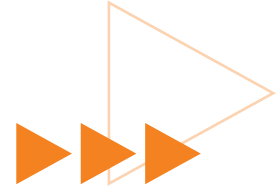
The [American Bar Association \(ABA\) Center for Human Rights](#) promotes and protects human rights worldwide by mobilizing lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. The ABA is the largest voluntary association of lawyers and legal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

[Belarusian Association of Human Rights Lawyers \(BAHRL\)](#), established on the initiative of lawyers deprived of the right to practice the profession in 2023. The mission of the Association is to restore the Bar institution and the right to defence in Belarus. BAHRL represents the interests of Belarusian lawyers at the international level, provides assistance to repressed lawyers, preserves the professional capacity and enhances the competence of lawyers and legal professionals, supports projects initiated by member lawyers of the Association including expertise in the development of law for a future democratic Belarus.

[The Center for Constitutionalism and Human Rights](#) is an academic community of researchers, teachers and students of the academic department of social sciences of the [European Humanities University](#), which aims to form and actively operate an expert community through research, consulting and educational activities in the field of constitutional law and order, the system of international legal values and ensuring human rights in the countries of Eastern and Central Europe.

The following partner organizations also supported this publication: Lawyers for Lawyers, International Bar Association Human Rights Institute, and Defenders Belarus.

1. OBSTACLES TO THE EXERCISE OF THE RIGHT TO DEFENCE



The authors of the 2022 Report identified a number of restrictions on the guarantees for the practice of law and procedural rights of lawyers and their clients that impede the exercise of the right to defence.⁶ To date, all of these restrictions remain in law and practice.

1.1. Barriers to a lawyer's access to a client

International Covenant on Civil and Political Rights, article 14:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

Basic Principles on the Role of Lawyers:

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.

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.

⁶ The 2022 Report, section 2.

The Constitution of the Republic of Belarus guarantees everyone the right to “use the assistance of lawyers at any time”.⁷ This right is provided at all stages of the criminal and administrative processes;⁸ it is also guaranteed for persons serving sentences in correctional institutions.⁹

The problem of lawyers’ access to detained and imprisoned clients remains relevant. As before, the state authorities do not ensure immediate access of a lawyer to a detainee.¹⁰ Instead, they complicate it with an arbitrary procedure of «admission» to participate in the case.¹¹

Access of lawyers to detainees during administrative proceedings remains completely excluded. The ban on visits to temporary detention centers and isolation centers for offenders, introduced in 2020 ostensibly as an anti-epidemic measure, has not yet been lifted; court hearings in cases of administrative offences are held in the format of videoconferencing, which does not provide opportunities for the preparation of the defence and confidentiality of consultations between the lawyer and the client.¹²

Unimpeded access of lawyers to clients serving sentences in penal colonies is not ensured. Penal colony administrations continue to manipulate the provision of part 6 of article 83 of the Penal Code, which provides for the granting of visits «at the request of the convicted person».¹³ Lawyers are denied visits on the pretext that there is no written application from the client (which in reality cannot be verified). At the same time, colony administrations arbitrarily impose additional conditions for granting visits.

In some penal colonies, administrations impose a requirement, which is not stipulated by law, to specify in the application the calendar month in which the visit is to take place. If a lawyer arrives at the colony in a different month

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- 7 Constitution, article 62: “Everyone shall have the right to legal assistance to exercise and protect his rights and freedoms, including the right to make use, at any time, of assistance of lawyers and his other representatives in court, other state bodies, other organisations and also in relations with officials and citizens. In the instances specified by law, legal assistance shall be rendered at the expense of state funding”.
- 8 Criminal Procedure Code, article 41, part 2, paragraphs 6-7; article 43, part 2, paragraphs 5-6; Procedural and Executive Code on Administrative Offences, article 4.1, part 1, paragraphs 5-6.
- 9 Penal Code, article 10, part 8: “In order to obtain legal assistance, convicted persons shall have the right to use the services of lawyers or other persons entitled to provide legal assistance”.
- 10 The 2022 Report, section 2.2.1.
- 11 The 2022 Report, section 2.2.2.
- 12 The 2022 Report, section 2.2.5.
- 13 The 2022 Report, section 2.2.6.

for whatever reason, he or she will usually be denied access to the client, despite the fact that the client has clearly expressed a desire to receive legal assistance.

The available evidence suggests that the widespread introduction of such restrictions is intended to minimise lawyers' visits to penal colonies, the provision of legal assistance to prisoners and the monitoring of their conditions of detention.

In this way, the state is not respecting its obligations to ensure the right to defence, the right of access to a lawyer and the ability of lawyers to perform their functions, as guaranteed under article 14 of the International Covenant on Civil and Political Rights, and as set out in the Basic Principles on the Role of Lawyers.¹⁴

The year 2023 was marked by the systematic practice of prolonged **incommunicado detention** of prominent opposition figures sentenced to long prison terms.

Since February 2023, a number of political and public figures - Viktor Babaryka, Maksim Znak (see also section 1.5), Maria Kalesnikava, Mikalai Statkevich, Sergey Tihanovski and others - have been held in colonies without contact with the outside world. Lawyers and relatives are not allowed to visit them, and they are completely deprived of correspondence and phone calls. Thus, prisoners have no opportunity not only to communicate with their lawyers in person, but even to address them in writing. Colony administrations refuse to provide lawyers with any information about their clients, and attempts to gain access to their clients through legal means have not yielded any results.¹⁵

At the end of April 2023, the media reported that Viktor Babaryka, with whom there had been no contact for almost three months at that time, was in hospital with bodily injuries. However, even under these circumstances, neither Babaryka's lawyers nor his relatives were given access to him or the opportunity to contact him in any way, and were denied any information about his state of health and whereabouts.¹⁶

On 30 May 2023, a group of UN Special Rapporteurs noted incommunicado

14 Basic Principles on the Role of Lawyers, paragraphs 7, 16.

15 Special Rapporteurs of the UN Human Rights Council reacted to this practice: <https://www.ohchr.org/ru/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>; BLR 3/2023; BLR 4/2023.

16 https://news.zerkalo.io/economics/39236.html?utm_source=editorial_block&utm_campaign=recirculation_tut&utm_medium=read_more

detention of above-mentioned political prisoners and called on the Belarusian authorities to release them,¹⁷ but the state has not taken any measures to restore their rights.

As at December 2023, all listed prisoners remain incommunicado (see also section 1.3).

The practice of incommunicado detention can constitute torture and cruel, inhuman and degrading treatment or punishment under international law¹⁸ and, as the above examples show, constitutes an insurmountable obstacle to the right to access to a lawyer. The complete absence of any response on the part of the state to such an unlawful situation demonstrates that prisoners in Belarus can be completely denied the right to legal assistance without any possibility of restoring this right through recourse to state authorities.

1.2. Interference with the confidential relationship between lawyer and client

Basic Principles on the Role of Lawyers:

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

In the legislation of Belarus, the principle of confidentiality of the lawyer-client relationship is reflected both in the Law «On the Bar and Practice of Law in the Republic of Belarus»¹⁹ and in the procedural codes²⁰ in the form of general rules on the right of the lawyer to communicate with the defendant in

¹⁷ <https://www.ohchr.org/en/press-releases/2023/05/belarus-must-release-all-detainees-held-political-grounds-and-protect-their>

¹⁸ E.g. Views of the Human Rights Committee N° 1761/2008 (Giri v. Nepal), CCPR/C/101/D/1761/2008, Judgments of the Inter-American Court of Human Rights: *Fairén-Garbi and Solís Corrales v. Honduras*, 15 March 1989, paragraph 149; *Velásquez Rodríguez v. Honduras*, 29 July 1988, paragraph 156.

¹⁹ For instance, article 17, paragraph 2: «A lawyer shall have the right to communicate in private with his/her client without hindrance and in confidence»; also see article 16, paragraph 3; article 16, paragraph 5.

²⁰ Criminal Procedure Code, article 41, part 2, paragraph 7; article 43, part 2, paragraph 6; article 48, part 1, paragraph 2; Procedural-Executive Code on Administrative Offences, article 4.1, part 1, paragraph 6.

confidentiality. The rules governing the institution of attorney-client privilege also act as a guarantee of confidentiality.²¹

However, the confidentiality of lawyer-client relations is still not adequately ensured²² and is subject to increasing violations by the state.

During the period under review, cases of interference in confidential relations between lawyers and their clients were particularly frequent in penitentiary institutions: colony administrations demanded that lawyers who came to visit clients show the documents they brought in; prohibited lawyers to bring in any documents (only blank sheets of paper were allowed); and there were cases of body searches of lawyers. A lawyer's refusal to fulfil such requirements, given the existing practice of obstructing visits to penal colonies (see section 1.1), can lead to a refusal to admit a lawyer.

Lawyers who are themselves subject to arbitrary detention (see section 1.3) are subject to body searches, searches at their place of residence, and inspection and seizure of mobile phones, computer equipment, and documents. In such cases, materials protected by attorney-client privilege are subject to inspection and seizure. In light of the continuing pressure on opposition figures including targeted arrests and detentions, there is reason to assume that access to above-mentioned materials is one of the purposes of the detaining authorities.

On 29 November 2022, officers of GUBOPiK²³ detained lawyer Tatsiana Lishankova. They confiscated her mobile phone and computer, which she used in her legal practice, and forced her to provide the passwords to these devices. A search was also conducted in the flat where she lived together with her partner Yauheni Pylchanka, a former lawyer who had been deprived of his profession in 2021.²⁴ During the search, printed case files, client documents and other materials which contained information constituting attorney-client privilege were seized from the flat. Subsequently, GUBOPiK handed over the seized documents to the Investigative Committee.

21 For instance, Law «On the Bar and Practice of Law in the Republic of Belarus», article 16, paragraph 2: "It is prohibited to interfere in the professional lawyer's activities carried out in accordance with the legislation or to obstruct these activities in any way, as well as to demand of the lawyer to disclose any information constituting attorney-client privilege or require such information from trainees and lawyers' assistants".

22 The 2022 Report, section 2.3; Joint report 2022, Chapter IV, section D.

23 Main Department for Combating Organized Crime and Corruption (GUBOPiK) is a division of the Ministry of Internal Affairs, which is currently one of the main organs of political persecution of citizens.

24 The 2022 Report, section 2.7.3.

In April 2023, the Investigative Committee handed them to the Minsk City Bar Association, which refused to return them to T.Lishankova and Y.Pylchanka.

The professional associations of lawyers not only ignore the interference of the state in the confidential relations of lawyers and clients, but also contribute to it themselves.

At the beginning of 2023, the chair of the Minsk City Bar Association Vera Oreshko demanded that the heads of the legal advice offices provide weekly information about foreign citizens (except for citizens of the Russian Federation), who are territorially located in the Republic of Belarus and had asked lawyers for legal assistance. The information to be reported to the management of the Bar Associations includes the name, surname, place of registration, and contact telephone number of the foreign citizen; however, there is no obligation to obtain the client's consent to the dissemination of this personal data about him/her. According to Oreshko's letter, this requirement was introduced «in fulfilment of the order of the Minister of Justice S.Khamenka».²⁵

The existence of such requirements (among other things, discriminatory towards citizens of any country other than the Russian Federation), instructed by lawyers themselves, demonstrates the gradual disintegration of attorney-client privilege in Belarus. The above actions by the state illustrate its disregard for its obligations under article 14 of the Covenant, paragraph 3(b), the guarantees of which include the right to confidential communication.²⁶

1.3. Arbitrary detention to prevent lawyers from defending clients

Basic Principles on the Role of Lawyers:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [...].

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

²⁵ <https://www.defendersbelarus.org/news/tpost/z0l4exkg41-vo-ispolnenie-rasporyazheniya-ministra-y>

²⁶ Human Rights Committee, General Comment No. 32 «Article 14: Right to equality before courts and tribunals and to a fair trial», paragraph 34.

The legislation of Belarus does not contain norms directly obliging the state to ensure the protection of lawyers from unlawful interference in their activities and prosecution for the performance of professional duties. Nevertheless, the Law «On the Bar and Practice of Law in the Republic of Belarus» proclaims the principle of «inadmissibility of interference in the professional activities of lawyers by bodies conducting criminal proceedings, other state bodies, other organisations and officials»²⁷ and provides that «the state guarantees lawyers the opportunity to practise law and facilitates the creation of the necessary conditions for this»²⁸. The Constitution expressly prohibits interference with legal aid²⁹. In reality, the number of cases of interference, opposition and harassment by state bodies is constantly increasing.

Since 2020, at least 30 lawyers have been arbitrarily detained.³⁰ In most cases, this resulted in lawyers being wrongfully convicted of administrative offences, but at least 9 lawyers were convicted of criminal offences (see section 1.4).

While in 2020 most cases of lawyers' imprisonment were related to exercise of their right to freedom of peaceful assembly,³¹ and in 2021 there were almost no detentions, a new trend emerged in 2022. Law enforcement agencies (mainly GUBOPiK) detain lawyers and draw up protocols on administrative offences against them on spurious grounds.³² This subsequently serves as a basis for administrative liability that results in expulsion from the Bar, since administrative liability is regarded as a disciplinary offence (see section 2). In the majority of known cases, lawyers subjected to this type of detention were those who actively defended political prisoners.

27 Law «On the Bar and Practice of Law in the Republic of Belarus», article 4.

28 Law «On the Bar and Practice of Law in the Republic of Belarus», article 37, paragraph 1.

29 The Constitution, article 62.

30 See also the 2022 Report, sections 2.6.2, 2.6.3; Joint report 2021, Chapter IV; Joint report 2022, Chapter IV.

31 The 2022 Report, section 2.7.5; Joint report – 2021, Chapters II, IV; Joint report – 2022, Chapter II, IV.

32 As a rule, administrative protocols are drawn up for “petty hooliganism” (Article 19.1 of the Code of Administrative Offences) or “disobedience to a lawful order or demand of an official” (Article 24.3); these protocols are based solely on the testimony of the law enforcement officers themselves, and the circumstances described in them clearly show that they are completely fictitious. In some cases, lawyers are prosecuted for “distribution of extremist materials” (Article 19.11). In practice, this means that a search of the lawyer’s mobile phone reveals a message from an independent media outlet, which are now almost all recognised as “extremist” in Belarus.

On 29 November 2022, lawyer Tatsiana Lishankova was detained by GUBOPiK officers, and on 1 December 2022, she was brought to administrative responsibility by the court in the form of detention for 15 days for «petty hooliganism» (the lawyer was allegedly taken to the police station for a preventive conversation, but began to use foul language there).³³ She was subsequently expelled from the Bar on this basis. T.Lishankova's detention took place immediately after the court hearing of her client, human rights defender Anastasia (Nasta) Loika, who had been brought to administrative responsibility for the fifth time in a row, also for alleged petty hooliganism at the police station. During one of the court hearings, A.Loika stated that she had been tortured by the officers of GUBOPiK and the Isolation Center for Offenders. This information was published by independent media³⁴ and became the basis for filing a complaint with the UN Human Rights Committee.³⁵ It is believed that GUBOPiK officers connected the publication of information about torture against A.Loika with the participation of the lawyer T.Lishankova in her case, and the detention was aimed at removing the lawyer from further defence of her client.

On 20 March 2023, GUBOPiK officers simultaneously detained at least 6 lawyers, including Yuri Kozikov, Daria Lipkina, Inessa Olenskaya, Artem Semyanov, Uladzimir Stashkevich, and Ivan Chyzhyk.³⁶ The detainees were interrogated, searched, and their equipment was seized. Lawyers Yuri Kozikov and Artem Semyanov were brought to administrative responsibility in the form of detention for 15 days (after its expiry A.Semyanov was re-arrested and detained for a further 15 days³⁷). Lawyer Inessa Olenskaya was detained for three days and subjected to an administrative fine.

All the detainees were united by the fact that, at that time, they represented the most famous political prisoners: Viktor Babaryka, Maksim Znak, Maria Kalesnikava, Ihar Losik, Mikalai Statkevich, and Sergey Tihanovski, who had been sentenced to long terms of imprisonment, and since February 2023 have been held incommunicado (see sections 1.1, 1.5). Soon after their detention, all the detained lawyers were deprived of their practicing licence or left the Bar themselves, and most of them left the country, perceiving the events as a direct threat to their own security. Following this, some of the above-mentioned political prisoners' relatives still cannot find new lawyers.

33 https://www.defendersbelarus.org/lishankova_trial

34 <https://www.defenders.by/news/tpost/a2bddctal1-pravozaschitnitsa-nasta-loika-poluchila>

35 <https://www.defenders.by/news/tpost/97zkkbx1b1-zaregistriravana-zhaloba-i-prinyati-vrem>

36 <https://defendersbelarus.org/news/tpost/0j9p1hd4l1-stali-izvestni-imena-zaderzhannih-20-mar>

37 <https://mediazona.by/news/2023/04/05/semyanov>

Thus, the arbitrary detention of lawyers has become a purposeful way for the law enforcement agencies to remove lawyers from specific cases and/or to prevent lawyers from assisting specific clients, and generally to deprive them of the opportunity to practice in the future.³⁸

There are at least two other cases where similar means were used against lawyers who did not represent political prisoners and/or openly express their civic position. This suggests that the practice of condoning arbitrary actions of law enforcement agencies in politically motivated cases has spread to the non-political sphere and is becoming an instrument of pressure on lawyers not only in the interests of the state authorities, but also in individuals' private interests.

The practice of persecution of lawyers creates an atmosphere of fear in the legal community as it is obvious that the defence of political prisoners clearly becomes the reason for the detention of their lawyers. The consequence of this is a clearly visible desire of lawyers themselves to avoid representing clients in politically motivated cases.

The above demonstrates that Belarus persistently violates one of the basic principles that ensure the effective fulfilment of lawyers' duties: the ability to perform their professional functions without intimidation, hindrance, harassment or improper interference.³⁹

38 Such a way of removing a lawyer from the case was used for the first time in September 2020, when lawyer Liudmila Kazak was detained in the above described manner (see the 2022 Report, sections 2.2.5, 2.6.2, 3.2.1). However, no other such cases were recorded until 2022. It should be noted, however, that Liudmila Kazak was not immediately disbarred but continued to work for another five months, while in 2022 and 2023, lawyers are sometimes expelled from the Bar even before their administrative detention expires.

39 Human Rights Committee, General Comment No. 32 «Article 14: Right to equality before courts and tribunals and to a fair trial», paragraph 34; Basic Principles on the Role of Lawyers, paragraph 16(a).

1.4. Criminal prosecution of lawyers for their legal practice and exercise of their civil rights

Basic Principles on the Role of Lawyers:

16. Governments shall ensure that lawyers [...] (c) 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.

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.

Between 2020 and November 2023, at least 10 lawyers were criminally prosecuted for their legal practice and exercise of their civil rights. Convictions were handed down against 9 of them.⁴⁰

To date, 6 lawyers are in detention:

- **Maksim Znak** - sentenced on 6 September 2021 to 10 years' imprisonment;⁴¹
- **Vitali Braginets** - sentenced on 2 February 2023 to 8 years' imprisonment;⁴²
- **Aliaksandr Danilevich** - sentenced on 10 April 2023 to 10 years' imprisonment.⁴³ On 14 July 2023 the appeal court reduced the term to 6 years;
- **Anastasiya Lazarenka** - sentenced on 11 May 2023 to 6 years' imprisonment;⁴⁴
- **Aliaksei Barodka** - sentenced in May 2023 (exact date unknown) to 6 years' imprisonment;⁴⁵

40 Only lawyer Illia Salei was not convicted: after 1,5 month of detention, the preventive measure was changed to house arrest, and when the term of house arrest ended, Illia managed to leave Belarus in 2021 (see the 2022 Report, section 2.6.3).

41 The 2022 Report, section 2.6.3.

42 <https://www.defendersbelarus.org/news/tpost/xygyzcpz21-advokatu-vitaliyu-bragintsu-prisudili-8>

43 https://defendersbelarus.org/criminal_prosecution_2020#danilevich

44 <https://www.defendersbelarus.org/news/tpost/3z2obxrmg1-advokatku-anastasiyu-lazarenko-prigovori>

45 <https://prisoners.spring96.org/ru/person/aljaksei-barodka>

- **Yuliya Yurhilevich** - sentenced on 26 July 2023 to 6 years' imprisonment.⁴⁶

Lawyer Mikhail Makarov, detained on 13 September 2022, was sentenced on 3 March 2023 to 1 year imprisonment⁴⁷ and has now fully served his sentence.

The above-mentioned lawyers were convicted under the same articles of the Criminal Code that are used by the authorities against political opponents and citizens who disagree with the existing regime: article 342 (active participation in actions that grossly violate public order), article 130 (incitement of social hatred and discord), article 361-4 (assistance with extremist activities), article 361-1 (creation of an extremist formation or participation in it), etc. In the current realities of Belarus, prosecution under such articles represents politically motivated persecution and punishment for the lawful realisation of the right to freedom of peaceful assembly, freedom of expression and freedom of association.

At the same time, the circumstances of the criminal prosecution of lawyers indicate that the reasons for their prosecution were not only the realisation of civil and political rights, but also the lawyer's activity itself.

Aliaksandr Danilevich, a lawyer detained by the KGB on 20 May 2022,⁴⁸ was convicted of assistance with extremist activities (part 1 of article 361-4 of the Criminal Code) (see section 1.6) and complicity in calls for sanctions (part 6 of article 16 and part 3 of article 361 of the Criminal Code). The court found such complicity in the fact that Danilevich «gave legal advice in the field of international sports law» to athletes Aliaksandra Herasimienia and Aliaksandr Apeikin, who called for the postponement of sports events scheduled in Belarus and the imposition of sanctions against the National Olympic Committee for human rights violations in Belarus. Danilevich was also accused of complicity in calls for sanctions by giving legal advice in the field of international law to the Belaruskali strike committee; thus, he assisted the strike committee in writing appeals to the Norwegian company Yara with calls to limit cooperation with Belaruskali. The prosecution emphasised that Danilevich performed these actions «being a lawyer, PhD in law, having

46 <https://www.defendersbelarus.org/news/tpost/td555sahu1-advokatka-yuliya-yurgilevich-prigovorena>

47 <https://www.defendersbelarus.org/news/tpost/98cezcpbu1-advokat-mihail-makarov-prigovoren-k-odno>

48 The 2022 Report, section 2.6.2.

special knowledge in the field of jurisprudence».⁴⁹ Thus, the legal assistance provided by the lawyer was explicitly called a criminal act.

Lawyer Vitali Braginets was detained in June 2022 and twice brought to administrative responsibility,⁵⁰ after which he was imprisoned in a criminal case. On 2 February 2023, the Minsk City Court sentenced him to 8 years imprisonment for «active participation in actions that grossly violate public order» (article 342 of the Criminal Code), «creation of an extremist formation or participation in it» (article 361-1), «incitement of hatred» (article 130) and «calls for sanction» (article 361). The trial against V.Braginets was held behind closed doors and the essence of the charges against him is still unknown. However, it is highly probable that the verdict is directly related to Braginets' legal practice. In particular, this is indicated by the fact that the detention of V.Braginets took place shortly before the Telegram chat room «Belaruskiya Advokaty» was recognised as an extremist formation (this chat room was used by lawyers to exchange professional experiences and opinions; for more information see section 1.6).

On 13 September 2022, GUBOPiK officers detained lawyers Mikhail Makarov, Viktoria Gulkova (Makarov's wife) and Anastasiya Sahanovich, who were defending political prisoners. On the day of their detention, the Ministry of Internal Affairs published a video that alleged "the involvement of some lawyers in the disclosure of personal data contained in the criminal case and constituting the secrets of the investigation to the extremist initiatives abroad". The personal data reportedly consisted of information about «employees of GUBOPiK, the Investigative Committee, the Prosecutor's Office and a judge". In addition, Telegram channels linked to the GUBOPiK published the lawyers' correspondence with clients, and emphasised that the latter were representatives of the anarchist movement.⁵¹ However, none of the detained lawyers were charged with disclosure of investigative data. Initially, they were placed under administrative detention for 15 days; then V.Gulkova was placed under administrative detention for a further 15 days, and M.Makarov was charged and convicted under article 342 of the Criminal Code (active participation in actions that grossly violate public order) for participating in a peaceful assembly in 2020. On 3 March 2023, he was sentenced to one year in prison.

These circumstances demonstrate that the detention and prosecution of the above-mentioned lawyers was not related to their allegedly illegal actions,

49 <https://www.defendersbelarus.org/news/tpost/rv3xsl66e1-advokatu-aleksandru-danilevichu-prisudil>

50 The 2022 Report, sections 2.5.2, 2.6.2.

51 <https://mediazona.by/article/2022/09/13/advocaty>

but to the fact that they were defending representatives of the anarchist movement in politically motivated criminal cases initiated by the GUBOPiK. The dissemination of information that they were detained for allegedly disclosing investigative data was aimed at intimidating other lawyers, discouraging them from reporting any information from criminal cases and from contacting representatives of the persecuted groups.

Despite the fact that the criminal prosecution of lawyers Maksim Znak and Illia Salei was launched as early as September 2020, i.e. at the very beginning of the socio-political crisis in Belarus, no other lawyers were detained in criminal cases until 2022. The majority of criminal proceedings against lawyers occurred in 2022-2023, which leads to the conclusion that a new trend in the practice of threatening and persecuting lawyers - a shift to criminal sanctions – developed in this period. It also points to neglect by the state of another fundamental guarantee for the practice of law – immunity from prosecution for any actions taken in accordance with recognized professional duties, standards and ethics.⁵²

1.5. Violation of the principle of non-identification of lawyers with their clients and turning lawyers into a persecuted group

Basic Principles on the Role of Lawyers:

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Since 2020, the circle of persons persecuted by the state has been steadily expanding in Belarus. In 2022-2023 it included not only public opponents of the current government, but also citizens who did not support the state policy. Under such conditions, the provision of legal assistance to persecuted persons is perceived by state representatives (especially, law enforcement agencies) as a continuation of the activities of these persons, which undermines the principle obliging the state not to identify the lawyer with the client.⁵³

In the past years, such identification resulted in some political prisoners – namely opposition leaders – consistently losing all their lawyers, who were deprived of their status by the state authorities.⁵⁴ This trend continued in

52 Basic Principles on the Role of Lawyers, paragraph 16(c).

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

54 The 2022 Report, section 2.6.4.

2022-2023 and was supplemented by arbitrary detentions of the lawyers of political prisoners (see section 1.3). The case of Aliaksandr Danilevich is also an example of identification, when the legal assistance he had provided to clients was regarded as his participating in the clients' activities (see Section 1.4).

The state is beginning to apply measures against lawyers that were previously directed at the regime's outspoken political opponents.

After the mass protests of summer-autumn 2020, political and public activists and citizens who were held administratively liable for participation in peaceful assemblies began to be subjected to enhanced searches when crossing the Belarusian state border. Since summer of 2023, such a search is also conducted for many lawyers crossing the border, including those who have already been deprived of the status of lawyer. During this procedure, KGB or Border Committee officers fully examine the contents of the mobile phone: photos, saved files, messages in social networks and messengers. The criteria for inclusion on the list of persons subject to such searches are not publicly disclosed. However, it can be stated that it is carried out primarily against lawyers who provided legal assistance to political prisoners.

At the same time, the measures directed personally at some lawyers indicate that they are gradually becoming a specific object of pressure from the state.

Lawyer Maksim Znak, detained in September 2020 and sentenced to 10 years imprisonment,⁵⁵ has been kept in penal colony No. 3 in Viciebsk region since the beginning of 2022. Throughout 2022, the colony administration has repeatedly, for spurious reasons, imposed penalties on him in the form of deprivation of meetings with relatives and placement in a punishment cell. At the end of November 2022, the administration moved him to the cell-type unit,⁵⁶ and, since February 2023, completely deprived him of contact with the outside world, prohibiting correspondence, phone calls and visits of relatives and lawyers (see section 1.1). Lawyer Yuri Kozikov, who visited M.Znak in the colony during 2022, was unable to obtain a meeting with him in February and early March 2023. On 20 March 2023, Y.Kozikov was detained and subsequently deprived of his lawyer's status (see section 1.3). To date, no information has been received from Maksim Znak for more than eleven months.

⁵⁵ The 2022 Report, section 2.6.3.

⁵⁶ <https://prisoners.spring96.org/ru/person/maksim-znak>

Maksim Znak was deprived of contact with the outside world at the same time as several other well-known political prisoners, leaders of the opposition movement, who, like him, are still held in incommunicado detention (see section 1.1). This circumstance indicates that pressure is being exerted on Maksim Znak as an opponent of the current regime, and that lawyers are actually categorised as individuals particularly persecuted by the current authorities.

1.6. Restrictions on lawyers' rights to freedom of expression and association

Basic Principles on the Role of Lawyers:

23. 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.

While the Constitution enshrines everyone's right to freedom of expression⁵⁷, the legislation in the area of legal profession (including the Rules of Professional Ethics of Lawyers approved by the Ministry of Justice) does not establish any special guarantees for lawyers and, on the contrary, constantly expands the list of restrictions on freedom of expression.

During the period under review, state authorities continued to use repressive mechanisms to punish lawyers for publicly expressing their opinions,⁵⁸ including by criminal prosecution.

Lawyer Yuliya Yurhilevich, who was expelled from the Hrodna Regional Bar Association in February 2022, was detained in August 2022 and remanded in custody as a criminal defendant. On 26 July 2023, the Hrodna Regional Court sentenced her to 6 years' imprisonment for «assistance with extremist activities» (article 361-4 of the Criminal Code). This was based on expressed

⁵⁷ The Constitution, article 33: «Everyone is guaranteed freedom of thoughts and beliefs and their free expression».

⁵⁸ The 2022 Report, section 2.7.

in the fact that Y.Yurhilevich allegedly provided the following information to journalist Pavel Mazheika: about the revocation of her license and her disbarment, about the consideration of the criminal case against her client - political prisoner Ales Pushkin – by Minsk City Court and his sentencing; and that this information was published by the TV channel Belsat, which had been recognised in Belarus as an extremist formation.⁵⁹

Regardless of whether or not Y.Yurhilevich did report this information to journalists, such information does not constitute a secret protected by law and, moreover, is openly published by the state bodies themselves. In this connection, Y.Yurhilevich's sentence should be regarded, on the one hand, as punishment of a lawyer for defending political prisoners, and, on the other hand, as a way of intimidating practicing lawyers in order to limit their communication with journalists and to abandon any publicity in their professional activity.

One of the acts for which lawyer Aliaksandr Danilevich was convicted (see section 1.4) was an interview he allegedly gave in 2022 to the online media Tribuna.com, recognised as «extremist» in Belarus. This was regarded as «assistance with extremist activities» (article 361-4 of the Criminal Code).

The consistent practice of suppressing freedom of expression in the legal community resulted in, during the period under review, lawyers stopping not only to speak publicly on socio-political topics, but also to comment in the media on their cases and to criticise legislation and law enforcement practice.

Furthermore, restrictions on freedom of speech continue to expand into the non-public sphere.

On 25 August 2022, the court of Partyzanski district of Minsk recognised the Telegram chat «Belaruskiya Advakaty» («Belarusian Lawyers») as «extremist materials».⁶⁰ This chat was created in 2020 against the backdrop of mass detentions of protesters, and was used by lawyers to quickly find defence lawyers for detainees, share experiences and discuss practice - that is, it was directly related to professional activities. In autumn 2020, the number of chat room participants reached 150-170 people. By the time of the court's decision, the chat room had already been deleted. Subsequently, on 9 September 2022, the same chat room was recognised as an «extremist formation» on

59 <https://www.defendersbelarus.org/news/tpost/6cz0z7a9f1-nachalsya-sud-nad-advokatkoilyurgilevich>

60 <https://www.defendersbelarus.org/news/tpost/dkjlgap4jl-ekstremistskim-priznan-telegram-chat-bel>

the basis of a decision of the Ministry of Internal Affairs,⁶¹ which, according to the established practice of criminal prosecution, creates a threat for any chat room participant to be prosecuted for participation in an extremist formation (see also section 1.4, case of Vitali Braginets).

The recognition of the Telegram chat room, around which an informal community of lawyers practising in politically motivated cases had begun to form, as an extremist formation can also be seen as a restriction on the freedom of association of lawyers and as another way of suppressing the activity of lawyers in such cases up to the point of their complete abandonment.

The restrictions are aimed not only at the lawyers themselves, but also at those sources from which it is possible to obtain objective information about the state of the Bar and the legal system in Belarus.

On 13 June 2023 the website of the project «Right to Defence» (defenders.by) was blocked in Belarus by a decision of the Ministry of Information.⁶² This project was created at the initiative of lawyers in autumn 2020 and since then it has been publishing materials about the state of the Bar and the legal system of Belarus in general, as well as about the practices of lawyers of other jurisdictions and international approaches to ensuring the right to a fair trial. After a change of the domain name, the site was able to operate unhindered for some time, but was blocked again on 11 September 2023.⁶³ Since then, access to the site from Belarus is only possible using a VPN.

These facts not only highlight further restrictions on the freedom of expression of lawyers, in particular the right to freely receive and impart information, and the freedom of association, but also show that any activity by lawyers that does not originate from the governing bodies of the bar associations or from the state is subject to restrictions.

The abusive nature of these restrictions on the human rights of lawyers is obvious, as these restrictions are not aimed at protecting the public interest. On the contrary, in spite of the public's demand for objective information about the course of politically motivated trials and for access to professional explanations about changes in legislation and practice, the state and the bar

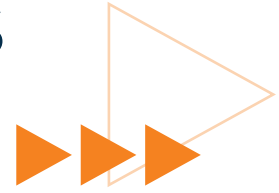
61 <https://www.defendersbelarus.org/news/tpost/l87t603sa1-telegramchat-belaruskiya-advakati-prizna>

62 <https://defendersbelarus.org/news/tpost/v64inls7t1-sait-proekta-pravo-na-zaschitu-zablokiro>

63 <https://www.defendersbelarus.org/news/tpost/rhgjojlfil-esche-odin-domen-nashego-saita-zablokiro>

associations under its control have taken actions to silence lawyers in the public space and prevent them from uniting on the basis of their professional interests. This leads to the conclusion that there has been a violation of lawyers' rights to freedom of expression and association, which is contrary to the guarantees of articles 19 and 22 of the Covenant and paragraph 23 of the Basic Principles on the Role of Lawyers.

2. DISCIPLINARY PROCEDURES AS A MEANS OF REPRISALS AGAINST LAWYERS



Basic Principles on the Role of Lawyers:

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. 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.

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.

The institution of licensing of lawyers⁶⁴ in Belarus provides for extremely broad powers of the Ministry of Justice in relation to both the Bar as a whole and individual lawyers, including the power to hold lawyers accountable for breaches of professional duties. In this regard, disciplinary proceedings against lawyers in Belarus are implemented through three procedures: termination of the license by the Ministry of Justice on the basis of the conclusion of the Qualification Commission under the Ministry; regular or extraordinary attestation in the Ministry of Justice; and disciplinary procedure

64 For a long time the main act in the field of licensing of lawyers' activities was the Edict of the President of the Republic of Belarus of 1 September 2010 No. 450 "On Licensing of Certain Types of Activities". The Law of the Republic of Belarus of 14 October 2022 No. 213-Z "On Licensing" replaced it on 1 January 2023. Despite some differences in the structure and wording of these legal acts, the new law demonstrates the same approaches to legal profession as the earlier edict.

of bar associations. All of these procedures have significant defects that make them incompatible with the principle of lawyers' independence.⁶⁵

As a result of these procedures, between 2020 and December 2023, 128 lawyers were deprived of the right to practice.⁶⁶

In 2022-2023, mainly attestations and disciplinary procedures by bar associations were used to disbar lawyers. It should be noted that bar associations are increasingly taking the initiative to begin disciplinary procedures and are using new ways to do so.

In September 2022, the Council of the Minsk City Bar Association initiated a selective inspection of the correct paperwork (for example, accuracy of contracts' drafting, registration of contracts, etc.) The inspection was mainly targeted at lawyers involved in politically motivated cases. As a result of the inspection, acts were drawn up in respect to lawyers Viktor Matskevich and Uladzimir Pylchanka (defence lawyers of V.Babaryka, E.Babaryka, S.Tihanovski, M.Kalesnikava, A.Bialiatski). In the acts the inspectors expressed their remarks about the lawyers' execution of some technical documents. No violations of the legislation affecting the quality of legal assistance were found. Nevertheless, the acts of the inspection were approved by the Council of the Minsk City Bar Association and sent to the Council of the Belarusian Republican Bar Association, which, in turn, applied to the Qualification Commission of the Ministry of Justice with a proposal to conduct an extraordinary attestation of lawyers V.Matskevich and U.Pylchanka due to "improper performance of their professional duties". On 1 December 2022, V.Matskevich and U.Pylchanka didn't pass the attestation⁶⁷ and on this basis they were excluded from the bar on 8 December 2022.

The bar associations, which have completely lost their independence from the state (see section 3), demonstrate a readiness to accept without criticism any allegations by state bodies that a lawyer has committed unlawful acts.

Detention and bringing a lawyer to administrative responsibility are considered by the boards of the bar associations as a disciplinary offence. Furthermore, as can be seen from the available data, bringing a lawyer to responsibility for certain administrative offences ("petty hooliganism",

65 The 2022 Report, section 3.2; Joint report 2021, Chapters IV, Section B; Joint report 2022, Chapter IV, Section B.

66 <https://defendersbelarus.org/lawyers-persecution-2020>

67 <https://www.defendersbelarus.org/news/tpost/x1di6ag9h1-advokati-vladimir-pilchenko-i-viktor-mat>

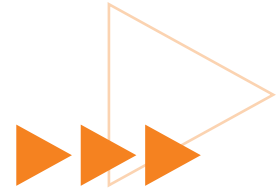
“disobedience to a lawful order or demand of an official”, “distribution of extremist materials”) is regarded as an unconditional ground for disbarment. The actual circumstances of detention and the lawyer’s position in such a case are not taken into account in the disciplinary procedure. It seems that it is precisely this approach that has enabled and facilitated the practice of arbitrary detention of lawyers (see section 1.3). Being confident that a lawyer will be deprived of his/her status for committing an administrative offence, the law enforcement bodies detain lawyers on spurious grounds, which subsequently leads to their disbarment and the termination of their license.

As a result, the procedures leading to disbarment are carried out either by a state body - the Ministry of Justice - or by the councils of bar associations dependent on the Ministry.⁶⁸ The sanction of disbarment or non-attestation for lawyers who defend opponents of the regime is predetermined in advance, which deprives lawyers of any opportunity and prospects to put forward arguments in their defence. Thus, internationally recognised principles on the disciplinary procedures for lawyers⁶⁹ are violated.

68 According to the Law «On the Bar and Practice of Law in the Republic of Belarus» (as amended in 2021), all candidates to the self-governing body of the territorial bar association – the Council of the bar association – are first approved by the Ministry of Justice, and only then can the conference of lawyers «elect» these candidates to the Council.

69 Basic Principles on the Role of Lawyers, paragraphs 27-29.

3. THE COMPLETE LOSS OF INDEPENDENCE OF THE PROFESSIONAL BAR ASSOCIATIONS AND THEIR AFFILIATION WITH THE STATE APPARATUS



Basic Principles on the Role of Lawyers:

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.

As a result of the extensive pressure exerted by the state on lawyers since the autumn of 2020 and the changes in legislation that came with it, as of the end of 2021 the territorial bar associations and the Belarusian Republican Bar Association (hereinafter – *BRBA*) had lost the main signs of independence and were structures dependent on the Ministry of Justice.⁷⁰

In this context, the activities of the management of the bar in recent years have been aimed not at representing and defending the rights of lawyers, but mainly at demonstrating loyalty to the current regime and performing an ideological function.

The official website and Telegram-channel of the BRBA are not only a source of information about events in the Bar, but also transmitters of the state ideology. The BRBA Telegram-channel publishes reports from the official channels of state bodies and state media, the unofficial channel of Aliaksandr Lukashenka’s press service “Pul Pervogo” and the openly propagandistic

⁷⁰ The 2022 Report, section 4.

channel “Zheltye Slivy”. Like the state bodies, the BRBA conducts ideological work with the population and forces its members to participate in state holidays originating from Belarus’ Soviet past.

The first message for the year 2023 on the BRBA Telegram channel is from the channel “Pul Pervogo” that 2023 is declared “the year of peace and creation” in Belarus.⁷¹ Later, BRBA Chairman Aleksei Shvakov took part in the round table “The Year of Peace and Creation: Prospects of Interaction between the Investigative Committee of the Republic of Belarus and Civil Society Institutions”.⁷² On its social networks, the BRBA reported on the Republican Plan of Measures for the Year of Peace and Creation in 2023, approved by the Council of Ministers,⁷³ and further reported on various events dedicated to the “Year of Peace and Creation” held in the Bar.

In 2023, lawyers participated in events related to the celebration of the People’s Unity Day (17 September).⁷⁴ BRBA Chairman Aleksei Shvakov posted a congratulatory message on its Telegram channel,⁷⁵ lawyers held meetings with schoolchildren, and the BRBA hosted a roundtable discussion with state propaganda figure Aliaksei Dzermant. Even earlier, the BRBA Telegram-channel posted the official trailer of “On the Other Side”⁷⁶ - a film broadcasting the official position of the current regime about the hard life of Belarusians in Western Belarus as part of Poland.

In November 2023, lawyers participated in the celebration of the October Revolution Day: they told college students “about the history of this significant event”,⁷⁷ laid flowers at the Lenin monument,⁷⁸ and the BRBA

71 https://t.me/brka_news/1224

72 https://t.me/brka_news/1466

73 https://t.me/brka_news/1416

74 The holiday was established by A.Lukashenka’s decree No. 206 of 7 June 2021 and is positioned as “the day of restoration of historical justice”: on 17 September 1939, Soviet troops invaded the eastern part of Poland; Western Belarus, which had been part of Poland since 1921, was annexed to the Belarusian Soviet Socialist Republic. The official rhetoric used in relation to these events is aimed at opposing Belarus and Poland, and in the context of tense relations between the states it is intended to cause hostility of Belarusians towards the latter. At the same time, official sources limit themselves to only one assessment of these historical events, omitting the accompanying circumstances (for example, the fact that the accession of Western Belarus took place in accordance with the Molotov-Ribbentrop Pact and was accompanied by repressions against the inhabitants of Western Belarus).

75 https://t.me/brka_news/3066

76 https://t.me/brka_news/2862

77 https://t.me/brka_news/3598

78 https://t.me/brka_news/3603

Telegram channel reposted A.Lukashenka's congratulatory message from the Telegram channel "Pul Pervogo".

In 2022-2023 the Bar also became involved in the broadcasting of a new ideological narrative - "genocide of the Belarusian people".⁷⁹ Lawyers touched upon this topic during lectures, actively participated in events dedicated to the "Great Patriotic War and genocide of the Belarusian people" (by laying flowers, visiting memorials, participating in rallies and car rallies organised by the authorities); and the BRBA held a round table "Genocide of the Belarusian people. Without Statute of Limitations" with the participation of representatives of state bodies.⁸⁰

Thus, the Bar publicly adheres to the official point of view on the events in the history of Belarus, broadcasts this point of view outwards and does not consider other approaches, thus becoming one of the conductors of the state ideology.

Regarding of the current political agenda, including foreign policy, the BRBA also broadcasts the position of the current political regime in Belarus.

On 24 June 2023, during the so-called rebellion of the private military company Wagner, the BRBA Telegram channel posted a message published by the Security Council of the Republic of Belarus. This message called Belarus an ally of Russia, fully sharing the goals and objectives of the "special military operation," and the war "a forced and justified mission to protect Russian people in Donbass".⁸¹

The news agenda of BRBA in general is clearly oriented towards Russia: there are publications about the Day of Unity of the Peoples of Belarus and Russia,⁸²

79 The idea of "genocide of the Belarusian people" emerged and started to be actively developed in the official rhetoric after the 2020 protests as a way to contrast Belarus and its current political regime with Western countries, which state representatives accuse of organising the protests. In April 2021, the Prosecutor General's Office initiated a criminal case "on the fact of genocide of the population of Belarus during the Great Patriotic War and the post-war period" (<https://www.prokuratura.gov.by/ru/activity/rassledovanie-ugolovnogo-dela-o-genotside/>). The Law of the Republic of Belarus of 5 January 2022 "On the Genocide of the Belarusian People" established criminal liability for denial of the genocide of the Belarusian people and instructed the Council of Ministers of the Republic of Belarus to take measures on a permanent basis to "disseminate reliable information about the genocide of the Belarusian people, as well as to educate citizens about the genocide of the Belarusian people." In June 2022, the book "Genocide of the Belarusian People" was published under the editorship of the Prosecutor General of the Republic of Belarus.

80 https://t.me/brka_news/2232

81 https://t.me/brka_news/2543

82 https://t.me/brka_news/1748

congratulations of Russian lawyers on the Day of the Russian Bar⁸³ (there are no congratulations to colleagues from other countries in the channel), publications about the conference of lawyers of Belarus and Russia and the signing of a cooperation agreement between them. The same can be seen from the content of the reports by state mass media and propaganda channels like “Zheltye Slivy” (for example, the report about the suppression of “the activities of three agent groups, combat cells of the Security Service of Ukraine, created for sabotage and terrorist acts in Belarus and Russia”).⁸⁴ At the same time, there are practically no references to bars from other countries in the resources owned by the BRBA.

The bar associations constantly emphasise the key role of A.Lukashenka in domestic policy, and demonstrate loyalty to him and his political course.

On the eve of the broadcast of Lukashenka’s “message to the Belarusian people and the National Assembly”, the BRBA Telegram-channel posted a message reminding about the date and time of the broadcast. Later, the Brest Regional Bar Association held a discussion of the message, where it was noted that “the Bar ... intends to actively participate together with all citizens of the country in achieving the goals set by the Head of State for the society”.⁸⁵ The BRBA Telegram-channel also reported about the presidential decree approving the concept of the legal policy of Belarus, according to which legal work will be based on the formula “strong President, influential Parliament, proactive Government with the connecting role of the Belarusian People’s Congress”;⁸⁶ further discussion of the concept was organised in the bar associations.

Lawyers are forced to participate in events aimed at supporting the current government, to discuss the activities of A.Lukashenka and state bodies – and to report about it in the public space. Thus, the leadership of the Bar actively interferes in the lives of lawyers outside the exercise of their professional duties and violates their freedom of opinion.

The leadership of the Belarusian Bar cooperates with the state bodies not only in holding joint events, but also in other activities with obvious political overtones.

83 https://t.me/brka_news/2360

84 https://t.me/brka_news/3043

85 https://t.me/brka_news/1782

86 https://t.me/brka_news/2570

Chairman of the BRBA Aleksei Shvakov was included⁸⁷ in the Commission to consider appeals of citizens of the Republic of Belarus abroad on the issues of their offences.⁸⁸ Later, the BRBA Telegram-channel reposted a message published in one of the state media outlets under the title “Will the lawyers defend the returned fugitives?”.⁸⁹ The repetition of the state rhetoric (“fugitives”) raises doubts that A.Shvakov as a member of the commission will in any way protect the rights of emigrated Belarusians. This circumstance once again indicates the lack of independence of the Bar.

Thus, instead of fulfilling their tasks of defending the independence of the legal profession, protecting the rights of lawyers and ensuring the availability of legal assistance, the bar associations of Belarus have become a repressive tool in the hands of the state and suppress all possible manifestations of dissent among lawyers. This contradicts the role of professional bar associations recognised by the UN Basic Principles on the Role of Lawyers.⁹⁰

Against the background of the crisis of the Belarusian Bar and the inability and unwillingness of professional associations to fulfil their functions, some lawyers who have been disbarred and emigrated from Belarus, but continue to maintain ties within the legal community, are attempting to organise themselves into professional associations outside the jurisdiction of Belarus. In April 2023, some of these lawyers announced the creation of the Belarusian Association of Human Rights Lawyers, which has the following goals: “representation in front of foreign colleagues, joint discussion of common problems and search for their solutions, assistance to colleagues in Belarus, building up professional competences and maintaining high standards of the profession, which in the future may become the basis for democratic reforms of the legal profession in Belarus”.⁹¹ On 20 June 2023, the Parliamentary Assembly of the Council of Europe adopted a resolution calling for the recognition of the Belarusian Association of Human Rights Lawyers as the «organisation entrusted with the promotion and protection of the human

87 https://t.me/brka_news/1415

88 As officially reported, this commission was created for citizens of Belarus, who have committed “administrative offences or crimes related to significant social and political events in the Republic of Belarus” and are abroad from January 1, 2020 to February 8, 2023. Such citizens are invited to report about the alleged unlawful acts, to declare their remorse and willingness to compensate for the damage. At the same time, an appeal to the Commission does not guarantee the absence of further criminal or administrative prosecution by the state. The Commission is made up of state officials, state propagandists, and representatives of so-called GONGOs («Government-organized non-governmental organizations»).

89 https://t.me/brka_news/1573

90 Basic Principles on the Role of Lawyers, preamble, paragraphs 24-25.

91 https://t.me/by_HRL/6

rights of lawyers deprived of the right to exercise their profession in Belarus, and with improving provision of legal assistance».⁹²

⁹² <https://pace.coe.int/en/files/31822/compendium>

4. LACK OF ACCESS TO LEGAL AID DUE TO THE INSUFFICIENT NUMBER OF LAWYERS IN BELARUS



Basic Principles on the Role of Lawyers:

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

According to the Law “On the Bar and Practice of Law in the Republic of Belarus”, “the state guarantees lawyers the opportunity to practise law and facilitates the creation of the necessary conditions for this, ensures the independence of the Bar and the accessibility of legal assistance”.⁹³ Ensuring the availability of legal assistance is also mentioned among the functions of the territorial bar associations and the Belarusian Republican Bar Association.⁹⁴ However, recent trends in the activities of state bodies and the leadership of the Bar are not conducive to the fulfilment of this task.

As a result of a long history of intimidation, disbarment for the lawful exercise of professional functions, arbitrary detention, and fundamental changes to the legislation on the Bar, the quantitative and qualitative composition of bar associations has changed significantly. In addition to lawyers disbarred as a result of disciplinary procedures, a significant number of lawyers have left the Bar due to their inability to continue practising in a manner acceptable to them.⁹⁵

⁹³ Law «On the Bar and Practice of Law in the Republic of Belarus», article 37, paragraph 1.

⁹⁴ Law «On the Bar and Practice of Law in the Republic of Belarus», article 42; article 46, paragraph 2.

⁹⁵ The 2022 Report, section 5.

In 2022-2023, the downward trend in the number of lawyers continued. As of July 2022, 1,780 people had the status of a lawyer. In September 2023, there were 1,616 lawyers. Based on the data on the population of Belarus as at 1 January 2023 - 9,200,617 people, there is only 1 lawyer for every 5,693 people.⁹⁶

After the amendments to the Law «On the Bar and Practice of Law in the Republic of Belarus» adopted in 2021,⁹⁷ members of the Bar are not allowed to practise individually or to start their attorneys bureaus. They can practise law only as members of legal advice offices set up by the Bar. The absolute majority of such offices are formed according to territorial principles and are designed to serve a particular administrative-territorial district (there are 118 districts in Belarus). According to a survey conducted in March 2023, many of these offices, located in districts with a population from 8,000 to 38,000 people, either had no lawyers at all or only one lawyer.⁹⁸ As at December 2023, the situation has not fundamentally changed: 8 out of the 118 districts of Belarus have no lawyers at all, and 38 districts have only one lawyer.⁹⁹ This situation means that residents of certain districts are unable to seek legal assistance in their own neighbourhoods and are forced to seek assistance from lawyers in other districts.

The BRBA itself recognises the problem of the shortage of lawyers. Summarising the results for 2022, Aleksei Shvakov noted that “last year not as many university graduates went to work as lawyers as it would

96 https://www.defendersbelarus.org/jurkonsultacyji_shredingera_chno_proishodit

97 The 2022 Report, section 5.1; Joint report 2021, Chapter V; Joint report 2022, Chapter V.

98 <https://www.defendersbelarus.org/kity-na-kotorych-derjitsa-rajonnaja-advokatura>

99 Brest Regional Bar Association: Liachavičy district (22,388 persons) - one lawyer in the legal advice office.

Viciebsk Regional Bar Association: no lawyers in the legal advice offices of Dubroŭna district (13,386) and Šarkaŭščyna district (13,362); one lawyer in the legal advice offices of Šumilina (16,418), Biešankovičy (13,653), Glybokaje (33,627), Haradok (20,769), Dokšycy (21,003), Lepel' (30,737), Liozna (15,022), Pastavy (32,402), Rasony (8,523), Sianno (19,035), Talačyn (22,218), Ušačy (11,732) districts.

Homiel' Regional Bar Association: no lawyers in the legal advice office of Naroŭlia district (10,494); one lawyer in the legal advice offices of Brahın (11,894), Jeĺsk (14,290), Karma (13,325), Leĺčycy (23,951), Loeŭ (11,005), Akciabrski (13,208) districts.

Hrodna Regional Bar Association: one lawyer in the legal advice offices of Zeĺva (10,494) and Kareličy (18,376) districts.

Minsk Regional Bar Association: no lawyers in the legal advice offices of Liubań (28,887) and Uzda (23,820) districts; one lawyer in the legal advice offices of Kapyĺ (26,785), Miadziel (24,709), Niasviž (38,889), and Staryja Darohi (19,481) districts.

Mahilioŭ Regional Bar Association: no lawyers in the legal advice offices of Bialyničy (17,749), Slaŭharad (12,393) and Čavusy (16,956) districts; one lawyer in the legal advice offices of Glusk (12,408), Horki (38,180), Drybin (9,670), Kiraŭsk (17,235), Klimavičy (22,433), Kličaŭ (13,890), Krasnapolle (8,942), Kryčaŭ (28,150), Kruhlaje (12,848), Mscislaŭ (18,671), Chocimsk (9,877) and Čerykaŭ (12,566) districts.

be desirable”.¹⁰⁰ Later, A.Shvakov emphasised the need for “personnel rejuvenation” and active participation in commissions for the distribution of law faculties graduates.¹⁰¹ Representatives of the Ministry of Justice also expressed the need to “continue personnel work in the Bar”¹⁰² and “attract young and promising specialists to the Bar”.¹⁰³

Judging by the news from the BRBA Telegram-channel, all the bar associations have joined the search for new staff: the channel has repeatedly reported on “career guidance meetings” of lawyers with law students from various universities of the country.

However, due to the declining prestige of the legal profession and the impossibility of practising this profession in a free environment, the addition of new lawyers to the Bar is mainly made up of former employees of law enforcement agencies and courts. They are admitted to the bar on the referral of these state bodies with a reduced internship period (up to 3 months instead of 3-6 months for interns with at least three years work experience, and 6-12 months for interns without work experience) and without having to pass a written qualification exam.¹⁰⁴

*As a result of the attestation by the Ministry of Justice in December 2022, the licenses of all three then-active lawyers of the Stoubcy District Legal Advice Office were terminated. As of May 2023, there were no active lawyers in the legal advice office, and lawyers from other territorial units with no more than three months of experience received cases from citizens. By September 2023, the office had two lawyers, one of whom had previously held the position of First Deputy Head of the Division of Internal Affairs - Head of the Criminal Police of Stoubcy District Division of Internal Affairs of Minsk region and received his lawyer’s license in July 2023.*¹⁰⁵

Among the newly admitted lawyers there are those who previously, while holding positions in state bodies, were involved in politically motivated trials.

100 <https://brka.by/news/rasshirenoe-zasedanie-soveta-brka-sostoyalos-31-yanvarya-v-minske/>

101 https://t.me/brka_news/1877

102 https://t.me/brka_news/3613

103 https://minjust.gov.by/press/news/advokatura_i_litsenzirovanie_yuridicheskoy_deyatelnosti/minskoy_oblastnoy_kollegiey_advokatov_podvedeny_itogi_raboty_za_1_e_polugodie_2023_goda/

104 Law “On the Bar and Practice of Law in the Republic of Belarus”, clause 1 of article 9, as amended on 27 May 2021.

105 <https://www.defendersbelarus.org/news/tpost/1x9re23r7l-sredi-nedavno-prinyatih-v-advokaturu-est>

In October 2022, Yulia Hustyr,¹⁰⁶ formerly a judge of the Central District Court of Minsk, received a license to practice law. As a judge, Y.Hustyr tried participants of the rally against integration with Russia in December 2019, from 2020 appointed a total of 607 days of administrative detention and almost 39 thousand rubles in fines, brought people to criminal responsibility and imprisonment for a beer glass thrown in the direction of a police bus and for a detail ripped from the water cannon.¹⁰⁷ On 17 December 2020, Y.Hustyr was placed on the European Union's sanctions list for ruling in politically motivated cases.¹⁰⁸

In October 2023, the license to practice law was granted to Siarhei Kukso, who was an investigator in politically motivated criminal cases in the period from August 2020, including the case against Sviatlana Tsikhanouskaya, Maksim Znak and Maria Kalesnikava.¹⁰⁹

Thus, the state's repressive policy towards lawyers and the legal profession, the disbarment of lawyers who uphold the rule of law and human rights, and the creation of an atmosphere of fear and inaction in the legal community of Belarus, have led to the fact that people living in the country are deprived of proper access to effective legal assistance. This problem is particularly acute for the group of people who are persecuted on political grounds. The consistent practice of persecution of lawyers and their disbarment has made it virtually impossible to find a lawyer for representing a client in politically motivated case. This situation is incompatible with the state's obligations under articles 2 and 14 of the Covenant regarding access to justice and effective remedies, which cannot be realised without meaningful access to a lawyer. In the case of persons who are subjected to criminal and administrative prosecution, this means deprivation of their right to defence.

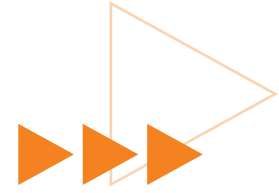
106 <https://www.advokat.by/advokat/reestr/gustyr-yuliya-cheslavovna/>

107 <https://nashaniva.com/301423>

108 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:4261:FULL&from=EN>

109 <https://www.defendersbelarus.org/news/tpost/1x9re23r7l-sredi-nedavno-prinyatih-v-advokaturu-est>

CONCLUSION



- 1** The practice of obstructing and denying lawyers access to their imprisoned clients continue in Belarus, and this practice has been formed mainly in relation to political prisoners. Some of them have been incommunicado for almost a year, and lawyers not only cannot meet with them, but also conduct any correspondence and know nothing about their fate.
- 2** Interference with the confidentiality of lawyer-client relations has increased through the practice of personal searches of lawyers before meeting with prisoners, searches at the lawyers' place of residence and offices and the seizure of documents and equipment containing lawyer-client privilege.
- 3** The number of arbitrary detentions of lawyers has increased, arrests began to be used as a reason and a means of depriving lawyers of their professional status and removing them from conducting defence, as well as a way to intimidate the other lawyers.
- 4** At least six lawyers were sentenced to long terms of imprisonment in connection with their professional activities and/or in connection with the exercise of their fundamental rights.
- 5** The disciplinary procedure of the bar associations and the extraordinary certification procedure continue to be misused to terminate the licenses of lawyers. As a result, about 130 lawyers were deprived of their professional status by the beginning of 2024.
- 6** Bar associations in Belarus not only do not fulfill their role in protecting the rights of lawyers and ensuring the provision of legal assistance, but they themselves have turned into a repressive instrument to deprive lawyers of their status, interfere in the activities of lawyers and in their expression of their beliefs, and broadcast state propaganda narratives.
- 7** As a result of long-term practices of intimidation, disbarment and arbitrary detention, as well as fundamental changes in legislation on the legal profession, the number of lawyers in Belarus continues to decrease: as at September 2023, there were 1,616 lawyers. Both the

lack of number of lawyers and their inability to effectively provide legal assistance due to various types of obstruction of legal practice lead to the conclusion that in Belarus the right to defence, access to a lawyer, to justice and to effective remedies are not fully ensured, and therefore, the state does not fulfill its obligations under articles 2 and 14 of the International Covenant on Civil and Political Rights.

RECOMMENDATIONS¹¹⁰



- 1** Release all imprisoned lawyers immediately.
- 2** Take all necessary measures to ensure the physical safety and protection of lawyers in Belarus, ensuring their professional rights and guarantees.
- 3** Stop all acts of harassment of lawyers, including their personal searches, searches in their office and residential premises, administrative and criminal prosecution, extraordinary certifications, termination of their licenses.
- 4** Ensure that, in all circumstances, lawyers in Belarus can exercise their legitimate professional activities and enjoy their fundamental human rights without fear of reprisal or being subject to harassment or other interference with their work.
- 5** Restore the status of lawyers who have been deprived of the right to practice their profession since 2020.
- 6** Take adequate measures to protect the integrity and independence of lawyers, including the adoption of legislation on the legal profession consistent with international standards and the functioning of an independent, self-governing and self-regulatory professional association of lawyers.

¹¹⁰ A detailed action program of restoration of the institute of advocacy and the right to defence in Belarus is set out in the 2022 Report; at the moment it remains relevant.

