

# BELARUS

## Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk

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MAY 2021





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American Bar Association Center for Human Rights



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The 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.

## ACKNOWLEDGMENTS

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

Front Cover from left to right: Liudmila Kazak, Konstantin Mikheil, Maxim Konon and Mikhail Kirilyuk

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1050 Connecticut Ave. N.W., Suite 450, Washington, D.C. 20036

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# EXECUTIVE SUMMARY<sup>1</sup>

Since protests erupted after Belarus's widely condemned 2020 presidential election, the Belarusian government has used several punitive tools against lawyers who express views critical of the government or who represent protestors or other opposition figures. The government's actions against lawyers over the past several months have taken the form of criminal proceedings, administrative detention and penalties, disciplinary proceedings, and, in several cases, disbarment. The disbarments examined in this report represent part of a wider and ongoing pattern of repression of the legal profession in Belarus that has included various forms of intimidation, harassment, and government control.

On February 19, 2021, Belarusian attorneys Liudmila Kazak, Konstantin Mikhel, Maxim Konon and Mikhail Kirilyuk were disbarred by the Belarus Ministry of Justice (MOJ)'s Qualification Commission, which is not an independent body. In its decision, the Commission found that each had "discredited" the legal profession and engaged in conduct "incompatible with the title of lawyer." The attorneys have provided legal representation in politically sensitive cases, including in cases related to detained protestors and political opposition figures, and made public statements or allegedly participated in protests regarding violations of the rule of law in Belarus. Their disbarments were based on arbitrary grounds, served to intimidate, hinder, and harass the lawyers and interfere with their work, and violated their fundamental rights.

In addition to Belarusian authorities' expansive use of administrative sanctions and disciplinary proceedings against lawyers, proposed legislative amendments also suggest a tightening of the government's grip on the legal profession in Belarus. For example, the government is adopting draft amendments to the Advocacy Law that would reportedly allow the executive branch more control over the selection of attorneys and the appointment of bar association leaders and, along with other amendments, further undermine the independence of lawyers and the legal profession.

Pursuant to international standards, lawyers are entitled to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference. In addition, lawyers have the same fundamental freedoms and basic rights as all other individuals, including the rights to freedom of expression, freedom of peaceful assembly and freedom from discrimination. The government's severe sanctions against lawyers for the legitimate exercise of their rights and fulfillment of professional obligations and the proposed amendments to the Advocacy Law also violate fundamental principles safeguarding the independence of the legal profession and its role in defending human rights and the rule of law in a democratic society.

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<sup>1</sup> This report was prepared by external *pro-bono* counsel, consultants, and staff attorneys of the American Bar Association Center for Human Rights and reflects their views. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore should not be construed as representing the policy of the American Bar Association as a whole. Further, nothing in this report should be considered as legal advice in a specific case.

# I. BACKGROUND

The August 9, 2020 presidential election in Belarus was marred by significant irregularities and was widely condemned as being neither free nor fair.<sup>2</sup> In the wake of widespread and unprecedented protests against the validity of the election results, there were sweeping arrests and numerous, credible reports that, in response to these protests, law enforcement agencies were employing unjustified violence and torture against civilians.<sup>3</sup> Belarusian lawyers who have attempted to visit those detained or who have represented alleged protesters or political opposition members have faced intimidation, administrative and criminal charges, and disbarment.<sup>4</sup> Lawyers who have allegedly participated in peaceful protests or made public statements about human rights abuses and violations of the rule of law have faced similar repercussions.<sup>5</sup>

Soon after the August 2020 elections, lawyers Maksim Znak, Ilia Salei, and Liliya Vlasova faced criminal charges related to their professional activities on behalf of their clients and in pursuit of the preservation of the rule of law in Belarus.<sup>6</sup>

All three lawyers had either represented Belarusian opposition leaders, protesters, or advocates or actually or allegedly engaged in political activism in the wake of the presidential election.<sup>7</sup> Mr. Znak and Ms. Vlasova also are both members of the Presidium of the Coordination Council, a body created by opposition candidate Sviatlana Tsikhanouskaya. Amnesty International reported in September 2020 that Ms. Vlasova - who was arrested on tax evasion charges in August 2020 - appears to have been targeted for her work with the Coordination Council.<sup>8</sup>

In October 2020, more attorneys faced retaliation - this time in the form of disbarment - for performing professional functions or exercising their rights. For example, attorney Alexander Pylchenko was disbarred for speaking to the press about human rights violations. Mr. Pylchenko had spoken publicly about Belarus's obligations to prevent and investigate allegations of torture in detention and represented several opposition figures, including Maria Kolesnikova and Viktor Babariko.

- 2 See Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus, No. 358/2020, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE) (Nov. 5, 2020), <https://www.osce.org/files/f/documents/2/b/469539.pdf>; Amnesty International Report 2020/21: The State of the World's Human Rights, AMNESTY INTERNATIONAL (2021), p. 83, [https://www.amnesty.org/sites/default/files/202021-air-english-2021-04-01\\_%20embargo\\_zz.pdf](https://www.amnesty.org/sites/default/files/202021-air-english-2021-04-01_%20embargo_zz.pdf); World Report 2021: Belarus, HUMAN RIGHTS WATCH (2021), <https://www.hrw.org/world-report/2021/country-chapters/belarus>.
- 3 Tanya Lokshina, *People are Seeking Change in Belarus. Instead, They're Being Mercilessly Beaten and Detained*, HUMAN RIGHTS WATCH (Aug. 14, 2020), <https://www.hrw.org/news/2020/08/14/people-are-seeking-change-belarus-instead-theyre-being-mercilessly-beaten-and>; *Belarus election: 'Widespread torture' inflicted on jailed protesters*, BBC (August 14, 2020), <https://www.bbc.com/news/world-europe-53773534>; Tanya Lokshina, *A Carpet of Bodies: One Woman's Ordeal in Detention in Belarus*, HUMAN RIGHTS WATCH (Aug. 18, 2020), <https://www.hrw.org/news/2020/08/18/carpet-bodies-one-womans-ordeal-detention-belarus>; Ivan Nechepurenko and Anton Troianovski, *Mass Beatings and Detentions in Belarus as President Clings to Power*, NEW YORK TIMES (Aug. 13, 2020), <https://www.nytimes.com/2020/08/13/world/europe/beatings-detentions-belarus-lukashenko.html>.
- 4 Letter from ABA President Patricia Lee Refo to Honorable Alyksandr Ryhoravich Lukashenka [hereinafter ABA President Letter to President Lukashenko] (Oct. 22, 2020), [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/justice-defenders/detention-of-lawyers-belarus.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/detention-of-lawyers-belarus.pdf).
- 5 See *Belarus: Preliminary Report on the Disbarment of Alexander Pylchenko*, ABA CENTER FOR HUMAN RIGHTS [hereinafter Pylchenko Report] (Dec. 21, 2020), [https://www.americanbar.org/groups/human\\_rights/reports/belarus-disbarment/](https://www.americanbar.org/groups/human_rights/reports/belarus-disbarment/); see also *Persecution of lawyers in Belarus after the elections in 2020* [hereinafter Defenders.by article on persecution of lawyers in Belarus], DEFENDERS.BY, [https://defenders.by/persecutionoflawyers\\_2020](https://defenders.by/persecutionoflawyers_2020).
- 6 ABA President Letter to President Lukashenko, *supra* note 4.
- 7 *Id.*
- 8 Amnesty Int'l Public Statement, *Belarus: "They are Stealing the Best of Us". Arbitrary Arrests and Forced Expulsion of Leading Opposition Activists* (Sept. 10, 2020), <https://www.amnesty.org/download/Documents/EUR4930402020ENGLISH.pdf>. (The Amnesty report uses a different spelling of her name: Liliya Ulasava.)

The Qualification Commission of the MOJ, which is not an independent body and of which only eight of its 17 members are lawyers,<sup>9</sup> based its decision to disbar Mr. Pylchenko upon its determination that his public remarks regarding reported human rights abuses and threats to the rule of law in Belarus were a discredit to the legal profession.<sup>10</sup> Another attorney, Yulia Levanchuk, was disbarred the same month following her representation of a flower shop owner who was the victim of severe police brutality after handing out flowers to protesters.<sup>11</sup>

The wave of disbarments and other disciplinary actions taken against Belarusian lawyers has continued in recent months. On February 19, 2021, four more lawyers - Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk - were disbarred for allegedly discrediting the legal profession.<sup>12</sup> Prior to being subject to disciplinary proceedings before the Qualification Commission, Ms. Kazak, Mr. Mikhel, and Mr. Konon had been convicted of administrative offenses. According to the MOJ, their commission of administrative offenses provided the grounds for disbarment.<sup>13</sup>

The facts suggest that the disbarments were politically motivated. Ms. Kazak and Mr. Konon have provided legal representation in politically sensitive cases. Mr. Kirilyuk, like similarly punished lawyers Mr. Znak and Ms. Vlasova, is a member of

the opposition's Coordination Council. Mr. Mikhel is the managing lawyer of a law office he shares with Ms. Vlasova. It appears that all four lawyers were arbitrarily disbarred for the legitimate exercise of their professional obligations to provide zealous representation to their clients and defend the rule of law as well as their actual or alleged exercise of their individual rights to freedom of expression and freedom of assembly. This report will examine the disbarments of these four lawyers as emblematic cases involving apparently politically motivated disbarments in Belarus. It is important to note that since the February disbarments, even more lawyers have been disbarred.

On March 3, 2021, six more lawyers had their licenses either suspended or revoked. These actions ensued after the MOJ Qualification Commission carried out an "extraordinary certification" examination of seven lawyers on the basis of their alleged "improper fulfillment of their professional duties."<sup>14</sup> Three of the seven (Daria Gorokhovich, Svetlana Konnova, and Elena Maisenya) had their licenses suspended for six months, subject to review, and three others (Andrei Bartashevich, Nikolai Yotka, and Elena Shinkarevich) were disbarred. Only Yulia Karachun passed the extraordinary examination. One of the lawyers reportedly stated that several dozen additional lawyers had been summoned to the

9 *Concerns about disbarment Liudmila Kazak* [hereinafter *Lawyers for Lawyers* article], LAWYERS FOR LAWYERS (Apr. 14, 2021), [https://lawyersforlawyers.org/en/concerns-about-disbarment-liudmila-kazak/#\\_ftn1](https://lawyersforlawyers.org/en/concerns-about-disbarment-liudmila-kazak/#_ftn1).

10 Pylchenko Report, *supra* note 5.

11 *Еще двух адвокатов вызвали на внеочередную аттестацию* [Two more lawyers were summoned for an extraordinary certification], TUT.BY (Apr. 19, 2021), <https://news.tut.by/society/727128.html>; «Якобы разобрал водомет и дачу командира ОМОНа поджег». Адвокат и родные — о жестком задержании мужчины в Минске ["Allegedly, he dismantled the water cannon and set the OMON commander's dacha on fire." A lawyer and family on the harsh arrest of a man in Minsk], TUT.BY (Oct. 13, 2020), <https://news.tut.by/society/703876.html>.

12 The Belarusian Ministry of Justice issued a press release detailing their rationale for concluding that these attorneys had "discredited the legal profession" and revoking their licenses. See *Об итогах заседания Квалификационной комиссии по вопросам адвокатской деятельности в Республике Беларусь* [On the results of the meeting of the Qualification Commission on the issues of advocacy in the Republic of Belarus], MINISTRY OF JUSTICE OF THE REPUBLIC OF BELARUS (Feb. 19, 2021), [https://minjust.gov.by/press/news/ob\\_itogakh\\_zasedaniya\\_kvalifikatsionnoy\\_komissii\\_po\\_voprosam\\_advokatskoy\\_deyatelnosti\\_v\\_respublike](https://minjust.gov.by/press/news/ob_itogakh_zasedaniya_kvalifikatsionnoy_komissii_po_voprosam_advokatskoy_deyatelnosti_v_respublike). Their licenses were officially revoked on Feb. 24, 2021. Максим Конон: «Действие лицензии прекращено на три года» [Maxim Konon: "The license was terminated for three years"], НАРОДНАЯ ВОЛЯ [People's Will] (Feb. 26, 2021), <https://www.nv-online.info/2021/02/26/maksim-konon-dejstvie-licenzii-prekrashheno-na-tri-goda.html>.

13 *Минюст объяснил, за что четырех адвокатов лишили лицензий* [The Ministry of Justice explained why four lawyers were deprived of their licenses] [hereinafter TUT.BY article on deprivation of four lawyers' licenses], TUT.BY (Feb. 19, 2021), <https://news.tut.by/economics/719658.html>.

14 *Квалификационной комиссией по вопросам адвокатской деятельности в Республике Беларусь проведена внеочередная аттестация адвокатов* [The Qualification Commission on the Issues of Advocate Activity in the Republic of Belarus carried out an extraordinary certification of advocates] (Telegram Post), ПРЕСС-СЛУЖБА МИНЮСТА БЕЛАРУСИ [Press Service of the Ministry of Justice of Belarus] (Mar. 3, 2021), [https://t.me/minjust\\_by/956](https://t.me/minjust_by/956); *Три беларусских адвоката не прошли аттестацию Минюста* [Three Belarusian lawyers did not pass the certification of the Ministry of Justice], REFORM. BY (Mar. 3, 2021), <https://reform.by/205985-tri-belarusskih-advokata-ne-proshli-attestaciju-minjusta>.

MOJ's Qualification Commission.<sup>15</sup>

The MOJ's Qualification Commission met again on March 24, 2021 and disqualified Sergei Zikratsky after yet another "certification examination."<sup>16</sup> Mr. Zikratsky had defended many Belarusian journalists and media organizations who were involved in politically motivated cases, including TUT.BY, an online news portal. Mr. Zikratsky also represented Mr. Kirilyuk in his disbarment proceedings.<sup>17</sup> Several other lawyers did not pass "recertification"<sup>18</sup>, including Olga Baranchik and Boris Leskovsky, who were the head of and a member of the disciplinary committee of the Minsk regional bar, respectively. This disciplinary committee had not disciplined Mr. Kirilyuk and Mr. Mikhel even when the MOJ requested it.<sup>19</sup>

On April 21, 2021, the Qualification Commission conducted yet another "extraordinary certification" exam.<sup>20</sup> Two more lawyers, Anna Vovchinskaya and Svetlana Hololovich, had their licenses revoked.<sup>21</sup>

Even the nominally independent Minsk City Bar Association has turned against members of the profession who have worked in support of opposition figures. Disciplinary proceedings were initiated against Dmitry Laevsky, opposition figure Victor Babariko's attorney, on March 25, 2021 for expressing his opinion on his Facebook page about the proposed amendments to the Advocacy Law.<sup>22</sup> On April 8, 2021, the attorney received an official reprimand from the Minsk City Bar,<sup>23</sup> although he has not been disbarred.

At least 17 attorneys have been disbarred in 8 months, all since the protests that ensued after the August 2020 presidential election.<sup>24</sup> Most, if not all, were lawyers who represented opposition leaders, protestors, or who themselves were members of the opposition movement. While this report does not address the details of each individual case of disbarment, the circumstances suggest these, too, may have been politically motivated.

15 Минюст Беларуси лишил троих адвокатов лицензий из-за "недостаточной квалификации". Они работали с политзаключенными [The Ministry of Justice of Belarus has deprived three lawyers of their licenses due to "insufficient qualifications". They worked with political prisoners] [hereinafter Current Time article], НАСТОЯЩЕЕ ВРЕМЯ [Current Time] (Mar. 4, 2020), <https://www.currenttime.tv/a/belarus-advokaty/31133110.html>.

16 Адвокат Зикрацкий не прошел переаттестацию и будет лишен лицензии [Lawyer Zikratsky did not pass recertification and will be deprived of his license], TUT.BY (Mar. 24, 2021), <https://news.tut.by/economics/723694.html>.

17 Некорректно выражался о представителях госорганов. Адвоката Михаила Кирилюка хотят лишить лицензии [He expressed himself incorrectly about representatives of government agencies. They want to revoke Mikhail Kirilyuk's license] [hereinafter TUT.BY article on why authorities wanted to revoke Mikhail Kirilyuk's license], TUT.BY (Feb. 15, 2021), <https://news.tut.by/economics/718917.html>.

18 Адвокат Зикрацкий не прошел переаттестацию и будет лишен лицензии [Lawyer Zikratsky did not pass recertification and will be deprived of his license], TUT.BY (Mar. 24, 2021), <https://news.tut.by/economics/723694.html>; «Дискриминация адвокатов». Михаил Кирилюк Обжалует лишение его лицензии ["Discrimination against lawyers". Mikhail Kirilyuk will appeal against the revocation of his license] [hereinafter TUT.BY article on Kirilyuk appealing the revocation of his license], TUT.BY (Apr. 12, 2021), <https://news.tut.by/economics/726122.html>.

19 Адвокаты Зикрацкий, Лесковский и Баранчик не прошли переаттестацию [Lawyers Zikratsky, Leskovsky and Baranchik did not pass recertification], BELSAT (Mar. 24, 2021), <https://belsat.eu/ru/news/24-03-2021-advokaty-zikratskij-leskovskij-i-baranchik-ne-proshli-pereattestatsiyu/>.

20 Еще двух адвокатов вызвали на внеочередную аттестацию [Two more lawyers were summoned for an extraordinary certification], TUT.BY (Apr. 19, 2021), <https://news.tut.by/society/727128.html>; Минюст лишил лицензии еще двух белорусских адвокатов. За что? [The Ministry of Justice revoked two more Belarusian lawyers' licenses. For what?], ВЛЗКО. ВУ (Apr. 21, 2021), <https://blizko.by/notes/minyust-lishil-litsenzii-esche-dvuh-belorusskih-advokatov-za-chno>.

21 *Id.*

22 Информация по вопросу возбуждения в отношении адвоката коллегии лаевского д.в. дисциплинарного производства [Information on the issue of the initiation of disciplinary proceedings against member of the bar association D.V. Laevsky], Минская Городская Коллегия Адвокатов [Minsk City Bar Association] (Mar. 25, 2021), <http://advokat.by/news/informatsiya-po-voprosu-vozbuzhdeniya-v-otnoshenii-advokata-kollegii-laevskogo-d-v-distiplinarnogo-/>; Защитник Виктора Бабарико Дмитрий Лаевский вызван на "комиссию" [Victor Babariko's attorney Dmitry Laevsky summoned to the "commission"], БЕЛОРУССКИЙ ПАРТИЗАН [Belarusian Partisan] (Apr. 8, 2021), <https://belaruspartisan.by/life/531211/>.

23 Дисциплинарная комиссия объявила выговор адвокату Дмитрию Лаевскому, который защищает Виктора Бабарико [The Disciplinary Commission reprimanded lawyer Dmitry Lawvsky, who is defending Viktor Babariko], Медиазона Беларусь [Mediazona Belarus] (Apr. 8, 2021), <https://mediazona.by/news/2021/04/08/laevskihttps://mediazona.by/news/2021/04/08/laevski>.

24 Defenders.by article on persecution of lawyers in Belarus, *supra* note 5.



The government has also introduced draft amendments to the current Advocacy Law, which sets forth the legal framework governing the legal profession. If enacted, the amendments will severely restrict the rights and independence of Belarusian lawyers. Among the many proposed amendments to the Advocacy Law is a provision that would prohibit lawyers who have had their licenses terminated for “discrediting the legal profession” from recertifying for three years from the date of the termination of their licenses.<sup>25</sup> The offense of “discrediting the legal profession” is an ill-defined offense that Belarusian authorities have wielded against lawyers who speak out against government abuses or who fulfill their professional

obligation of defending zealously their clients – including clients sympathetic to the Belarusian opposition.

Additional proposed amendments would, among other measures: require candidates for legal internships, the completion of which is necessary to become an attorney in Belarus, to be approved by the MOJ; allow the MOJ to propose its candidates for the local bars’ executive committees, and, if not approved locally, the MOJ’s candidates would nonetheless automatically be appointed; and dismantle the local bars’ disciplinary committees and give their functions to the MOJ-appointed executive committees.<sup>26</sup>

<sup>25</sup> Mikhail Kirilyuk, «Это очень опасно для присвоивших себе власть». Почему в Беларуси взяли за зачистку адвокатов [“It is very dangerous for those who have arrogated power to themselves.” Why Belarusian authorities have started a clearing operation against lawyers] [hereinafter Kirilyuk article on why Belarusian authorities have been persecuting lawyers], TUT.BY (Mar. 11, 2021), <https://news.tut.by/economics/722068.html>.

<sup>26</sup> *Id.*

## II. THE CASES OF LIUDMILA KAZAK, KONSTANTIN MIKHEL, MAXIM KONON, AND MIKHAIL KIRILYUK

This report focuses on the cases of the four attorneys disbarred in February 2021 by the MOJ's Qualification Commission. Their cases are emblematic of the use of disbarment as a tool to punish lawyers for criticizing the government, defending the rule of law and human rights, or representing defendants involved in the Belarusian opposition.

### DISBARMENT OF LIUDMILA KAZAK



Liudmila Kazak is a well-known lawyer who has led the defense of public activists, political prisoners, human rights defenders, and journalists throughout her 22 years of practice. She served as counsel

to opposition activist Maria Kolesnikova whose other attorney, Maksim Znak, was arrested and placed in detention on September 9, 2020.<sup>27</sup>

On September 24, 2020, the day before a hearing in Ms. Kolesnikova's case, Ms. Kazak was taken from the street in Minsk by three masked officers who allegedly neither identified themselves nor explained the reasons for her arrest.<sup>28</sup> They forced her into an unmarked car and transported her to the District Department of Internal Affairs, a local law enforcement department. Her phone and other belongings, including a privileged case file on Ms. Kolesnikova's case, were confiscated.<sup>29</sup> She was then taken to a temporary detention center where she spent the night.

On September 25, 2020, Ms. Kazak appeared before the Oktyabrsky District Court. The state authorities alleged that Ms. Kazak had been detained on suspicion of participating in an unauthorized "mass event" on August 30, 2020 as well as disobedience to a police officer, both violations of Belarus's Code of Administrative Offenses.<sup>30</sup> However, Ms. Kazak was only tried on the latter charge.<sup>31</sup> The court held Ms. Kazak liable for disobeying a police officer based on testimony given by anonymous masked witnesses who appeared by video. The men reportedly claimed to be two of the officers who conducted the arrest.<sup>32</sup> But their real names were not disclosed to Ms. Kazak or her counsel. On November 10, 2020, the Minsk City Court upheld the decision.

As a result of the arrest and detention, Ms. Kazak was unable to represent Ms. Kolesnikova at a hearing that took place on September 25, 2020, the same day as Ms. Kazak's trial.<sup>33</sup> Ms. Kazak believes that the reasons behind her arrest and detention were to prevent her from providing legal assistance to her client and to obtain privileged and confidential information about her client.<sup>34</sup>

On February 11, 2021, Ms. Kazak received notification of a pending disciplinary proceeding before the MOJ's Qualification Commission in connection with the administrative offense for which she was convicted in September 2020. The notification informed her that the Commission

27 Letter of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders to President Lukashenko [hereinafter Special Rapporteurs' Letter] (Nov. 6, 2020), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25674>.

28 *Id.*

29 It is unclear whether the seizure of Ms. Kazak's belongings took place pursuant to a judicial warrant. *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 Special Rapporteurs' Letter, *supra* note 27.

34 *Id.*

would determine whether she had committed actions incompatible with the title of a lawyer and which discredited the legal profession by committing an administrative offense and whether to terminate her license accordingly. On February 19, 2021, the Commission disbarred Ms. Kazak. Ms. Kazak's lawyer was not allowed to attend the hearing.

Ms. Kazak appealed the decision and had her first hearing on the appeal on April 8, 2021 at the Moskovsky District Court in Minsk, and at a hearing on April 15, 2021, the court upheld Ms. Kazak's disbarment.<sup>35</sup>

### DISBARMENT OF KONSTANTIN MIKHEL



Konstantin Mikhel has been a practicing attorney in Belarus since 1995. He is a well-known and highly respected corporate lawyer and serves as a member of several business development advisory councils under various government agencies.<sup>36</sup> Mr.

Mikhel is listed as the managing partner and Chairman of the Partnership at Vlasova Mikhel & Partners law office, the law firm founded by Liliya Vlasova. As noted above, Ms. Vlasova sits on the seven-person Presidium of the Coordination Council, an organ of the opposition movement.<sup>37</sup>

In November 2020, Mr. Mikhel was convicted under article 23.34(1) of the Code of Administrative Offenses for taking part in a mass event that did not have the appropriate permission from relevant authorities (in this case, an unauthorized post-

election protest).<sup>38</sup> Mr. Mikhel maintains that he did not participate in the protest as alleged. He served a 14-day sentence upon conviction.<sup>39</sup> On February 19, 2021, the Qualification Commission made a decision to disbar Mr. Mikhel on the basis of this administrative offense.<sup>40</sup> The Commission reasoned that commission of the administrative offense discredited the title of lawyer and the legal profession and is incompatible with the title of lawyer and that he should therefore be prohibited from practicing law.<sup>41</sup>

### DISBARMENT OF MAXIM KONON



Maxim Konon is an attorney at the firm Konon & Partners. Mr. Konon has defended government critics, journalists, and alleged protesters.<sup>42</sup> He has also publicly criticized investigative authorities in Belarus for their alleged inaction on allegations

of police mistreatment of detainees.<sup>43</sup>

In October 2020, the Oktyabrsky District Court of Minsk found Mr. Konon guilty of an administrative offence for allegedly participating in an unauthorized mass event in Braslav.<sup>44</sup> Like Mr. Mikhel, Mr. Konon was charged with participation in a mass event that did not have the required permission in violation of Article 23.34 of the Administrative Offenses Code.<sup>45</sup> Mr. Konon served a 12-day sentence upon his conviction.<sup>46</sup> Mr. Konon allegedly was detained when he was walking to meet his client - journalist Yekaterina Borisevich - who is one of the accused defendants in the high-

35 *Belarus: IBAHRI calls for reinstatement of Lyudmila Kazak after concerning ruling upholds disbarment*, INT'L BAR ASSOC. (Apr. 16, 2021), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=09fa9c9f-1e27-4e55-983c-3f4e112a569f>.

36 Defenders.by article on persecution of lawyers in Belarus, *supra* note 5.

37 Board of the Coordination Council, <https://rada.vision/en/prezidium> (accessed April 17, 2021).

38 TUT.BY article on deprivation of four lawyers' licenses, *supra* note 13.

39 Current Time article, *supra* note 15.

40 TUT.BY article on deprivation of four lawyers' licenses, *supra* note 13.

41 *Id.*

42 Elena Tolkacheva, *Адвоката Максима Конона тоже хотят лишитъ лицензии* [Authorities also want to revoke lawyer Maxim Konon's license] [hereinafter Tolkacheva article on Maxim Konon], TUT.BY (Feb. 12 2021), <https://news.tut.by/economics/718741.html>.

43 *Id.*

44 *Id.*; Defenders.by article on persecution of lawyers in Belarus, *supra* note 5.

45 TUT.BY article on deprivation of four lawyers' licenses, *supra* note 13.

46 Tolkacheva article on Maxim Konon, *supra* note 42.

profile political case “Zero ppm.”<sup>47</sup>

Mr. Konon wrote an explanatory letter to the Minsk City Bar Association stating that he had not participated in the rallies but rather went to Braslav on behalf of a client.<sup>48</sup> Nonetheless, on February 19, 2021, the MOJ’s Qualification Commission disbarred Mr. Konon on the basis of the administrative offense, finding that Mr. Konon “took part in mass events without the appropriate permission of the local executive committee, and thereby committed an administrative offence.”<sup>49</sup> The Commission found that he had discredited the legal profession and the title of lawyer with the commission of acts incompatible with the title of lawyer and terminated his license to practice law.<sup>50</sup>

Mr. Konon told TUT.BY that he believes that he may have been targeted for disbarment due to his work defending individuals critical of the government, including those who participated in the initial post-electoral protests in August 2020 and journalists in high-profile cases.<sup>51</sup> He also believes that he may have been targeted due to his public criticism of the inaction by investigating authorities into allegations of mistreatment of detainees.<sup>52</sup>

## DISBARMENT OF MIKHAIL KIRILYUK



Mikhail Kirilyuk is an attorney who has represented protestors and opposition figures and is a core member of the opposition Coordination Council.<sup>53</sup> In August 2020, Mr. Kirilyuk gave an interview to the press in which

he commented on indicia of political motivation behind the prosecution of one of his clients. In September 2020, Mr. Kirilyuk made a series of Facebook publications regarding the state of the rule of law in Belarus and the potential for the peaceful transfer of power.<sup>54</sup> After alleged threats against his safety and suspicions that he may soon be arrested, Mr. Kirilyuk left the country.<sup>55</sup>

On February 8, 2021, the MOJ issued a notification of its consideration of the termination of Mr. Kirilyuk’s law license based on allegations that he had published statements on the Internet in relation to representatives of government bodies, which the MOJ deemed inappropriate and incompatible with the title of lawyer.<sup>56</sup> Mr. Kirilyuk responded that the notification did not indicate which statements were inappropriate, and, in the Ministry’s view, “incompatible with the title of a lawyer.”<sup>57</sup> He also noted that the notification neither contained the date of the publication at issue or a link to it nor specified the source of the publication or the exact language of the allegedly

47 *Public statement on the human rights situation in Belarus: repressions against lawyers and advocates*, HELSIŃSKA FUNDACJA PRAW CZŁOWIEKA [Helsinki Foundation for Human Rights], <https://www.hfhr.pl/en/public-statement-on-the-human-rights-situation-in-belarus-repressions-against-lawyers-and-advocates/>. On March 2, 2021, the Moskovsky District Court in Minsk sentenced Ms. Borisevich to six months in prison for disclosing medical information (in violation of Criminal Code Articles 16 and 178). <https://cedem.org.ua/en/news/zayava-nmr-bilorus/>

48 TUT.BY article on why authorities wanted to revoke Mikhail Kirilyuk’s license, *supra* note 17.

49 Defenders.by article on persecution of lawyers in Belarus, *supra* note 5.

50 *Id.*; TUT.BY article on deprivation of four lawyers’ licenses, *supra* note 13.

51 Tolkacheva article on Maxim Konon, *supra* note 42.

52 *Id.*

53 TUT.BY article on Kirilyuk appealing the revocation of his license, *supra* note 18; Kirilyuk article on why Belarusian authorities have been persecuting lawyers, *supra* note 25.

54 Maxim Gatsak, «Руководство страны устами задержанного делает политические заявления» Адвокат Воскресенского прокомментировал его дело [The country’s leadership makes political statements through the mouth of the detainee.’ Voskresensky’s lawyer commented on his case], BELSAT (Aug. 27, 2020), <https://belsat.eu/ru/news/rukovodstvo-strany-ustami-zaderzhannogo-delaet-politicheskie-zayavleniya-advokat-voskresenskogo-prokommentiroval-ego-delo/>; Mikhail Kirilyuk, September 1, 2020 Facebook post, <https://www.facebook.com/mkirilyk/posts/3301388439940432/>; TUT.BY article on why authorities wanted to revoke Mikhail Kirilyuk’s license, *supra* note 17; Mikhail Kirilyuk, September 5, 2020 Facebook post, <https://www.facebook.com/mkirilyk/posts/3312460558833220/>; Mikhail Kirilyuk, September 20, 2020 Facebook post, <https://www.facebook.com/mkirilyk/posts/3358489157563693/>.

55 *Id.*

56 TUT.BY article on deprivation of four lawyers’ licenses, *supra* note 13; *see also* TUT.BY article on why authorities wanted to revoke Mikhail Kirilyuk’s license, *supra* note 17.

57 *Id.*



inappropriate statement.<sup>58</sup>

Mr. Kirilyuk requested this information the day after receiving the notification, but the MOJ never specified which statements were allegedly incorrect. Mr. Kirilyuk's response also noted that the failure to adequately specify the basis of the disciplinary proceedings against him violated the Constitution's requirement that state bodies provide citizens with the opportunity to become acquainted with materials affecting their rights and legitimate interests to be able to prepare an adequate defense.<sup>59</sup>

On February 19, 2021, the Qualification Commission terminated Mr. Kirilyuk's law license without giving any additional information about which

statements were the basis for the proceedings or in what way they were inappropriate. Mr. Kirilyuk was not present during the disciplinary hearing as he was out of the country. Mr. Kirilyuk's attorney requested that Mr. Kirilyuk be allowed to appear at the hearing via Skype, but the request was denied by the head of the Commission, who reasoned that either the attorney himself or his representative must be present at the hearing.<sup>60</sup>

Mr. Kirilyuk appealed the revocation of his license<sup>61</sup> and on April 12, 2021, the Moskovsky District Court of Minsk held a preliminary hearing. Mr. Kirilyuk argued that nothing he had posted on Facebook violated any professional ethics and, therefore, could not support a decision to disbar him.<sup>62</sup> The court reportedly will schedule another hearing.

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58 *Id.*

59 *Id.* See also BELARUS CONST. Art. 34.

60 TUT.BY article on Kirilyuk appealing the revocation of his license, *supra* note 18.

61 *Id.*

62 *Id.*

# III. ANALYSIS

The recent wave of arrests and disbarments of lawyers in Belarus - including those of Liudmila Kazak, Mikhail Kirilyuk, Konstantin Mikhel and Maxim Konon, which are emblematic of this alarming trend - have raised concerns among human rights organizations within Belarus as well as the international community that the actions are politically motivated.<sup>63</sup> The disbarments appear to serve as retaliation against lawyers for performing their professional duties for clients who are openly opposed to the sitting president, and, as such, the disbarments undermine the independence of the legal profession.<sup>64</sup> The International Commission of Jurists recently described “a clear pattern of the misuse of disciplinary proceedings against lawyers who represent political opponents of the government or those who openly criticize the government on issues of public significance.”<sup>65</sup> The disbarments of lawyers Kazak, Mikhel, Konon, and Kirilyuk are part of this pattern. They have been arrested, detained, and subsequently disbarred in what appear to be politically motivated and retaliatory proceedings.

Examination of the cases of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk suggests that the disbarments were arbitrary and contravened international standards on the role of the lawyer. They also violated the lawyers’ individual rights to freedom of expression, freedom of assembly, and non-discrimination.

## ARBITRARY DISBARMENT

The disbarments of Ms. Kazak, Mr. Mikhel, and Mr. Konon were all based upon their purported commission of administrative offenses, which in turn was viewed by the Qualification Commission as conduct that discredits the legal profession and incompatible with the title of lawyer. However, the underlying arrest and offense charged in each case was arbitrary under international law, rendering the corresponding disbarments similarly arbitrary.

The ICCPR, to which Belarus is a State party, guarantees the right of every person to liberty and security of person. Pursuant to ICCPR Article 9(1), “[n]o one shall be subjected to arbitrary arrest or detention.”<sup>66</sup> When someone is arrested, the individual must be informed of the reasons for the arrest and informed “promptly” of any charges against him or her.<sup>67</sup> The UN Human Rights Committee, which oversees the implementation of the ICCPR, has taken an expansive approach to “the notion of ‘arbitrariness’,” which it says must be interpreted “broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law[.]”<sup>68</sup> Moreover, any arrest or detention “as punishment for the legitimate exercise of the rights” set forth in the ICCPR is arbitrary.<sup>69</sup> This includes any arrest or detention for the legitimate exercise of one’s freedom of expression (art. 19), freedom of assembly (art. 21) or freedom of association

63 See, e.g., Lawyers for Lawyers article, *supra* note 9; *Belarus: stop politically motivated prosecution and disbarment of lawyers* [hereinafter ICJ Statement], INTERNATIONAL COMMISSION OF JURISTS (Apr. 13, 2021), <https://www.icj.org/belarus-stop-politically-motivated-prosecution-and-disbarment-of-lawyers/>; Statement of Patricia Lee Refo, president, American Bar Association re: Independence of legal profession in Belarus [hereinafter ABA President statement on independence of legal profession in Belarus] (Mar. 9, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/03/aba-president-s-statement-re-belarus/>.

64 ICJ Statement, *supra* note 63.

65 *Id.*; see also Ms Alexandra Louis, *Human rights violations in Belarus require an international investigation*, PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS (Mar. 22, 2021), para. 29, <https://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2021/20210324-BelarusViolationsHR-EN.pdf> (“It is also alleged that the lawyers who defend civic rights of militants and opponents of the current government are targeted by politically motivated persecutions and other forms of harassment, notably by the removal of their licenses to practice.”).

66 International Covenant on Civil and Political Rights [hereinafter ICCPR] art. 9(1), Dec. 16, 1966, 999, T.I.A.S. 92-908, U.N.T.S. 171.

67 *Id.*, art. 9(2).

68 Human Rights Committee, General Comment No. 35: Liberty and Security of Person, para. 12, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35).

69 *Id.*, para. 17.

(art. 22).<sup>70</sup> Further, any arrest or detention on discriminatory grounds is considered arbitrary.<sup>71</sup>

Ms. Kazak's arrest on September 24, 2020 by unidentified masked officers violated these standards. Ms. Kazak maintains that she was not informed of the charges against her at the time of the arrest. In fact, she was not made aware of the charge upon which her administrative sanction was based until the next day - at her trial. The administrative procedure against Ms. Kazak contained several irregularities, including the change in charges and testimony by unidentified masked officers.<sup>72</sup> In light of the international standards set forth by the Human Rights Committee, Ms. Kazak's arrest was arbitrary, and the entire proceedings lacked due process. Therefore, any sanction or disciplinary action stemming from such arrest is similarly arbitrary.

Mr. Mikhel and Mr. Konon were both arrested (and subsequently convicted) for allegedly engaging in mass events that lacked authorization from the relevant government authorities. As discussed below, the freedom to peacefully assemble is a fundamental human right that is afforded extensive protection under international law. Both Mr. Mikhel and Mr. Konon dispute the alleged factual bases for their arrest and administrative conviction because they claim they did not take part in the protests. Moreover, there were no allegations that either Mr. Mikhel or Mr. Konon acted non-peacefully during the events at issue or acted unlawfully in any way during these events. Indeed, even if they had participated in the protests as alleged, their right peacefully to participate in such protests is protected under international law. As such, the arrests of Mr. Mikhel and Mr. Konon in the fall of 2020 were arbitrary, rendering their subsequent disbarment based upon the underlying administrative offense similarly arbitrary.

Finally, Mr. Kirilyuk's disbarment was arbitrary in part due to irregularities in the disciplinary proceedings. While the substantive basis of Mr. Kirilyuk's disbarment was his legitimate exercise of his fundamental right to freedom of expression and belief (discussed below), the disciplinary proceedings were marred with procedural irregularities, rendering the disbarment even more arbitrary. The notification of the MOJ's consideration of Mr. Kirilyuk's disbarment was vague and ambiguous and lacked key information necessary for Mr. Kirilyuk to adequately defend himself against the accusations. It contained no precise information about the statements themselves or how they may be considered incompatible with the title of lawyer. Moreover, Mr. Kirilyuk, who fled the country for his safety, was refused participation in his own disciplinary proceedings. In light of these procedural irregularities and violations of Mr. Kirilyuk's rights, his disbarment was arbitrary.

#### INTIMIDATION, HINDRANCE, HARASSMENT, OR IMPROPER INTERFERENCE IN PROFESSIONAL FUNCTIONS

The disbarments of Ms. Kazak, Mr. Kirilyuk, Mr. Mikhel, and Mr. Konon appear to have been a measure used by the government to intimidate and harass the lawyers and hinder and interfere with their practice of law. International standards set forth in the UN Basic Principles on the Role of Lawyers establish that lawyers have the right to work free from intimidation, hindrance, harassment, or improper interference in their professional functions.<sup>73</sup> According to these standards, governments must ensure that lawyers "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>74</sup> Arbitrary and politically motivated disciplinary

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> The initial charge against Ms. Kazak was allegedly for participation in an unauthorized mass event, but the charge that ultimately led to an administrative penalty and her resulting disbarment was that of disobeying a lawful order of a police officer (a charge under a different provision in the Administrative Code) in the process of her arrest. At her administrative hearing, masked officers allegedly involved in the arrest testified that Ms. Kazak was informed that she was being arrested due to suspicion that she participated in an unauthorized rally in August 2020; however, that charge is not the one on which her conviction was based. Only the charge of disobeying a police officer under Article 23.4 was considered at her trial.

<sup>73</sup> See UN Basic Principles on the Role of Lawyers [hereinafter UN Basic Principles], Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, principle 16, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

<sup>74</sup> *Id.*

proceedings and disbarments against lawyers violate these principles and undermine the independence of the legal profession in Belarus as a whole.

Ms. Kazak was representing a high-profile political figure, Maria Kolesnikova, at the time of her arrest. Ms. Kazak's arrest and detention, as well as her subsequent disbarment, appear directly related to her representation of Ms. Kolesnikova.<sup>75</sup> They also appear to have been largely aimed at intimidating and harassing her for, and interfering with, her representation of Ms. Kolesnikova. Ms. Kazak's arrest took place the day before she was to appear in court on Ms. Kolesnikova's behalf. She was held in detention for over 24 hours and required to appear in court to face the administrative charges against her on the same day as the hearing in Ms. Kolesnikova's case. As a result of her detention, Ms. Kazak missed her client's hearing. Rather than protect Ms. Kazak from such interference and intimidation, the government - through the MOJ's Qualification Commission - took the further step of not only interfering with her professional functions, but terminating them entirely through disbarment.<sup>76</sup>

Similarly, Mr. Mikhel and Mr. Konon were disbarred as a result of their administrative convictions for taking part in unauthorized mass events. As discussed below, disbarment for participation in a peaceful protest is incompatible with the right to freedom of assembly. Accordingly, actual or alleged exercise of this right cannot constitute a valid basis on which to interfere with a lawyer's right to practice law. As such, the disbarments of Mr. Mikhel and Mr. Konon infringed upon their right to perform their professional functions without intimidation, hindrance, harassment, or improper interference.

Mr. Kirilyuk's disbarment was based on public statements made regarding the political nature of a client's case, the rule of law in Belarus, and

the potential for a peaceful transfer of power. In other words, he was engaging in public discourse on the state of human rights and the rule of law in Belarus and the administration of justice. As discussed in detail below, each category of public statements made by Mr. Kirilyuk thus falls within permissible speech for lawyers under international law and standards. Any interference therewith would be improper. Moreover, the Commission provided no substantive legal explanation as to how his statements were incompatible with the legal profession or served to discredit the title of a lawyer. Thus, Mr. Kirilyuk's disbarment appears to have been a means of harassment and intimidation for, and improper interference with, his representation of protestors and politically sensitive figures.

## **VIOLATIONS OF THE RIGHTS TO FREEDOM OF EXPRESSION, FREEDOM OF ASSEMBLY, AND NON-DISCRIMINATION**

### Freedom of Expression



The disciplinary actions taken against lawyers Kazak, Mikhel, Konon, and Kirilyuk violate the lawyers' rights to freedom of expression and may have a chilling effect on the speech of all lawyers in Belarus about the state of human rights and the rule of law in the country. Belarus has committed, through ratification of the ICCPR, to respect individuals' rights to freedom of expression, including "freedom to seek, receive and impart information and ideas of all kinds."<sup>77</sup> The Constitution of Belarus similarly ensures that "[e]veryone is guaranteed freedom of opinion, belief, and their free expression."<sup>78</sup> The only permissible restriction on the exercise of the right to freedom of expression pursuant to the ICCPR is where such restrictions are provided by law and are necessary for the protection of the rights or reputations of others, national security, public order, or public

75 Ms. Kolesnikova's three previous attorneys were retaliated against when they were criminally charged or disbarred. Please see background section above.

76 Of note, Ms. Kolesnikova's previous three attorneys, Maksim Znak, Ilia Salei and Alexandr Pylchenko, had each faced various forms of intimidation related to and interference with their representation of her. Allegations have been asserted that in all four cases, the harassment and intimidation of Ms. Kolesnikova's lawyers was due to identification [of the lawyers] with their client or their client's cause." Lawyers for Lawyers article, *supra* note 9. Most recently, Mr. Pylchenko was disbarred in proceedings similarly marred by irregularities and indicia of political motivations. See Pylchenko Report, *supra* note 5.

77 ICCPR, *supra* note 66, Art. 19(2).

78 BELARUS CONST., Art. 33.

health or morals.<sup>79</sup> And even in such cases, a state must be able to show that the restriction is justified and necessary.<sup>80</sup>

The UN Human Rights Committee, in its authoritative General Comment No. 34, underscored the importance of freedom of expression as a “necessary condition” to achieve transparency and accountability.<sup>81</sup> It also emphasizes that freedom of expression and freedom of opinion “constitute the foundation stone for every free and democratic society.”<sup>82</sup> The right to freedom of expression set out in ICCPR Article 19(2) includes *inter alia* engaging in political discourse, commentary on public affairs, and discussion of human rights.<sup>83</sup> Moreover, as set forth in the UN Basic Principles, lawyers “like other citizens are entitled to freedom of expression [and] belief.”<sup>84</sup> This includes the right to participate in “public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.”<sup>85</sup>

The Human Rights Committee places a premium on the protection of political speech: “[T]he value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”<sup>86</sup> According to the Committee, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties” for that expression.<sup>87</sup>

Rather, all public figures - including those at the highest levels of political authority such as heads of state and government - “are legitimately subject to criticism and political opposition.”<sup>88</sup> The Committee has expressed corresponding “concern” regarding laws on matters such as “disrespect for authority” or “the protection of the honour of public officials[.]”<sup>89</sup>

All of the lawyers but Mr. Mikhel had publicly criticized the Belarusian government’s human rights record prior to their disbarment.<sup>90</sup> And, in the case of Mr. Kirilyuk, his disbarment was explicitly based on statements he had made regarding the prosecution of an opposition candidate’s campaign staff, the rule of law, and the potential for a peaceful transfer of power in Belarus.<sup>91</sup> Notably, all such statements - which can be categorized as part of the public discourse on the law, the administration of justice, and human rights - fall within permissible speech not only for general citizens, but also for lawyers. Neither the MOJ’s Qualification Commission nor the MOJ prosecutors provided any substantive explanation as to how Mr. Kirilyuk’s statements ran afoul of the acceptable parameters of free speech or the applicable rules of professional ethics. Nor did they establish that the disbarment was justified and necessary for the protection of the rights or reputations of others, national security, public order, or public health or morals. As such, Mr. Kirilyuk’s disbarment violates his right to freedom of expression.<sup>92</sup> If indeed Ms.

79 ICCPR, *supra* note 66, Art. 19(3).

80 See Gryb v. Belarus, Communication No. 1316/2004 [hereinafter Gryb v. Belarus], U.N. Doc. CCPR/C/103/D/1316/2004 (2011), para. 13.4, <https://juris.ohchr.org/Search/Details/1225>.

81 Human Rights Committee General Comment No. 34, Article 19, Freedoms of opinion and expression [hereinafter GC 34], para. 3, <https://digitallibrary.un.org/record/715606?ln=en>.

82 *Id.*, para. 2.

83 *Id.*, para. 11.

84 UN Basic Principles, *supra* note 73, principle 23.

85 *Id.*

86 GC 34, *supra* note 81, para. 34; see also Human Rights Committee, General Comment No. 37 on the right of peaceful assembly (article 21) [hereinafter GC 37], para. 32 (noting that “political speech enjoys particular protection as a form of expression”), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F37](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F37).

87 GC 34, *supra* note 81, para. 38.

88 *Id.*, para. 38.

89 *Id.* (internal citations omitted).

90 ABA President statement on independence of legal profession in Belarus, *supra* note 63.

91 TUT.BY article on Kirilyuk appealing the revocation of his license, *supra* note 18. See also Mr. Kirilyuk’s facebook post describing the grounds for his appeal and citing the posts at issue of April 10, <https://www.facebook.com/mkirilyuk/posts/3911579728921297>.

92 See Gryb v. Belarus, *supra* note 80, paras. 13.2-13.4 (finding a violation of the author’s rights under ICCPR article 19 where the State party, Belarus, failed to “adduce[] any explanation on how the non-issuance of the author’s lawyer’s license was justified and necessary[.]”).

Kazak's and Mr. Konon's disbarments were also motivated at least in part by their public criticism of Belarusian authorities - as was likely the case given the current crackdown on the Belarusian opposition - the disbarments similarly violated their freedom of expression.

### Freedom of Assembly



The disbarments of Mr. Mikhel and Mr. Konon raise further concerns regarding the right to freedom of assembly. Freedom of peaceful assembly is a basic human right and, like freedom of expression, considered “indispensable in a democratic society.”<sup>93</sup> ICCPR Article 21 recognizes the “right of peaceful assembly” and only permits restriction on the exercise of that right where such restrictions are provided by law and necessary in the interests of national security or public safety, public order, or the protection of public health or morals or the rights and freedoms of others.<sup>94</sup> When a state imposes a restriction on the right to freedom of assembly, it must be “justified and necessary”<sup>95</sup> as well as proportionate to these interests.<sup>96</sup>

The UN Basic Principles on the Role of Lawyers emphasize that “lawyers like other citizens” are entitled to freedom of assembly.<sup>97</sup> Moreover, the Constitution of Belarus reflects these international

norms and principles in article 35: “The freedom to hold assemblies, rallies, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State.”<sup>98</sup>

In September 2020, the Human Rights Committee issued its current guidance on ICCPR Article 21’s protection of peaceful assemblies. In its General Comment No. 37, the Committee stipulates that if participants’ conduct at an assembly “is peaceful, the fact that certain domestic requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21.”<sup>99</sup> The Committee also emphasized that “assemblies with a political message should enjoy a heightened level of accommodation and protection.”<sup>100</sup> Furthermore, the Council of Europe’s Venice Commission noted in a March 2021 opinion on Belarus that those participating in peaceful demonstrations should not be subject to detention or other serious sanctions.<sup>101</sup>

The UN Human Rights Committee has found against Belarus in approximately 20 cases involving the right to freedom of assembly,<sup>102</sup> including in a case concerning the non-issuance of a lawyer’s license. In *Gryb v. Belarus*, Comm. No. 1316/2004 (2011), the Committee considered a submission

93 UN Human Rights Committee, *Poplavny v. Belarus*, Communication No. 2019/2010 [hereinafter *Poplavny v. Belarus*], CCPR/C/115/D/2019/2010 (2015), para. 8.4, <https://juris.ohchr.org/Search/Details/2030>; *Gryb v. Belarus*, *supra* note 80, para. 13.3.

94 ICCPR, *supra* note 66, Art. 21.

95 *Gryb v. Belarus*, *supra* note 80, para. 13.2-13.4.

96 UN Human Rights Committee, *Sadykov v. Kazakhstan*, Communication No. 2456/2014 [hereinafter *Sadykov v. Kazakhstan*] (2020), para. 7.6, <https://juris.ohchr.org/Search/Details/2858>.

97 UN Basic Principles, *supra* note 73, Principle 23.

98 BELARUS CONST., Art. 35. Article 35 further states that “the procedure” for conducting such events “shall be determined by the law.”

99 GC 37, *supra* note 86, para. 16; *see also* *Sadykov v. Kazakhstan*, *supra* note 96, para. 7.6 (“The Committee observes that authorization regimes, where those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, undercut the idea that peaceful assembly is a basic right. Where such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise.”).

100 GC 37, *supra* note 86, para. 32. Paragraph 32 states in full: “Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.”

101 Venice Commission, *Belarus - Opinion on the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and members of the “Coordination Council”*, adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021), CDL-AD(2021)002-e, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)002-e).

102 *Poplavny v. Belarus*, *supra* note 93, *Individual opinion of Committee member Sarah Cleveland (concurring)*, para. 4 (“In approximately 20 cases, the Committee has found that application of the Law on Mass Events of Belarus violated the rights of individuals under article 19, 21 and/or 22 to the freedoms of expression, assembly and association.”).

by a Belarusian national who had been denied a lawyer's license by the MOJ because of his participation in "an unauthorized street rally" an administrative offense in Belarus. In defense of its action, the Ministry asserted that "[c]ommitting an administrative offense is incompatible with the functions of a lawyer."<sup>103</sup> But the Committee found the State's explanation insufficient to justify depriving the applicant of his lawyer's license where the State had not explained "how the non-issuance of the author's lawyer's license was justified and necessary."<sup>104</sup> The Committee therefore held that the individual's right to freedom of assembly under ICCPR Article 21 had been violated.<sup>105</sup>

According to the MOJ, Mr. Mikhel and Mr. Konon were both disbarred for their commission of the administrative offense of participating in unauthorized mass events (street rallies). Although participation in the mass events is disputed by the lawyers, those administrative convictions served as the basis for their disbarment. In each case, the MOJ Qualification Commission's position is that the alleged participation was unlawful because the mass event did not have the proper permission as required under the domestic law. As such, the Commission concluded that the lawyers committed an act that discredits the legal profession and is incompatible with the title of lawyer.

However, as set forth by the Human Rights Committee in General Comment No. 37, an assembly that fails to meet "certain domestic requirements" does not place participants outside the protections of ICCPR Article 21. Therefore, the revocation of Mr. Mikhel's and Mr. Konon's law licenses must have been justified, necessary, and proportionate. Yet, in neither case has the MOJ explained how the disbarment was justified or necessary in a democratic society or how it was proportionate to the interests of national security or public safety, public order, or the protection of public health or morals or the rights and freedom of others.<sup>106</sup> Therefore, even if Mr. Mikhel and Mr. Konon participated in the protests as alleged, their disbarments violated their rights under

## ICCPR Article 21.

The disbarments not only raise concerns regarding the freedom of assembly of these attorneys, but also the freedom of assembly more generally in Belarus. The threat of such sanctions constitutes an unlawful restriction on the right to freedom assembly and exerts a powerful chilling effect on individuals' exercise of this right.

### Non-Discrimination



The disbarment of Ms. Kazak, Mr. Mikhel, Mr. Konon and Mr. Kirilyuk violate international standards on non-discrimination. Principle 10 of the UN Basic Principles on the Role of Lawyers states that "[g]overnments, 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 . . . political or other opinion[.]"<sup>107</sup> In addition, lawyers must not be identified with "their clients or their clients' causes as a result of discharging their functions."<sup>108</sup>

Ms. Kazak and Mr. Konon were representing high profile, politically sensitive cases of individuals overtly opposed to the government. Mr. Kirilyuk's disbarment was based on statements he made in relation to political motivations underlying a client's prosecution, among other issues pertaining to the rule of law and human rights in Belarus. As such, the circumstances surrounding the cases of Ms. Kazak, Mr. Konon, and Mr. Kirilyuk, suggest that the disbarments were politically motivated, discriminatory in nature, and issued as reprisal for the lawyers' political opinions or imputed political opinions (resulting from identifying the lawyers with the clients they represented). By disbarring these lawyers on grounds related to their own or their clients' political opinions, the government discriminated against them in violation of international standards.

<sup>103</sup> Gryb v. Belarus, *supra* note 80, para. 6.2.

<sup>104</sup> *Id.*, para. 13.4.

<sup>105</sup> *Id.*

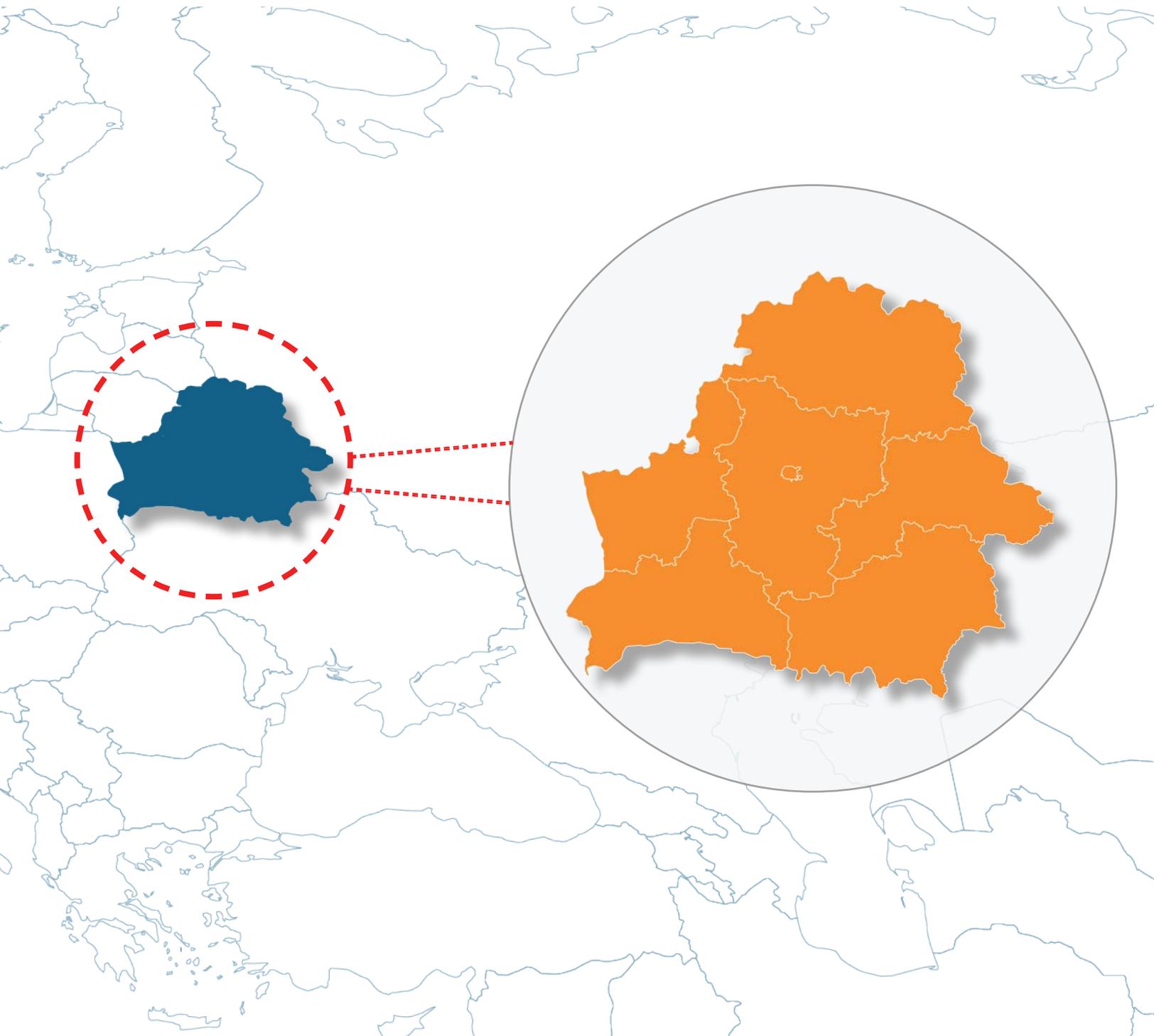
<sup>106</sup> See Sadykov v. Kazakhstan, *supra* note 96, para. 7.6.

<sup>107</sup> UN Basic Principles, *supra* note 73, principle 10 (emphasis added).

<sup>108</sup> *Id.*

# IV. CONCLUSION

The disbarments of Ms. Kazak, Mr. Mikhel, Mr. Konon, and Mr. Kirilyuk appear to be part of a larger pattern of retaliation by the Belarus government against lawyers for representing political opposition members, journalists and protestors and speaking out about the rule of law and human rights in Belarus. In each of the four cases, the lawyers were either carrying out their professional duties as lawyers or exercising their fundamental rights and freedoms. These arbitrary disbarments represent intimidation, hindrance, harassment, and improper interference with the lawyers' professional functions. They also violate the basic human rights of these lawyers, and fundamental, long-standing principles that safeguard the independence of the legal profession, further undermining the rule of law in Belarus.





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