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21 August 2020

Your Excellency,

Belarus: Lawyers prevented from carrying out their professional duties

The Law Society of England and Wales (the “Law Society”) is the professional body representing more than 180,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world. The Law Society holds special consultative status with the Economic and Social Council of the United Nations since 2014.

Lawyers for Lawyers is an independent lawyers’ organization which seeks to promote and protect the independence of the legal profession through the support of lawyers around the world, who face reprisals, improper interferences or restrictions in carrying out their professional functions. Lawyers for Lawyers has Special Consultative status with the UN Economic and Social Council since 2013.

The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions; the independence of the legal and judicial professions; and the UN Basic Principles on the Role of Lawyers, especially in defence of human rights. UIA has enjoyed Special Consultative status with the UN Economic and Social Council since 1971.

On 9 August 2020, the presidential elections in Belarus took place. In the aftermath of these elections, over 6000 citizens of Belarus have been arrested and detained for taking part in largely peaceful protests against the election results or by voicing criticism of the Government of Belarus. It has been reported that there has been an excessive use of force by state authorities against protesters and that many of those arrested are facing ill-treatment and poor conditions in detention.

We are gravely concerned that many of those arrested and detained have not had access to a legal representative, nor a legal representative of their own choosing. Where they have been able to meet with a lawyer, it has been alleged that the principle of lawyer-client confidentiality has not been respected. In addition, lawyers have not been granted access to pertinent information to adequately represent and defend the rights of their clients.

It has also been reported that lawyers are being prevented from carrying out their professional duties by law enforcement officers and other state agents and have been harassed, which directly threatens the independence of the legal profession in Belarus. Therefore, access to justice for all citizens in Belarus has been severely curtailed.

There are a number of international legal obligations and standards, which are applicable to Belarus.

Belarus ratified the **International Covenant on Civil and Political Rights (ICCPR)** on 12 Nov 1973, which states:

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law...

Article 19

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

The UN Basic Principles Basic Principles on the Role of Lawyers 1990 state:

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (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.

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

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

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

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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

We urge the relevant Belarusian authorities to:

1. Ensure that all those arrested have access to a lawyer of their own choosing;
2. Ensure that in all meetings or calls between those arrested and their legal representatives the principle of lawyer-client confidentiality is respected;
3. Ensure that anyone arrested, detained, and charged has the right to adequately prepare for a defence, including access to the case file by the legal representative;
4. Ensure that lawyers can carry out their professional duties freely and without undue external interference, hindrance or intimidation;
5. Ensure compliance with all Belarus' international legal obligations, specifically the right to life, the right to liberty and security of the person, the right to freedom of expression, the right to freedom of assembly, the right to a fair trial, as well as freedom from arbitrary arrest and freedom from torture and ill-treatment.

We will continue to monitor the situation in Belarus and support our colleagues there.

Yours sincerely,

The Law Society of England and Wales
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CC.

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