
October 22, 2020

Via email: press@president.gov.by; mail@mfa.gov.by

Honorable Alyaksandr Ryhoravich Lukashenka
President of the Republic of Belarus
Minsk, Belarus

Re: Imprisonment of lawyers Maksim Znak, Illia Salei and Liliya Vlasova

Dear President Lukashenka:

The American Bar Association (ABA) is the largest voluntary association of attorneys and legal professionals in the world and is committed to promoting the independence of the legal profession and the rights of lawyers in the United States and internationally. This includes the right of lawyers to practice their profession without intimidation or harassment, which is vital to preserving their role as counselors, advisors, and litigators defending the rule of law and individual rights.

For this reason, I write to express the ABA's concern over recent credible reports that at least three Belarussian lawyers — **Maksim Znak, Illia Salei, and Liliya Vlasova** — are facing criminal charges related to their legitimate activities on behalf of their clients and in pursuit of the preservation of the rule of law within Belarus. All three lawyers had represented Belarussian opposition politicians, protesters, advocates, and others engaged in, or allegedly engaged in, political activism in the wake of the recent elections. All three were initially detained. Illia Salei and Liliya Vlasova have since been released to house arrest, while Maksim Znak remains in detention. Their arrests and the charges against them appear to be politically motivated. The charges infringe on these lawyers' basic human rights and breach fundamental, long-standing principles that safeguard the independence of the legal profession.

The ABA urges that Maksim Znak, be immediately released from pretrial detention, and Illia Salei and Liliya Vlasova be immediately released from house arrest, and that the criminal charges against them be reviewed for compliance with domestic and international law.

A. Lawyers Facing Criminal Charges in Belarus¹

The ABA has reviewed public reports regarding the criminal cases against Maksim Znak, Illia Salei, and Liliya Vlasova, each of whom appears to have been targeted based solely on the legitimate exercise of their rights and fulfillment of their professional obligations.

¹ The cases against Maksim Znak, Illia Salei, and Liliya Vlasova have been widely reported on in the media, both within and outside of Belarus.

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Maksim Znak

Maksim Znak has represented former presidential candidate Victor Babariko in several matters, including in a recent criminal tax evasion case brought in June 2020. Mr. Znak also submitted Mr. Babariko's application to register as a presidential candidate and represented Mr. Babariko before the Central Commission of the Republic of Belarus on Elections and Conducting Republican Referenda (CEC) on June 20, 2020. Additionally, Mr. Znak represented the campaign of presidential candidate Svetlana Tikhanovskaya and filed her campaign's August 10, 2020, complaint with the CEC protesting the results of the August 9 presidential elections. On behalf of Ms. Tikhanovskaya, Mr. Znak filed a complaint, dated August 21, 2020, with the Supreme Court of Belarus requesting that the Court declare the August 9 elections invalid based on multiple reports of fraud.

In mid-August 2020, Mr. Znak participated in the creation of the Coordination Council, an informal association of 4,691 citizens that "identifies its goal in finding the paths to overcome the political crisis in the Republic of Belarus and in ensuring the harmonious consensus in the society on the basis of the Constitution." He was subsequently elected as a member of the Presidium of the Coordination Council and, in that role, continued to provide legal support and counsel to the Coordination Council.

On September 9, 2020, Mr. Znak was taken into custody, and is still being detained. On September 18, 2020, he was charged under Art. 361(3) of the Criminal Code of Belarus with engaging in "actions aimed at causing harm to the national security of the Republic of Belarus." The government did not cite any alleged activities beyond his participation in the Coordination Council, discussed above, as the basis for the allegations.

Mr. Znak's detention fails to comply with the procedures laid out in Belarusian law as follows:

- The investigative committee failed to provide for an appeal against the detention of Mr. Znak within 72 hours, which is the required time period given in Article 143(6) of the Belarussian Criminal Procedure Code, instead waiting almost six days;
- The Partizansky District Court refused to hear the appeal once filed although it had an obligation to do so under Article 144(1) of the Criminal Procedure Code;
- The Partizensky District Court instead transferred the case to the Minsk City Court, without providing any justification for this decision;
- The Minsk City Court, despite its apparent lack of jurisdiction to consider such an appeal, rendered a decision to dismiss the appeal and continue the detention; and
- The Minsk City Court then refused to accept an immediate appeal against its decision, in breach of Art. 145(3) of the Criminal Procedure Code.

In addition, the above appear to constitute a violation of Article 60 of the Constitution of Belarus that states: "Everyone is guaranteed the protection of his rights and freedoms by a competent, independent and impartial court within the time limits specified by law."

Illia Salei

Illia Salei also provided legal advice to the campaigns of Mr. Babariko and Ms. Tikhanovskaya, including by assisting in the preparation of the complaint to the Supreme Court of Belarus filed by Mr. Znak on August 21, 2020. Though not a member of the Coordination Council himself, he has represented Maria Kolesnikova, a member of the Presidium of the Coordination Council who was arrested on September 9, 2020, in relation to a criminal case under Art. 361(3) of the Criminal Code. That same day, Mr. Salei was taken into custody.

Like Mr. Znak, on September 18, 2020, Mr. Salei was charged under Art. 361(3) of the Criminal Code of Belarus with engaging in “actions aimed at causing harm to the national security of the Republic of Belarus.”

Mr. Salei’s detention violates Belarusian law in numerous respects, including the fact that no appeal against his detention was permitted until September 21, 2020, though the 72-hour time-limit for such appeal had lapsed on September 12. As noted above, this is contrary to both the Criminal Procedure Code and Constitution of Belarus. It was reported that on October 16, 2020, Mr. Salei was released from detention and placed under house arrest.

Liliya Vlasova

Liliya Vlasova is a well-known lawyer and another elected member of the Presidium of the Coordination Council. Ms. Vlasova was detained on August 31, 2020. Like other members of the Presidium of the Coordination Council, including Mr. Znak, she was taken into state custody. On September 9, 2020, Ms. Vlasova was charged under Article 243 of the Criminal Code (tax evasion). It was also reported that on October 16, 2020, Ms. Vlasova was released from detention and is currently under house arrest.

B. ABA’s Concerns

The ABA has grave concerns that the cases against Maksim Znak, Illia Salei, and Liliya Vlasova are in retaliation for those lawyers’ legal professional activities. In particular, the charges appear to be retaliation for their representation of Belarusian politicians and their own civic engagement and the legitimate exercise of their rights to freedom of expression, association, and assembly. These rights are all specifically guaranteed in the Belarusian Constitution and protected under international human rights law. Such retaliation, by its nature and by the means employed in these specific instances, violates the fundamental human rights of both the lawyers involved and their clients. It also undermines the rule of law.

The UN Basic Principles on the Role of Lawyers (1990) require that governments ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and that they “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” (Principle 16). When their security is threatened, lawyers “shall be adequately safeguarded by the authorities” (Principle 17). Retaliating against Maksim Znak and Illia Salei for their legal representation of clients violates

these principles. Further, and especially with respect to Illia Salei, who is not a member of the Coordination Council, these actions also indicate a breach of the principle that “[l]awyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions” (Principle 18).

That principle is a safeguard to the fundamental right to counsel of all individuals. The International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus in 1973, guarantees the right to counsel, including that of “everyone charged with a criminal offence . . . to communicate with counsel of his own choosing” (Article 14). By retaliating against Messrs. Znak and Salei, the Belarusian government has violated their clients’ right to counsel of their own “choosing.” The actions taken against these lawyers undermine the rule of law by infringing on the ability of the Belarusian legal profession to provide individuals—including those engaged in political activities—with an effective right to counsel. More generally, they have a chilling effect on the activities of the Belarusian legal profession.

Perhaps most importantly, violations of lawyers’ rights, and the rights of the politicians they represent, imperil the right of all individuals in Belarus “to take part in the conduct of public affairs, directly or through freely chosen representatives” (ICCPR Article 25). Article 33 of the Constitution of Belarus states: “Everyone is guaranteed freedom of opinion, belief and their free expression.” Belarus has also committed, through the ICCPR, to respect individuals’ rights “to freedom of expression [including] freedom to seek, receive and impart information and ideas of all kinds,” “to freedom of association with others,” and to “peaceful assembly” (Articles 19, 21 and 22). Moreover, the UN Basic Principles emphasize that “lawyers like other citizens are entitled to freedom of expression, belief, association and assembly” (Principle 23). The arrests and detention of Maksim Znak, Illia Salei, and Liliya Vlasova infringe on their rights to participate freely in the Coordination Council and to express their thoughts and share information in relation to its aims and in support of a peaceful resolution to escalating reports of violence and unrest in Belarus.

In addition, the detentions violated the ICCPR’s guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law,” and that “[a]nyone 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” (Article 9). Maksim Znak, Illia Salei, and Liliya Vlasova were each initially detained in breach of the procedure established by Belarussian law. Mr. Znak remains in pretrial detention.

C. Conclusion

Governmental retaliation against lawyers based on their legal professional activities and the exercise of their rights to freedom of expression, belief, association, and assembly violates domestic and international law and undermines the rule of law and human rights in Belarus. The ABA notes that in addition to the criminal cases pending in the above cases, there have been

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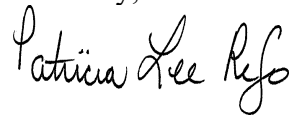
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reported incidents of lawyers facing other forms of harassment and intimidation in relation to their professional obligations.²

To comply with international law, including its treaty obligations under the ICCPR, the UN Basic Principles on the Role of Lawyers, and other international human rights instruments, the ABA respectfully urges the government of Belarus take all necessary steps to:

- Release Maksim Znak, without delay and cause the Prosecutor General to review and drop all charges, and cease all proceedings against Maksim Znak, Illia Salei, and Liliya Vlasova that are in violation of the principles set out above;
- Pending such release, guarantee that the detention of Maksim Znak complies with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners; and
- Ensure that Maksim Znak, Illia Salei, and Liliya Vlasova, and all lawyers in Belarus, are able to carry out their professional activities, including with respect to clients involved in political activities, as well as to exercise their own rights to freedom of expression, belief, association, and assembly, without intimidation, hindrance, harassment or improper interference.

Sincerely,



Patricia Lee Refo

cc:

Oleg Slizhevskij, Minister of Justice of the Republic of Belarus
Yuri Karaev, Minister of Internal Affairs of the Republic of Belarus
Shved Andrei Ivanovich, Prosecutor General of the Republic of Belarus
H.E. Yury Ambrazevich, Ambassador of the Republic of Belarus to the United Nations
Jeffrey Giauque, Charge D’Affairs of the United States of America to the Republic of Belarus
David Sassoli, European Parliament President
Maria Arena, European Parliament Chair of Subcommittee on Human Rights
Josep Borrell, High Representative of the EU for Foreign Affairs and Security Policy and Vice-President of the European Commission
Michael R. Pompeo, U.S. Secretary of State

² In addition to the three criminal cases raised in this letter, the ABA is aware of other reported cases of intimidation of lawyers. For example, Lyudmila Kazak, another lawyer who represented political opposition figure Maria Kolesnikova, was reportedly briefly detained and fined in September 2020. It is unclear if she was charged with a crime. Alexander Pylchenko, who is representing political opposition figures Viktor Babariko and Maria Kolesnikova, lost his license on October 15, 2020, reportedly for having given an interview where he criticized the role of law enforcement during the mass protests in August 2020.

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Robert Destro, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor

Anaïs Marin, United Nations Special Rapporteur on the Situation of Human Rights in Belarus

Diego García-Sayán, United Nations Special Rapporteur on the Independence of Judges and Lawyers

Irene Khan, United Nations Special Rapporteur on the Promotion and Protection of Freedom of Expression and Opinion

Clément Nyaletsossi Voule, United Nations Special Rapporteur on the Rights to Freedom of Association and Assembly