

BY (PRIORITY) AIRMAIL AND EMAIL

President

Alexander Grigoryevich Lukashenko

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Brussels, 8 June 2022

Subject: detention of Vitaly Braginets and criminal case brought against Andrey Machalau

Your Excellency,

Lawyers for Lawyers is an independent and non-political foundation which seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. We support lawyers worldwide who face reprisals, improper interferences or unreasonable restrictions in the execution of their profession. Lawyers for Lawyers was granted Special Consultative status with the UN Economic and Social Council in July 2013.

The Council of Bars and Law Societies of Europe (CCBE), which represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE places great emphasis on respect for human rights and the rule of law and is particularly concerned with the protection of human rights defenders around the world.

Lawyers for Lawyers and the CCBE are concerned about the recent detention of Belarusian lawyer Vitaly Braginets, and the criminal case recently brought against Andrey Machalau.

Firstly, according to the information we have received, on 23 May 2022, Mr. Braginets' apartment was searched, and subsequently he was taken to the State Security Committee, and then to the police station for questioning about his "involvement in protest activities". It is alleged that Mr. Braginets started swearing and screaming and tried to leave the police department and was consequently accused of "disobeying a police officer" under Article 24.3 of the Code of the Republic of Belarus on Administrative Offenses.

Two days later, on 25 May 2022, the Partizansky District Court of Minsk sentenced Mr. Braginets to an administrative detention of fifteen days. From the transcript of the court hearing it becomes clear that these alleged protest activities relate to organizing and taking part in an unauthorized protest in Minsk and using protest channels on Telegram. Despite the expiration of his 15-day administrative detention, Mr. Braginets was not released on 7 June 2022.

It has been brought to our attention that as a result of the administrative arrest, Mr. Braginets will be deprived of his lawyer's license and the right to discharge his professional duties as a lawyer. Furthermore, the fact that he was questioned in relation to "participation in protests activities" carries a risk of continued prosecution.

We are deeply concerned that the ongoing detention of Mr. Braginets is connected to, and serves to unlawfully curb his legitimate activities as a lawyer.

Secondly, according to the information we have received, on 3 June 2022, it became known that a criminal case was initiated against lawyer Andrey Machalau on charges of "using deliberately forged documents" (part 1 of article 380 of the Criminal Code of Belarus) – a lawyer's certificate and a warrant for the protection of a client. It is alleged that knowing about the decision of the disciplinary commission of the Minsk Regional Bar Association to impose a penalty on him in the form of expulsion from the bar, he went to court to defend his client, where, as usual, he provided a certificate and a warrant.

However, we understand that according to the legislation of Belarus of that time (as of May-June 2021), the decision of the disciplinary commission of the bar association to apply a disciplinary sanction in the form of expulsion from the bar does not mean that the lawyer is automatically expelled from the bar. Indeed, a lawyer loses the right to practice only when the decision has been confirmed by the council of the bar association and when this decision has been notified to him. Therefore, until then, the lawyer is not only entitled, but is also obliged to continue to perform his lawyer's duties.

And although, subsequently, there was a decision by the council of the bar association to expel him, this decision was taken behind closed doors and had not been duly notified to Mr. Machalau when he represented his client. Therefore, all the actions taken up by lawyer Mr. Machalau to that point, including the use of documents of a lawyer (certificates and warrants), were absolutely legal. This entails that the charges brought against him are unfounded and are rather connected to, and serve to unlawfully curb his legitimate activities as a lawyer.

Furthermore, it is reported that in the trial against lawyer Mr. Machalau which has started on 6 June 2022, he was not provided with the minimum guarantees to a fair trial. Indeed, it is reported that Mr. Machalau's defense lawyer was supposed to be lawyer Mr. Braginets.

However, given that the term of the administrative detention of lawyer Mr. Braginets expires on June 7 (see above), lawyer Mr. Machalau petitioned to postpone the court session, for only two days, to June 8, so that after his release his lawyer Mr. Braginets could defend him. This demand was refused and another lawyer was appointed by the judge, who was granted only 20 minutes to study the criminal case and prepare for the defense of Mr. Machalau.

Lawyers for Lawyers¹ and the CCBE² have repeatedly expressed concern about the increasing pressure of the legal profession in Belarus following the contested August 2020 presidential election. An example of this is that most recently, on 25 May 2022, we sent a joint letter to the Belarusian authorities to express concern about the detention of Belarusian lawyer Alexander Danilevich.³

In view of the above, we draw your attention to the United Nations (UN) Basic Principles on the Role of Lawyers⁴, particularly Principles 1, 5, 16 and 23, which 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.

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

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

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

¹ Lawyers for Lawyers, "Report: Lawyers Under Threat – Increasing Suppression of the Legal Profession in Belarus", 21 July 2021, available at: <https://lawyersforlawyers.org/en/report-lawyers-under-threat-increasing-suppression-of-the-legal-profession-in-belarus/>

² See all letters sent by the CCBE in support of Belarusian lawyers between 2020 and 2022: <https://www.ccbe.eu/actions/human-rights-portal/human-rights-letters/>

³ Lawyers for Lawyers and the CCBE, "Joint letter on the detention of Alexander Danilevich", 25 March 2022, available at: <https://lawyersforlawyers.org/wp-content/uploads/2022/05/Joint-CCBE-L4L-Final-HR-letter-Belarus-detention-Alexander-Danilevich.pdf>

⁴ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

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.

In view of the above, Lawyers for Lawyers and the CCBE respectfully urge the relevant authorities in Belarus to:

- Release Vitaly Braginets and drop all charges against him and against lawyer Andrey Machalau unless credible evidence is presented in proceedings that respect fair trial guarantees;
- Guarantee that all lawyers in Belarus, including the ones named above, are able to practice law without threat, intimidation, hindrance, harassment, improper interference or reprisals.

We will continue to monitor the situation of Mr. Braginets and Mr. Machalau, as well as the situation of other lawyers in Belarus.

Your sincerely,

Lawyers for Lawyers
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CC.

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