

Le Président
The President

Mr. Viktor Golovanov
Minister of Justice of the Republic of Belarus
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Dear Mr. Golovanov,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents around one million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

Among the most important of the CCBE's missions are the defence of the rule of law, human rights and democratic values. We place great emphasis on the rights of access to justice and the protection of the client by ensuring respect for the core values of the lawyer's profession. We are therefore deeply concerned about recent developments in Belarus which have been brought to our attention:

- a) **Access to lawyers and legal services** – we have learned that since 20 December 2010 over 700 people – participants in the demonstration on the presidential election in Minsk – have been detained on either criminal or administrative charges. Many of those detained have asked for legal assistance. However, in a number of cases the detainees have not been able to meet their lawyers at all. We have also received information that the lawyers have been prevented from meeting with their clients in private.

In this context, the CCBE wishes to draw to your attention the following Articles of the United Nations Basic Principles on the Role of Lawyers (1990):

Article 7 states that: *Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer and in any case not later than forty-eight hours from the time of arrest or detention.*

Furthermore, Article 8 states that: *All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.*

The above-mentioned difficulties for the detainees to receive assistance of a lawyer at all or to receive it adequately (in terms of time, facilities and the respect of the confidentiality principle) are in our view contrary to international standards. The CCBE urges the Ministry of Justice to eliminate any obstacles regarding access to lawyers and legal services throughout all proceedings. We would like to emphasize that the European Parliament in its resolution of 20 January 2011 on the situation in Belarus

also called on the Belarusian authorities to provide unhindered access for the detainees to legal assistance.

- b) **Guarantees for the functioning of lawyers and freedom of expression** – we have learned that lawyers, through the media, have informed the public about several severe problems the detainees are facing, particularly regarding access to legal assistance, circumstances of detention, conditions of custody and delays in medical care. We have also been informed that the Ministry of Justice has been critical about these lawyers' communication with media. As a result, the Ministry of Justice has notified the lawyers of the possibility of their losing their licence (notwithstanding the fact that these lawyers, by disseminating the above-mentioned information to the public, have not breached any law, or standards and ethics of the legal profession). This threat of being debarred has also been raised in the European Parliament resolution of 20 January 2011 on the situation in Belarus.

In this context, the CCBE wishes to draw to your attention the following Articles of the United Nations Basic Principles on the Role of Lawyers (1990):

Article 16 states that: *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.*

Furthermore, Article 23 states that: *Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights 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 organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.*

It is clearly stated that lawyers are entitled to disseminate information on the administration of justice and human rights issues in accordance with the law, and the recognised standards and ethics of the legal profession, and, by doing so, the lawyers shall not be threatened with any sanctions by any institution. The CCBE urges the Ministry of Justice to guarantee the lawyers' activities in this sphere without any improper interference.

- c) **Independence of professional associations of lawyers and impartiality of disciplinary proceedings** – we have been informed that legal assistance for the detainees was mainly provided by lawyers of the Minsk City Bar. From the end of December 2010 until the beginning of January 2011, the Ministry of Justice has sent requests to the Minsk City Bar raising a question about initiating disciplinary proceedings against these lawyers. Since no breaches of the law and professional ethical rules in the actions of these lawyers were found, the Minsk City Bar has refused to initiate any disciplinary proceedings. Recently the Ministry of Justice has sent new requests and according to information received, also the new requests to initiate disciplinary proceedings against lawyers have been dismissed by the Minsk City Bar. In addition, we have also been informed that the Ministry of Justice has declared its intention to amend the existing professional ethical rules.

In this context, the CCBE wishes to draw to your attention the following Articles of the United Nations Basic Principles on the Role of Lawyers (1990):

Article 24 states that: *Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.*

Furthermore, Article 28 states that: *Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.*

Taking into account the recent actions carried out by the Ministry of Justice, the CCBE urges you to guarantee the principle of independence of professional associations of lawyers (Minsk City Bar in particular) and subsequently also the impartiality principle of disciplinary proceedings against lawyers.

In view of the above, we urge you to guarantee full respect for the international standards envisaged in the United Nations Basic Principles on the Role of Lawyers (1990), in particular regarding adequate access to lawyers and legal services, freedom of expression of lawyers, independence of professional associations of lawyers and impartiality of disciplinary proceedings.

Yours sincerely,



Georges-Albert Dal
CCBE President

CC:

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