

Alexander Bileychik
First Deputy Minister
Ministry of Justice
10 Kollektornaya str
220004 Minsk
Belarus



London, 20 January 2010

Dear Minister Bileychik,

RE: Paval Sapelko and Valiantsina Busko

I am writing on behalf of the Bar Human Rights Committee of England and Wales (BHRC). The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. The Committee is also concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The BHRC is contacting you to express its concerns regarding actions taken against Paval Sapelko, lawyer acting for opposition leader Andrei Sannikov, and Valiantsina Busko, lawyer formally of the Hrodna Regional Bar Association, in apparent violation of the individual's human rights and rights to practice independently as lawyers.

The BHRC has been informed that on or about 10 January 2011 Mr Sapelko received a letter from the Ministry of Justice that disciplinary action was formally undertaken to revoke his license of the Minsk City Bar and to bring prosecutions relating to activities against the state. It is understood that the justification for this action was taken because of alleged "inappropriate statements" Mr. Sapelko had made against the college of lawyers (as an independent legal institution), the state's treatment of his client and the conditions of his detention and Mr Sapelko's questioning of justifiability of actions of the Justice Ministry. Such statements referred to comments made by Mr Sapelko regarding pressure from the state on the work of state lawyers and specifically in the defence of his client, Andrei Sannikov. As such, the subsequent disciplinary action taken against Mr Sapelko appears to be politically motivated in contravention of his freedom of expression and the independent practice of lawyers.

According to reports received by the BHRC, Ms Busko's annual practicing license issued by the Hrodna Regional Bar Association was revoked due to her participation in the protests of 19 December 2010 which followed the presidential elections. Ms Busko was detained for 10 days following her arrest on 19 December and found guilty of participation in an unsanctioned rally and sentenced to administrative arrest. Her appeal to the Minsk City Court was unsuccessful. The decision to cancel her license was confirmed by the Qualification Commission for the Legal Profession in Belarus on 4 January 2011.

The actions taken against Mr Sapelko and Ms Busko are representative of an increasing wave of harassment against a number of Belarusian lawyers. The BHRC has also been informed that other lawyers have been warned regarding comments in the media and several lawyers defending clients who took part in opposition rallies on 19 and 20 December are also under investigation. Such actions would appear to be directed to intimidate and threaten lawyers, in direct violation of international standards relating to independent representation and fair trial rights.

These reports are deeply troubling and raise serious concerns in an increasingly disturbing political context. International law recognises lawyers' rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, as an element of freedom of expression.¹ This is never more so critical than when actions are being defended against the state, such as is the case in criminal trials. Although this is recognised to a limited extent in Articles 17 and 18 of the Law of the Republic of Belarus "On Advocacy", the qualification that this is limited to the tasks of advocacy and norms of law included in the texts of these provisions is a prohibitory restriction of the freedom of a lawyer to defend their client, due to the wide interpretation given by the authorities evident in the present case and room for abuse.

In light of the above, the BHRC is concerned for the safety of the individuals highlighted and ability of lawyers generally to work unmolested. In this regard, the BHRC would draw particular attention to Article 16 of the UN Basic Principles on the Role of Lawyers 1990 states:

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.

It goes without saying that the ability of a lawyer to act independent is directly linked with their client's right to a fair trial, as enshrined by the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights (Article 14).² It should also be noted that Article 18 of the UN Basic Principle on the Role of Lawyers state that lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions".

In the case of Ms Busko, the BHRC would also draw to the attention of the Belarusian authorities the rights to freedom of expression and freedom of association protected in Article 19 and Article 22 of the ICCPR. These provisions are reinforced by the Declaration on Human Rights Defenders, adopted on 9 December 1998 by the UN General Assembly, which provide the right for everyone, individual and in associations with others, *inter alia* to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms (Article 9) and confers an

¹ Article 23, The Basic Principles on the Role of Lawyers, 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, available at <http://www2.ohchr.org/english/law/lawyers.htm>.

² See further in this context the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly at the 76th plenary meeting on 9 December 1988 A/RES/43/173, available at: <http://www2.ohchr.org/english/law/bodyprinciples.htm>.

obligation on States to take all necessary measures to ensure protection against violence, threats, pressure or any other arbitrary action, amongst others, as a consequence of their legitimate exercise of the rights referred to in the Declaration (Article 12(2)).

The BHRC therefore respectfully urges the Belarusian authorities to guarantee in all circumstances the physical and psychological integrity of Mr Sapelko and Ms Busko, and in general all threatened lawyers, in order to preserve the independence and integrity of the administration of justice. The BHRC would also encourage the Belarusian authorities to revoke the disciplinary actions against Mr Sapelko and Ms Busko, reinstate their respective licenses and put an end to investigations and other acts of harassment against lawyers defending clients involved in the opposition protests in December 2010.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Mark Muller', written in a cursive style.

Mark Muller QC
Chair
Bar Human Rights Committee of England and Wales

CC:

- Galina Grishkovec, Head of the Office of the Bar and Licensing of Legal Activity
- Alyaksandr Lukashenka, President of the Republic of Belarus
- Grigory Vasilevich, Prosecutor General
- Rosemary Thomas, British Ambassador to Minsk
- Aleksandr Mikhnevich, Belarus Ambassador to the UK
- Gabriela Knaul, UN Special Rapporteur on the Independence of Judges and Lawyers