

Wm. T. (Bill) Robinson III
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

June 18, 2012

Honorable Ms. Navanethem Pillay
UN High Commissioner for Human Rights
Office of the United Nations High Commissioner
for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10
SWITZERLAND

Dear Honorable Ms. Pillay,

I write to express the American Bar Association's (ABA) concerns about the violations of international law that are ongoing in Belarus as it relates to the independence of the legal profession. The ABA is an independent, voluntary, non-governmental organization with nearly 400,000 judges, lawyers, and associate members worldwide. The ABA regards human rights and the rule of law as cornerstones of a free and just society and has committed to strengthening them in the United States and around the world.

We know that you have been following the developments in the Republic of Belarus very closely. I am concerned that the rule of law cannot be restored in Belarus without addressing ongoing threats to the independence of the legal profession. The ABA respectfully requests that you consider additional means to raise the profile of this issue in your relations with the government of Belarus.

A. The situation of the Bar and lawyers in Belarus

As you know, the government of Belarus has punished many lawyers who have represented political opponents and human rights activists. The government has also taken steps to dismantle the Minsk Bar Association ("Bar") in order to undermine its independence from the government. These actions by the government of Belarus are clear violations of international law, infringements on human rights, and breaches of fundamental principles of the legal profession.

We are aware of six (6) lawyers who have either had their licenses revoked by the Ministry of Justice ("Ministry") and/or been disbarred by the Bar as a result of pressure from the government. While the Ministry alleges that their punishments were due to "professional" or "ethical" failings, these lawyers appear to have been the subject of

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retaliation for representing political candidates who were detained after the December 2012 election violence, or advocating for the respect of human rights through their work..

In addition to targeting individual lawyers, the government of Belarus has taken legislative and administrative action to replace the Bar's leadership and bring the Bar under the government's direct control. When the government directed the Bar to disbar particular lawyers who were representing political opponents and human rights activists under the pretense of professional violations, the Bar refused. In response, the government increased the political pressure on the Bar, targeted the Bar's leadership, and took steps to refashion the Bar in its favor.

These governmental actions resulted in the revocation of the licenses of three leaders of the Bar and the disbarment of other lawyers. Additionally, the government passed rules restricting the movement of lawyers internationally and rules that gave the government unfettered power to set up extraordinary commissions to evaluate the overall performance of the Belarusian legal profession. The government has also arrogated the power to initiate disciplinary proceedings against specific lawyers and expanded the grounds that can justify disciplinary action. Finally, the government gave itself the power to rewrite the Bar's ethics rules, which it is currently doing at this time.

B. ABA Concerns

These actions by the government of Belarus against the Bar and individual lawyers have raised serious concerns among ABA members and its leadership. Not only is there a concern that lawyers and the legal profession are under attack, but that the government of Belarus' actions will enable other human rights and international law violations in Belarus to continue and to increase.

At the core of our concerns is that Belarus is violating international law and not adhering to its treaty obligations. The government's retaliation against these lawyers and interference with the administration of the Bar contravenes fundamental human rights enshrined in the International Covenant on Civil and Political Rights, to which Belarus is a State Party. Namely, these actions violate the right to freedom of expression, freedom of association and the right to counsel.

Belarus' has violated Article 14 of the ICCPR which protects the right to counsel. By punishing these lawyers and the Bar for simply representing political opponents and human rights defenders, the government has violated these individuals' right to counsel of their own "choosing" and created a chilling effect on the Belarusian legal profession's ability to provide other like-minded individuals with the right to counsel.

The government of Belarus has also violated the right to freedom of expression by retaliating against attorneys speaking on behalf of their clients without justification. It has also violated the right of these lawyers to associate with colleagues and clients without undue interference.

These developments are also in clear breach of the core principles of the legal profession, namely the principle of independent regulation of the practice of law recognized in Europe, the United States, and internationally. Independent regulation is the cornerstone of any democratic society based on the rule of law; it is also necessary for the sound administration of justice. 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, in Havana in 1990, provide that “[l]awyers like other citizens are entitled to freedom of expression, belief, association and assembly (Principle 23). Furthermore, the Basic Principles continue by stating 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. (Point 24)

Moreover, the Basic Principles state that:

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. (Point 16)

The Standards for the Independence of the Legal Profession, as adopted by the International Bar Association, echoes the Basic Principles when it states that:

“There shall be established in each jurisdiction one or more independent self-governing associations of lawyers recognised in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person.”

The principle of independence is also laid down in the Recommendation of the Council of Europe (Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer). We realize that Belarus is

not a member of the Council of Europe; however, this recommendation reflects important European standards for the legal profession:

“All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.” (Principle I, point 1)

“Bar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.” (Principle 5, point 2)

The recommendation also highlights the role of the Bar:

“Bar associations or other lawyers’ professional associations should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate rights and interests of their clients, lawyers have a duty to act independently, diligently and fairly.” (Principle III, point 1)

“The role of Bar associations or other lawyers’ professional associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.” (Principle V, point 3)

The ABA along with bar associations around the world adopted the “Statement of Core Principles” of the legal profession, which was formulated during the 2005 Bar Associations’ Presidents Meeting in Paris, France. The core principles numbered three, one of which was the requirement of “[a]n *independent* legal profession”.

In light of international and regional standards on the independence of the legal profession as well as the lawyers’ unequivocal freedom of association, it is no surprise that the Special Rapporteur on the Independence of Judges and Lawyers, in his report to the U.N. General Assembly, found that, “the foundation of an independent and self-regulated association is one of the most significant steps in a period of political transition.”

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C. Conclusion

In bringing these concerns to your attention, we are lending our support to, and pledging our future assistance with, any efforts that you undertake to remedy the plight of the Belarusian legal profession. To this end, we respectfully request that you investigate this matter, and take action as deemed appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. T. Robinson III", enclosed within a large, loopy circular flourish.

Wm. T. (Bill) Robinson III

cc: Nils Muiznieks, Council of Europe Commissioner for Human Rights
Thorbjørn Jagland, Secretary General of the Council of Europe
Hillary Rodham Clinton, U.S. Secretary of State
Michael Posner, U.S. Assistant Secretary of State of Democracy, Human Rights,
and Labor