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**SENT BY EMAIL**

21 February 2024

**Public letter to the Ministry of Foreign Affairs, General Prosecutor's Office and the Department of Corrections of the Ministry of Internal Affairs of Belarus from the International Bar Association's Human Rights Institute**

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern regarding the incommunicado detention of lawyer Maksim Znak for over one year and to call on the Belarusian authorities to cease this.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 170 countries. The IBAHRI, an autonomous and substantively independent entity of the IBA, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

In 2021, Maksim Znak was awarded the International Bar Association's Award for Outstanding Contribution for Human Rights for his commitment to defending democratic principles and human rights in Belarus,<sup>i</sup> in addition to awards from the Council of Bars and Law Societies of Europe (CCBE) and Lawyers for Lawyers.<sup>ii</sup>

According to reports, on 9 September 2020, Maksim Znak was arrested and taken into custody in the pre-trial detention facility No1 in Minsk. On 6 September 2021, after a closed trial, he was convicted of 'conspiracy to seize state power', 'creation of an extremist formation', and 'calls for action aimed at harming national security' under Articles 357(1), 361-1(1), and 361(3) of the Criminal Code of Belarus respectively and sentenced to ten years imprisonment. On 24 December 2021, the Supreme Court upheld the sentence against Mr Znak. As we understand, in January 2022, Mr Znak was transferred to penal colony No 3 near Viciebsk. Since February 2023, Mr Znak has reportedly been held in incommunicado detention and has been denied access to his family members, his lawyer(s) and independent medical personnel.<sup>iii</sup>

The IBAHRI notes that, in May 2022, the UN Working Group on Arbitrary Detention found the arrest and detention of Mr Znak to be arbitrary and considered that his treatment was an act of retaliation for his activism. The Working Group requested, *inter alia*, that he be released immediately and granted reparation and compensation, in accordance with international law.<sup>iv</sup>

The IBAHRI recalls that Belarus has ratified and is therefore bound by, *inter alia*, the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)<sup>v</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>vi</sup>

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We respectfully remind you that, in line with the above legal framework, Belarus must respect and fulfil international human rights law, standards and norms, including, but not limited to:

*I. Prohibition of torture: Incommunicado detention as a form of torture and ill-treatment per se*

Numerous UN human rights bodies and mechanisms, including the UN Human Rights Committee and the UN Working Group on Arbitrary Detention, have held that prolonged incommunicado detention can itself constitute torture and ill-treatment.<sup>vii</sup> The latter has considered incommunicado detention for four months to be ‘prolonged’ based on factual circumstances.<sup>viii</sup>

The prohibition of torture and ill-treatment, which is a peremptory norm of international law,<sup>ix</sup> is codified in Article 7, ICCPR. It is an absolute prohibition, from which no derogation is permitted, as per Article 4(2), ICCPR, and Article 2(2), CAT. Article 10(1), ICCPR, complements this prohibition and imposes a positive obligation on State parties to treat all persons deprived of their liberty with humanity and respect for their dignity.<sup>x</sup>

*II. Prevention of torture: Heightened risk of torture and ill-treatment during incommunicado detention*

Prolonged incommunicado detention is conducive to and facilitates the perpetration of torture and ill-treatment, creating a heightened risk of such treatment.<sup>xi</sup>

Under Articles 2(1) and 16, CAT, States must take effective legislative, administrative, judicial, or other measures to prevent acts of torture and ill-treatment in any territory under its jurisdiction. Furthermore, the UN Human Rights Committee has held that States must make provisions against incommunicado detention to guarantee the effective protection of detained persons.<sup>xii</sup>

Prompt and regular access to lawyers of one’s choice, independent medical personnel and family members of detainees at all stages of detention are, *inter alia*, essential and necessary safeguards against torture and ill-treatment that States must ensure in order to comply with the above obligations.<sup>xiii</sup>

**We therefore call on the Belarusian authorities to cease the incommunicado detention of Mr Znak and to respect and fulfil his right of access to his lawyer(s), independent medical personnel and contact with his family to, *inter alia*, respect the prohibition and ensure the prevention of torture and ill-treatment.**

We would be grateful to receive your assurances that you have received this letter and that these concerns will be addressed as a matter of urgency.

Yours sincerely,

**Anne Ramberg Dr Jur hc**  
Co-Chair, IBAHRI and Immediate Past Secretary General of the Swedish Bar Association

**Mark Stephens CBE**  
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<sup>i</sup> International Bar Association. *Belarus: Lawyers Ludmila Kazak and Maksim Znak win the 2021 IBA Human Rights Award* (28 October 2021) available at: <<https://www.ibanet.org/Belarus-Lawyers-Ludmila-Kazak-and-Maksim-Znak-win-the-2021-IBA-Human-Rights-Award>>.

<sup>ii</sup> See: Council of Bars and Law Societies of Europe (CCBE). *Human Rights Award 2021: Background document* (2021) available at:

<[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_AWARD/2021/EN\\_Background-document-HR-Award-Belarus-2021.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_AWARD/2021/EN_Background-document-HR-Award-Belarus-2021.pdf)>; Lawyers for Lawyers. *Maksim Znak and Liudmila Kazak laureates Lawyers for Lawyers Award 2021* (9 September 2021) available at: <<https://lawyersforlawyers.org/en/maksim-znak-and-liudmila-kazak-laureates-lawyers-for-lawyers-award-2021/?fbclid=IwAR0ucflXlLhSwujKoPsKB6Bwa0FzbDo-6Phf3pFkrIjcIJMgR9dp3urknD4>>.

<sup>iii</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Communication Ref. UA BLR 4/2023* (25 May 2023) pg. 8.

<sup>iv</sup> UN Working Group on Arbitrary Detention, *Opinion No. 24/2022 concerning Maksim Znak (Belarus)* (25 May 2022) UN Doc A/HRC/WGAD/2022/24 [110 - 114].

<sup>v</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) 1465 UNTS 85 (ratified by Belarus in 1987).

<sup>vi</sup> International Covenant on Civil and Political Rights (ICCPR) (4 April 1968) 999 UNTS 170 (ratified by Belarus in 1973).

<sup>vii</sup> UN Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and security of person)* (16 December 2014) UN Doc CCPR/C/GC/35 [56]; UN Human Rights Committee, *Communication No 440/1990: El-Megreisi v Libya* (24 March 1994) UN Doc CCPR/C/50/D/440/1990 [5.4]; UN Working Group on Arbitrary Detention, *Opinion No. 84/2022 concerning Abdelrhman Mohammed Farhanah (Saudi Arabia)* (13 March 2023) UN Doc A/HRC/WGAD/2022/84 [87]. See also: UN General Assembly, *Resolution 68/156: Torture and other cruel, inhuman or degrading treatment or punishment* (14 February 2014) UN Doc A/RES/68/156 [27].

<sup>viii</sup> UN Working Group on Arbitrary Detention, *Opinion No. 86/2022 concerning Do Nam Trung (Viet Nam)* (9 March 2023) UN Doc A/HRC/WGAD/2022/86 [13, 32]. See also: UN Working Group on Arbitrary Detention, *Opinion No. 34/2020 concerning Abdullah Awad Salim Al Shamsi (United Arab Emirates)* (17 June 2020) UN Doc A/HRC/WGAD/2020/34 [7, 48, 60] (6 months incommunicado detention); UN Working Group on Arbitrary Detention, *Opinion No. 84/2022 concerning Abdelrhman Mohammed Farhanah (Saudi Arabia)* (10 March 2023) UN Doc A/HRC/WGAD/2022/84 [33, 87] (8 months incommunicado detention).

<sup>ix</sup> See, e.g., Articles 7 and 10, ICCPR; Articles 1, 2 and 16, CAT; Article 5, Universal Declaration of Human Rights; International Law Commission, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)* (2022), Annex. Available at: <[https://legal.un.org/ilc/texts/1\\_14.shtml](https://legal.un.org/ilc/texts/1_14.shtml)>.

<sup>x</sup> UN Human Rights Committee, *General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty)* (10 April 1992) UN Doc HRI/GEN/1/Rev.1, pg. 33 [3].

<sup>xi</sup> UN Working Group on Arbitrary Detention, *Opinion No. 84/2022 adopted by the Working Group on Arbitrary Detention concerning Abdelrhman Mohammed Farhanah (Saudi Arabia)* (10 March 2023) UN Doc A/HRC/WGAD/2022/84 [87]; UNGA, *Resolution 68/156: Torture and other cruel, inhuman or degrading treatment or punishment* (14 February 2014) UN Doc A/RES/68/156 [27]; UN Committee against Torture, *Conclusions and Recommendations: Spain* (23 December 2002) UN Doc CAT/C/CR/29/3 [10].

<sup>xii</sup> UN Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (10 March 1992) UN Doc HRI/GEN/1/Rev.1, pg. 32 [11]. See also: Article 10(3), ICCPR, and UN Human Rights Committee, *General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty)* (10 April 1992) UN Doc HRI/GEN/1/Rev.1, pgs. 34-35 [12].

<sup>xiii</sup> See, *inter alia*: UN Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and security of person)* (16 December 2014) UN Doc CCPR/C/GC/35 [35, 58]; UN Commission on Human Rights, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (12 January 1995) UN Doc. E/CN.4/1995/34 [926(d)]; UNGA, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment* (3 July 2001) UN Doc A/56/156 [34]; UN Human Rights Council, *Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention* (5 February 2010) UN Doc A/HRC/13/39/Add.5 [156]; UN Human Rights Council, *Report of the Working Group on Arbitrary Detention* (24 December 2012) UN Doc A/HRC/22/44 [84]. See also: UNGA, *Resolution 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (8 January 2016) UN Doc A/RES/70/175, Annex, Rule 58.

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