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***Authors***

**The Center for Constitutionalism and Human Rights of the European Humanities University** (Belarusian University in exile, Vilnius, Lithuania) is an academic community of lecturers, students and associate participants engaged in research, academic and consulting work in the field of constitutional law and order, the system of international legal values and ensuring human rights in the states of Eastern and Central Europe [1].

**Right to Defense** is an initiative of independent Belarusian lawyers which was created in order to provide independent information about lawyers and Bar in Belarus, to promote international standards of the legal profession [2].

***Introduction***

Aim of this document is to introduce the concept of a "Human Rights Lawyer" as a potential approach for legal empowerment to access to justice as well as to support lawyers who are deprived of the ability to practice by authoritarian regimes or have left their own country because of war.

Such legal professionals can vitally contribute to empowerment of achieving equal and effective justice for those seeking justice in cases of human rights violations.

In this regard the core question is **whether the international legal framework should be interpreted to incorporate lawyers, who are disbarred or not admitted to practice by authoritarian regimes or depended Bars, or relocated because of repression or war, by recognizing them as legitimate agents of human rights protection within the justice system.**

***Background***

For the first time, the term “Human Rights Lawyer” was introduced in 2014 at the conference of the international educational program “International Law in Advocacy” (now – the international partnership ILIA) in Vilnius, where lawyers from Azerbaijan, Belarus, Moldova, Russia and Ukraine discussed challenges and threats to their professional activities in the defense of human rights. Shortly thereafter, one of the key experts, Intigam Aliev, one of the leading lawyers in Azerbaijan representing individuals in the European Court of Human Rights, was arrested and then sentenced to seven and half years in prison. This event gave impetus to lawyers to openly declare that pressure has been intensified on lawyers working on human rights, and it is the trend observed in Eastern Europe.

In the report “Human Rights Lawyers at Risk” (September, 2015) experts of ILIA formulated definition of *human rights lawyers.*

*“Human rights lawyer” refers to a lawyer who provides legal counseling to victims of human rights violations regardless of the lawyer’s membership in a professional association. Lawyers constitute a professional group whose work is indissolubly related to human rights protection including implementation of the right to fair trial. The term “human rights defender” is an umbrella term for all those engaged in human rights work including the human rights lawyer.  Hence, a human rights lawyer is both a professional practicing law and a human rights defender[3].*

The report received support from international organizations, human rights organizations and professional Bar Associations [4].

On June 11-12, 2016 in Belgrade, consultations with UN Special Rapporteur on the independence of judges and lawyers Monica Pinto, were held. 50 lawyers from 16 countries of Eastern Europe, the Caucasus and Central Asia took part in it. As a result, they developed recommendations regarding the issue of the threats, faced by lawyers in the performance of their work [5].

On October 21, 2016, at the 7session of the UN General Assembly, the Special Rapporteur presented a report (A/71/348\*), which included a number of proposals made during the consultations in Belgrade. In particular, she distinguished the concept of *human rights lawyers as a certain group of human rights defenders*.

Since then, the concept of human rights lawyers has been recognized by civil society organizations, professional associations of lawyers, international organizations and academic institutions.

Since 2019 within the framework of the Council of Europe they are developing a new instrument on the legal profession. The EHU Center for Constitutionalism and Human Rights, ILIA and lawyers who disbarred in Belarus because of repression, but continue human rights work, are promoting the idea, that status of a *human rights lawyer* could be defined in this instrument and recognized as legitimate and beneficial to human rights law the continued work of those lawyers who are denied the opportunity to practice in their own countries due to: 1) obstacles / restrictions created and maintained by the State or by professional associations, who thereby applied domestic law in a manner contrary to the purposes and principles of the UN Charter and/or core human rights treaties or 2) because of involuntary emigration to another country, provided that these lawyers are qualified and committed to the ethical standards necessary to protect and promote human rights on the basis of the principle of universality and the rule of human rights [6].

Belarusian disbarred lawyers formed a new type of professional association of human rights lawyers in exile [7] and are developing a code of professional ethics for it. Thus, the idea is alive.

***Discourse: can lawyers’ guarantees be extended to those lawyers, who do not have state-recognized status***

### The concept of *human rights lawyers* is based on a broad understanding of the definition *lawyer* in the international standards developed at the global level. So, UN Basic Principles on the Role of Lawyers (1990), use the term "lawyers" in the title and content of the document, extending the guarantees to a wide range of legal professionals, including advocates and paralegals. While the original focus of this document was on criminal defense matters that involve a licensed lawyer in most national legal systems, governments have agreed on a "functional approach" that extends the standards of the legal profession not only to lawyers in the narrow sense but also to all categories of legal professionals who perform the functions of lawyers without official status. This same approach has been adopted as the basis for the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. As it was mentioned, the Special Rapporteur on the Independence of Judges and Lawyers, Monika Pinto, used the concept of human rights lawyers in her report (A/71/348\*, para 36). Moreover, the Special Rapporteur on the Independence of Judges and Lawyers Diego García-Sayán highlighted an even broader sense, mentioning "persons who practice law" and "the free practice of the legal profession” (A/HRC/50/36, para1).

On the other hand, according to the CoE Committee of Ministers Recommendation on the Freedom of Exercise of the Profession of Lawyer (2000), a lawyer is defined as a person who is qualified and authorized under national law to plead and act on behalf of clients, engage in the practice of law, appear before courts, and advise and represent clients in legal matters. An important characteristic of a lawyer is that they are "authorized", meaning they have received a license and/or permission to practice and represent clients in a particular case, usually from a state or authorized agency, with the client's consent in the form of a power of attorney or agreement. Nowadays, by preparing a new Convention devoted to lawyers [8] the Committee of Experts on the Protection of Lawyers of the Council of Europe took a careful approach: they limited the scope of the definition, as well as the entire Convention, to the so-called “regulated profession of lawyers”. According to the Committee’s report, the general definition of a lawyer shall be complemented by the Parties (governments) at the moment of signature or ratification, indicating specific professional titles used in their national legislation to which the convention would apply [9].

Explaining the term "regulated profession of lawyer," the largest European professional association of lawyers and advocates (CCBE) suggests that "a lawyer" means a natural person who belongs to a professional association and who, under national law, is entitled to practice law in such a capacity. Lastly, the position of Europeans addresses the issue of protection and substance of the concept “lawyer”, emphasizing that protection should also be given to natural persons who have the necessary qualifications to become a lawyer but have not been admitted to the relevant professional association. [10].

To sum up, while universal standards refrain from using terminology that subordinates a legal professional to the "authorized"/"regulated" profession, European institutions tend to adopt a definition that emphasizes a lawyer's dependency on State regulation of the legal profession.

***Lawyers within the human rights defenders’ protection regime***

The Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UNDHRD) [11], which has become known as a "code of human rights practice", provides no definition on human rights defenders. However, an interpretation of its provisions allows one to conclude that anyone, regardless of occupation, can be a human rights defender; it is the activities, not the profession, that primarily determine the role of a human rights defender. The United Nations General Assembly and Human Rights Council regularly and unanimously adopted resolutions proclaiming the rights related to work and activities of human rights defenders [12]. Interpreting the UNDHRD experts of the OSCE Bureau on Democracy and Human Rights in their Guiding Principles on Protection of Human Rights Defenders [13] stressed that *lawyers*can be human rights defenders. And finally, the Special Rapporteur on the Independence of Judges and Lawyers explained in her Report to the UN General Assembly (A/71/348\*, section "Lawyers as Human Rights Defenders") that *when acting on behalf of their clients in defending their human rights and fundamental freedoms, lawyers should also be regarded as human rights defenders, and in that role they should fall under the protective scope of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.*

***Reality: authoritarian states manipulate the status of а lawyer. Disbarred lawyers continue to defend human rights but do not enjoy any professional guarantees, and their clients are not ensured the guaranties of confidentiality***

A narrow definition of “lawyer”, dependent on an official recognition, allows authoritarian states to manipulate the status of a lawyer. By imposing control over the legal profession, states use Bar Associations as a repressive tool. A vivid example of this is Belarus. More, than 100 lawyers who, during the political and legal crisis before and after the presidential elections in 2020, worked in the paradigm of the rule of law and human rights, defended political opponents, activists, human rights defenders, journalists, were deprived of the right to the profession, were disbarred [14]. In such states, the deprivation of a lawyer of his status within the national system becomes only a “technical” issue. Therefore, a lawyer, who is considered such only “in accordance with national law” in an authoritarian state is protected by nothing. As a result of the elimination of the most active lawyers, which has a chilling effect on the entire professional community, their clients – imprisoned opponents of the regime – have been left without access to a lawyer because their lawyers are deprived of their status and other lawyers do not agree to provide legal assistance to them.

At the same time, disbarred lawyers, who, although unable to serve in national courts, continue to work in the field of human rights. Such lawyers represent their clients in international bodies and are recognized there as lawyers. They also provide legal expertise on human rights issues and make legal comments in public space.

Performing work, that is legitimate in terms of the Declaration on Human Rights Defenders, human rights lawyers are a special professional group of human rights defenders, which is due to the principles of the legal profession:

1) inherent nature of the lawyer-client confidence relationship thatmeans the loyalty of a lawyer to their client. The implementation of this principle implies conditions for confidential communication between the lawyer and the client, as well as observance of the lawyer's immunities in terms of their exemption from liability for refusing to disclose information received from the client; 2) *the independence of the legal representative,* i.e., the autonomy of a lawyer, primarily from interference by the state, through all its bodies, in the activities of lawyers and their associations through the creation and functioning of a system of guarantees and immunities. International standards recognize as minimum essential guarantees that should be provided to lawyers enabling them to perform their duties towards clients.

In addition, lawyers, regardless of their legal status, must follow the rules of professional ethics in relations with clients. International standards also emphasize that those who can affect the human dignity, human rights, and fundamental freedoms of others as a result of their profession should respect such rights and freedoms, and comply with relevant national and international standards of occupational and professional conduct or ethics [15].

However, without having the recognized status of lawyers/human rights lawyers, while performing functions, that are in fact purely lawyers, these lawyers do not have any professional guarantees and immunities, such as: attorney-client privilege, access to the client and to materials relating to the client. This obviously restrict access of clients, who wish to use the assistance of these professionals, to justice.

***Conclusion***

Thus, due to the normative establishment of the importance of the legal means and effective remedies in the promotion and protection of human rights the term "human rights lawyers" has been increasingly used in public discourse, as well as in the jurisprudence of international judicial and quasi-judicial bodies [16].

Assuming that the human rights regime allows for the work of human rights lawyers and their adherence to professional and ethical standards, there remains an issue of ensuring that clients of these lawyers receive the same level of guarantees as those outlined in national and international legislation for clients of "fully-fledged" lawyers. Meanwhile, the interpretation of international standards, based on non-discrimination, allows for extending guarantees and immunities to legal professionals who protect human rights. This approach emphasizes that treating legal professionals differently from advocates may result in unequal treatment for clients, contradicting the principles of human rights protection. It has already been applied by international bodies [17].

To encourage international organizations working with international standards, national lawyers, academicians, and civil society representatives emphasize the need for a broad definition of a lawyer that includes human rights protection work. This definition, along with an international recognition process, would ensure that disbarment or relocation does not deprive them of the right to practice, but instead allows them to obtain the status of 'human rights lawyer' based on their previous activities. This would foster a corps of human rights lawyers who practice based on human rights and ethical standards, strengthening the space for human rights law [18].

In conclusion, the emergence of the "human rights lawyer" in legal discourse has the potential to become an effective means of protecting individual rights and freedoms. Derived from the framework of human rights defenders, the definition of *human rights lawyers* is rooted in professional and ethical standards inherited from traditional lawyers. The obligation of the state is to respect and ensure equal treatment for clients of human rights lawyers.

In this regard, we are grateful to Ms. Special Rapporteur for promoting the concept of a human rights lawyer by including it in the interpretation of international standards and achieving consensus among governments and other interested parties. We would be happy to take part in consultations with the Special Rapporteur to develop this idea.

**Footnotes:**

[1] [https://cchr.online/о-nas/o-centre/](https://cchr.online/%D0%BE-nas/o-centre/) ;

[2] <https://www.defenders.by/right_to_protection>;

[3] "Human Rights Lawyers at Risk: Making the Case for Protection of Legal Professionals in Azerbaijan, Belarus, Moldova, Russia, and Ukraine", published in September 2015, Annex. Comparative and Legal Analysis of Certain Terms used in the Report, p.15, <https://humanrightshouse.org/noop-media/documents/21177.pdf> ;

[4] The Human Rights House Network, American Bar Association Justice Defenders Program, Lawyers for Lawyers Foundation, The Council of Bars and Law Societies of Europe, OSCE Office for Democratic Institutions and Human Rights, The Council of Europe, International Commission of Jurists, Global Network for Public Interest Law, Global law firm Dentons, Norwegian Mission of Rule of Law Advisers to Moldova;

[5] <https://humanrightshouse.org/noop-media/documents/21965.pdf>;

[6]These proposals were made at the CCHR EHU/ILIA conferences in October 2022 <https://docs.google.com/document/d/1Znf-mjLvB1Jd8Z2mNn9m-Oav4d0qmkDZ/edit>, and April 2023, as well as at follow-up consultations with the convention drafting group.\*

[7] <https://www.defenders.by/tpost/be1oxh9vc1-belarusian-independent-association-of-hu>

[8] McBride, J. Study on the feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer: possible added-value and effectiveness, European Committee on Legal Co-operation (CDCJ), CoE, 2021, рр. 5-6: <https://rm.coe.int/eng-examen-de-faisabilite-d-un-instrument-juridque-europeen-couv-texte/1680a22790> ;

[9] Committee of Experts on the Protection of Lawyers, Meeting Report, 4th meeting, 1-3 March 2023, р.12, <https://rm.coe.int/report-of-the-4th-meeting-of-the-committee-of-experts-on-the-protectio/1680aa743>;

[10] CCBE position on the draft Convention on the protection of the profession of lawyer 16/02/2023, р.2 <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_CONVENTION/CONV_Position_papers/EN_CONV_20230216_CCBE-position-on-the-draft-Convention-on-the-protection-of-the-profession-of-lawyer.pdf>;

[11] Declaration on the Right and Duty of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly [resolution 53/144](http://www.un.org/ru/documents/ods.asp?m=A/RES/53/144) of December 9, 1998;

[12] Resolution 66/164 on the Situation of Human Rights Defenders - Adopted by the UN General Assembly on December 19, 2011; Resolution 68/181 on Human Rights Defenders - Adopted by the UN General Assembly on December 18, 2013;Resolution 70/161 on the Situation of Human Rights Defenders - Adopted by the UN General Assembly on December 17, 2015; Resolution 72/247 on the Situation of Human Rights Defenders - Adopted by the UN General Assembly on December 20, 2017; Resolution 74/162 on the Situation of Human Rights Defenders - Adopted by the UN General Assembly on December 18, 2019 etc (12);

[13] OSCE ODIHR Guidelines on the Protection of Human Rights Defenders (2014), Section B, Explanatory Note, рр.7,37 <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>;

[14] <https://www.defenders.by/right_to_protection>; <https://cchr.online/report-eng-version/>;

[15] Declaration on the Right and Duty of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly [resolution 53/144](http://www.un.org/ru/documents/ods.asp?m=A/RES/53/144) of December 9, 1998, art.11.;

[16] *ALIYEV v. AZERBAIJAN* (Applications nos. [68762/14](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2268762/14%22]}) and [71200/14](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2271200/14%22]})), ECHR, p.3 <https://hudoc.echr.coe.int/fre?i=001-186126>: Report of the Special Rapporteur on the independence of judges and lawyers, Diego García Sayán,A/HRC/50/36, 22 April 2022,pp.1 - <https://www.ohchr.org/en/special-procedures/sr-independence-of-judges-and-lawyers> ; “Right to equality before courts and tribunals and to fair trial”, General Comment of the Human Rights Committee, No. 32, para. 34;

[17] Freedom of Exercise of the Profession of Lawyer: Recommendation Rec (2000)21 Adopted by the Committee of Ministers of the Council of Europe on 25 October 2000, p.48-58. https://play.google.com/store/books/details/Freedom\_of\_Exercise\_of\_the\_Profession\_of\_Lawyer\_Re?id=fkMCTns5YGUC&hl=az&gl=US&pli=1 – Access date: 04/20/2023;

[18] The right to legal counsel: scientific and practical aspects of the role of lawyers for human rights in the light of the development of the Council of Europe document “On the profession of lawyers and access to legal assistance”, 30 Sept -1 Oct 2022, EHU, Vilnius, Lithuania; <https://cchr.online/conference-outlines-the-new-coe-instrument-on-the-profession-of-lawyer-and-the-universality-of-human-rights-challenges-in-shaping-standards-on-access-to-the-defence-key-challenges-and-entr/>.