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Republic of Tajikistan

30 October 2018

Your Excellency,

Tajikistan – Arrest and detention of lawyers

The Law Society of England & Wales is the professional body representing more than 180,000 solicitors in England and Wales. It aims to promote and support solicitors while upholding the rule of law, legal independence, ethical values, and the principle of justice for all around the world. The Law Society holds Special Consultative status with the United Nations Economic and Social Council since 2014.

Lawyers for Lawyers is an independent lawyers' organization which seeks to promote and protect the independence of the legal profession through the support of lawyers around the world, who face reprisals, improper interferences or restrictions in carrying out their professional functions. Lawyers for Lawyers has Special Consultative status with the United Nations Economic and Social Council since 2013.

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights and the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO in Special Consultative status with the United Nations Economic and Social Council.

The Law Society previously expressed its concern about the arrests and detentions of lawyers and human rights defenders in Tajikistan in our letters of 15 August 2014, 2 February 2015, and 30 November 2016. The Law Society, Lawyers for Lawyers, and LRWC welcome the release of Shukhrat Kudratov in August 2018 after he was imprisoned on embezzlement and bribery charges in 2015. He was sentenced to nine years, which was subsequently shortened to three years and eight months. However, we understand that, since his release, he has been visited by the police at least six times and it is not clear why these repeated police visits have taken place. It has also been reported that Mr. Kudratov has been prohibited from carrying out his functions as a lawyer after completion of his prison term.

Mr. Kudratov's arrest and detention seem to have been related to his legal representation of Mr Zaid Saidov. Prior to the December 2013 presidential elections, Mr Saidov sought to create a new opposition party, was arrested in May 2013 and sentenced in November 2013 to 26 years

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imprisonment. We understand that Mr. Zokirov, another legal representative of Mr. Zaid, was also arrested and detained on fraud charges but has since been released.

Apart from the cases of Mr. Kudratov and Mr. Zokirov, several cases have been recorded where lawyers have had to leave the country because of reprisals taken against them for legally representing opposition politicians or other lawyers who represent such politicians. As an example, on 22 August 2016, Jamshed Yorov - a defence lawyer in the case against members of the Islamic Renaissance Party of Tajikistan - was detained on charges of "divulging state secrets" under Article 311 of the Criminal Code. On 30 September 2016, he was released but was forced to leave the country because of continued harassment. On 27 December 2016, Muazzamakhon Kadirova – defence lawyer in the case of two other lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov - was summoned to the Prosecutor General's Office and questioned. After having been under surveillance and learning that a criminal case was being prepared against her, she has had to leave the country in 2017.

We understand that the lawyer Dilbar Dodojonova remains under house arrest. Buzurgmehr Yorov and Nuriddin Makhkamov, two lawyers about whom we wrote a letter on 30 November 2016, are still serving prison sentences of 28 and 21 years respectively because they represented political opposition leaders. On 12 December 2016, a second proceeding was started against Mr. Yorov for "disrespecting" the court and insulting government officials, because he had quoted an 11th century poet in his closing statement to Dushanbe City Court in his first trial. On 16 March 2017, the Supreme Court found him guilty and sentenced him to an additional two years in prison. Meanwhile, in February 2017, Firdavs district court in Dushanbe started hearings into a third case brought against Mr. Yorov on fraud charges and apparently a fourth criminal case against him was brought shortly afterwards. The latter related to charges of having insulted your Excellency during statements made in court in response to the fraud charges brought against him. In August 2017, he was found guilty of the latter offence and another three years were added to his prison sentence. We also understand that, in September 2018, Mr. Yorov was beaten by prison guards. His family has had difficulties to find an independent lawyer to represent him in court, because of the measures taken against lawyers who represent him or persons of the political opposition in Tajikistan.

The abovementioned events illustrate a systematic practice of arresting, detaining, and prosecuting lawyers who represent opposition politicians. This practice goes against the well-established principle, included in the United Nations Basic Principles on the Role of Lawyers (see below), that lawyers should not be identified with their clients or clients' causes. Lawyers representing their prosecuted colleagues are themselves being arrested and prosecuted. This has a chilling effect in which no independent legal representation can be found, in violation of the fair trial guarantee – established in the International Covenant on Civil and Political Rights - that everyone has a right to legal representation of one's own choosing.

In addition, in November 2015, amendments were made to the law on the legal profession (*advokatura*) that requires lawyers to renew their licenses with the Justice Ministry rather than with an independent bar association. The Presidency of the Qualifying Commission is held by a Deputy Minister of Justice. This oversight from the executive branch threatens the independence of the legal profession. Another consequence of these amendments is that the number of licensed lawyers has decreased from more than 1,200 in 2015 to 600 in May 2017. This means that access to justice for all citizens in Tajikistan is now severely restricted.

The following international standards are applicable to Tajikistan, with respect to the treatment of detainees, fair trial guarantees, and the independence of the legal profession.

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The International Covenant on Civil and Political Rights 1966, acceded to by Tajikistan on 4 January 1999 provides that:

Article 7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9: (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 14: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [....].

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; [...].

Tajikistan acceded to the **Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment** on 11 January 1995, which provides that:

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

We also draw your attention to **The United Nations Basic Principles on the Role of Lawyers (1990)**, which provide that:

16. 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.

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17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

24. 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.

The **UN Standard Minimum Rules for the Treatment of Prisoners** provide that:

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

In addition, the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** (1988) states:

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

The **UN Basic Principles for the Treatment of Prisoners** (1990) provide that:

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

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The Law Society, Lawyers for Lawyers, and LRWC respectfully urge that the relevant authorities:

1. Ensure that the conditions in detention of Mr Yorov, Mr Makhkamov, and other lawyers who are detained, comply with applicable international standards;
2. Ensure that any violation of the physical integrity of lawyers is fully and promptly investigated and the perpetrators brought to justice;
3. Ensure that lawyers can appeal their convictions through an independent, impartial judicial proceeding that is open to the public and in which all rules regarding due process are respected, including that lawyers should be able to choose their legal representatives;
4. Investigate promptly and effectively any credible allegations of lawyers being threatened, intimidated, and harassed;
5. Review the existing legislation, in particular the amendments to the Law on the legal profession, and amend those provisions that restrict the independence of lawyers;
6. Release immediately the lawyers in detention and revoke any charges pending against them, unless sufficient evidence is available which is served upon them and their guilt is established in proceedings carried out in accordance with fair trial guarantees;
7. Comply with Tajikistan's international obligations to ensure that lawyers can carry out their professional functions without harassment and improper interference.

We will continue to monitor the situation of lawyers and human rights defenders in Tajikistan, in particular the situation of Mr Yorov, Mr Makhkamov, and Mr. Kudratov.

Yours sincerely,

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