

Lack of necessary guarantees for the functioning of the legal profession in Tajikistan

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Summary

The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers are able to carry out their professional duties independently of the government and political pressure.

Since the second UPR cycle the situation of lawyers in Tajikistan remains of concern. Tajikistan does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the United Nations Basic Principles on the Role of Lawyers. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

No effective guarantees for the functioning of lawyers

i. Improper interference by law enforcement agencies

In recent years the rights and privileges of lawyers, and their clients, have not been guaranteed and lawyers have sometimes been subject to harassment and improper interference by law enforcement agencies (L4L and IBA submission §13).

Despite Article 53 of the Criminal Procedure Code and Article 9 of the Law on Advokatura establishing a lawyer's right to meet with his/her clients, our information indicates that bureaucratic or unjustified restrictions or even abuse of power are limiting this access (L4L and IBA submission §13.1). Lawyers from Tajikistan have also reported that insufficient measures are taken by prison personnel to guarantee the confidential nature of their meetings with their clients (L4L and IBA submission §13.2).

Furthermore, Article 11(4) of the Law on Advokatura revokes the lawyer-client privilege by providing that no information on cases related to terrorism, extremism or money laundering constitutes lawyer's privilege and that failure to report such information will result in criminal prosecution (L4L and IBA submission §13.2).

ii. Intimidation and harassment of lawyers

Lawyers in Tajikistan face significant persecution for their involvement in sensitive cases. This comes in the form of intimidation and other threats against them and their families, typically in retaliation for representing political opponents or expressing a willingness to take on politically sensitive cases. They are often threatened with disciplinary, administrative and even criminal charges for doing their work. (L4L and IBA submission §15 and 17).

Based on the definitions of terrorism and extremism in the Tajik legislation, lawyers who defend clients charged with those crimes may become the subject of criminal prosecutions for the same or similar crimes themselves. This was the case with the lawyers Buzurgmehr Yorov and Nuriddin Makhkamov (L4L and IBA submission §18).

Threats to the Independence of the legal profession

Professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them

There are concerns that the independence of the legal profession is not fully guaranteed as some institutions of the Bar Association are now dependent on the Ministry of Justice, for example the Qualification Commission (L4L and IBA submission §20).

The Law on Advokatura introduced a requirement that all lawyers must requalify every five years and that this process be carried out by the Qualification Commission. The examination process apparently involves questions unrelated to law, including political and historical questions (L4L and IBA submission §21). The Qualification Commission is chaired by a Deputy Minister of Justice who also convenes all sessions. It has been reported that as a result of these changes there has been a dramatic drop in the number of practising lawyers in Tajikistan, to the detriment of an effective access to justice for everyone in need of legal representation (L4L and IBA submissions §20 22, 23 and 24).

Recommendations

- **Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.**
- **In consultation with the Bar Association and with individual lawyers, reform the Law On Advokatura to properly safeguard the lawyer-client principle, and remove any role for the Ministry of Justice in the governance of the legal profession, including in the Qualification Commission.**
- **In cooperation with the Bar Association take measures to enable a marked increase in the number of individuals qualifying to practise as lawyers, including in rural areas.**
- **To take measures to ensure that law enforcement agencies in Tajikistan cease any illegitimate interference with lawyers' activities. Cases of improper and illegal interference with the work of lawyers should be punishable under national law.**