



KAZAKHSTAN

Human Rights Committee Consideration of the Second Periodic Report of Kazakhstan

Submission on the List of Issues

Amsterdam, 7 August 2015

Lawyers for Lawyers Foundation

PO Box 7113

1007 JC Amsterdam

The Netherlands

T +31 (0) 20 717 16 38

E Info@lawyersforlawyers.org

@ www.lawyersforlawyers.org

I Introduction

Submitting Party

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.¹
2. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).² We do this by supporting lawyers across the world who are threatened or suppressed as a result of discharging their functions and by promoting the proper role of lawyers.³
3. L4L wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of Kazakhstan.

II Executive Summary

Issues

4. This submission outlines L4L's key areas of concern about the failure of the Kazakh authorities to comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.
5. It highlights, in particular, concerns in relation to the following issues:
 - (i) No effective guarantees for the functioning of lawyers: Increasing harassment and intimidation of lawyers (Article 14);
 - (ii) The abuse of disciplinary proceedings against lawyers (Article 14).

Recommendations

6. **The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
7. **The Human Rights Committee should address the failure of the authorities to provide lawyers with all the facilities, rights and privileges necessary for**

¹ For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³ For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time.

8. **The Human Rights Committee should address the lack of necessary measures that the Kazakhstan government takes to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds.**

III Effective mechanisms for the protection of human rights

9. 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, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the ICCPR.
10. In its task of promoting and ensuring the proper role of lawyers, the Kazakh government should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.⁴
11. In its concluding observations of 19 August 2011, the Human Rights Committee urged the Kazakh authorities to safeguard the independence of the judiciary, and guarantee the competence, independence and tenure of judges. Kazakhstan should eradicate all forms of interference with the judiciary.⁵ Furthermore, the Human Rights Committee expressed concern at reports indicating that the prosecution had undue influence on the judiciary, thereby affecting judicial decisions.⁶
12. The Kazakh authorities disagreed with the Committee's observation that Kazakhstan lacks a largely independent judicial system. The authorities drew attention to the continued adoption of measures to strengthen the independence of the judiciary⁷. However, in its 2013 follow-up letter, the Human Rights Committee noted that additional measures remained necessary to strengthen the independence of the judiciary, and reiterated its recommendation of 2011.⁸

⁴ Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

⁵ CCPR/C/KAZ/CO/1/Add.1, paras. 21.

⁶ CCPR/C/KAZ/CO/1, para. 22. See also CCPR/C/KAZ/CO/1/Add.1, paras. 254–258.

⁷ CCPR/C/KAZ/CO/1/Add.1, paras. 207-253.

⁸ Letters from HR Committee to the Permanent Mission of Kazakhstan to the United Nations Office and other international organizations in Geneva, dated 3 April 2013 and 2 December 2013, available from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_FUL_KAZ_15875_E.pdf and

13. During the interactive dialogue in the UPR cycle of 2010 several recommendations with respect to the proper functioning of the judicial system and the role of lawyers were supported by Kazakhstan.⁹ These recommendations¹⁰ called upon the Kazakh government – amongst others - to limit the powers of public prosecutors, to strengthen the roles of judges and defence lawyers in the criminal procedure, to prevent any interference in the exercise by defence lawyers of their functions and to improve the independence of the judiciary and the impartiality of court processes. The Special Rapporteur on the independence of judges and lawyers made similar recommendations following his official visit to Kazakhstan in 2004.¹¹ According to Kazakhstan all these recommendations ‘have already been implemented or are in the process of implementation’.¹²

14. Reports gathered by L4L and information that we received from lawyers in Kazakhstan show that Kazakh authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Public prosecutors still play a dominant role in legal proceedings as a result of which lawyers are not in an equal position to represent their clients.¹³ Lawyers are also regularly subject to improper interference, attempts to put pressure on them, including by judges and public prosecutors or disciplinary actions on improper grounds.¹⁴

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_FUL_KAZ_15876_E.pdf (accessed on 16 June 2014), See also UNCT submission for UPR of Kazakhstan, pp. 8–9.

⁹ Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, §95, p 14.

¹⁰ Recommendations 54-59, Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, p. 18.

Recommendation 54: ‘To strengthen the roles of judges and defence lawyers in the criminal procedure, and to guarantee full access for defendants to the legal counsel of their choice’.

Recommendation 55: ‘To take measures to prevent any interference in the exercise by defence lawyers of their functions, in accordance with the International Covenant on Civil and Political Rights’.

Recommendation 56: ‘To take measures to limit the powers of the public prosecutors and bring criminal procedure into greater conformity with article 14 of the International Covenant on Civil and Political Rights’.

Recommendation 57: ‘To continue to develop the rule of law, including the independence of the judiciary and the impartiality of court processes, in order to bring legislation and practices further into line with the principles of the international Legal system’.

Recommendation 59: ‘To reform the judicial system in accordance with international standards regarding the administration of justice (...) and ensuring the independence of judges and lawyers.’

¹¹ Report of the Special Rapporteur on the independence of judges and lawyers on the mission to Kazakhstan, 11 January 2005, E/CN.4/2005/60/Add.2.

¹² Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, § 96, p 21.

¹³ See also the United Nations Country Team (UNCT) submission for the Universal Periodic Review of Kazakhstan in October 2014, p. 7. The UNCT stated that “inequality of arms remains a key characteristic of the criminal process. The Procuracy (prosecution) performs the predominant role throughout the judicial process: the Prosecutor General can appellate a court decision even when the decision has entered into legal force; it can temporarily suspend the execution of a court decision or sentence; a prosecutor can decide on exclusion of participation of defence lawyer in pre-trial investigation, authorize investigation actions limiting constitutional rights (search, seizure, wire-tapping , eavesdropping). Public prosecutors exercise the highest supervision over exact and uniform application of law, legality of preliminary investigation, represent interest of the State in court as well as criminal prosecution in cases using procedures and within the limits, stipulated by law” and that “lawyers continue to have limited powers to collect evidence, which hampers their capacity to counterbalance the powers of the prosecutor and impact on the judicial process.”

¹⁴ See also the UNCT submission for UPR of Kazakhstan, p. 9. The UNCT stated that “In recent years there have also been cases in which lawyers have been subjected to threats or the initiation of disciplinary action,

15. As a consequence, lawyers encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.

IV No effective guarantees for the functioning of lawyers

16. L4L has been informed by lawyers in Kazakhstan that they are regularly subjected to threats or physical attacks, intimidation and improper interference or attempts to put pressure on them by judges, public prosecutors and members of law enforcement agencies or investigative bodies. Lawyers seem to be seen as an obstacle for the work those agencies are carrying out. Very often they don't have the opportunity to meet with their clients in full confidentiality. During court hearings, lawyers are often insulted by judges. Lawyers also face 'interim orders' issued by judges which may lead to disciplinary action or even disbarment.

Cases:

*While defending a client in a criminal hearing on 7 December 2012, lawyers Raziya Nurmasheva and Iskander Alimbayev had difficulties exercising their professional activities, due to hindrance and improper interference by a judge of the Specialised Inter-district Court on Criminal Cases of Zhambyl. According to the lawyers, the judge refused to allow the lawyers to communicate with their client in private, constantly dismissed the questions asked by the lawyers and threatened to deprive the lawyers of the right to ask questions. Furthermore, the judge gave answers instead of the witnesses for the prosecution, ignored protests against the behaviour of the witnesses of the prosecution, dismissed all the motions submitted by the defence, prohibited to mention in front of the jury violations allegedly committed by the law enforcement agents, and made statements alleging that the defendants had engaged in criminal activities.*¹⁵

Another lawyer who took up a sensitive case in Astana while living in another town, was visited by a member of the Kazakhstan intelligence service who kept asking her why she had taken up the case and that she better go home.

17. The cases of lawyers Natalya Sokolova and Zinaida Mukhortova show that lawyers are subjected to criminal proceedings and even psychiatric confinement.

Natalya Sokolova

*On September 8, 2011, labor union lawyer Natalya Sokolova was sentenced to six years in jail by the city court of Aktau in Kazakhstan after finding her guilty of "inciting social discord" and "organizing illegal gatherings." Besides the prison term, she also received a ban on legal practice and public work for three years. Sokolova told the court that she did not organize the strike or any illegal meetings but acted in her official capacity as lawyer of the union, appearing at the invitation of workers who wished to consult her about wages. In March 2012, after international advocacy campaigns, Sokolova was released from prison after her sentence was reduced.*¹⁶

including action leading to disbarment for conduct they see as the legitimate exercise of their profession. Such threats or actions against lawyers risk weakening the essential role of lawyers in ensuring the right to fair trial."

¹⁵ <http://www.advocatenvooradvocaten.nl/8977/kazakhstan-lawyers-disbarred-on-improper-grounds/>

¹⁶ <http://www.advocatenvooradvocaten.nl/8983/kazakhstan-criminal-trial-against-lawyer/>

Zinaida Mukhortova

In 2009, lawyer Zinaida Mukhortova sent a complaint to the president of Kazakhstan about a member of parliament interfering in a civil case in which she was involved at the time. In response to this complaint, a criminal investigation was launched against her for the "deliberate false filing of a complaint" under Article 351(2) of the Criminal Code. On 12 February 2010, she was arrested in the courtroom of the Balkash city court, and detained in pre-trial detention facilities. In July 2010, a psychiatric examination was ordered and Zinaida Mukhortova was diagnosed with a 'delusional disorder'. Mukhortova has been forcibly detained in psychiatric facilities several times since. She challenged her diagnosis and the legality of the forced psychiatric confinement in court. In May 2014 the Supreme Court ruled that the forced psychiatric confinement of Mukhortova is legal. On 2 July 2014 she was forcibly admitted to a psychiatric clinic again. She was released on 15 December 2014, but remains at risk of further detainment in the psychiatric facility.¹⁷

18. It was brought to L4L's attention that public prosecutors still play a dominant role in legal proceedings as a result of which lawyers are not in an equal position to represent their clients. One example is that lawyers only get limited access or no access at all to their clients' files. Statistics show that prosecutor's motions or requests, for example to hear witnesses, are almost always granted, while those from the defence are rejected.

Recommendations

19. **The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
20. **The Human Rights Committee should address the failure of the authorities to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time.**

V Abuse of legal proceedings against lawyers

21. Governments must protect lawyers from unfair or arbitrary disciplinary proceedings. This follows from article 16(c) of the Basic Principles in combination with articles 26, 27, 28 and 29 thereof. Disciplinary action against lawyers must be based solely upon a code of professional conduct which is consistent with recognized ethical and professional standards including the Basic Principles. According to national legislation, disciplinary procedures against lawyers in Kazakhstan fall within the competence of the Presidium of the Collegium of Lawyers.

¹⁷ <http://www.advocatenvooradvocaten.nl/8521/kazakhstan-zinaida-mukhurtova-released-from-psychiatric-confinement/>

22. L4L has been informed that several lawyers in Kazakhstan have been disbarred, or are facing disbarment, on improper grounds. In a number of cases the Court evaded the disciplinary procedure established by law, by issuing interim-rulings on the basis of which the Ministry of Justice terminated the lawyers' license to practice law. In this way, consideration of the complaints against lawyers by the established disciplinary bodies at the Presidium of the Collegium of Lawyers is avoided.

Lyubov Agushevich and Polina Zhukova

Lawyers Lyubov Agushevich and Polina Zhukova represented a defendant in criminal proceedings. During his trial, they submitted motions and requests for recusals. While the lawyers claim that they were just defending clients' rights by using their professional skills, the presiding judge interpreted their actions as violations of professional ethics. According to the judge, the lawyers' misconduct included the submission of a statement of innocence of their client and filing a motion to examine a witness who attended the hearing. The judge also blamed one of the lawyers for 'putting a question which she knew the answer to' and 'reading out a page of the case file'. Lyubov Agushevich and Polina Zhukova were disbarred following disciplinary proceedings initiated by the Ministry of Justice.¹⁸

Raziya Nurmasheva and Iskander Alimbayev

On 7 December 2012, the Specialised Inter-district Court on Criminal Cases of the Zhambyl region issued an intermediate ruling requiring the Ministry of Justice to terminate the license to practice law of two lawyers, Raziya Nurmasheva and Iskander Alimbayev, who were representing a client in a criminal case. According to the Court, this intermediate ruling was issued due to alleged violations of the Law of the Republic of Kazakhstan on Lawyers Activity, including amongst others: submitting motions to disqualify the judge, the prosecutor, the jury; nonattendance of the hearing and pretence of worsening of health condition (by one of the lawyers). An order for disbarment was issued, confirmed by an appeal court and forwarded to the Ministry of Justice, though no action has as yet been taken to terminate their licences to practise law.¹⁹

Recommendations

23. The Human Rights Committee should address the lack of necessary measures that the Kazakhstan government takes to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds

¹⁸ <http://www.advocatenvooradvocaten.nl/8774/kazakhstan-disbarment-of-lawyers/>

¹⁹ <http://www.advocatenvooradvocaten.nl/8977/kazakhstan-lawyers-disbarred-on-improper-grounds/>