

**11 July 2018**

**Kazakhstan: ICJ deplores new law restricting independence of lawyers**

Today, the ICJ expressed concern at the adoption of a new law on lawyers in Kazakhstan. The Law 'On the Professional Activities of Advocates and Legal Assistance', signed into law on 10 July 2018, contradicts international law and standards on the independence of the legal profession, by enabling the executive to influence or to have control over who is allowed to practice law and substantial influence on disciplinary proceedings against lawyers. The law will have negative repercussions for protection of human rights and the rule of law in the Republic of Kazakhstan.

"Some of the key provisions of the adopted law undermine the independence of the legal profession, a cornerstone of the rule of law", Temur Shakirov, ICJ Europe Program Senior Legal Adviser said today.

"Not only does the law weaken the legal profession, it sends an unfortunate message to the public that, as a result, their human rights, including their right to a fair trial, may be harder to uphold within the legal system", he added.

More specifically, the ICJ is concerned that, under the new law, the role of the independent Bar Association in the composition of the disciplinary commissions is reduced. Besides lawyers, the Disciplinary Commission will now include 'representatives of the public' designated by the Ministry of Justice.

While the law does not specify how these members of the Disciplinary Commission would be selected, the selection is to be made by the Ministry of Justice. The same procedure is not excluded to select members who are retired judges, which the Law requires also be part of disciplinary commissions.

While many of the specific procedures are unclear, it is apparent that these provisions would give the Ministry extensive influence over the Disciplinary Commission, especially as the law does not explicitly require these members perform their duties independently from the instructions of the Ministry of Justice.

The influence of the executive over the disciplinary proceedings of the Bar Association is contrary to the principles of independence of lawyers. The UN Basic Principles on the Role of Lawyers provide that disciplinary proceedings against lawyers are to be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

Furthermore, the law continues to give the Ministry of Justice control over admission to the practice of law. It stipulates that prospective lawyers who have completed their professional training are to be assessed by the Commission for admission to practice established by territorial bodies of the Ministry of Justice.

The commissions consist of seven members, of which only three are members of the Bar Association. The composition of the commissions and the principles of their work are to be approved by the orders of the Minister of Justice of the Republic of Kazakhstan.

The Law therefore preserves the previous procedure on admission to the profession [criticised by the ICJ earlier](#), according to which the attestation of applicants for obtaining the membership to the Bar Association and issuing a license were within the exclusive competence of the Ministry of Justice of the Republic of Kazakhstan.

At the same time, many defense rights listed in the Law are curtailed or compromised by the wording that would allow for enactment of restrictions by secondary legislation, including that the adopted Law would not allow lawyers to freely and without interference collect evidence in defense of their clients or that lawyer's inquiries can be subject to limitation where they seek to obtain "restricted information".

The ICJ notes that according to the UN Basic Principles on the Role of Lawyers, States must ensure lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time (Principle 21).

The ICJ notes that many of the problematic aspects of the new law were not in fact removed from the final text of the law, despite reports to the contrary during the discussion in the Parliament. For example, the newly adopted Law provides for the establishment of a State Advokatura (Article 21(3)), a state-controlled professional association which all lawyers would be compelled to join (with what powers).

The UN Basic Principles on the Role of Lawyers state that lawyers must be able to form and join self-governing professional associations, to among other things represent the interests of lawyers, promote their continuing education and training and protect their professional integrity (Principle 24).

This Principle further stipulates that "...The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference." Therefore, the establishment of a State-controlled professional association Advokatura, in place of a self-governing association, would raise further concerns for the independence of the legal profession and individual lawyers in Kazakhstan.

The ICJ believes that there could have been many valid reasons for reform the legislative framework for the legal profession in Kazakhstan. However, this reform can only be a success if it takes fully into account international standards and the strong voice of the legal profession in Kazakhstan, which was very critical of the adopted law, but largely ignored by the authorities.

The ICJ considers it essential for the protection of the rule of law and human rights in Kazakhstan, that the legal profession is given the authority to decide on admission to the profession, a power which is still vested in Ministry of Justice, should, be left to regulate its own affairs on the basis of full self-governance, including on financial matters, and should be able to set and enforce ethical standards of the profession.

Individual lawyers and the legal profession as a whole must be able to operate without improper interference from the executive. Without these guarantees, the legal profession in Kazakhstan will be significantly inhibited in its capacity to ensure effective protection of human rights for years to come.

### **Background:**

The ICJ has followed the situation on the legal reform since its initiation in the end of 2017. The ICJ had a visit to Astana in December 2017, which was prompted by the reform and the Draft Law which has been submitted to the Parliament. The ICJ's views on the reform, including the composition of the Disciplinary Commission, are outlined in its previous statements:

[Kazakhstan: the reform of the legal profession should aim to strengthen its independence](#)

[Attacks on Lawyers: Turkey, Azerbaijan, Kazakhstan and China \(UN Statement\)](#)

[Kazakhstan: ICJ urges the government to refrain from interference with the legal profession](#)