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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF KAZAKHSTAN**

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INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF KAZAKHSTAN

The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Kazakhstan. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) information relating to the following concerns: (1) an increase in the pressure the authorities put on lawyers in comparison with previous reporting periods, which, in turn, is undermining the independence of the legal profession in Kazakhstan; and (2) ratification of international human rights instruments by the Republic of Kazakhstan.

I. Situation of the legal profession

The reform of the legal profession

1. The ICJ notes that, in the last UPR cycle, Kazakhstan supported the recommendation by France (no. 125.68) to "[t]ake all necessary measures in order to provide a fair and independent judiciary system, which respect the rights of the defence (France)."

2. The ICJ also notes that the 2017 Law "On the Professional Activities of Advocates and Legal Assistance"¹ (hereinafter "the Law on Advocates") includes provisions that clearly interfere with the independence of the legal profession, and thereby impede lawyers' ability to effectively represent and protect the human rights of their clients.² In particular, following amendments in 2017, this Law limits the independence of the legal profession by inserting three representatives of the Executive in each of the new disciplinary bodies of the Bar Association, which previously were solely composed of lawyers.³ Given that, in recent years in Kazakhstan, abusive disciplinary complaints against lawyers by State bodies have regularly sought to undermine their independence, the new composition of the new disciplinary bodies of the Bar Association threatens to further undermine the ability of lawyers to exercise their profession independently, and to protect the human rights of their clients.

3. Furthermore, the reform introduced by the 2017 legislation mentioned above failed to address the issue of the independence of the process through which lawyers become accredited to exercise their profession.⁴ The Qualification Commission, which conducts examinations necessary for prospective lawyers to become accredited, continues to be a body under the authority of the Ministry of Justice, rather than being administered by the Bar Association itself.⁵ The Qualification Commission is composed of seven members, only three of whom are lawyers.⁶ Moreover, it is the Minister of Justice of Kazakhstan, rather than by the Bar Association, that decides both the membership of the Qualification Commission, as well as its rules of procedure.⁷

Attacks on lawyers

4. Over the last five to seven years, there have been frequent reports of lawyers being summoned for interrogations about the circumstances related to the provision of legal assistance; offices of lawyers have been searched, and disciplinary petitions have been lodged against individual lawyers, in particular related to their statements on social media networks about human rights violations by law enforcement agencies and in court.⁸

5. In addition to the concerns arising from the 2017 law itself, the reform of the Bar Association has resulted in an increased pressure on individual lawyers, particularly those who actively protested against the 2017 reform. Prominent lawyers, including chairs of regional Bar Associations, have faced direct pressure, such as the filing of motions for their disbarment and demands to resign their positions as chairs of regional Bar Associations.⁹

6. In October 2018, shortly before the constituent Congress of the new Bar Association, Anuar Tugel, the President of the Bar Association, resigned and publicly declared that his resignation was related to the pressure exerted on him by the Ministry of Justice.¹⁰ In particular, he said: "*(...) the adopted law does not comply with international norms and standards, as stated by a large number of reputable international organizations. (...) opposing the principal provisions of the law, I do not think it is possible for myself to engage further in its implementation.*"¹¹

7. In November 2018, Raisa Yakubenko and Vladimir Zolotov, the presidents of the Aktyubinsk and Pavlodar bar associations respectively, faced disbarment proceedings in the Kazakhstan courts, initiated by the Ministry of Justice.¹² The disciplinary charges against them related to their administration of the bar associations.¹³ In March 2019, Sergey Sizintsev, former Executive Director of the National Bar Association and the newly-elected head of the Scientific-Consultative Board of the National Bar Association was dismissed from his position and is currently facing disciplinary sanctions on dubious charges related to the exercise of his profession as a lawyer and work related to the self-governance of the Bar Association.¹⁴ The pressure put on the management of the Bar Association through such proceedings appears to be directly linked to their active position against the reform of the Bar Association described above.¹⁵

8. Further recent cases of pressure on lawyers through seemingly abusive criminal proceedings include a criminal case initiated against lawyers Yerlan Gazimzhanov, Amanzhol Mukhamedyarov and Assel Tokayeva in July 2017.¹⁶ The charges against them included lodging a complaint with the Commission on Judicial Ethics and Judicial Jury of the Supreme Court alleging unethical conduct by a judge; filing a motion for recusal of the judge; stating that the crime for which their clients had been charged had in fact been committed by another defendant; and participating in an international conference (of which they informed the court), rather than attending a court hearing.¹⁷ Furthermore, in July 2018 Baurdjan Azanov was prosecuted for spreading false information due to his attempts to raise attention to the case of a child molested by the older children at school in a remote region of Kazakhstan.¹⁸

9. Most recently, on 22 March 2019, the Bar Association issued a press release where it called on the Almaty Bar Association to initiate disciplinary proceedings against one of its members, a prominent Kazakhstan lawyer, Jokhar Utebekov.¹⁹ The disciplinary initiative is related to the lawyer's statement on Facebook where he provided an analysis of the recent renaming of the capital of Kazakhstan from Astana to Nur-Sultan. The case appears to be the first initiative of the Bar Association to hold a lawyer accountable for publishing a legal analysis. Such actions of the Bar Association threaten the freedom of expression of lawyers under Article 19 ICCPR, and in particular, undermine the ability of its members to participate in discussions on matters of public interest.

10. Against this background the ICJ calls upon the Working Group and the HRC to recommend to the authorities of Kazakhstan:

- to amend the current legislation to ensure that representatives of the executive, such as the Ministry of Justice, are not included in the disciplinary bodies of the legal profession;
- to amend the current legislation to ensure that the qualification procedures are fully governed by the legal profession in Kazakhstan in line with international law and standards on the role of lawyers; in particular, the Qualification Commissions should be bodies of the Bar Association while their composition should predominantly consist of lawyers delegated by the Bar Association itself;
- to ensure that as the main stakeholder in any reforms affecting the legal profession, the Bar Association participates in such reforms in a meaningful way;
- to take effective measures to prevent further interference by the executive and law enforcement bodies in the exercise of lawyers' professional duties, in particular prevent the practice of bringing disciplinary complaints against lawyers solely for their defence of their clients or legitimate exercise of their right of freedom of expression;
- to ensure that the right of lawyers to freedom of expression is respected, especially in regard to matters of public interest and law.

II. Concerning international human rights instruments

11. In the last UPR cycle, Kazakhstan supported the recommendations to ratify the OP-CESCR and the CRPD and noted the recommendations to ratify the ICRMW, the OP-CRPD, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Rome Statute of the International Criminal Court, including the Kampala amendments on the crime of aggression, and the Agreement on the Privileges and Immunities of the International Criminal Court.

12. The ICJ welcomes the ratification of the CRPD. However, it regrets that Kazakhstan has not yet ratified, as committed to do, the OP-ICESCR, neither the ICRMW nor the OP2-ICCPR.

Recommendations:

13. The ICJ calls upon the Working Group and the HRC to recommend to the authorities of Kazakhstan the following:

1. To ratify the Agreement on the Privileges and Immunities of the International Criminal Court.
2. To ratify the Optional Protocol to the Covenant on Economic Social and Cultural Rights and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as the Second Optional Protocol to the International Covenant on civil and Political Rights.

ENDNOTES

¹ ‘On the Professional Activities of Advocates and Legal Assistance’ Law of the Republic of Kazakhstan of dated July 5 2018 № 176-VI.

² *Ibid*, Article 39.

³ Articles 72-74 of the Law on Advocates Activity and Legal Aid. Mandate of the Special Rapporteur on the independence of judges and lawyers OL KAZ 1/2018 17 January 2018, p 2 § 2.

⁴ Kazakhstan: the reform of the legal profession should aim to strengthen its independence, ICJ says, <https://www.icj.org/kazakhstan-the-reform-of-the-legal-profession-should-aim-to-strengthen-its-independence-icj-says/>.

⁵ *Ibid*, Article. 39.1.

⁶ *Ibid*, Article. 39.1.

⁷ *Ibid*, Article. 3.1.

⁸ Kazakhstan: ICJ alarmed at government interference in legal profession <https://www.icj.org/kazakhstan-icj-alarmed-at-government-interference-in-legal-profession/> (Accessed on 23 March 2019).

⁹ *Ibid*.

¹⁰ Facebook post by Anuar Tugel, 1 October 2018 (Original in Russian), <https://www.facebook.com/a.tugel/posts/1567181540094323> (Accessed on 23 March 2019).

¹¹ Kazakhstan: ICJ alarmed at government interference in legal profession, *op cit*; Chairman of the Bar Association of the Republic of Kazakhstan resigned due to disagreement with the Ministry of Justice (Original in Russian), <https://informburo.kz/novosti/predsedatel-kollegii-advokatov-rk-ushyol-v-otstavku-iz-za-nesoglasiya-s-minyustom.html> (Accessed on 23 March 2019).

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ Kazakhstan: frivolous disbarment proceedings against prominent lawyer Sergey Sizintsev should be immediately dropped, <https://www.icj.org/kazakhstan-disbarment-proceedings-against-a-leading-lawyer-sergey-sizintsev-should-be-immediately-dropped/> (Accessed on 23 March 2019).

¹⁵ *Ibid*.

¹⁶ Kazakhstan: ICJ calls authorities to discontinue prosecution of lawyers, <https://www.icj.org/kazakhstan-icj-calls-authorities-to-discontinue-prosecution-of-lawyers/> (Accessed on 23 March 2019).

¹⁷ *Ibid*.

¹⁸ Kazakhstan: the ICJ calls to immediately drop prosecution of lawyer Bauyrzhan Azanov, <https://www.icj.org/kazakhstan-the-icj-calls-to-immediately-drop-prosecution-of-lawyer-bauyrzhan-azanov/> (Accessed on 23 March 2019).

¹⁹ Statement of the Republican Bar Association, http://advokatura.kz/zayavlenie-respublikanskoj-kollegii-advokatov-2/?fbclid=IwAR3gz4gz5_oSbstUr_qvq3Lmp_EU1wJJD18oavMddy9eSNOFdlrdTDRRZ8U (Accessed on 25 March 2019).