

Submission to the United Nations
Universal Periodic Review

Individual UPR submission

Republic of Kazakhstan

Twentieth Session of the Working Group on the UPR
Human Rights Council

October/November 2014

Presented by:

Lawyers for Lawyers Foundation
An NGO in special consultative status with ECOSOC,
United Nations
March 2014

LAWYERS FOR LAWYERS (L4L)
PO box 7113, 1007 JC Amsterdam, The
Netherlands
info@lawyersforlawyers.nl
<http://www.lawyersforlawyers.nl/>



LAWYERS FOR LAWYERS UPR SUBMISSION – KAZAKHSTAN – MARCH 2014

A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those regarding the legal profession, in Kazakhstan, with recommendations to the OHCHR for the 20th session of the UPR Working Group in the UN Human Rights Council in October/November 2014.
2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Kazakhstan's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyersⁱ ('Basic Principles'), focusing on three main themes: (i) No effective guarantees for the functioning of lawyers, (ii) Abuse of legal proceedings against lawyers, and (iii) No effective access to legal services. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.

Recommendations to the government:

4. **Regarding (i) no effective guarantees for the functioning of lawyers:**
 - (a) **to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
 - (b) **to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
 - (c) **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, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
 - (d) **to raise awareness of the Basic Principles among lawyers, judges and prosecutors, amongst others, by giving them periodically, appropriate mandatory education and training on the Basic Principles, to ensure that its provisions are respected and taken into account before national courts and in pre-trial stages.**
- Regarding (ii) abuse of legal proceedings against lawyers:**
 - (e) **to take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions**

on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;

Regarding (iii) no effective access to legal services

(f) continue to implement in legislation as well as in practice recommendations 54, 55, 56, 57 and 59 of the UPR cycle in 2010 to ensure the proper functioning of the judicial system, including the right to fair trial

C. Normative and institutional framework of the State

5. 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 free to carry out their professional duties independently. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to which Kazakhstan is a party.
6. In its task of promoting and ensuring the proper role of lawyers, the Kazakhstan government should respect and take into account the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. 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.
7. 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 Kazakhstanⁱⁱ, including recommendations 54ⁱⁱⁱ, 55^{iv}, 56^v, 57^{vi} and 59^{vii}. According to Kazakhstan all these recommendations 'have already been implemented or are in the process of implementation'.^{viii}
8. The laws governing the legal profession in Kazakhstan contain principles guaranteeing the independence and the role of lawyers^{ix}. However, reports gathered by L4L and information that we received from lawyers in Kazakhstan, demonstrate that Kazakhstan does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers^x

9. 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. ^{xi}

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.

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

Cases:

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. ^{xii}

On August 9, 2013, Zinaida Mukhortova, was detained and forcibly admitted to a psychiatric hospital, violating her rights to liberty and security. Mukhortova's problems started in 2009 after she 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'. ^{xiii}

On August 12, 2013, her lawyer, Shormanbaev, attempted to visit Mukhortova at the psychiatric hospital. Although by law the hospital has no grounds to deny Mukhortova the right to meet with her legal representative, the head doctor refused to let Shormanbaev meet his client and without further explanation told him to "go to the prosecutor's office." ^{xiv}

11. 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.

12. Recommendations to the Kazakhstan government:

- (a) **to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (b) **to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
- (c) **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, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
- (d) **to raise awareness of the Basic Principles among lawyers, judges and prosecutors, to ensure that its provisions are respected and taken into account before national courts and in pre-trial stages.**

(ii) Abuse of legal proceedings against lawyers

13. 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.
14. 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.

Cases:

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.^{xv}

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). Although these accusations were never investigated properly, the licenses to practice law of both lawyers were withdrawn.^{xvi}

Recommendation:

15. That the Kazakhstan government take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles.

(iii) No effective access to legal assistance

16. The above mentioned violations of the Basic Principles do not only undermine the proper functioning of the role of lawyers, but also every person's right to fair trial, of which the principles of equality of arms and effective access to legal assistance form an essential element.^{xvii}

Recommendation:

17. That the Kazakhstan government continues to implement in legislation as well as in practice recommendations 54, 55, 56, 57 and 59 of the UPR cycle in 2010 to ensure the proper functioning of the judicial system, including the right to fair trial.

ⁱ 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.

ⁱⁱ Report of the Working Group on the Universal Periodic Review of 23 March 2011, A/HRC/14/10, §95, p 14.

ⁱⁱⁱ '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', *Ibid.*, p 18.

^{iv} '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', *Ibid.*

^v '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', *Ibid.*

^{vi} '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', *Ibid.*

^{vii} 'To reform the judicial system in accordance with international standards regarding the administration of justice (...), and ensuring the independence of judges and lawyers, *Ibid.*

^{viii} *Ibid.*, § 96, p 21.

^{ix} Law of the Republic of Kazakhstan on Lawyers' Activity.

^x Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

^{xi} <http://www.advocatenvooradvocaten.nl/8977/kazakhstan-lawyers-disbarred-on-improper-grounds/>

^{xii} <http://www.advocatenvooradvocaten.nl/8983/kazakhstan-criminal-trial-against-lawyer/>

^{xiii} <http://www.advocatenvooradvocaten.nl/8521/kazakhstan-zinaida-mukhurtova-released-from-psychiatric-confinement/>

^{xiv} *Ibid.*

^{xv} <http://www.advocatenvooradvocaten.nl/8774/kazakhstan-disbarment-of-lawyers/>

^{xvi} <http://www.advocatenvooradvocaten.nl/8977/kazakhstan-lawyers-disbarred-on-improper-grounds/>

^{xvii} Basic Principles on the Role of Lawyers, principles 1, 2, 7.