



NGO in Special Consultative Status with the Economic and Social Council of the United Nations since 2013

BY AIRMAIL

Mr. Corneliu Gurin
General Prosecutor of the Republic of Moldova
Chisinau Municipality, Banulescu-Bodoni Street
No. 26, MD-2009

MOLDOVA

Amsterdam, 2 December 2014

Subject: Harassment of lawyer Alexandru Bernaz

Your Excellency,

I am writing to you on behalf of Lawyers for Lawyers (L4L), an independent and non-political Netherlands foundation. Lawyers for Lawyers is committed to ensuring the proper functioning of the rule of law by pursuing freedom and independence of the legal profession throughout the world. In that context, Lawyers for Lawyers respectfully would like to express its grave concern about the harassment of our colleague, Atty. Alexandru Bernaz.

According to our information, Atty. Bernaz is subjected to improper interference by legal enforcement bodies as a result of discharging his function of criminal defense lawyer.

In the period from May to August 2014, Atty. Bernaz filed complaints against prosecutors of the Anticorruption Prosecutor's Office, in a criminal case in which he represented the accused. In his complaints, Atty. Bernaz legally challenged procedural decisions of the prosecution and of the criminal investigation officers of the National Anticorruption Center (NAC) conducting the criminal investigation against his client.

Following the above mentioned legal professional activities of Atty. Bernaz, the Anticorruption Prosecutor's Office issued criminal charges against Atty. Bernaz in another criminal case in which he acted as defense counsel.

As part of his defense work, Atty. Bernaz held discussions with injured parties to gather information, in accordance with Art.53 para. (1) letter c) of the Law on the Legal Profession that stipulates that the attorney is entitled to independently collect information about the case circumstances.

On 5 September 2014, criminal investigation officers of the NAC conducted searches in the office, home, and private car of Atty. Bernaz but nothing was found and seized.

On 8 September 2014, Atty. Bernaz left Moldova to go on holiday abroad. At that time he wasn't served any summonses and did not know about the intentions of the criminal investigation body to call him in for questioning. The NAC criminal investigation officers issued a summons, dated 5 Sept 2014, that required Atty. Bernaz, as suspect, to appear at the NAC on 8 August 2014, i.e. one month earlier. Atty. Bernaz was suspected of a form of co-participation to the offense of which his client was accused, based on his legal activities carried out in his capacity of defence counsel under article 53 para. (1) letter c) of the Law on the Legal Profession.



On 8 September 2014, the prosecutor of the Anticorruption Prosecutor's Office, relying on the above-said summons, issued a forced summoning order, despite the fact that Bernaz had not been summonsed as stipulated by the criminal procedural law. On 9 September 2014, without informing Atty. Bernaz or his defense attorney, an order was issued to start investigations into Atty. Bernaz, based on charges of 'absconding from the criminal investigation body and court'. On 10 September 2014, a request for pre-trial detention was submitted to court. On 16 Sept 2014, the court accepted the request, on the grounds that Bernaz allegedly absconded from the criminal investigation body. Atty. Bernaz appealed against this decision, however, the Chişinău Court of Appeal, on 25 Sept 2014, issued a final decision to reject the appeal of the defense.

According to Atty. Bernaz's defence lawyers, these charges are fabricated and used to silence Atty. Bernaz and to exclude him from the cases administered by the NAC and the Anticorruption Prosecutor's Office. Lawyers for Lawyers urge you to recognize the valuable role played by criminal defence lawyers and to promote and support their work in line with the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

Paragraphs 16 of the United Nations Basic Principles on the Role of Lawyers state that the Government is under an obligation 'to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference', and to ensure that lawyers 'shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics'. Furthermore, paragraph 18 states clearly that 'lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions'.


These principles are universally applicable. Therefore, your government is under an obligation to adequately protect and support its lawyers.

In view of the above, Lawyers for Lawyers urge you to ensure that a prompt, thorough, impartial and transparent investigation into the charges against Atty. Alexandru Bernaz will be conducted and to cancel the preventive measure in the form of pretrial detention so that he can return to Moldova to defend himself without being arrested.

We thank you for your attention to this very important matter. We are confident of your good will and sense of justice and will continue to monitor this case closely.

On behalf of the President of Lawyers for Lawyers, Phon van den Biesen,

Sincerely,
Lawyers for Lawyers



Adrie van de Streek
Executive director

Copies of this letter were sent to:

- *Emilian Brenici, Ambassador of Moldova in the Kingdom of the Netherlands*
- *R.L.M. de Groof, Honorary Consul of the Kingdom of the Netherlands in Chisinau, Moldova*