



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

23 July 2003

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Your Excellency,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL) is dedicated to promoting the independence of judges and lawyers throughout the world.

We are writing to you to express our alarm at the on-going prosecution of Gulguna Kaisarova, a lawyer and a respected member of the Kyrgyz Bar who currently faces criminal and civil proceedings at the Sverdlov District Court of Bishkek for having allegedly insulted a public official during cross-examination.

According to the information we have received, Ms. Kaisarova was defence counsel for Colonel German Petrovich Kan at the Bishkek Military Court on 5 September 2001. In that proceeding, while cross-examining the plaintiff, Kubanychbek Isabekov, who was an advisor to the then Prime Minister she asked, "So who is a swindler?"

On 23 November 2001, Mr. Isabekov initiated criminal and civil proceedings at the Sverdlov District Court of Bishkek against Ms. Kaisarova for slander and insult (Articles 127 and 128 of the Criminal Code, respectively). According to Ms. Kaisarova and other witnesses, the court record was altered such that her original question to Mr. Isabekov was changed into an accusation. The court record currently remains unchanged and the Kyrgyz Supreme Court reportedly confirmed the said changes on 23 February 2003. A verdict has not yet been reached.

To date, there have been 28 hearings in Ms. Kaisarova's criminal trial and 6 hearings in the civil case against her. It is evident that

these proceedings are a form of harassment and intimidation of this lawyer who was discharging her professional duties for which she should have full immunity. In this regard, we would like to remind your Government that under the *United Nations Basic Principles on the Role of Lawyers*, which were adopted by the U.N. General Assembly in 1990, Governments have a duty to ensure that lawyers can fulfil their functions without fear of harassment and that they should enjoy immunity for statements they make in court in their professional capacity. The said *Principles* specifically provide that:

Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (c) 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.

Principle 20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Similarly, under relevant Kyrgyz law, *About a Lawyer's Activities*, lawyers are accorded immunity for statements they make in the context of legal proceedings. Article 16 of this law states:

A lawyer cannot be brought into disciplinary, civil, administrative or criminal account for a statement of opinion made during the fulfilment of his professional functions, for prepared statements in court or before law enforcement bodies, and also any actions taken in accordance with recognised professional duties and ethical norms.

It is thus a violation of both international and national standards to prosecute Ms. Kaisarova for statements she made during legal proceedings. As such, we are deeply troubled at the manner by which the Kyrgyz Criminal Code has been used to impinge upon the freedom of lawyers to represent their clients to the best of their abilities.

Furthermore, we have received information that in the course of the above-mentioned hearings against Ms. Kaisarova, on at least two occasions, monitors were not allowed into the courtroom. An observer, Dmitry Kabak, a local human rights defender, was reportedly expelled from one hearing and was later assaulted by unknown men. In addition, on 3 June 2003 an OSCE representative was prevented from attending a hearing at Bishkek City Court, where Ms. Kaisarova had filed an appeal claiming procedural violations at the lower court. Barring observers from a public trial when no special circumstances so require is a violation of the *International Covenant on Civil and Political Rights* (ICCPR), to which the Kyrgyz Republic is a party. Pursuant to Article 14.1 of the ICCPR,

... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing...

Moreover, we are deeply concerned that on 2 May 2003, the Department of Justice notified Ms. Kaisarova of a hearing to revoke her license to practice law on the basis of the criminal and civil charges against her. A Board of Experts met to this end, but the matter was postponed due to Ms. Kaisarova's illness. The revocation of Ms. Kaisarova's license due to legal proceedings against her runs contrary to the six-month statute of limitations of the Order of the Department of Justice which provides that "*disciplinary measures cannot be applied after 6 months from the day of the perpetration of the offence*". In the instant case, more than a year

and half has elapsed between the alleged events and the initiation of the proceedings to withdraw her license. These proceedings have now been reportedly suspended.

On an even more worrisome note, the Vice-Minister of Justice is reportedly empowered, by virtue of Order 73 of the Department of Justice, to unilaterally withdraw the license of any lawyer to practice law. This unfettered power runs contrary to the aforementioned *United Nations Basic Principles*, which require that any disciplinary proceedings against lawyers must be conducted by a fair and impartial body. Accordingly, the *Principles* state as follows:

Principle 27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

Principle 28. Disciplinary proceedings against lawyers shall 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.

Thus, the disbarment of Ms. Kaisarova based on the criminal and civil proceedings against her would violate internationally recognised due process standards.

In conclusion, we call upon Kyrgyzstan to take all necessary measures to terminate the disbarment proceedings against Ms. Kaisarova. We furthermore urge your Government to accord Ms. Kaisarova full immunity for statements made in defence of her client in the context of court proceedings. In addition, we encourage your Government to revise the Criminal Code with a view to precluding its slander and defamation provisions from being used to prevent lawyers from carrying out their duties.

We will continue to monitor the status of all proceedings against Ms. Kaisarova and hope that your Government will be receptive to our intervention in this matter.

Please accept the assurances of my highest consideration.

Yours sincerely,

Ernst Lueber
Acting Secretary-General

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