

Geneva

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Tajikistan: ICJ warns of risk to independence of lawyers

Following its mission to Tajikistan on 10-13 November, the International Commission of Jurists (ICJ) called on the Tajikistan authorities to reconsider provisions of a draft law which could undermine the independence of the legal profession.

The draft Law on Lawyers' Activities and Advokatura would allow the Ministry of Justice a significant role in regulating entry to the profession. In particular, the Qualification Commission for lawyers, which would be responsible for access to the profession, would operate under the Ministry of Justice. It would be chaired by a deputy Minister, and would also include five lawyers, one representative of Parliament, one legal academic, and one other representative of the Ministry of Justice.

It is particularly worrying that all lawyers would be required to go through a new qualification process, carried out by this Commission, within one year of the new law coming into force.

"The draft law would bring welcome reforms, unifying a divided profession under a single, independent, Union of Lawyers. However, the value of these reforms would be undermined, since every lawyer would have to go through a new qualification process, the nature of which is not yet clear, administered by a body under the Ministry of Justice" said Judge Egbert Myjer, Commissioner of the ICJ.

"The procedure would risk cleansing the profession of independent lawyers and leading to de facto domination of the profession by the Ministry of Justice, contrary to the UN Basic Principles on the Role of Lawyers," he added.

Under international standards on the role of lawyers, independent self-governing professional associations of lawyers should be established, and should have sufficient powers to regulate the profession, including control of the qualification of lawyers.

The ICJ emphasized that at present there is a lack of consistency in the varied qualification procedures in the different sections of the legal profession in Tajikistan, which impedes high professional standards. This should be addressed through a unified, independent and rigorous qualification process administered by the profession itself, in line with international standards, and as recommended by the UN Human Rights Committee, the International Bar Association and the ICJ.

The ICJ heard consensus from lawyers' associations in Tajikistan that the proposed role of the Ministry of Justice would impair the effective and independent work of lawyers. The lawyers' associations added that these concerns were not taken into account in the drafting process.

In response to criticism by the UN Human Rights Committee earlier this year, the Minister of Justice stated that the Qualification Commission would only be placed under the Ministry for Justice for a transitional period. This is not reflected in the current draft law. However, the authorities reassured the ICJ that the role of the Ministry of Justice in qualification was not intended to be permanent.

The ICJ mission to Tajikistan took place from 10 to 13 November. It was led by Justice Egbert Myjer, an ICJ Commissioner and former judge of the European Court of Human Rights, and also included ICJ staff members Róisín Pillay, Director of the Europe Programme of the ICJ, and Temur Shakirov, Legal Advisor of the Europe Programme. The mission included a roundtable discussion with lawyers' associations of Tajikistan, as well as meetings with representatives of the judiciary, the Ombudsman, and the National Legislative Centre and NGOs. On 14 November, ICJ staff members met with the first deputy Minister of Justice.

The ICJ mission followed its report on [the Independence of the Legal Profession in Central Asia](#), which analysed the law and practice of each of the five Central Asian states, including Tajikistan, in light of international law and standards, and made recommendations on the principles that should guide reform of the legal profession.

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