

ICJ Recommendations on the Independence of Legal Profession and Role of Lawyers in Justice Systems of the Central Asian States¹

The International Commission of Jurists (ICJ) based on the consultations with the participants of the Regional Forum for Central Asia on the Independence and Role of Lawyers representing the National Bar Associations of the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan;

Emphasizing the critical role lawyers play in strengthening the rule of law and protection of human rights in the justice systems of the Central Asian countries;

Noting the continuing and renewed attempts to undermine the independence of the professional associations of lawyers in these countries;

Noting also cases of targeted disbarment and harassment of individual lawyers for fulfilment of professional duties towards their clients;

Drawing attention of the Governments of the Central Asian countries to the urgency of ensuring in law and practice the independence of the lawyers' professional associations and individual lawyers;

Encouraged by the emerging practice of the establishment of specialized bodies for the protection of the rights of lawyers within the professional associations of lawyers;
Guided by international law and standards on the independence and role of lawyers, recommends that:

National professional associations of lawyers in Central Asian countries should:

1. Carry out regular monitoring of cases involving improper interference with the independent exercise of the legal profession, including cases of harassment, intimidation, physical attacks with regard to individual lawyers;
2. Establish secure communication channels inside national professional associations of lawyers for urgent consideration of and action upon complaints about undue interference with the free exercise of the profession of lawyers;
3. Strengthen mechanisms and procedures within the professional associations of lawyers that allow designated specialized bodies of lawyers' associations for the protection of the rights of lawyers to speedily and effectively react to cases of undue interference with the independent exercise of the legal profession, publicize these cases as well as report back on measures taken and their impact; enable these specialized bodies to study situations of gross or systematic violation of lawyers' rights and suggest recommendations for ensuring the independent exercise of the legal profession.
4. Increase democratic participation of the members of the professional associations of lawyers in the self-governance of the profession by strengthening fair, transparent and competitive democratic procedures for the election of the executive body of each professional association by its members, developed and enforced by the legal profession independently from the executive. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

¹ These Concluding recommendations are drafted based on the discussions and proposals suggested by the representatives of the legal profession at the Regional Forum for Central Asia, in Dushanbe, on 9 November 2018

5. Facilitate, or as a minimum refrain from interfering unduly with, the use of social media as well as other media by individual lawyers, and recognize that use of social media by lawyers to express their professional views, including on matters of public interest (e.g. reform of justice system) or specific cases where human rights of their clients may be violated or jeopardised, is an exercise of the lawyers' right to freedom of expression consistent with their professional standards and ethics. Any guidance on the use of social media, if adopted, should not lead to a blanket ban on the use of social media by lawyers or measures that would discourage the appropriate use of social or other media.
6. Ensure that all proceedings to remove a lawyer's professional status fully meet international requirements of fairness, expeditiousness, independence, objectivity, and legal basis, and to this end intensify adoption of safeguards against arbitrary proceedings, and take measures to protect and support lawyers who face arbitrary disbarment.

Parliaments in Central Asian countries should:

7. Ensure that laws enable all individuals and institutions to be formally held accountable for impeding lawyers' ability to carry out their professional duties freely. Especially in cases of violence or attempted violence, in connection with the exercise of professional duties, this should include criminal investigations and proceedings. Accountability and redress and remedy should also be ensured whenever law-enforcement bodies abuse their powers to impede the legitimate exercise of lawyers' functions, fail to respect lawyer-client confidentiality or misuse special investigative measures in relation to lawyers' due exercise of their legitimate professional duties.
8. Introduce legal safeguards specifically to address situations of external interference with the assumption or continuation of office by leaders and executives of lawyers' associations that have been duly elected through free and fair elections by the members of the profession.
9. Exclude by law any interference from executive authorities of the government, including the Ministry of Justice, in the organization, management or supervision of the professional associations of lawyers, *inter alia* through nomination of candidates to the position of heads of lawyer's professional organizations or other senior positions including any other bodies of associations of lawyers;
10. Ensure that laws do not unjustifiably or otherwise inappropriately restrict the freedom of expression of lawyers or their right to disseminate information in any form, or discriminate against lawyers in the enjoyment of these rights; and that all laws respect the confidentiality of communications between lawyers and clients.
11. Abolish the licensing of lawyers' status by the executive, where it still exists, and transfer this role to the sole responsibility of the associations of lawyers. The law should be brought in line with the principle that professional associations of lawyers shall enjoy full independence in administering their profession, including in admission process and functioning of disciplinary bodies.

The Executive, including the Ministry of Justice, and Law Enforcement Bodies in Central Asian countries should:

12. Refrain from and prevent any forms of interference with free exercise of professional duties of lawyers and take measures in accordance with the law to hold perpetrators

of such violations, including Government agents, to account as provided by the law and international standards on the role of lawyers;

13. Refrain from any interference with the ability of lawyers to freely and fairly elect the members of their choosing to the executive bodies of lawyers' associations;
14. Instruct their officials to abstain from issuing formal or informal guidance to the professional associations of lawyers and the bodies of lawyers' self-governance on the issues under the remit of the legal profession itself;
15. Instruct their officials to abstain from attending internal meetings of lawyers unless they are explicitly invited.
16. Abandon any practice of adopting documents (orders, instructions, letters, recommendations) that should be within the exclusive prerogative of the self-regulating and self-governing professional associations of lawyers and as such should be adopted by lawyers' associations only.