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Central Asia: ICJ calls on Central Asian States to ensure access to justice during the COVID-19 pandemic

The International Commission of Jurists (ICJ) is concerned that in Kazakhstan, Kyrgyz Republic, Tajikistan and Uzbekistan the COVID-19 pandemic, and measures taken purportedly to contain it, have significantly curtailed access to justice. Restrictions have affected the operation of the courts and impeded lawyers' ability to provide effective legal assistance to their clients.

In the context of the COVID-19 pandemic -- whether under a state of emergency or not -- States' obligations under international human rights law to uphold the fundamental guarantees of a fair trial, and to ensure access to effective remedies for violations of human rights endure. The right to a fair trial entails the right to adequate time and facilities to prepare a defence, which, in turn, requires the opportunity to communicate with one's lawyer effectively and in confidence.

In light of this, the ICJ calls on Central Asian States to ensure that, while COVID-19 restrictions are in place, access to a lawyer continues to be ensured, and that measures be put in place so that lawyers are able to communicate with their clients safely, effectively and confidentially, including in places of detention or during online hearings. In addition, wherever and whenever the authorities put in place restrictions on physical meetings or travel with the stated purpose of containing the COVID-19 pandemic, the ICJ calls on Central Asian States to ensure that access to court is guaranteed through specific legal, administrative and practical measures.

ICJ research and discussions with lawyers have shown that across Central Asia, regulations adopted during COVID-19 relating to the administration of justice have suffered from vague language, inconsistencies and unclear guidance. In practice, this had serious implications for the right to fair trial of defendants: in some cases defence lawyers were not allowed to meet their clients who were charged with serious crimes; in other instances lawyer-client meetings were very short, undermining the ability of lawyers to take proper instructions from their clients and to advise them accordingly; in other cases defence lawyers met their clients in circumstances where the confidentiality of their communication was compromised as a result of the virtual communication platforms they were forced to use. The restriction measures relating to the administration of justice that the authorities have imposed have also had negative consequences for access to justice and effective remedies for victims of human rights violations; notably, access to legal assistance in domestic violence cases was impeded across the region.

In many court buildings social distancing requirements were not adjusted in such a way as to uphold the right to a public hearing. There has been a lack of sufficient guidance on how the right to a public hearing may be ensured online, including as to how the right to equality of arms and the right to legal representation would be protected.

In Kazakhstan, most court hearings have been held online through use of online communication platforms, which ensured access to courts to a greater extent than in other countries in the region. However, lawyers have raised multiple concerns indicating that online hearings have a negative impact on the right to legal assistance, since they have not been accompanied by measures guaranteeing adequate time and facilities to prepare a defence, and because they are often conducted in a manner that undermines the principle of equality of arms and the confidentiality of lawyer-client communications. Furthermore, there is no clarity as to why certain cases are heard in courtrooms, others are scheduled for online consideration or are delayed. Lawyers also noticed that the courts dismissed an increasing number of lawsuits without consideration on very formalistic or dubious grounds. The right to a public hearing is also often compromised when proceedings are conducted online as there are no regulations in place to formally regulate how the public may observe such hearings.

In the Kyrgyz Republic, at the beginning of the pandemic most court hearings were effectively postponed and court buildings were closed, except for urgent cases, usually involving detention hearings. However, in an egregious omission, lawyers were not added to the list of the professions that were not subject to movement restrictions during the lockdown. Lawyers faced problems in accessing their clients in pre-trial detention facilities. Currently, the courts have resumed consideration of cases in courtrooms, but the administration of justice framework during COVID-19 remains underdeveloped, resulting in greater challenges for lawyers. Lawyers from the Kyrgyz Republic have also noted that some cases, including those where the court is called upon to determine whether the individuals concerned may be remanded in custody, were held online or through a video-link, although no normative framework is in place for such hearings to be held virtually. The right to a fair and public hearing or the right to liberty may have been compromised in some cases as a result.

In Tajikistan, lockdown restrictions were not formally introduced, and officially publicized anti-COVID-19 regulations were replaced by inconsistent practices by courts in different regions. In some regions courts are reported to operate close to normal, while in others hearings are postponed or courts have ceased operating altogether. In many cases lawyers note that the uncertainty about the official position has adversely affected access to courts and the ability of lawyers to carry out their duties effectively. Some lawyers have complained of limited access to their clients in pre-trial facilities.

In Uzbekistan members of the Bar Association have had to comply with a general rule restricting use of personal vehicles to only a few hours per day except night-

time and weekends. Unlike prosecutors, investigators or other justice system actors, lawyers were not included among those who may use special stickers authorizing them to travel without restriction. Lawyers may only rely on the official transport of law-enforcement agencies or the Ministry of Justice, which may be made available to them upon the request of the court in a limited number of cases where their participation is mandatory by law. In those circumstances, however, there is a risk that the independence of lawyers and access to legal representation both in court and during pre-trial investigation where people are entitled to be represented by counsel of their choosing may be significantly undermined.

While restrictive measures may be necessary to effectively tackle the pandemic, and thereby protect the rights to life and health, the ICJ recalls that that justice must be administered even in emergency situations that are officially proclaimed, in a manner that upholds the right to a fair hearing, guaranteed under Article 14 of the International Covenant on Civil and Political Rights, to which all the Central Asian States are parties.

Background:

On 12 June 2020, the ICJ published a [briefing paper](#) outlining measures affecting the court system and access to justice which include sections on Kazakhstan, Kyrgyzstan and Uzbekistan. The paper considers the issue of the legislative framework governing the restrictive measures, as well as problems of access to lawyers and courts in relation to the COVID-19 restrictions. This briefing paper should be read in conjunction with the [ICJ's general briefing note on COVID-19 and the Courts](#), which explains relevant international laws and standards in more detail.

On 10 July 2020, the ICJ held an [online discussion](#) for lawyers and representatives of civil society in Tajikistan on access to justice in the context of the Covid-19 pandemic.

On 22-23 June 2020, the ICJ co-hosted a high-profile online [Expert Discussion](#) on the impact of COVID-19 on access to justice for economic, social and cultural rights in Uzbekistan and comparative experiences from Europe and Central Asia.

On 15 May 2020, the ICJ co-hosted an online international conference "Law and human rights during the pandemic" in Kazakhstan, where leading legal experts and practitioners from Central Asia and other countries discussed the most pertinent issues for ensuring human rights and access to justice in times of pandemic.