

## RECOMMENDATIONS

### **to the Union of Lawyers of Tajikistan on the organisation and functioning of the Commission for the protection of the rights of lawyers 10 August 2020**

On 16 and 17 December 2019, the International Commission of Jurists (ICJ) held a workshop on strengthening the work of the specialised bodies of the Bar Association on the protection of the rights of lawyers in Tajikistan.<sup>1</sup> The event was held in the city of Gulistan in the North of Tajikistan for members of the Commission for the Protection of the Rights of Lawyers (CPRL) of the Union of Lawyers of the Republic of Tajikistan. The ICJ organized this seminar in cooperation with the Union of Lawyers of Tajikistan and the Legal Policy Research Center, Kazakhstan.<sup>2</sup> The President of the Tajikistan Union of Lawyers, heads of regional departments of the Union of Lawyers, who are members of the Commission on the protection of the rights of lawyers, and other lawyers took part in the two-day discussion. Based on the outcome of this discussion, the participants elaborated the recommendations to strengthen the work of the Commission. Those recommendations are provided below.

The recommendations have been formulated on the basis of the views expressed by members of the Tajikistan Union of Lawyers addressing the situation in Tajikistan, and are not intended necessarily to reflect the legal or policy positions or other views of the ICJ or to be applicable to other contexts. This set of recommendations deals with key challenges faced by the CPRL in upholding the independence, security and effective work of lawyers in Tajikistan. However, the list of these issues is not exhaustive nor comprehensive and should be further reviewed in light of ongoing developments in the legal profession and the justice system as a whole.

The recommendations should be read in light of the international law obligations of Tajikistan to protect the right of access to a lawyer, to a fair trial and to effective remedies for violations of human rights, including under the International Covenant on Civil and Political Rights, and international standards on the role of lawyers, including the UN Basic Principles on the Role of Lawyers.

#### **I. THE GOAL AND OBJECTIVES OF THE CPRL**

In its work, the CPRL should aim to strengthen the independence and security of lawyers when exercising their duties by means of timely and effective response to attacks, harassment and interference with the work of lawyers. This is the primary goal of the CPRL, which should provide both legal assistance and social support to lawyers, where this is necessary.

The CPRL should aim to address the issue of identification by the authorities of lawyers with their clients or their clients' causes as a result of discharging their functions, which appears to be one of the commonplace problems lawyers face in high profile cases. The CPRL should aim to improve its responses to situations where criminal cases are brought against lawyers in connection with the exercise of their duties, inter alia for expressing their opinions in connection with the defence of their clients.

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<sup>1</sup> Tajikistan: ICJ and Tajikistan Bar Association seminar on security of lawyers, <https://www.icj.org/tajikistan-icj-and-tajikistan-bar-association-seminar-on-security-of-lawyers/>.

<sup>2</sup> Legal Policy Research Centre official website: <https://lprc.kz/en/>.

The CPRL should aim to address the problem of searches and seizures against lawyers that do not respect lawyer-client professional confidentiality, or rights to privacy more generally, which often include bodily search, search of their means of transport, work premises and home.

CPRL should also focus on systematic work to strengthen the professional rights of lawyers including through robust and pro-active engagement with the legislator and policy-making bodies. This work can be done as part of standard-setting and proposals for amending of legislation in relation to the rights of lawyers. CPRL should equally strengthen its own standing in the Union of Lawyers, making it an autonomous body, which is governed by a specific regulation.

The Commission should also aim to increase communications with relevant government bodies in order to strengthen and ensure the safety and security of lawyers when exercising their professional duties through regular written correspondence and face-to-face meetings.

## **II. ORGANISATION AND FUNCTIONING OF CPRL**

### **1. The principles of work of CPRL**

When CPRL receives communications from lawyers it should presume that lawyers act in line with professional ethics unless it otherwise transpires as a result of a check of the circumstances of the case.

While it should be an obligation of the CPRL as a specialised body to intervene in specific cases of attacks on lawyers, individual members of the Commission must participate in specific activities to protect the rights of lawyers only to the extent that their capacity to dedicate time to the work of the Commission allows.

A key principle of the work of the CPRL should be transparency. The CPRL should create a section on the Union of Lawyers' website where it would publish all the documents and reports related to its functioning.

### **2. Structure and composition**

Members of the CPRL should be elected by their peers at the General Meetings of lawyers with a view to ensuring that only those interested in advancing the objectives of the CPRL are elected. The term for which each member of the CPRL is thereby elected should be a period of 2 or 3 years, following which the member should be required to compete in a new election if he or she wishes to continue to be a member. If necessary, the number of the members of the CPRL should be increased. It may also be advised to elaborate the rules for recusal of members of the CPRL.

The legal profession should aim to elect those lawyers who are likely to actively contribute to the work of the CPRL. Yet, it should be borne in mind that lawyers holding official positions may sometimes be less likely to face the same problems as other members of the Bar Association which may require additional vigilance on their part.

Rules and procedures of the CPRL should prescribe a specific role and task to each member of the CPRL which should also be known to members of Bar Association. It is key that members know who they should contact in cases of emergency.

To that end a task force should be established as part of the structure of the CPRL. This task force (mobile group) may include up to 5-10 members, including volunteers, who would be able to respond immediately to information from lawyers from any part of Tajikistan.

### **3. Rules and procedures**

The CPRL should adopt its rules and procedures in order to define in a strict manner key priorities for the work of the CPRL, and its competences including the issues which should not fall under the competence of the CPRL, i.e. those which do not concern threats, harassment, intimidation, and other interference with the exercise of the duties of lawyer.

It is essential that the CPRL works out a regularly applied system or guidelines of the steps to be taken in a particular case where a lawyer maybe under threat, including in cases of prosecution of lawyers. While preserving a necessary level of flexibility, the CPRL should elaborate methods for reaction for each type of situation including the assignment of regular roles within the CPRL and steps to be taken vis-à-vis relevant State bodies and officials.

In order to strengthen rapport with the State bodies in regard to situations where professional rights of lawyers may require communication with the relevant authorities, the CPRL should adopt its own letterhead and forms for specific situations which can be used by individual lawyers to file communications with the Commission. They should be available on the website. This should be done in order for the State and non-State stakeholders to be aware of the official status of the CPRL.

While the CPRL should hold its regular meetings, the contact among the CPRL members should be regularly maintained by using electronic means of communication, including group chats. It is recommended to use other designated means of communication and planning in order to share information about specific cases and work plans. It is therefore important that lawyers who are elected to the CPRL undertake to use electronic means of communication on a regular basis and pledge to be accessible by colleagues, especially, those who may require an urgent intervention.

### **III. METHODS OF OPERATION AND ACTIVITIES OF CPRL**

The CPRL should adopt such methods of work that are proven to show its responsiveness. The CPRL should not act only upon specific appeals but should react to the information of possible cases of harassment of lawyers even in the absence of a formal complaint. It should be an obligation of members of the Commission to proactively reach out to those lawyers which may face threats or harassment, especially those practicing in remote parts of Tajikistan. The CPRL should also develop monitoring capacity and produce monitoring reports based on social media to ensure that the CPRL responds to situations of attacks on lawyers even without a formal appeal to it to do so.

It is important to introduce tools and mechanisms for regular monitoring of the situation of attacks on lawyers throughout Tajikistan. Based on this, the CPRL should conduct regular analyses of the issues underpinning instances of attacks, harassment, and intimidation of lawyers. Such analysis can result in production of guidelines on the conduct of lawyers in cases of attacks, including on how to establish an immediate contact with the CPRL.

A hotline for lawyers which they can use in situations where they face threats, harassment, insults or other violations of their rights can be a good practice to introduce. Other tools of rapid alert and reaction should be also available.

Where appropriate, the CPRL should intervene in various cases of attacks, threats, intimidation in the work of lawyers by means of:

- Letters of enquiry to State bodies and other bodies and organisations;
- Public appeals and statement in support of lawyers;
- Legal analysis of law and practice including in regard to national legislation and international standards concerning the independence and security of lawyers;
- Appeals to UN and other international human rights bodies, international and national NGOs especially those operating in the field of human rights and the rule of law.

The CPRL should participate in court proceedings as observers of trials against lawyers or where lawyers seek remedies for alleged violations of their rights. Besides, the CPRL should conduct annual surveys among lawyers to be well informed of the key challenges to the protection of the rights and ensuring security of lawyers.

Where necessary, the CPRL should urgently provide legal representation to the members of the Bar Association where this should be necessary. The CPRL should in certain cases take on representation of the rights and interests of lawyers before relevant State bodies and in courts.

The CPRL should establish and maintain direct contact with relevant State bodies, including the Prosecutor General's Office, State Security Service, the Agency for the State Financial Control and Combating Corruption, the Ministry of Defence and others.

The CPRL should engage in advocacy with relevant State bodies about rights and security of lawyers and to that end should conduct round table seminars and meetings with representatives of State bodies to discuss violations of lawyers' rights.

It is key that every member of the Bar Association is well-informed about the work of the CPRL and its work on the protection of lawyers. The CPRL should implement regular activities to raise awareness of the legal community about the role of the CPRL and ways of reaction to cases of attacks (including trainings and round table discussions). At the same time members of the Union of Lawyers of Tajikistan should act responsibly and provide information to the CPRL when they face instances of attacks, intimidation, harassment and interference with their work.

The CPRL should establish communication with international bodies on the protection of lawyers, including UN and other mechanisms, national and international human rights NGOs and IGOs, international legal professional associations, and similar bodies relevant to the protection of the rights of lawyers.

The CPRL should be proactive in pursuing public relations and should produce booklets, participate in interviews, including those on TV to inform the public about the work of the CPRL. Such activity should include distribution of success stories.

The CPRL can organise press-conferences and regular meet-ups with the media in order to inform members of the legal profession and the broader public about its work. Besides, the CPRL should publish regular reports about its work.



To sustain the work of the CPRL, a special fund should be created which should be used exclusively to cover the cost of the activities of the CPRL.