

BRIEFING PAPER

Roundtable with the Supreme Court of Justice Dushanbe, Tajikistan, 27 October 2023

I. INTRODUCTION

On 27 of October 2023, the International Commission of Jurists (ICJ) in partnership with the Supreme Court of the Republic of Tajikistan, the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for Central Asia (ROCA), and the Organization for Security and Cooperation in Europe (OSCE) held a roundtable discussion titled "Application of international law by courts: international and national practices."¹ The roundtable aimed to discuss challenges for the judiciary in Tajikistan in the application of international law and standards by courts. The participants focused on the binding nature of international treaties, discussed the practical application of international law by Tajikistan courts, and scrutinized adherence of Tajikistan to its international human rights obligations.

The discussions aimed to identify the challenges and propose recommendations for increasing the use of international law more effectively. Furthermore, the roundtable discussions drew upon insights from an ICJ report, "Neither Check nor Balance: the Judiciary in Tajikistan,"² which highlighted the critical need for judicial independence as a cornerstone for protecting human rights and supporting the rule of law.

The independence of the judiciary means, among other things, that courts can make decisions free from external pressure, interference, or influence.³ This principle, mandates that national judiciaries uphold and apply international human rights law and standards, ensuring justice and fairness in accordance with international law and standards.⁴ The integration of international law into national judicial decisions requires courts to act in good faith, respecting treaties and obligations that enshrine human rights, thus bringing domestic legal frameworks closer to international law. Judges play a key role in interpreting and applying laws that resonate with the principles of justice, equity, and access to legal aid, ensuring individuals' rights are protected in criminal justice systems.⁵ Through this lens, national courts are not only adjudicators of domestic cases but also key players in the human rights protection, tasked with the interpretation and application of laws in a manner that respect international obligations of States.

II. THE ROUND TABLE DISCUSSION

The discussions and recommendations from the roundtable point to the need of cooperation between the judiciary, the executive, the civil society, and international partners to improve the justice system. By focusing on the effective implementation of international law and standards, Tajikistan can make progress in strengthening the rule of law, ensuring that the judiciary serves as a pillar of human rights protection.

The participants expressed the views on the necessity of using international mechanisms when national remedies prove ineffective. Moreover, concerns were raised about the lack of integration and application of international norms in national legal decisions. The participants stressed the critical role of the judiciary in interpreting and applying international law within the national legal context. This not only requires a profound understanding and accessibility of international legal resources but also demands a systemic integration of these norms into judicial decisions. The recommendations emphasize the importance of language accessibility, judicial training, and the harmonization of international and national laws to ensure that national justice is delivered in accordance with international human rights law and standards.

¹ Tajikistan: Round Table on the Application of International Law in Judicial Systems, <https://www.icj.org/tajikistan-round-table-on-the-application-of-international-law-in-judicial-systems/>.

² Neither Check nor Balance: The Judiciary in Tajikistan ICJ Mission Report December 2020, <https://icj2.wpenginepowered.com/wp-content/uploads/2020/12/Tajikistan-Judiciary-Publications-Reports-Mission-report-2020-ENG.pdf>.

³ Basic Principles on the Independence of the Judiciary, Article 1.

⁴ Vienna Convention on the Law of Treaties, Article 26

⁵ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 3.

Moreover, the emphasis on engagement with international mechanisms and bodies to advance systemic reforms was made. It was stressed, that by focusing on the effective implementation of international standards and fostering cooperation, Tajikistan can make progress in making the judiciary independent.

III. RECOMMENDATIONS

A. Integration of international law in judicial decisions

A concern was raised about the insufficient use of international law. The recommendation was to encourage the judiciary to actively incorporate international norms into their decisions. Such a practice would speed up the use of the interpretation of these norms and contribute to a more predictable and coherent legal framework. It was recommended to adopt a strategy that seeks to harmonize national law with international standards, thereby avoiding potential contradictions and ensuring a more holistic approach to it.

B. Use of international mechanisms

Collaboration with international organizations: The participants emphasized the importance of international mechanisms in the protection of human rights, as well as in driving systemic reforms. There is an apparent need for enhanced cooperation with UN procedures and mechanisms, such as the UN Treaty Bodies and Special Procedures, to provide victims with access to international remedies for rights protection and to motivate domestic systems towards legal reform. The effectiveness of international mechanisms in exerting pressure in human rights cases was acknowledged.

Facilitating individual complaints to international bodies: The importance of individual applications to UN mechanisms in cases where domestic remedies fall short was emphasized. Enhancing the procedures for such individual communications and engaging with international bodies were identified as essential steps which should be taken.

Accessibility to international legal instruments: The limited access to international legal instruments in the Tajik language was identified as a significant barrier. Improving the availability, translation, and dissemination of these instruments is crucial for enabling the legal community to effectively engage with and apply international legal standards. To bridge this gap, there is a need to compile and translate key international documents into the Tajik language.

Comprehensive judicial training: The necessity of revising judicial training programs to include a more extensive focus on international human rights law was discussed. Such training should aim at not just theoretical knowledge but also at practical application, ensuring that judges are well-equipped to apply international standards in their decisions. It was recommended to actively use international norms in judicial decisions, which can expedite the process of interpreting these norms and create a more unified legal application space.

Collaboration for Judicial System Reform: The roundtable concluded with a strong recommendation for continued cooperation with international experts and organizations. This collaborative approach is vital for facilitating the successful reform of the judicial system and for integrating international legal standards into the national legal framework.