



MISSION PERMANENTE
DE LA RÉPUBLIQUE DU KAZAKHSTAN
AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS
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The Permanent Mission of the Republic of Kazakhstan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in reference to the letter AL KAZ 2/2020 of the Special Rapporteur on the independence of judges and lawyers Diego García-Sayán dated 20/04/2020, has the honor to transmit the following reply of the Republic of Kazakhstan.

The Permanent Mission avails itself of this opportunity to renew to the OHCHR the assurances of its highest consideration.

Geneva, July «15», 2020



**Office of the High Commissioner
for Human Rights
Geneva**



Diego Garcia-Sayan
Special Rapporteur on the independence
of judges and lawyers

Excellency,

On behalf of the Republic of Kazakhstan (the "Republic"), I am writing in response to the April 20, 2020 letter regarding the revocation of the license to practice law and disbarment of two lawyers, Mr. Amanzhol Mukhamedyarov and Mr. Erlan Gazymzhanov. The Republic appreciates the opportunity to respond to the letter and provide information on the Republic's long-standing commitment to the rights and freedom of lawyers. Before addressing your specific questions, I wanted to provide some relevant background on Kazakhstan's legislation and regulation governing the practice of law.

According to the law "On advocate practice and legal assistance" (hereinafter, the "Law"), legal assistance through an advocate in the Republic of Kazakhstan is a constitutional right and the goal of advocates is to protect and assist their clients in realization of rights, freedoms and legitimate interests. See Art. 31. An advocate shall be guaranteed the right to security and independence in performing his or her practice in the manner prescribed by the Law. Advocates independently exercise their professional duties and the rights of an advocate shall not be subject to restrictions, except where expressly provided for by the laws of the Republic of Kazakhstan in the interest of ensuring appropriate and professional advocacy and protecting the interests of individuals and the Republic. Wrongful or inappropriate obstruction of the work of advocates is illegal as stipulated by the laws of the Republic of Kazakhstan. See Art. 31 §1-6.

Significantly, in exchange for the independence and protections afforded to them, the Law obliges advocates to comply with all of the laws of the Republic of Kazakhstan, the principles of legal assistance and the norms of the Code of Professional Ethics of Lawyers. See Arts. 3, 5, 10 and 33. In fact, the most fundamental principle of an advocate's profession is to uphold the law. In addition, advocates are required to treat their colleagues, including the court, with

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professionalism, courtesy and respect. And, advocates activities should be based on respect for the law, the courts and the rules of judicial proceedings. See Art. 13.

With this introduction, I turn to the specific questions in your letter:

Question 1: *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

Response: The Ministry of Justice of the Republic of Kazakhstan issued licenses to practice law to Mukhamedyarov A.N. and E. Gazymzhanov (hereinafter referred to as advocates) on March 1, 2012 and August 6, 2014, respectively.

Since the fall of 2018, advocates Mukhamedyarov A.N. and E. Gazymzhanov have been defending the local entrepreneur [REDACTED] who was accused of engaging in a significant fraudulent scheme. The scheme, and the evidence presented in the criminal case against [REDACTED], involved the deception of approximately one thousand individuals (victims). The case was considered in one of the district courts of Nur-Sultan City as an ordinary case among thousands of other cases in Kazakhstan.

On March 1, 2019, Mukhamedyarov and Gazymzhanov, as advocates for the defendant [REDACTED] in the criminal case, filed a petition to obtain copies of the audio and video records (AVR) that are made of all court hearings. In their petition to obtain the AVR, the advocates indicated that they were requesting the AVR to prepare for upcoming judicial proceedings and that the AVR was required because of the large number of hearings and witnesses involved in the case. In the petition for the AVR, the advocates gave a written undertaking not to transfer the AVR to third parties or to post the AVR on social networks and media. [See Petition Attached as Annex 1].

Despite their express undertaking not to post the AVR on social networks, which was required to obtain the AVR, on August 24, 26 and 27, 2019, the advocates posted selected video clips from of the court hearings on Facebook. In addition to being contrary to their undertaking and contrary to the express reasons provided for requesting the AVR, the use of the AVR for purposes other than the legal proceedings, was a violation of Article 347-1 of the Criminal Procedure Code¹. The posts were also accompanied by disparaging comments regarding the judge and the judge's actions and became a source of negative and, in some cases, offensive comments directed to the judge and the judiciary system in general.

On August 28 and September 11, 2019, the Chairman of Nur-Sultan City Court and the judge of the Almaty District Court advised The Ministry of Justice that the advocates grossly violated the "Code of Professional Ethics of Lawyers."

Advocates Mukhamedyarov and Gazymzhanov had previously violated the Code of Professional Ethics of Lawyers in nearly the same way in 2017. On June 22, 2017, Almaty District Court No.2 issued a decree against advocates Mukhamedyarov and Gazymzhanov due to posting on a social network inaccurate

¹ Audio and video recordings of court sessions are used only for judicial purposes to accurately record the progress of the trial, and also for the purpose of establishing factual data in civil, criminal, administrative offenses or in disciplinary proceedings. See. Art 347-1 ¶4.

and false information regarding a judge and a judge's actions, as well as exhibiting an incorrect attitude towards the counterparties' advocate. On October 26, 2017, on the basis of this decree, the presidium of the bar association issued a severe reprimand to Mukhamedyarov. While the disciplinary proceedings against Gazymzhanov were discontinued, he was admonished of the need for strict compliance with all applicable laws and ethical obligations. [See the letter of Presidium Annex 2].

With the prior violations as background, on November 7, 2019, the Department of Justice of Nur-Sultan City sent a statement to the Ministry of Justice, as licensor, asking the Ministry of Justice to consider making an application for the deprivation of the advocates' licenses in accordance with the Law. See Art. 44².

On November 28, 2019, consistent with the relevant laws and procedures, the Ministry of Justice filed lawsuits against E. Gazymzhanov in Saryarka District Court and against A.N. Mukhamedyarov in Yesil District Court seeking orders from the courts revoking the advocates' licenses on the basis of gross and repeated violations of the Code of Professional Ethics of Lawyers.

By posting the records on social media despite having taken a commitment not to make the records publicly available, the advocates had an intention to and/or tried to artificially scandalize the criminal process. In addition, their actions and conduct were likely an attempt to unduly exert pressure on the judge and the court system as a whole. To the extent that the advocates had legitimate concerns regarding the particular judge's behavior or believed that her actions infringed their or their client's rights, the advocates could have, and should have, acted in accordance with the requirements of current legislation that allows advocates to assert objections relating to the actions (or omissions) of judges which infringe the rights of the parties in the process. Instead of following the appropriate methods, advocates Gazymzhanov and Mukhamedyarov disregarded the law and their ethical obligations.

In all events, lawyers must preserve the honor and dignity inherent in their profession and they must respect all members of the process, including judges. In accordance with the Code of Professional Ethics of Lawyers, advocates participating in legal proceedings must comply with the norms of procedural legislation, show respect for the court and the persons participating in the case, comply with the Law and, in case of violation of his rights, petition for their elimination. See Arts. 9 and 10. According to Constitutional Law "On Judicial System and Status of Judges in the Republic of Kazakhstan", no one may interfere in the administration of justice or exert any undue influence over a judge or jurors. Such acts shall be prosecuted according to the law. See Art. 25³.

² According to subparagraph 1) of paragraph 4 of Article 44 of the Law, if a lawyer grossly or repeatedly violates the legislation of the Republic of Kazakhstan, the principles of legal assistance or the Code of Professional Ethics of Lawyers in the performance of their professional duties, the license to practice law is revoked in court at the request of the licensor. And according to the paragraph 6 of this Article, the basis for the decision on termination of a license for advocate practice in cases provided for in paragraph 3 of this Article shall be the submission of the territorial body of justice.

³ According to paragraphs of the Code of professional ethics of lawyers, a lawyer participating in legal proceedings must comply with the rules of procedural law. The lawyer must show respect for the court and the persons

It should be noted that before the filing of the suit, the advocates were asked by the department of justice of Nur Sultan to remove the posts, which would have significantly changed the nature of, or potentially even negated, the proceedings against the advocates.

The advocates refused any effort to resolve the situation short of a court hearing. During the Court hearings the advocates were represented by their own counsel and had the opportunity to present evidence and arguments in opposition to the request made by The Minister of Justice. Ultimately, the court found that the advocates, having committed themselves to comply with the requirements of the Law, and having full knowledge that there was a ban on publishing copies of the AVR on social networks, grossly violated the above-mentioned rules and the rights of participants in the process by repeatedly posting video taken from the AVR on social networks.

On February 26, 2020, the Yesil and Saryarka district courts satisfied the claims of the Ministry of Justice on the deprivation of their licenses and the advocates then filed appeals. On appeal, the Appellate Courts upheld the finding of gross violations of the Code of Professional Ethics of Lawyers for both advocates and confirmed the revocation of their licenses.⁴

Question 2: *Please provide information on the procedure for handling disciplinary cases against lawyers and on the division of competence between the disciplinary commission of the National Bar Association, the Ministry of Justice and national court.*

Response: Under the law "On advocate practice and legal assistance", bringing a lawyer to disciplinary responsibility shall be carried out by the disciplinary commission of advocates. The disciplinary commission of advocates is an independent body of the advocates' collegium elected by the general meeting (conference) of the members of the advocates' collegium and accountable to it. The decisions of the disciplinary commission of advocates are binding. See Art. 72.

The composition of the disciplinary commission of advocates includes six advocates with at least five years of experience in advocate practice on the proposal of the advocates' collegium, three members of the public, proposed by the justice authorities, and two retired judges. See Art. 72.

involved in the case, monitor compliance with the law in relation to the principal, and in case of violations of the rights of the latter, apply for their elimination.

⁴ As to E. Gazymzhanov, while the Appellate Court affirmed the finding of gross violations of the Code of Professional Ethics of Lawyers and upheld the revocation of his license, the revocation was upheld for other grounds. During the consideration of the case in the Appellate Court it was disclosed that E. Gazymzhanov remained a citizen of the Russian Federation. Indeed, before applying for citizenship of Kazakhstan, Gazymzhanov had a different surname - Makhmutov. In addition, according to the information provided by officials from the Investigative Committee and the Prosecutor's office of the Astrakhan region of the Russian Federation, E. Makhmutov (aka E. Gazymzhanov) is wanted in Russian in connection with certain criminal activity.

According to the Constitution of the Republic of Kazakhstan, dual citizenship is forbidden. And, thus, because Gazymzhanov never renounced his Russian citizenship, he could not remain a citizen of the Republic of Kazakhstan. Because only Kazakh Citizens can hold licenses to practice law, Gazymzhanov's loss of citizenship necessarily resulted in the termination of his license to practice law. See Art. 44 of the Law.

In the event an advocate violates the requirements of the current legislation, the justice authorities have the right to refer the advocate to the disciplinary commission of lawyers seeking the initiation of disciplinary proceedings, as well as take part in its consideration. The current legislation, however, does not contain provisions according to which a referral to the disciplinary commission is a prerequisite for resolving the issue of revocation of a license.

It should be noted that the advocate carries out his activities on the basis of a license issued by the Ministry of Justice. The procedure to authorize the deprivation of a license is carried out exclusively in court and is initiated by the Ministry of Justice. This process meets the principles of objectivity and impartiality in considering this issue, and also ensures the right of lawyers to challenge decisions through the appellate process.

The justice authorities are not entitled to conduct investigations against lawyers. If the justice authorities believe an investigation is necessary, then the justice authorities will refer the issue to the disciplinary commission.

Thus, if a violation of law or the Code of Professional Ethics of Lawyers has already been established by decision, sentence or private ruling of a court and these violations do not require further investigation and if a gross and repeated violation is committed, then the department of Justice submits a submission to the Ministry of Justice for the subsequent initiation of the deprivation of a license in a court.

Question 3: *Please elaborate on the substance of the disciplinary proceedings brought against the two lawyers, and explain whether, and to what extent, did these proceedings comply with the provisions of the UN Basic Principles on the Role of Lawyers. In particular, please explain, whether and to what extent, could the Ministry of Justice's decision to bypass the regular disciplinary proceedings be regarded as respectful of the essential role of the National Bar Association in ensuring the free and independent exercise of the legal profession.*

Response: As mentioned above, in 2017 the advocates committed very similar violations of the Code of Professional Ethics of Lawyers. While only Mukhamedyarov was issued a severe reprimand by the presidium of the bar association, Gazymzhanov was advised of the need for strict compliance with all applicable laws and ethical obligations. It should be noted that according to para. 14 of the UN Basic Principles, lawyers shall, at all times, act in accordance with ethics of the legal profession.

In any event, the proceedings against the two advocates in this instance was not a bypass of the regular disciplinary proceedings because the issuance of a revocation of license does not fall within the competence of the disciplinary commission. To the contrary, where there is a gross or repeated violation of the legislation of the Republic of Kazakhstan by a lawyer, the principles of rendering legal assistance, or the Code of Professional Ethics of Lawyers during the performance of his professional duties, a license of advocacy shall be revoked at the suit of the licensor filed in court. See Art. 44⁵. As mentioned above, there are

⁵ According to the paragraph 4 of article 44, In addition to the grounds provided for by paragraph 2 of this Article, the deprivation of a license for advocate practice shall be carried out in a judicial proceeding upon the suit of the licensor in the following cases: 1) gross or repeated violation by an advocate of the legislation of the Republic of Kazakhstan, the principles of rendering legal assistance, the Code of professional ethics of advocates during the performance of his

circumstances, like the one at issue here, where a violation has already been determined by judicial act or where the violation is clear or undisputed such that the submission of statements or materials to the disciplinary commission or further investigation is not required.

In fact, Article 44 of the Law provides for the possibility of revoking a license under the Code of administrative offences and sets out five cases provided for in paragraph 4. One of the five cases contemplates the preparation of a claim to revoke a license at the request of the presidium of the bar association; however, when establishing the cases provided for in paragraphs 1, 3, 4 and 5 of clause 4 of Article 44 of the Law, the basis for preparing a claim is the representation of the territorial departments of justice.

The possibility of submitting a petition by the presidium of the bar association is provided because justice authorities are not empowered to investigate the activities of lawyers. Rather, such powers are with the disciplinary commission when specified in the statement (appeal, complaint) and the violation(s) are implicit, require careful consideration, interviewing stakeholders, and gathering necessary materials. In such instances, the application for review is forwarded to the disciplinary commission.

Here, the judicial authorities have observed all the rights of lawyers provided for by the basic principles. The disciplinary measures taken against the advocates fully comply with paragraph 28 of the basic principles, since the review was conducted in open court where more than ten lawyers attended as representatives of the advocates, including those from Russia and international organizations (located in Geneva, Switzerland). The process was openly covered in the media and social networks.

Question 4: *Please explain how the decision of the Yesil and Saryarka district courts could be regarded as proportional to the seriousness of the disciplinary violation allegedly committed by the defendant.*

Response: The advocates committed gross and repeated violations of the Criminal Procedure Code, the Law and the Code of Professional Ethics of Lawyers. Significantly, these advocates misrepresented the basis for requesting the AVR when they filed their petition to obtain the AVR. Instead of wanting the AVR to prepare for future judicial proceedings, as they claimed on their petition, they wanted the AVR to post it to social media to disparage a judge and seek to improperly influence the legal proceedings against their client. In other words, they lied to the Court in order to get access to the AVR. Moreover, the advocates acted with knowledge that what they were doing was a violation of Kazakh law and each specifically undertook not to do what they eventually did. Such knowing and calculated violations of the law and the Code of Professional Ethics rise to the level of gross violations, which subject any advocate to license revocation.

professional duties ; 2) inability of an advocate to perform his (her) professional duties due to insufficient qualifications; 3) non-elimination of the circumstances specified in subparagraphs 3) and 6) of paragraph 3 of Article 43 of this Law, for which the license has been suspended; 4) establishing the fact of provision inaccurate or deliberately distorted information in documents that were the basis for issuing a license by an advocate; 5) three times suspension of the license within thirty-six consecutive months on the grounds provided for in subparagraphs 3), 4) and 5) of paragraph 3 of Article 43 of this Law.

The posting of the AVR to social media, on its own, is sufficient to justify the revocation of the advocates' licenses. Here, the advocates were also repeat violators, having been brought before the disciplinary committee previously for the nearly identical violations. Thus, the repeat nature of the violations further justifies the revocation of the licenses.

Question 5: *Please provide information on whether there are legal remedies to challenge the decisions of the Yesil and Saryarka district courts to withdraw the licenses of the two lawyers.*

Response: Court decisions in a civil case can only be reviewed by the relevant courts in the manner prescribed by the Civil Procedure Code. Here, the advocates had the right to appeal the decisions of the district courts. The advocates did appeal, which appeals were denied. The advocates still have further rights to appeal to higher courts. See Art. 7⁶.

Question 6: *Please provide the information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.*

Response: As indicated by the above, there was no intimidation, threat, harassment or improper interference with the advocates in this situation. They were properly brought before a court by the Minister of Justice seeking revocation of their licenses for the gross violations of the law and the Code of Professional Ethics. That said, as outlined at the beginning of this letter, the Republic of Kazakhstan takes access to independent advocates very seriously and applies all measures to implement into national legislation international standards and requirements aimed at full protection of the rights and freedoms of citizens, including lawyers.

In 2018, Kazakhstan adopted a new law on advocacy which has made a significant contribution to the development of legal assistance. The Law has abolished entrance fees to the bar association, introduced mandatory professional liability insurance for lawyers and legal consultants, a unified information system has been developed to provide the population with legal assistance online and had made other changes seeking to modernize and westernize Kazakhstan's legal community. The bill was sent for discussion with International organizations (Office for Democratic Institutions and Human Rights, International Commission of Jurists, Organization for Economic Co-operation and Development and others) in an open and transparent manner. During the discussion of the bill we tried to accommodate all legitimate requests and concerns of relevant stakeholders. This law is aimed at improving the regulation of the system of providing legal services and increasing the number of lawyers by removing unnecessary barriers. The positive effects of this law can be seen from the statistics, which illustrate that the number of advocates increased by 558 people in the first 18 months since the new Law was adopted. In contrast, during the period from 2010 to 2017 the number of advocates increased by only 562 people.

⁶ According to the paragraph 5 of the Code, rulings of court concerning a civil case may be checked and re-considered only by the relevant courts according to procedure stipulated by this Law.

The Republic is grateful for the opportunity to provide information about its long-standing commitment to freedom of expression and opinion, including a vibrant and independent legal community. I would welcome the opportunity to engage with UN Special Procedures further on these important topics. Thank you for your prompt attention to this letter.



Respectfully Submitted,

**Vice Minister of Justice
of the Republic of Kazakhstan
Almat Madaliyev**
