

(Translated from Russian)

**Permanent Mission of the Russian Federation
to the United Nations Office
and Other International Organizations
in Geneva**

No. 317

The Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to request AL RUS 9/2020, of 15 December 2020, from the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Council, has the honour to forward information from the Russian Federation.

The Permanent Mission takes this opportunity to convey to the Office the assurances of its highest consideration.

Enclosed: as mentioned, 8 pp.

Geneva, 28 January 2021

(Seal)

Office of the United Nations High Commissioner for Human Rights



Information from the Russian Federation in relation to the request of the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Council regarding the situation of the member of the Bar Association of the Chechen Republic of the Russian Federation, Lilia Ibrahimovna Hemedzhy

Reference: AL RUS 9/2020 of 15 December 2020

Having carefully considered the request from the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Council, D. García-Sayán, regarding the so-called intimidation and repression of Ms. L. I. Gemedzhi, a member of the Bar Association of the Chechen Republic of the Russian Federation, the Russian Federation has the honour to present the following information.

According to article 3 of the Federal Act No. 63-FZ of 31 May 2002 on the work of lawyers and the legal profession, the Bar Association is the professional association of lawyers, and as a civilian association, it is not a part of the system of bodies of State power or local government; it acts on the basis of the principles of legality, independence, self-governance, corporatism and equality of rights.

The mandatory rules of conduct for every lawyer in carrying out the profession and the grounds and procedures for the prosecution of lawyers are established by the Lawyer's Code of Professional Ethics, adopted by the First National Congress of Lawyers on 31 January 2003.

In accordance with article 19 (2) of the Code, acts by lawyers that denigrate their honour and dignity or diminish the authority of the legal profession, or a failure or improper performance by lawyers of their professional duties to their clients, should become the subject of consideration by the relevant qualification commission and council of the Bar Association of the constituent entity of the Russian Federation in which such defenders are members when disciplinary proceedings are initiated against them.

On the basis of article 20 (1) of the Code, one of the reasons for initiating disciplinary proceedings is a submission filed with the Bar Association by a court or judge considering a case in which a lawyer acts as a representative or defender. Article 21 (1) of the Code establishes that the right to initiate disciplinary proceedings against a particular lawyer is vested in the president of the corresponding regional Bar Association of the Russian Federation.

At the same time, article 18 (4) and article 19 (5) of the Code provide for disciplinary measures against lawyers only within the framework of disciplinary proceedings, which, on the basis of article 31 (3) (9) and article 33 (7) of Federal Act No. 63-FZ, are to be carried out exclusively by the qualification commission and the council of the Bar Association of the constituent entity of the Russian Federation in which such lawyers are members when proceedings are initiated against them.

According to the Registry of lawyers of the Russian Federation and lawyers of foreign States carrying out the legal profession in the Russian Federation (a federal State information system), Ms. Hemedzhy is an active lawyer. An entry for her has been filed in the registry of lawyers of the Chechen Republic, under registration number 20/1213.

In that capacity, Ms. Hemedzhy defended the interests of defendant A. and others in a public, open trial of the Southern District Military Court in the case of Hizb ut-Tahrir, an extremist organization banned in the Russian Federation. Her rights and obligations as a defender in the proceedings were defined by Federal Act No. 63-FZ and the Code, mentioned above, and by the Code of Criminal Procedure of the Russian Federation.

In accordance with the provisions of these legislative acts, lawyers must maintain the honour and dignity inherent to their profession. When participating in court proceedings, they must comply with the norms of the procedural legislation in force, show respect for the court and other participants in the proceedings and, when objecting to the actions of a judge or other participants in the proceedings, do so in the appropriate form, in accordance with the law, avoiding acts that discredit their honour or dignity or belittle the authority of the legal profession.

In Ms. Hemedzhy's case these requirements were clearly not met. Specifically, she repeatedly violated the rules of etiquette and the rules for the conduct of court sessions, designed to ensure proper conditions for the administration of justice.

Thus, on 4 December 2019, despite a prohibition by the court, during the questioning of witness A., she showed the witness photographs of other persons, entered into an altercation with the presiding judge and failed to comply with the requests of the bailiff, who was attempting to halt her illegal actions. Owing to the disruption of order in the court, the court, in accordance with article 258 of the Code of Criminal Procedure of the Russian Federation, issued a warning to her and subsequently once again explained the requirements of the law relating to the rules of court sessions. However, since Ms. Hemedzhy began to speak at the same time as the presiding judge, the court, in order to restore order, had to announce a break for 10 minutes.

Despite the measures that were taken, Ms. Hemedzhy continued to fail to comply with legal requirements:

- On 4 December 2019, during the questioning of witness A., she interrupted him, argued with him and commented on his replies and the actions of the presiding judge;
- On 17 December 2019, she interrupted the presiding judge during consideration of her motion and argued with him;
- On 14 January 2020, she shouted when the court personnel withdrew from the courtroom and commented on the testimony of witness A. during his questioning, as follows: "He calls this an analysis. He doesn't understand what an analysis is"; "I do not have to give you anything" (in response to the witness's request to be reminded of the testimony he had given and on the basis of which she had questioned him); "Maybe he is deaf?! He only hears what is convenient" (when the witness was questioned by videoconference); and later, to the court: "I notice that throughout all the court proceedings, you hear things the way it suits you!". Explaining her position to the court, she used an inappropriate expression ("fool"), interrupted the aforementioned witness during his testimony and interrupted the presiding judge and commented on court decisions;
- On 15 January 2020, during the questioning of witness A., she entered into a dispute with the State prosecutor, argued with the presiding judge and commented on his actions and the responses of the witness;
- On 20 January 2020, during the questioning of witness A. by the other participants in the proceedings, she repeatedly interrupted the witness's answers with her own explanations;
- On 27 January 2020, during the examination of documentation describing the defendants, she interrupted the presiding judge and shouted from her seat;
- On 19 February 2020, during the examination of the material evidence, she expressed her opinion without being called upon to speak by the presiding judge and suggested that the presiding judge "swap places" with the defendants, and during the deliberations of the judges she shouted from her seat;
- On 2 March 2020, during questioning of the witness using the pseudonym I. and after an explanation given by the presiding judge on 26 February 2020 prohibiting divulgence of the witness's true identity, ignoring those requirements, she posed a question to the witness, including her own conjecture regarding his true identity, inviting the latter to comment on it;
- She shouted from her seat and commented on court decisions on 3 March 2020, and interrupted the presiding judge on 20 May 2020;
- She commented on the replies of the witness using the pseudonym B., on 10 June 2020, and interrupted the presiding judge on 11 June 2020;
- On 15 June 2020, during questioning of the witness using the pseudonym B., she laughed at his answers, using an illiterate slang expression that he had used (for

“participation” in a terrorist organization), rhetorically asked if he was suffering from “idiocy” and entered into an argument with and interrupted the presiding judge;

- On 18 June 2020, she argued with the presiding judge;
- On 6 July 2020, during questioning of witness T. by the public prosecutor, she shouted from her seat;
- On 17 August 2020, during a meeting of the judges, she made statements from her seat, without being given the floor by the presiding judge and without awaiting the court’s decision.

Ms. Hemedzhy’s deliberate actions obviously violated the established procedure for the administration of justice, creating a tense atmosphere in the courtroom and thus preventing the court and other participants in the trial from comprehensively, fully and objectively investigating the circumstances relevant to the case. This adversely affected the parties’ implementation of the principle of equal rights to access and examine evidence, violated the reasonable balance of the rights of the parties, which is called for by law, and undermined the authority of the court. All the violations mentioned above were recorded in the minutes of the court sessions, in accordance with established procedure.

Ms. Hemedzhy was not denied the opportunity to take part in the oral arguments during the court session; there is no information to that effect in the case file.

In her appeal, Ms. Hemedzhy cited an argument about the inadequate sound quality of a videoconference regarding an injunction announced by the presiding judge on 17 August 2020. However, this argument was deemed to be unfounded, as she was served with a copy of this decision for review in a timely manner, which allowed her to file a complaint as an appeal.

Ms. Hemedzhy’s complaint also put forward an argument that the court unreasonably refused to provide the defence with a relevant part of the minutes of the court session, but that too was deemed to be contrived and in contradiction with the case file. The minutes of the court session on 17 August 2020 clearly show that the court granted her request for the presentation of the part of the minutes concerning the issuance of the injunction by the court.

The case file shows that once a duly certified excerpt of the minutes had been drawn up, Ms. Hemedzhy was given the opportunity to take cognizance of the document, but that she categorically refused to read it or to receive a copy. This is confirmed by an internal memorandum and by the court assistant’s clarifications submitted to the appeals court.

Thus, the court of first instance took all practical and necessary measures so that Ms. Hemedzhy could realize her right to familiarize herself with the minutes of the court session concerning her competence, but she made use of this right at her own discretion.

According to the court, the violations of the law committed by Ms. Hemedzhy called for a response. In accordance with article 29 (4) of the Code of Criminal Procedure of the Russian Federation, during a judicial examination of a criminal case, if circumstances are found where the rights and freedoms of citizens are violated or the law is otherwise violated, the court has the right to issue an injunction in order to draw attention to such circumstances and violations of the law that would require the adoption of the necessary measures. In view of the above, on 17 August 2020, the Southern District Military Court issued an injunction to the president of the Bar Association of the Chechen Republic, which was subsequently confirmed by Appeal Ruling No. 55-261/2020, of 27 October 2020 (enclosed), of the Criminal Chamber of the Military Court of Appeal.

In this connection, Decision No. 12, of 7 December, by the president of the Bar Association of the Chechen Republic, initiated disciplinary proceedings against Ms. Hemedzhy and submitted a disciplinary procedure against her for consideration by the Bar Association’s qualification commission. Consideration of the issue on the merits was scheduled for 23 December 2020, but it was postponed at the request of Ms. Hemedzhy.

If such a session is held and Ms. Hemedzhy objects to the decision taken by the qualification commission of the Bar Association of the Chechen Republic, the decision is subject to appeal by her in court.

The court's issuance of an injunction in respect of Ms. Hemedzhy had no impact on the exercise of her clients' right to a fair trial. During the entire trial, she was able to provide her clients with the necessary legal assistance and they made ample use of her services as a lawyer.

In accordance with the procedural legislation of the Russian Federation, Ms. Hemedzhy had the opportunity to file an appeal against the decision of the Military Court of Appeal with the Supreme Court of the Russian Federation, but she has so far not exercised this right.

Military courts of the Russian Federation are courts of general jurisdiction and consider cases in accordance with the same legislation that applies to all courts of general jurisdiction. The military courts are subject to all guarantees of independence and impartiality provided for the judges of the Russian Federation, and the judges of military courts have the same status as all judges of the Russian Federation. When cases are considered in military courts, defendants and their lawyers are provided with all the guarantees of a fair trial, in accordance with the provisions of article 14 of the International Covenant on Civil and Political Rights.

There are no grounds to claim that Ms. Hemedzhy's rights have been infringed for political reasons.
