

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE: AL
TJK 1/2015:

11 February 2015

Dear Mr. Khamidov,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 26/7.

In this connection I would like to draw the attention of your Government to new information we have received concerning a **draft law on the Advocacy and the Bar**, already adopted by the Lower House of the Parliament, the current form of which could jeopardise the independence of the legal profession.

The draft law was the subject of a previous letter that I sent to your Government on 27 February 2014. Of particular concern was the makeup of the Qualification Commission, and the power given to the executive branch of government in regulating entry into the legal profession, disbarment procedures and the issuing of licenses to practice law. I regret that to this date I have not received a response from your Government. I wish to reiterate my concern at the serious threat to the independence of lawyers posed by the law in its current form.

According to the new information received:

On 7 January 2015, the Lower House of the Parliament adopted the law on Advocacy and the Bar. The law still needs to be approved by the Upper House of the Parliament and signed by the President in order to be officially enacted and come into force.

The law adopted by the Lower House reportedly retains all the concerning provisions described in the letter of 27 February 2014. In particular, it includes provisions according to which the Qualification Commission shall be placed under the purview of the Ministry of Justice, be chaired by one of the Deputy Ministers of Justice, and composed of two representatives from the Ministry of Justice, one Member of Parliament, five representatives from the new Union of Lawyers, and one legal academic. This would thereby allow undue interference

from the executive in the work of the Qualification Commission. Further, the executive branch of government would be in a position to play a decisive role in regulating entry into the legal profession as the law also gives the Qualification Commission the dual responsibility of developing the procedure for taking the qualification exam and assessing the level of knowledge of applicants to become lawyers. In addition, the law would apply retroactively as it includes provisions requiring practicing lawyers to re-acquire their lawyer's status in compliance with the new law in order to continue practicing law within a year of the law's entry into force.

Serious concern is expressed about the draft law on the Advocacy and the Bar as some of its provisions, as highlighted above, pose a threat to the independence of the legal profession by giving too important a role to the executive branch of government with regards to the admission of lawyers to the bar, the regulation of their licences, and disbarment procedures.

In this context, I would like to urge the Upper House of the Parliament to consider amending the draft law on the Advocacy and the Bar with the view to ensure its compliance with international human rights standards, and include the establishment of a self-regulating independent bar association or committee that would administer issues related to the bar such as access to the profession, removal from the profession, disciplinary measures, respect for ethical rules and continuing legal education.

In connection with the above allegations and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to them

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the status of the draft law on Advocacy and the Bar and when it will be considered by the Upper House of Parliament.
3. Please indicate whether propositions and suggestions to modify the draft law were received from the legal profession and civil society; and whether these propositions were considered by the Government, and if yes, explain through what process.
4. Please explain why the concerns expressed in the allegation letter of 27 February 2014 were not taken into account to review the draft law.

I would appreciate receiving a response within 60 days.

I also take this opportunity to request your Government that a copy of this letter be shared with the chairman of the Upper House of the Parliament.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Khamidov, the assurances of my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with the above allegations and concerns regarding the law on the Advocacy and the Bar, I would like to refer your Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana Cuba, from 27 August to 7 September 1990. In particular, I would like to draw your Government's attention to the provisions stipulating that lawyers are able to perform their professional functions without improper interference (principle 16), that the executive body of the professional associations of lawyers shall be elected by its members and shall exercise its functions without external interference (principle 24), and that disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee, an independent statutory authority or a court, and shall be subject to independent judicial review (principle 28).

Moreover, I would like to highlight that the Human Rights Committee, in its concluding observations on the second periodic report of Tajikistan, expressed concern that "lawyers are harassed for carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice". On this occasion, the Human Rights Committee urged Tajikistan to ensure that "the procedures and criteria for access to and conditions of membership of the Bar do not compromise the independence of lawyers" (CCPR/C/TJK/CO/2, para. 18.).

In addition, I would also like to draw your Government's attention to the fact that the draft law in its current form would be contrary to the recommendations contained in the report of the official visit to Tajikistan conducted by the former Special Rapporteur on the independence of judges and lawyers in September 2005 (E/CN.4/2006/52/Add.4). In particular, the Special Rapporteur recommended "the establishment of a single, self-governed body with compulsory membership, which would administer issues related to the bar such as access to the profession, removal from the profession, disciplinary measures, respect for ethical rules and continuing legal education. This body should be independent from the executive branch" (para.93).