

**Mandates of the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention**

REFERENCE:  
AL KWT 1/2021

1 February 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Working Group on Arbitrary Detention and, pursuant to Human Rights Council resolutions 44/8 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **intimidation and reprisals against the defence team of Ms. Maria Lazareva, allegedly as a result of the legitimate exercise of their professional activities.**

A related communication was transmitted to your Excellency's Government on 11 September 2019 (AL KWT 4/2019). In that communication, we expressed concerns, inter alia, about the intimidation addressed to the international law firms providing assistance to Ms. Lazareva, which allegedly aimed at hindering the exercise of their professional activities in favour of their client.

We thank you for the response received on 18 October 2019, in which your Excellency's Government underscored that the law recognises the independence of the legal profession and provides lawyers with robust safeguards to carry out their duties freely and without any form of intimidation. Your Excellency's Government also contended that the allegations concerning the intimidation against the international legal team of Ms. Lazareva were "pure fabrication, as evinced by its repeated visits to Kuwait and the cooperation Kuwait has shown towards any inquiry from international bodies on this subject" (para. 22).

Despite the assurances provided in your response, we remain concerned about the alleged intimidation and reprisals faced by the legal team of Ms. Lazareva in connection with the legitimate exercise of their profession.

According to the new information received:

On 28 August 2020, the Working Group on Arbitrary detention (WGAD) adopted its opinion No. 60/2020 concerning Maria Lazareva (Kuwait).

The opinion lists a number of instances where the total or partial non-observance of the international norms relating to the right to a fair trial, established inter alia in article 14 of the International Covenant on Civil and Political Rights, was of such gravity as to render the detention of Ms. Lazareva arbitrary, falling under category III of the Working Group (paras. 91-101).

The opinion also identified a number of instances where the fairness of the procedure against Ms. Lazareva fell short of international standards relating to the free and independent exercise of the legal profession:

-In para. 93, the Working Group noted that Ms. Lazareva's legal team was not given access to the entirety of the casefile, and that it was not granted sufficient time to review the extensive disclosure, which amounted to some 18,000 pages. The Working Group concluded that it was difficult in the present case "to accept (...) that the time given to the defence was sufficient to study the charges in such a complex case", while noting at the same time that the source had also failed to explain "whether the defence team submitted requests for more time to be provided and whether such requests were denied".

-In paras. 95 and 96, the Working Group considered two distinct allegations of intimidation and reprisals against the defence team of Ms. Lazareva. The Kuwaiti lawyer of the defence team was subject to criminal prosecution on the basis of his work, although the Government claimed that the lawyer was investigated for having insulted a public official. The Working Group also noted with concern "the allegations of serious intimidation of the lawyers", which in its opinion constituted "a serious interference with the right to legal assistance in violation of article 14(3)(b) and (d) of the Covenant".

-In para. 99, the Working Group considered that the State had not been able to provide evidence that Ms. Lazareva was able to have private and confidential consultations with her lawyers, despite the fact that the meetings were held in public spaces or with agents near them. It concluded that the facts of the case disclosed a violation of article 14(3)(b) of the Covenant.

Pursuant to paragraph 33 (a) of its methods of work, the Working Group referred the alleged violations of the international norms relating to the right to a fair trial, and in particular the alleged intimidation and reprisals against Ms. Lazareva's defence team, to the Special Rapporteur on the independence of judges and lawyers "for consideration and appropriate action" (para. 106 of the opinion).

While we do not want to prejudge the accuracy of this allegation, concern is expressed at the alleged systematic intimidation and harassment faced by Ms. Lazareva's legal team as a result of the legitimate exercise of their professional functions. As pointed out by the Working Group in its opinion, the State has a positive obligation to take all appropriate measures to enable lawyers "to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which indicates international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek and clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide detailed information on the measures adopted by your Excellency's Government to ensure that Ms. Lazareva's defence team had adequate time and facilities to prepare their client's defence. In particular, please explain whether the defence team requested more time to study the case file; if that request was denied, please explain why.
3. Please provide detailed information on the facts that led to the criminal prosecution against the Kuwaiti lawyer of the defence team, and explain whether, and to what extent, his prosecution is consistent with international guarantees relating to the independent exercise of the legal profession.
4. Please provide additional information on the allegations of serious intimidation of the lawyers in Ms. Lazareva's legal team, referred to in paragraph 96 of the Working Group's opinion, and indicate the legislative and other measures adopted by your Excellency's Government to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.
5. Please provide detailed information on the measures adopted by your Excellency's Government to ensure that persons under arrest or detention be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention



## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), acceded by Kuwait on 21 May 1996.

Article 14 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the most recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16), where the Working Group specifically highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (paras. 50 to 55). While expressing its concern at the various forms of retaliatory measures reportedly taken against lawyers solely for providing professional legal services to their clients, the Working Group stated that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedy whenever a violation still occurs (para. 54).

We would further like to refer your Excellency’s 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.

Principle 16 requires States to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 20 provides that lawyers enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 21 establishes the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Principle 22 requires that governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential. This principle should be read in conjunction with principle 8, which provides that all arrested, detained or imprisoned persons must be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. The principle stresses that such consultations may be within sight, but not within the hearing, of law enforcement.