

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders

Ref.: AL RUS 13/2022
(Please use this reference in your reply)

31 August 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolution 44/8 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the disbarment of three Ukrainian human rights lawyers, Ms. Lilia Ibrahimovna Hemedzhy, Nazim Nuriievych Sheikhmambetov, and Rustem Nuriievych Kiamelev, allegedly as a result of the legitimate exercise of the legal profession.

Ms. Hemedzhy, Mr. Sheikhmambetov and Mr. Kiamelev are Crimean Tatar residents of the Autonomous Republic of Crimea, Ukraine, occupied by the Russian Federation (hereinafter – Crimea)¹. All three are human rights defenders and defense lawyers.

Special procedures mandate holders have addressed concerns regarding the situation of human rights lawyers in Crimea before. On 15 December 2020, the Special Rapporteur on the independence of judges and lawyers requested the Government of the Russian Federation to provide information in connection with the acts of intimidation and repressions against Ms. Hemedzhy (AL RUS 9/2020). We thank you for the replies received on 30 December 2020, and 1 January 2021.

However, we remain concerned about the alleged interference with the legitimate exercise of the legal profession lawyers carry out in favour of opposition leaders, peaceful protesters, independent journalists and human rights defenders in the Russian Federation.

According to the information received:

Ms. Hemedzhy, Mr. Sheikhmambetov and Mr. Kiamelev are human rights defenders and defense lawyers who, until 15 July 2022, were all in good standing and had been admitted to practice law in the Russian Federation since 2019 as members of the Bar Association of the Chechen Republic.

Ms. Hemedzhy, Mr. Sheikhmambetov and Mr. Kiamelev frequently represented Crimean Tatar defendants in high-profile criminal cases in Crimea and the Russian Federation and have been strong advocates for protecting the rights of the Crimean Tatar community in Crimea.

¹ References to Crimea should be read in accordance with General Assembly resolution 68/262, in which the General Assembly affirmed its commitment “to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders” (para. 1).

In 2019, in recognition of her human rights work in Crimea Ms. Hemedzhy received the distinguished “Human Rights Tulip” award from the Government of the Netherlands.

According to the source, because of their human rights work, all three lawyers have been repeatedly subjected to harassment, persecution and threats by the Russian Federation authorities.

Disbarment from the Bar Association of the Chechen Republic

Due to the pressure and threats from the representatives of the Bar Association of Crimea, the human rights lawyers were not allowed to obtain lawyer licences in Crimea. Therefore, they decided to submit their documents to the Bar Association of the Chechen Republic and received their legal professional status in 2019.

In 2020, the Russian Federation authorities reportedly launched a campaign against them with the ultimate goal to deprive them of their licenses to practice law. As part of this campaign, at various stages over 2020-2021, the Bar Association in the Chechen Republic under the threat of disbarment informally requested the three lawyers to de-register and apply separately for admission with the Bar Association in Crimea. The lawyers believe that these informal requests have been made unlawfully given that Russian law allows lawyers to practice law in any region in the jurisdiction of the Russian Federation, irrespective of the region or Bar Association where they are formally registered or admitted to practice.

Mr. Kiamalev and Ms. Hemedzhy filed requests for de-registration with the Bar Association of the Chechen Republic in March 2020 and December 2021 respectively.

Between 2020 and 2022, Ms. Hemedzhy and Mr. Kiamalev attempted unsuccessfully to register with the Bar Association in Crimea. Despite repeated attempts, the Crimean Bar Association denied the lawyers’ requests for admission to practice in Crimea.

Mr. Sheikhmambetov, fearing that it would be impossible for him to successfully register with the Bar Association in Crimea due to their allegedly biased attitude towards human rights defenders involved in high-profile cases, decided to voluntarily cancel his current practicing certificate and filed the relevant request with the Bar Association of the Chechen Republic in May 2022. In doing so, his intention was to restore his practicing certificate at a later point without having to undergo the mandatory one-year suspension period which would otherwise be applicable in the case of disbarment. On 13 May 2022, his request was granted. However, on 22 June 2022, the Bar Association of the Chechen Republic notified Mr. Sheikhmambetov that the decision to cancel his practicing certificate had been rescinded upon request of the Ministry of Justice of the Russian Federation and his full practicing status was restored.

On 13 May 2022, the Crimean Bar Association informed Ms. Hemedzhy that it had established an “illegality” associated with her practicing certificate, claiming that she had chosen to apply to the Bar Association of the Chechen Republic with the sole goal to circumvent the law. In reaching its decision, the Crimean Bar Association relied on numerous formalistic grounds, including the purported absence of her law degree transcript in the case-file, lack of required years of practical experience, absence of cases in the Chechen Republic, and a failure to change her telephone number in the registry of lawyers.

The Crimean Bar Association adopted similar reasoning in relation to the request of Mr. Sheikhmambetov and Mr. Kiamelev. According to three lawyers, the Crimean Bar Association de facto engaged in a retrospective review of the lawfulness of admission to practice law, which is contrary to Russian legislation.

On 28 April 2022, the Chechen Bar Association received a complaint from the Office of the Ministry of Justice for the Chechen Republic, demanding that the legal professional statuses of Lilia Hemedzhy, Rustem Kyamilev and Nazim Sheikhmambetov be revoked. Prior to this, the Minister of Internal Affairs of Crimea, ██████████, appealed to the Ministry of Justice for the Chechen Republic with a demand to conduct an investigation into the human rights lawyers’ work "in case they violate the current legislation of the Russian Federation." ██████████ reportedly threatened the Chechen Bar Association that if his demand was ignored, the Russian Ministry of Justice and the Federal Bar Association would question to what extent the members of the Qualification Commission of the Chechen Bar Association fulfil their duties professionally.

On 15 July 2022, the Bar Association of the Chechen Republic decided to disbar all three lawyers. Ms. Hemedzhy was notified about the hearing in her case one day in advance, which was insufficient time for her to travel from Crimea to the Chechen Republic. Mr. Sheikhmambetov and Mr. Kiamelev have not been notified about the hearings at all. The decision to disbar all three lawyers was taken in their absence, in relation to their alleged violation of the procedure concerning transferring from one bar association to another. The lawyers currently cannot participate in criminal cases and are ineligible to take an exam for re-acquisition of legal professional status for one year.

The Bar Association of the Chechen Republic relied on the provisions of art. 15(6) and art. 15(5)(3) of the Federal Law of the Russian Federation No. 63-FZ. According to these provisions, every lawyer is required to register with a Bar Association within one month starting from the date when he/she was de-registered with the Bar Association where he/she had been previously registered; every lawyer is also required to choose the form of his/her form of legal practice (solo practitioner, lawyer’ bureau, lawyer’s association etc.) within three months starting from the date of their registration with the Bar Association.

The disbarment procedure took place without the participation of Lilia Hemedzhy, Rustem Kyamilev and Nazim Sheikhmambetov. The lawyers did not receive the materials that became the basis for the investigation, nor had

they the opportunity to object to their disbarment. They are planning on appealing the decision at court and before the Federal Bar Association.

According to the information received the decisions to disbar these lawyers are contrary to the provisions of Russian law; furthermore, their disbarment is not related to any disciplinary or criminal offence, but rather serves as retaliation for the lawful exercise of their professional duties. According to the source, Russian law does not grant Bar Associations the right to review the lawfulness of lawyers' licenses to practice law; lawyers are free to choose any Bar Association within the Russian Federation's jurisdiction and no Bar Association can refuse to admit a lawyer who is in possession of a license to practice law. The lawyers maintain that the whole situation giving rise to the need to change their Bar Association had been artificially constructed by the Russian Federation authorities with the sole objective of denying them their right to practice law. In this regard, the lawyers underline the unprecedented nature of the decision and absence of any similar cases in the past.

Other instances of harassment

The source indicates that Ms. Hemedzhy and Mr. Sheikhmambetov have been targeted for their human rights work for many years.

In October 2018, during a meeting of Crimean Solidarity, Lilia Hemedzhy together with another lawyer was handed "warnings" as alleged possible organisers of "extremist activities". In February 2020, the president of the Bar Association of the Chechen Republic initiated disciplinary proceedings against Lilia Hemedzhy, for an internet publication where she stated that most of the Crimean Tatars are prosecuted under "terrorist" charges. The vice-president of the Bar Association of the Chechen Republic, who filed a submission in the proceedings, stated that Lilia Hemedzhy violated the professional ethics of a lawyer, but no disciplinary measures were imposed on her.

In August 2020, when Lilia Hemedzhy was representing a human rights defender at the Southern District Military Court in Rostov-on-Don, the judge issued her a special court determination. Lilia Hemedzhy asked to call on a witness three times, but the judge didn't respond. When she continued to speak, the judge reportedly shouted at her and retired to the conference room for an hour, only to come back with a special court determination after (AL RUS 9/2020).

On 26 May 2022, Russian police arrested Mr. Sheikhmambetov inside the premises of a district court in Simferopol, Crimea, for a media interview which he had given near a police station back in 2021. Arising out of the media interview, he was charged with having violated COVID-19 restrictions, namely for "taking part in simultaneous mass gathering of citizens in violation of sanitary rules and norms" and sentenced to 8 days of administrative detention.

Without prejudging the accuracy of the information made available to us, we are very concerned about the information received that the disbarment of Ms. Hemedzhy, Mr. Sheikhmambetov and Mr. Kiamelev is a reprisal for their

legitimate and peaceful work as human rights lawyers and for voicing concerns over the on-going human rights violations in Crimea.

If confirmed, these facts would be in breach of the guarantees that lawyers are entitled to in order to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards.

In particular, international standards provide that, lawyers should not be subject to civil, criminal or disciplinary liability for statements made in good faith in written or oral pleadings or in their professional appearances before the judicial authority.

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 cites 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 to clarify all cases brought to our attention, we would 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 detailed information on the facts that led to the disbarment of Ms. Hemedzhy, Mr. Sheikhmambetov and Mr. Kiamelev, and explain how their disbarment may be regarded as compatible with the Russian Federation's obligations under article 14 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the legislative and other measures adopted by the Russian Federation to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic Principles on the Role of Lawyers) and to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (principle 18).

We would appreciate receiving a response within 60 days. Past 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.

In accordance with General Assembly resolution 68/262 on the territorial integrity of Ukraine, and taking into account General Assembly resolutions 71/205, 72/190, 73/263 and 74/168 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, we wish to inform you that a copy of this letter will also be sent to the authorities of Ukraine for their information.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973.

In its General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee observed that States Parties are required by article 2(1) to respect and to ensure the Covenant rights “to all persons who may be within their territory and to all persons subject to their jurisdiction”. This means that a State party must respect and ensure the rights laid down in the Covenant to “anyone within the power or effective control of that State Party”, even if not situated within the territory of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained (para. 10).

In resolution 74/168 and previous resolutions on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, the General Assembly urged the Russian Federation to, inter alia, “uphold all of its obligations under applicable international law as an occupying Power” (para. 6 (a)).

Article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR 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. They 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 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 governments 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 17 provides that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.