

Statement UPR pre-session Tajikistan

Organizations: International Bar Association's Human Rights Institute (IBAHRI) and Lawyers for Lawyers (L4L)

Recommendations:

- Take immediate measures to ensure, both in law and in practice, the full independence and safety of lawyers and their effective protection against any form of retaliation and harassment related to their professional activity.
- Immediately and unconditionally release Buzurgmehr Yorov and Nuriddin Makhamov and drop all charges against them.
- In consultation with the Bar Association and with individual lawyers, reform the Law On Advokatura to properly safeguard the lawyer-client relation principle, and remove any interference of the Ministry of Justice in the governance of the legal profession, including in the Qualification Commission.

Introduction

Lawyers play a vital role the administration of justice, and in upholding the rule of law and the protection of human rights, to ensure accountability and combat impunity. Their work is indispensable for the public confidence in the justice system and to ensure effective access justice for all. To fulfil their professional duties, lawyers should be free from improper interferences, fear of reprisals, or unreasonable restrictions. A legal profession which is controlled, manipulated, or intimidated the executive branch, is unable to sustain the rule of law and to contribute to the effective administration of justice. This severely compromises the universal right to effective legal representation.

2nd UPR Cycle and situation of lawyers in Tajikistan

Despite the support of several recommendations concerning the role and safety of lawyers by Tajikistan during the 2nd cycle in 2016ⁱ, a study carried out in 2019ⁱⁱ shows that, in recent years, lawyers have been facing significant constraints and challenges in exercising their profession and their rights and those of their clients, are not guaranteed.ⁱⁱⁱ Various law enforcement agencies systematically improperly intervene in or restrict the work of lawyers. Although these practices are contrary to the principle of equality of arms and to the right to an effective defence, they go unaddressed.

Furthermore, lawyers in Tajikistan have faced persecution for their involvement in politically sensitive cases. This interference comes in the form of intimidation and threats against attorneys (and their families) through disciplinary, administrative and even criminal charges for doing their work.

More alarmingly, based on the definitions of terrorism and extremism in the Tajik legislation, lawyers who defend clients charged with the crimes of terrorism or extremism risk criminal prosecution for the same or similar crimes, as it was the case with the lawyers Buzurgmehr Yorov and Nuriddin Makhkamov.

A further concern is that the institutional independence of the legal profession in Tajikistan is not fully guaranteed. Some institutions of the Bar Association depend on the Ministry of Justice of Tajikistan, including the Qualification Commission.^{iv} This means that the legal profession is exposed to interference from members of the executive in the Qualification Commission.

ⁱ A/HRC/33/11/Add.1 Report of the Working Group on the Universal Periodic Review of Tajikistan, A/HRC/WG.6/25/L.8 20 May 2016 p.23-25. During the UPR 2nd cycle in 2016, Tajikistan receivedⁱ and acceptedⁱ recommendations concerning the need to ensure that lawyers have the freedom to exercise their professional duties by guaranteeing unhindered access to their clients, freedom to represent their clients without threats from state or other actors and that such threats are properly investigated (**118.38**); also to refrain from and prevent any executive interference with lawyers' conduct of their professional duties (**118.39**). Further it received and accepted a recommendation to provide human rights defenders, including defence attorneys and political figures detained as a result of their political activities such as Buzurgmehr Yorov, Shuhrat Kudratov and Ishok Tabarov and his sons with fair, open and transparent trials, including the substantive protections and procedural guarantees in accordance with Tajikistan's international obligations (**118.67**).

ⁱⁱ In April-May 2019, the IBAHRI, in cooperation with local civil society actors, conducted a wide survey of lawyers ("the Survey") to monitor the situation of the legal profession. The Survey was conducted in Dushanbe; the regions of Central Subordination; Autonomous Mountain Region Badakhshan; Khatlon region; Sugd region (Khujand, Panjakent; Istaravshan; Konibodom; Isfara; J. Rasulov and B. Gafuriv cities). 158 practising lawyers were interviewed.

ⁱⁱⁱ Lawyers frequently face difficulties when accessing their clients in detention, and lawyer-client confidentiality is often not respected. They also face other acts of harassment: their clients are pressured into declining the services of their lawyers; lawyers are not given enough time to prepare for cases, they are not allowed to make copies of the documents for their cases, or not given access to the case file at all; their requests to investigators and/or judges go unaddressed. See Joint UPR submissions IBAHRI and L4L, par. 13.1-13.3, available on: <https://lawyersforlawyers.org/wp-content/uploads/2021/03/UPR-Tajikistan-L4L-and-IBA-March-2021-final-version.pdf>

^{iv} Law "On Advokatura and Advocates' Activity", Article 13(1).