



KAZAKHSTAN

**Human Rights Committee Consideration of the Second Periodic Report of
Kazakhstan**

Submission

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I Introduction

Submitting Party

1. Lawyers for Lawyers is an independent Netherlands foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.¹
2. Lawyers for Lawyers' mission is to promote the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights ('the Covenant') and the Basic Principles on the Role of Lawyers of the United Nations ('the Basic Principles').² To pursue its mission, Lawyers for Lawyers supports lawyers across the world who are threatened or suppressed as a result of discharging their functions and promotes the proper role of lawyers.³
3. On 4 December 2015, the Human Rights Committee ('the Committee') adopted a List of Issues in relation to the second period report of Kazakhstan,⁴ in response to which Kazakhstan submitted a reply.⁵ In advance to the adoption of the List of Issues on Kazakhstan, Lawyers for Lawyers submitted a thematic report to the Committee on the implementation of article 14 of the Covenant by Kazakhstan and the position of lawyers in Kazakhstan in particular, which is attached as Annex 1 to this submission.
4. During its 117th session, from 20 June to 15 July 2016, the Committee will consider the second report submitted by Kazakhstan under article 40 of the Covenant and adopt concluding observations that will assist Kazakhstan in the implementation of the Covenant. In the context of this review, Lawyers for Lawyers wishes to provide a short update to our thematic report submitted before the adoption of the List of Issues.

¹ For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

³ For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

⁴ List of issues in relation to the second periodic report of Kazakhstan, Human Rights Committee, 4 December 2015, CCPR/C/KAZ/Q/2

⁵ List of issues in relation to the second periodic report of Kazakhstan, Addendum: Replies of Kazakhstan to the list of issues, 4 April 2016, CCPR/C/KAZ/Q/2/Add.1

II Executive Summary

Issues

5. This submission outlines L4L's key areas of concern about the failure of the Kazakh authorities to fully comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the Covenant.
6. It highlights, in particular, concerns in relation to the following issues:

No effective guarantees for the functioning of lawyers:

- Harassment, intimidation of lawyers and improper interference (Article 14 of the Covenant).
- Disrespect for the confidentiality of communications and consultations between lawyers and their clients (Article 14 of the Covenant).
- Use of criminal and disciplinary proceedings against lawyers on improper grounds (Article 14 of the Covenant).

Recommendations

7. **Kazakhstan should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.**
8. **Kazakhstan should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**
9. **Kazakhstan should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**

III Substantive Part - The implementation of article 14 of the Covenant by Kazakhstan

A. Effective Mechanisms for the Protection of Human Rights

10. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments – article 14 of the Covenant.
11. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.⁶ In particular, the Committee has stated that *'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter'*.⁷ Lawyers should also be able to *'meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications'*.⁸
12. The right to a fair trial also entails the principle of equality of arms. In view of the Committee, this means that *'the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant'*.⁹
13. In its task of promoting and ensuring the proper role of lawyers, the Kazakh government should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.¹⁰
14. In its concluding observations of 19 August 2011, the Committee urged the Kazakh authorities to *'take steps to safeguard, in law and practice, the*

⁶ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

⁷ Idem, para. 34

⁸ Idem, para. 34

⁹ Idem, para. 13

¹⁰ Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

*independence of the judiciary and its role as the sole administrator of justice, and guarantee the competence, independence and tenure of judges’, and called on the authorities to ‘take measures to eradicate all forms of interference with the judiciary’.*¹¹ The Committee also expressed concern at reports indicating that the prosecution had undue influence on the judiciary, thereby affecting judicial decisions.¹²

15. The Kazakh authorities disagreed with the Committee’s observation that Kazakhstan lacks a largely independent judicial system. The authorities drew attention to the continued adoption of measures to strengthen the independence of the judiciary.¹³ However, in its 2013 follow-up letter, the Committee noted that additional measures remained necessary to strengthen the independence of the judiciary, and reiterated its recommendation of 2011.¹⁴

16. During the interactive dialogue in the UPR cycle of 2010 several recommendations with respect to the proper functioning of the judicial system and the role of lawyers were supported by Kazakhstan.¹⁵ These recommendations¹⁶ called upon the Kazakh government – amongst others - to limit the powers of public prosecutors, to strengthen the roles of judges and defence lawyers in the criminal procedure, to prevent any interference in the exercise by defence lawyers of their functions and to improve the independence of the judiciary and the impartiality of court processes. The Special Rapporteur on the independence of judges and lawyers made similar recommendations following his official visit to Kazakhstan in

¹¹ CCPR/C/KAZ/CO/1, paras. 21.

¹² CCPR/C/KAZ/CO/1, para. 22. See also CCPR/C/KAZ/CO/1/Add.1, paras. 254–258.

¹³ CCPR/C/KAZ/CO/1/Add.1, paras. 207-253.

¹⁴ Letters from HR Committee to the Permanent Mission of Kazakhstan to the United Nations Office and other international organizations in Geneva, dated 3 April 2013 and 2 December 2013, available from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_FUL_KAZ_15875_E.pdf and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_FUL_KAZ_15876_E.pdf (accessed on 16 June 2014), See also UNCT submission for UPR of Kazakhstan, pp. 8–9.

¹⁵ Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, §95, p 14.

¹⁶ Recommendations 54-59, Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, p. 18.

Recommendation 54: ‘To strengthen the roles of judges and defence lawyers in the criminal procedure, and to guarantee full access for defendants to the legal counsel of their choice’.

Recommendation 55: ‘To take measures to prevent any interference in the exercise by defence lawyers of their functions, in accordance with the International Covenant on Civil and Political Rights’.

Recommendation 56: ‘To take measures to limit the powers of the public prosecutors and bring criminal procedure into greater conformity with article 14 of the International Covenant on Civil and Political Rights’.

Recommendation 57: ‘To continue to develop the rule of law, including the independence of the judiciary and the impartiality of court processes, in order to bring legislation and practices further into line with the principles of the international Legal system’.

Recommendation 59: ‘To reform the judicial system in accordance with international standards regarding the administration of justice (...) and ensuring the independence of judges and lawyers.’

2004.¹⁷ According to Kazakhstan all these recommendations 'have already been implemented or are in the process of implementation'.¹⁸

17. During the interactive dialogue in the second UPR cycle of 2014, Kazakhstan again received, and accepted, several recommendations with respect to the proper functioning of the judicial system and the role of lawyers.¹⁹

18. The laws relating to the legal profession in Kazakhstan incorporate principles guaranteeing the independence of lawyers. The law includes a range of provisions that require state officials and others to respect the roles of lawyers and that prohibit and criminalize the obstruction of lawyers' exercise of professional activities.²⁰ In practice, however, the Kazakh authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession. In August 2015, Lawyers for Lawyers submitted a report for the adoption of the List of Issues on Kazakhstan. In this report, we outlined information indicating that public prosecutors still play a dominant role in legal proceedings as a result of which lawyers are not in an equal position to represent their clients.²¹ Lawyers are

¹⁷ Report of the Special Rapporteur on the independence of judges and lawyers on the mission to Kazakhstan, 11 January 2005, E/CN.4/2005/60/Add.2.

¹⁸ Report of the Working Group on the Universal Periodic Review of 23 March 2010, A/HRC/14/10, § 96, p 21.

¹⁹ Recommendation 124.13, 125.53 and 125.68-125.70, Report of the Working Group on the Universal Periodic Review' 10 December 2014, A/HRC/28/10

Recommendation 124.13: Revise the Criminal Procedure Code in order to strengthen the role of defence lawyers and extend the power of investigative judges in criminal proceedings (Czech Republic);

Recommendation 125.53: Take steps to further strengthen the impartiality and independence of the judiciary by implementing existing judicial procedures, and by promptly and thoroughly investigating any allegations or complaints of corruption in its courts (Canada);

Recommendation 125.68 :Take all necessary measures in order to provide a fair and independent judiciary system, which respect the rights of the defence (France);

Recommendation 125.69: Intensify efforts to enhance the complete independence and functioning of the judiciary (Kenya);

Recommendation 125.70: Pay particular attention to the process of judicial-legal reforms by strengthening the legislative framework (Tajikistan);

²⁰ Law of the Republic of Kazakhstan on Lawyers' Activity, article 17. Also see the report of the International Commission of Jurists: Independence of the Legal Profession in Central Asia, page 60, available at:

<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>

²¹ See also the United Nations Country Team (UNCT) submission for the Universal Periodic Review of Kazakhstan in October 2014, p. 7. The UNCT stated that "inequality of arms remains a key characteristic of the criminal process. The Procuracy (prosecution) performs the predominant role throughout the judicial process: the Prosecutor General can appellate a court decision even when the decision has entered into legal force; it can temporarily suspend the execution of a court decision or sentence; a prosecutor can decide on exclusion of participation of defence lawyer in pre-trial investigation, authorize investigation actions limiting constitutional rights (search, seizure, wire-tapping, eavesdropping). Public prosecutors exercise the highest supervision over exact and uniform application of law, legality of preliminary investigation, represent interest of the State in court as well as criminal prosecution in cases using procedures and within the limits, stipulated by law" and that "lawyers continue to have limited powers to collect evidence, which hampers their capacity to counterbalance the powers of the prosecutor and impact on the judicial process."

also regularly subject to improper interference, attempts to put pressure on them, including by judges and public prosecutors or disciplinary actions on improper grounds.²²

19. In its List of Issues, the Committee asked the Kazakh authorities to comment on reports that *'lawyers are subjected to threats or physical attacks, intimidation, interference in their work, including by judges and public prosecutors, and arbitrary disciplinary actions and disbarment.'*²³ In their reply to the List of Issues, the Kazakh authorities commented that *'there is no evidence to substantiate allegations of interference in the work of lawyers, including intimidation by judges and procurators'.*²⁴

20. Since submitting our report for the adoption of the List of Issues, new cases of interference in the work of lawyers have been brought to the attention of Lawyers for Lawyers as described below. As a consequence, lawyers encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the Covenant.

B. No effective guarantees for the functioning of lawyers (breaching article 14 of the Covenant)

21. Lawyers for Lawyers has been informed by lawyers in Kazakhstan that they are regularly subjected to threats or physical attacks, intimidation and improper interference or attempts to put pressure on them by judges, public prosecutors and members of law enforcement agencies or investigative bodies. Lawyers seem to be seen as an obstacle for the work those agencies are carrying out. Very often they don't have the opportunity to meet with their clients in full confidentiality.

22. Since August 2015, new cases of improper interference in the work of lawyers and undermining the confidentiality of communications and consultations between lawyers and their clients, have been brought to the attention of Lawyers for Lawyers:

²² See also the UNCT submission for UPR of Kazakhstan, p. 9. The UNCT stated that "In recent years there have also been cases in which lawyers have been subjected to threats or the initiation of disciplinary action, including action leading to disbarment for conduct they see as the legitimate exercise of their profession. Such threats or actions against lawyers risk weakening the essential role of lawyers in ensuring the right to fair trial."

²³ List of issues in relation to the second periodic report of Kazakhstan, Human Rights Committee, 4 December 2015, CCPR/C/KAZ/Q/2, par. 19

²⁴ List of issues in relation to the second periodic report of Kazakhstan, Addendum: Replies of Kazakhstan to the list of issues, 4 April 2016, CCPR/C/KAZ/Q/2/Add.1, par. 119

Shenhanna Kim

On 24 July 2015, lawyer Shenhanna Kim was having a meeting with a client in a detention facility in Kostanay. During that meeting an officer of the detention facility came into the room and demanded to read the notes that Kim made during the meeting. The lawyer's notebook was on the table, and before she had a chance to take it away, the officer began reading the notes in it.

After the meeting with her client ended, the officer of the detention facility again requested Kim to show her notes, threatening her that she would otherwise be obstructed or prevented from visiting clients in the detention facility in future. She refused to show her notes, with reference to the lawyer-client privilege. When she attempted to leave the room, the officer closed the barred iron door in front of her, thereby preventing her from leaving. He told her that she would not be allowed to leave until she showed her notes. After about 15 minutes, she was eventually allowed to leave the detention facility.

The lawyer filed a complaint with the Kostanay Regional Prosecutor's office on the day of the incident, but this did not result in an adequate investigation. She therefore turned to the Prosecutor General's office, which informed her in early August 2015 that the complaint had been sent back to the Regional Prosecutor's office for further consideration.²⁵

Ayman Umarova

Lawyer Ayman Umarova started to represent her client, Sayat Nadirbaye, in March 2015. On 2 April 2015, Ayman Umarova received an official demand to appear and testify as a witness in the case against her client. Since then, she was required to appear and testify against her client several times.

Moreover, on 6 April 2016, the Chair of the Almaty Collegium of Lawyers received a letter from the head of an investigative group of the Anti-Corruption Service of

²⁵ <http://www.advocatenvooradvocaten.nl/10927/kazakhstan-prison-officers-interfere-with-work-lawyer/>. See also: <http://www.icj.org/kazakhstan-prison-officials-interfere-with-lawyer-snezhanna-kim/>
See also the report: SPOTLIGHT: FUNDAMENTAL RIGHTS IN CENTRAL ASIA: Recent developments in Kazakhstan, Tajikistan and Turkmenistan, by Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), Nota Bene (Tajikistan) and Turkmen Initiative for Human Rights (TIHR, based in exile in Austria) in their respective countries in May 2015 to August 2015. International Partnership for Human Rights (IPHR, Belgium) has conducted additional research and prepared the document together with the three partner organizations within the framework of the project "A Transnational Civil Society Coalition in Support of Fundamental Rights in Central Asia", September 2015, p. 9

Almaty, asking it to "facilitate the appearance of lawyer Umarova Ayman ... to question her as a witness".

On 8 April 2015, Ayman Umarova had challenged the official summons of the head of an investigative group of the Anti-Corruption Service of Almaty, to testify as a witness. The Appeals Collegium of the Almaty City Court decided on 18 April 2016 that demands from the investigative authorities to a lawyer to testify as a witness in a case in which she represented a client, were contrary to the law of the Republic of Kazakhstan.²⁶

23. Article 22 of the Basic Principles stipulates that: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential". Calling lawyers as witnesses in their own clients' cases could frustrate the principle of client-attorney confidentiality and thus the lawyers' ability to represent their clients. Lawyers for Lawyers therefore welcomes the decision of the Appeals Collegium of the Almaty Court. This decision is an important step towards a system where the rights of lawyers and their clients are protected. It is however worrying that this kind of interference with the work of lawyers continues to occur in the first place.

24. It was brought to the attention of Lawyers for Lawyers that public prosecutors still play a dominant role in legal proceedings as a result of which lawyers are not in an equal position to represent their clients. One example is that lawyers only get limited access or no access at all to their clients' files. Statistics show that prosecutor's motions or requests, for example to hear witnesses, are almost always granted, while those from the defence are rejected.

25. In its report for the adoption of the List of Issues, Lawyers for Lawyers also noted that some lawyers in Kazakhstan are criminally prosecuted, or disciplinarily sanctioned, or even subjected to forced psychiatric confinement. In this regard, Lawyers for Lawyers also provided information about lawyer Zinaida Mukhortova.²⁷ Zinaida Mukhortova has repeatedly been subjected to involuntary psychiatric detention.

²⁶ <http://www.advocatenvooradvocaten.nl/11615/kazakhstan-court-rules-in-favour-of-lawyer/>

²⁷ In 2009, lawyer Zinaida Mukhortova sent a complaint to the president of Kazakhstan about a member of parliament interfering in a civil case in which she was involved at the time. In response to this complaint, a criminal investigation was launched against her for the "deliberate false denunciation" under Article 351(2) of the Criminal Code. On 12 February 2010, she was arrested in the courtroom of the Balkash city court, and detained in pre-trial detention facilities. In July 2010, a psychiatric examination was ordered and Zinaida Mukhortova was diagnosed with a 'delusional disorder'. Mukhortova has been forcibly detained in psychiatric facilities several times since. On 9 August 2013, Mukhortova was again forcibly detained in a psychiatric clinic in the city of Balkhash, allegedly because she had refused out-patient treatment. In August 2013, a local court decision was issued to sanction her detention. Zinaida Mukhortova appealed the decision to forcibly admit her

26. In its List of Issues, the Committee asked Kazakhstan to *'comment on reports of forced psychiatric detention of human rights defenders, in particular on the case of lawyer Zinaida Mukhortova, who has been repeatedly subjected to involuntary psychiatric detention since 2009'*.²⁸ In their reply to the List of Issues, the Kazakh authorities commented that *'during the judicial proceedings against Zinaida Mukhortova on the charge of false denunciation, the court concluded on the basis of a forensic psychiatric examination that she was not to be held criminally responsible and imposed compulsory medical treatment. She was subsequently prescribed outpatient treatment at home on the basis of a medical report. However, given that her state of health had deteriorated and the fact that her condition was classified as serious and she had avoided treatment since August 2013, the court once again took up the issue of compulsory treatment. It should be noted that this person did not practice law and the fact of her illness was not disputed by her or other persons in court'*.²⁹

27. Zinaida Mukhortova was a lawyer and human rights defender who for many years has provided citizens free legal assistance. Many organizations, Lawyers for Lawyers amongst them, believe her forced psychiatric confinement was connected to her legitimate activities as a lawyer. According to our information, the fact of her illness was disputed by Zinaida Mukhortova. She appealed the decision of the Balkash City Court to forcibly admit her to a psychiatric hospital, claiming it was unlawful, but the decision was upheld by the Karaganda Regional Court³⁰ in December 2013, and by Kazakhstan's Supreme Court in May 2014.³¹ Furthermore, in September 2012 Mukhortova underwent an independent psychiatric assessment arranged by a local independent human rights group. The expert concluded that Mukhortova "did not suffer and does not suffer from any mental disorders either during the period of the alleged [criminal] acts or now."³² Lawyers for Lawyers welcomes the release of Zinaida Mukhortova from the psychiatric facility in December 2014.³³

to a psychiatric hospital, claiming it was unlawful, but Kazakhstan's Supreme Court upheld the ruling in May 2014. On 2 July 2014 she was forcibly admitted to a psychiatric clinic again. She was released on 15 December 2014.

²⁸ List of issues in relation to the second periodic report of Kazakhstan, Human Rights Committee, 4 December 2015, CCPR/C/KAZ/Q/2, par. 15

²⁹ List of issues in relation to the second periodic report of Kazakhstan, Addendum: Replies of Kazakhstan to the list of issues, 4 April 2016, CCPR/C/KAZ/Q/2/Add.1, par. 91

³⁰ This hearing was observed by the International Commission of Jurists: <http://www.icj.org/kazakhstan-icj-observes-appeal-against-psychiatric-detention-of-a-lawyer/>

³¹ <https://www.hrw.org/news/2014/07/09/dispatches-abuse-detention-occupational-hazards-kazakhstan>

³² <https://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>, also see: <http://www.advocatenvooradvocaten.nl/8216/kazakhstan-forced-psychiatric-confinement-of-zinaida-mukhortova/>

³³ <http://www.advocatenvooradvocaten.nl/9846/kazakhstan-lawyer-released-from-psychiatric-clinic/>

IV Conclusions and recommendations

28. The Kazakh authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subject to improper interference, attempts to put pressure on them, including by judges and public prosecutors or disciplinary actions on improper grounds. Some lawyers are even subjected to criminal proceedings or forced psychiatric confinement, in connection to their legitimate professional activities. Furthermore, public prosecutors still play a dominant role in legal proceedings. The prosecution calls lawyers as witnesses in the cases against their clients. As a result, lawyers are not in an equal position to represent their clients. This violates the right to a fair trial as set out in article 14 of the Covenant.

Recommendations

29. **Kazakhstan should take measures to prevent the harassment of lawyers and attempts to impede or interfere with their defence of clients, in accordance with Article 14 of the Covenant and articles 16, 17 and 18 of the Basic Principles on the Role of Lawyers.**
30. **Kazakhstan should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**
31. **Kazakhstan should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**