

# Human Rights Committee Consideration of the Periodic Report of Tajikistan

Submission on the List of Issues

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## I Introduction

### *Submitting Party*

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation, merely funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.<sup>1</sup>
2. L4L seeks to promote and protect the independence of the legal profession to enable lawyers to effectively fulfil their vital role in the protection of the rule of law and human rights, in conformity with international laws and standards, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).<sup>2</sup> We support lawyers across the world who face reprisals, improper interferences or restrictions as a result of discharging their professional functions and we raise awareness of the importance of the independent functioning of lawyers for a fair judicial system and effective access to justice for all.<sup>3</sup>
3. L4L wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of Tajikistan.

## II Executive Summary

### *Issues*

4. This submission outlines L4L's key areas of concern about the failure of the Tajikistan government to 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 ICCPR.
5. It highlights, in particular, concerns in relation to the following issues:
  - (i) No effective guarantees for the functioning of lawyers:
    - a. Increasing harassment and intimidation of lawyers (Article 14 ICCPR);<sup>4</sup>
    - b. Increasing judicial harassment of lawyers on improper grounds (Article 14 ICCPR);<sup>5</sup>
  - (ii) No proper functioning of the Tajikistan's Bar Association (Article 14 ICCPR).<sup>6</sup>

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<sup>1</sup>For more information visit our website: <http://www.lawyersforlawyers.org>

<sup>2</sup> 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.

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

<sup>4</sup> See also Basic Principles, Principle 16 (a).

<sup>5</sup> Idem, Principle 16 (c).

<sup>6</sup> Idem, Principles 24 and 25.

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*Recommendations*

6. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Tajikistan to ensure that lawyers are able to carry out their professional functions without threats, harassment or improper interference with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
7. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Tajikistan to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds.**
8. **The Human Rights Committee should address as a matter of priority the improper interference of the government of Tajikistan with the Bar Association of Tajikistan, preventing it from being an independent institution capable of protecting the interests of the legal profession in Tajikistan.**

### **III Effective mechanisms for the protection of human rights**

9. 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 - the ICCPR.
10. In its task of promoting and ensuring the proper role of lawyers, the government of Tajikistan should respect and take into account the Basic Principles within the framework of its national legislation and practice.<sup>7</sup> 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.<sup>8</sup>
11. Professional associations of lawyers also have a vital role to play in upholding professional standards and ethics and protecting their members from persecution and improper restrictions and infringements.<sup>9</sup> The Bar Association of Tajikistan should exercise its functions without external interference and cooperate with the government of Tajikistan to ensure – amongst others – that lawyers are able, without improper interference, to counsel and assist their clients.<sup>10</sup>

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<sup>7</sup> Basic Principles, Preamble, paragraph 11.

<sup>8</sup> Basic Principles, Preamble, paragraph 9.

<sup>9</sup> Basic Principles, Preamble, paragraph 10.

<sup>10</sup> Basic Principles, Principles 24 and 25.

12. In its concluding observations of 22 August 2013, the Committee expressed concerns about the fact “that lawyers are harassed for carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice”.<sup>11</sup> The Committee urged the government of 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”.<sup>12</sup>
13. However, reports gathered by L4L and information received from lawyers in Tajikistan show that the government of Tajikistan does not always uphold the necessary guarantees and human rights for the proper functioning of the legal profession in practice. As a consequence, lawyers encounter difficulties in carrying out their profession freely and independently, immediately impacting the rights to effective legal representation as enshrined in Article 14 of the ICCPR.

#### IV No effective guarantees for the functioning of lawyers

##### a. Increasing harassment and intimidation of lawyers (Article 14)

14. Tajikistan’s human rights record has severely deteriorated in recent years, since authorities deepened a severe, widespread crackdown on the independent functioning of the legal profession, as well as on the rights to free expression and association, peaceful political opposition activity and the independent exercise of religious faith. Particularly following the parliamentary election of 2015, lawyers and human rights defenders have faced significant persecution for their involvement in politically sensitive cases. This interference comes in the form of intimidation and (death) threats of numerous attorneys (and their families), typically in retaliation for representing political opponents or expressing a willingness to take on politically sensitive cases.

##### b. Increasing judicial harassment of lawyers on improper grounds (Article 14)

15. In recent years, a couple of lawyers who had been representing clients in sensitive cases have been subjected to arbitrary arrests, prosecution and detention. At least three of them have been sentenced to long prison terms following unfair trials. Lawyers who have been defending colleague lawyers that had been arrested, have also been subjected to harassment. This is demonstrated by the following cases:

##### ***Fakhriddin Zokirov***

*In March 2014, Tajikistan’s Anti-Corruption Agency arrested Fakhriddin Zokirov, one of the lawyers who had represented the former Minister of Industry, Zaid Saidov. He was detained until November 3, then released under an amnesty. Following his release, Zokirov publicly stated that he would no longer represent Saidov. In August 2015, authorities again arrested Zokirov, this time on extortion charges. He was*

<sup>11</sup> Concluding observations on the second periodic report of Tajikistan, Human Rights Committee, 22 August 2013, CCPR/C/TJK/CO/2, par. 18.

<sup>12</sup> *Id.*

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again released in November, after paying a 14,600 Somoni fine (approximately US\$2,000)<sup>13</sup>.

**Buzurgmehr Yorov**

*Buzurgmehr Yorov was the head of the law firm Sipar. He had a reputation as one of Tajikistan's most fearless human rights lawyers, serving as defense counsel of - amongst others - lawyer Fakhridin Zokirov.*

*Buzurgmehr Yorov was arrested on 28 September 2015. At the time of his arrest, Yorov had just started to represent thirteen senior leaders of the Islamic Renaissance Party of Tajikistan (IRPT). These leaders were arrested by the authorities on various charges on 16 September 2015. The IRPT was the only Islamic political party legally registered in Central Asia before the Supreme Court of Tajikistan banned the party and declared it a terrorist organization on 29 September 2015.*

*On 6 October 2016, the Dushanbe City Court sentenced Yorov to 23 years in prison. The court found Mr. Yorov guilty of, amongst other things, "fraud" and "public calls for undertaking extremist activities". Yorov pleaded not guilty and denied any wrongdoing, insisting in his closing statement on 3 October 2016 that he was "not an extremist, but a lawyer".*

*Since then, a further three cases have been instigated against Yorov on charges of fraud, "disrespecting" the court, insulting government officials and insulting "the leader of the Nation", and he has ultimately been sentenced to an additional five years in prison.*

**Nuriddin Makhkamov**

*On October 22, 2015, police arrested lawyer Nuriddin Makhkamov, a lawyer who worked for Buzurgmehr Yorov's law firm Sipar. Makhkamov, who was also representing arrested IRPT members, was arrested on swindling charges. In December 2015, additional extremism-related charges were brought against both Buzurgmekhr Yorov and Nuriddin Makhkamov.*

*On 6 October 2016, Dushanbe City Court sentenced Nuriddin Makhkamov to 21 years in prison following an unfair trial.<sup>14</sup>*

*Recommendations:*

**16. The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Tajikistan to ensure that lawyers are able to carry out their professional functions without threats, harassment or improper interference with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

**17. The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Tajikistan to prevent that**

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<sup>13</sup> <http://www.advocatenvooradvocaten.nl/10213/tajikistan-sentencing-of-lawyer-sukhrat-qudratov/>,

<https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>

<sup>14</sup> <http://www.advocatenvooradvocaten.nl/12887/tajikistan-concerns-about-lawyer-buzurgmehr-yorov/>

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**lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds.**

**V Bar Association of Tajikistan**

18. Since March 2015, there is a unified self-governing Bar Association representing all lawyers in the Tajikistan, which was established with the Law of the Republic of Tajikistan "On Advokatura and Advocates' Activities". Before the adoption of this law, lawyers could practice their profession either as a member of a Collegium or as an independent lawyer-attorney on the basis of a license issued by the Ministry of Justice<sup>15</sup>.
19. Amendments to the Law of the Republic of Tajikistan "On Advokatura and Advocates' Activities" were approved by parliament on 4 November 2015 and entered into legal force on 26 November 2015.
20. According to Article 24 of the Basic Principles lawyers shall be entitled 'to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity'. These associations of lawyers shall 'cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics'.
21. During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted a resolution in which it recognized the "importance of [bar associations] working in defence of the principle of the independence of [lawyers]".<sup>16</sup>
22. L4L welcomes the efforts of the Tajikistan government to conduct judicial reforms and to establish a national bar association. However, certain parts of this law are of concern to L4L. These parts could undermine the independence of the legal profession<sup>17</sup>.
23. (1) The Law establishes a Qualification Commission under Tajikistan's Ministry of Justice<sup>18</sup>. This Commission regulates entry to the profession<sup>19</sup>. Lawyers' associations should have sufficient powers to be effective in protecting the independence of the profession. However, the prominent role of a member of the

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<sup>15</sup> See also the report 'Independence of the Legal Profession in Central Asia', which states that: "The law of Tajikistan provided for one form of lawyers' association—a Collegium of Lawyers. In 1998, the concept of a lawyer-attorney was introduced, being defined as a business person providing legal services on the basis of a license issued by the Ministry of Justice", *Ibid.* page 15.

<sup>16</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/RES/29/6, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/L.11](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11)

<sup>17</sup> See also See International Commission of Jurists (ICJ) report "Recommendations on the Independence of the Legal Profession in the Republic of Tajikistan", 23 February 2016, <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-Publications-Reports-Thematic-reports-2016-ENG.pdf>

<sup>18</sup> The nine-member Commission is composed of two representatives of the Ministry of Justice, one judge, five lawyers elected by the Union's assembly, one academic. Law on Advokatura, Art. 13(2).

<sup>19</sup> <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-Publications-Reports-Thematic-reports-2016-ENG.pdf>

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executive in the Qualification Commission could make the legal profession vulnerable to interference.

24. (2) Furthermore, the *Law "On Advokatura"* (as amended by the November 2015 amendments) includes a requirement that all lawyers must re-qualify and this re-qualification is carried out by the Qualification Commission<sup>20</sup>. It has been reported that these developments have been instrumental in cutting the numbers of licensed lawyers (advokaty) by more than half and consequently restricting further the already limited access to justice for all citizens in Tajikistan, not only for those individuals charged with national security-related offences.<sup>21</sup>

#### *Recommendation*

- 25. The Human Rights Committee should address as a matter of priority the improper interference of the government of Tajikistan with the Bar Association of Tajikistan, preventing it from being an independent institution capable of protecting the interests of the legal profession in Tajikistan.**

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<sup>20</sup> <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-Publications-Reports-Thematic-reports-2016-ENG.pdf>

<sup>21</sup> <https://www.amnesty.org/download/Documents/EUR6062662017ENGLISH.PDF>