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## **International Bar Association's Human Rights Institute**

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## **Stakeholder submission to the UN Human Rights Council's Universal Periodic Review**

### **Republic of Tajikistan: 25th Session**

### **Independence of Lawyers in Tajikistan**

#### **About the IBAHRI:**

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of over 55,000 individual lawyers and 206 bar associations and law societies spanning all continents and has considerable experience in providing assistance to the global legal community.

The IBA's Human Rights Institute (IBAHRI) was established in 1995 and works across the IBA helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and legal profession worldwide.

## CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

### 1. Role of lawyers

#### *Single professional association*

- 1.1 A new 'Law on Advokatura' (the 'Advocacy Law') came into force on 18 March 2015 regulating the role of lawyers and the legal profession. It establishes the Union of Lawyers of the Republic of Tajikistan (the 'Union'), a single unified bar association with mandatory membership for all lawyers<sup>1</sup> to replace the numerous regional bar associations which previously existed. The Union will be independently governed by a board elected from the membership.<sup>2</sup> The Bar was established as a civil society institution that is separate from any government authority, and the government is required to provide guarantees of its independence.<sup>3</sup>
- 1.2 The Union will have a Disciplinary Commission,<sup>4</sup> the Code of Professional Ethics will be subject to the approval of the Union,<sup>5</sup> and the Union itself will be able to make recommendations to the Ministry of Justice to terminate a lawyer's status for improper performance of professional duties or violation of the Code of Professional Ethics.<sup>6</sup> The new Advocacy Law requires lawyers to undertake advanced training every five years in state-accredited education institutions.<sup>7</sup> The IBAHRI hopes that these reforms will lead to better, more consistent professional standards and improved provision of legal services across Tajikistan.
- 1.3 The IBAHRI welcomes the reform of this area of the law. The creation of the Union will remove the perceived deficiencies<sup>8</sup> in the historic, decentralised system and become a strong professional association for lawyers in Tajikistan. Bar associations have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and providing legal services to all who need them.<sup>9</sup> A high quality, independent legal profession is vital in ensuring the individual's right to a fair trial and equity before the law.

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<sup>1</sup> Law of the Republic of Tajikistan On Advocacy and the Bar, Article 37.

<sup>2</sup> Ibid, Article 39. This complies with Article 24 of UN Basic Principles on the Role of Lawyers

<sup>3</sup> Ibid, Article 6.

<sup>4</sup> Ibid, Article 41.

<sup>5</sup> Ibid, Article 36.

<sup>6</sup> Ibid, Article 22.

<sup>7</sup> Ibid, Article 35

<sup>8</sup> See the Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy: E/CN4/2006/52/Add 4 (Tajikistan, 2005), para 87.

<sup>9</sup> UN Basic Principles on the Role of Lawyers, preamble, para 11.

## *Qualification*

- 1.4 The Advocacy Law sets out a new process for qualification as a lawyer. To enter the profession an individual must satisfy minimum education and experience requirements,<sup>10</sup> pass a qualification exam (computer-based written test), and a qualification commission test (oral examination). The procedure for taking the qualification exam and the means by which an applicant's level of knowledge will be assessed is established by the Qualification Commission (the 'Commission').<sup>11</sup>
- 1.5 The Commission is established under the Ministry of Justice. The Commission consists of nine members, including five lawyers from the Union and a legal academic. There will always be one representative from the Council of Justice, two representatives from the Ministry of Justice, and the Chairman of the Commission will be one of the Deputy Ministers of Justice.<sup>12</sup>
- 1.6 The IBAHRI is in favour of a single route into the legal profession with set minimum levels of education and experience, and qualification by virtue of a single standardised exam. The new Law on Advocacy is a step forward from the previous diffuse, decentralised system where entry was controlled either by the internal requirements of each individual bar association or the Ministry of Justice under the 'Law on Licensing Certain Types of Activities.'
- 1.7 The IBAHRI is concerned by the location of the Commission within the Ministry of Justice. It raises the possibility of executive involvement in the conferral and withdrawal of a lawyer's status. The IBAHRI acknowledges that the Advocacy Law guarantees that decisions on examination results shall be made by majority voting by the members of the Commission.<sup>13</sup> However, the current composition of the Commission, with the Chair position held by a deputy of the Minister of Justice, appears to weigh the balance of power in favour of the executive. Equally, the relationship between the Ministry of Justice and the Commission is not clearly defined in the Advocacy Law, leading to concerns that the Commission will not operate independently.
- 1.8 Any attempt to control who should be permitted to practice law or expel controversial elements of the profession would be an abuse of power by the Ministry of Justice and the Executive, and would breach Principle 16 of the UN Basic Principles on the Role of lawyers, which states that 'Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.'
- 1.9 The potential for interference was highlighted by the United Nations Human Rights Committee, which mentioned that lawyers in Tajikistan are frequently subject to harassment for 'carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice.'<sup>14</sup>

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<sup>10</sup>Law of the Republic of Tajikistan on Advocacy and the Bar, Article 12.

<sup>11</sup> Ibid, Article 15.

<sup>12</sup> Ibid, Article 13.

<sup>13</sup> Ibid.

<sup>14</sup> Concluding observations on the second periodic report of Tajikistan, Human Rights Committee 108th session, 8 –29 July 2013: CCPR/C/TJK/CO/2, para 18.

- 1.10 The IBAHRI is concerned by the transitional provisions which require every individual currently practising as a lawyer in Tajikistan to requalify under the new system within one year of the entry into force of the Advocacy Law and the Bar.<sup>15</sup>

**Recommendation 1**

**As recommended by the UN Human rights Committee, ensure that the procedures and criteria for access to and conditions of membership of the Bar do not compromise the independence of lawyers, and amend the sections of the Advocacy Law regulating the role and structure of the Commission:**

- a) Ensure transparent process of lawyers' examination via computer-based written test and the oral examination via the Commission;**
- b) Move the Commission's functions from Ministry of Justice to the Union of Lawyers;**
- c) Give the Union of Lawyers exclusive control of withholding legal status for improper performance of professional duties/ breach of the Professional Code of Ethics.**

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<sup>15</sup> Particularly given the outcome of a comparative provision following legal reform in Uzbekistan in 2008. See International Commission of Jurists *The Independence of the Legal Profession in Central Asia* (September 2013) p35, available at <http://www.refworld.org/pdfid/530f03374.pdf>. [Accessed 21 August 2015]

## 2. Legal aid

### *Access to free legal aid*

- 2.1 The provision of free legal aid within Tajikistan is underdeveloped. Although legislation provides for the provision of free legal aid in certain circumstances, there is currently no state budget for the supply of legal aid and there are large sums owed to lawyers by the government in respect of work completed.<sup>16</sup> No system exists in the country to guarantee quality free legal aid for all.
- 2.2 Legal information is provided by state-financed Public Information Offices, crisis centres and civil society organisations. Currently there are around 45 free legal aid centres across the country, fully funded by international donor organisations. Topics covered relate to land rights, domestic violence, civil registration issues and torture. Coordination between centres on substantive rights issues is frequent.
- 2.3 On 5 January 2015, the government adopted a new 'Concept on Legal Aid' to pilot different methods of providing primary and secondary legal aid, with a view to drafting a law on legal aid. The proposed scheme indicates that to achieve holistic reform for the provision of free legal aid in the country, five pilot schemes (three for primary legal aid and two for secondary legal aid) will be implemented. It is intended that the legal aid system will be in place within eight years.
- 2.4 Principle 25 of the UN Basic Principles on the Role of Lawyers (1990) establishes that 'professional 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 recognised professional standards and ethics'. Similarly, bar associations and the Union are expected to play major role in providing free legal aid via all five pilot schemes under Tajikistan's legal aid strategy.
- 2.5 Some of the pilot scheme models envisage rendering of free primary legal aid through the specialised state-run legal aid offices, outreach legal consultations in outlying rural areas, involvement of the paralegals in rural areas and on hotlines. The fourth and fifth pilot scheme models aim to facilitate the tendering processes, meaning that civil society organisations and bar associations submit their bids and financial proposals to render free legal aid in certain regions. More clarity is needed to define the role and functions of the Union and its regional offices in providing free legal aid after the pilot programmes are finished.
- 2.6 IBAHRI reaffirms the importance of bar associations in providing legal aid and reiterates that 'States should also take measures:
- 2.7 (a) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;

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<sup>16</sup> Galina Derevenchenko *Access to Justice: The Problem of State-Guaranteed Free Legal Aid in Tajikistan* (2010), p41

- 2.8 (b) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g., tax exemption, fellowships and travel and subsistence allowances); and
- 2.9 (c) To encourage lawyers to organise regular circuits of lawyers around the country to provide legal aid to those in need.<sup>17</sup>
- 2.10 IBAHRI further encourages states to take all appropriate measures 'to establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations, support university clinics, and sponsor non-governmental and other organisations, including paralegal organizations, in providing legal aid services throughout the country.'<sup>18</sup>

**Recommendation 2**

**Develop and adopt a law on legal aid with clear reference to the role of the Union of Lawyers in providing free legal aid in Tajikistan in accordance with the UN Basic Principles on the Role of Lawyers and Article 14 of the International Covenant on Civil and Political Rights.**

**Recommendation 3**

**Establish an outreach education project to ensure that individual citizens are aware of the availability of legal aid under the new pilot project, particularly primary legal aid.**

**Recommendation 4**

**Adopt an applicable scheme to pay lawyers for their completed work on free legal cases, whilst implementing the new 'Concept on Legal Aid' in accordance with Guidelines 11 and 12 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.**

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<sup>17</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 11, General Assembly resolution 67/187

<sup>18</sup> Ibid, para 12.