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## INFORMATION

In recent years, we have seen systemic violations of lawyers' rights in Kazakhstan, which are not adequately addressed by authorized state bodies.

Most cases of pressure on lawyers and obstruction of their lawful activities are mainly related to their involvement in torture cases and defense of persons who are persecuted for exercising their right to freedom of speech and expression, the right to freedom of peaceful assembly and association, and the right to participate in the governance of their country, including by forming political parties and participating in elections. In addition, lawyers are persecuted in connection with their activities to draw public attention to unlawful acts by representatives of state authorities: pre-trial investigation bodies, national security bodies, prosecutors and courts.

The most common cases are when investigators or prosecutors make representations on disbarment of lawyers due to "impeding investigation", "contempt", refusal to sign documents on non-disclosure of pre-trial investigation data, which essentially prohibit lawyers from saying or writing anything about the essence of the charges and evidence, etc. In turn, some judges, if the position of the defence and the activity of the lawyer is not to their liking, abuse their procedural powers by issuing special resolutions against lawyers, creating a risk of disbarment for the latter and preventing them from providing clients with proper qualified legal aid.

We urge you to respond, within the framework of your mandate, to cases of attacks on the independence and rights of:

1. **M. Doskarayev, advocate, Akmola Oblast Bar Association** (license No.4923 to practice advocacy, lawyer of the Akmola Oblast Bar Association (license No. 4923):
  - On 03/06/202, the judge of District Court No. 2 of Saryarka district of the city of Nur-Sultan (currently Astana) issued a special resolution on bringing the advocate to disciplinary responsibility;
  - On 07/06/2023, the investigator of the Astana Police Department sent a statement to the Akmola Oblast Bar Association on bringing the lawyer to disciplinary liability;
2. **A. Ibrayev, advocate, Zhambyl Oblast Bar Association** (licensed to practice advocacy No. 0005554):
  - On 16/11/2023, the judge of court No. 2 of the city of Taraz issued a special resolution on bringing the advocate to disciplinary liability and depriving him of his licensed to practice as an advocate;
3. **G. Nurpeissov, advocate, Almaty Oblast Bar Association** (licensed to practice as an advocate No. 0003787):
  - On 13/11/2020, the investigator of the Investigation Department of the Almaty Police Department made a submission to the Almaty Oblast Bar Association to bring the advocate to disciplinary liability;
  - On 22/04/2021, the advocate's house was searched by officers of the National Security Committee in Shymkent.
4. **G. Zhauaspayeva, advocate, Abai Oblast Bar Association** (license to practice as an advocate No. 000000605):
  - On 08/12/2023, the judge of the Turksib District Court of Almaty issued a special resolution to consider and take appropriate disciplinary measures against the advocate and to withdraw her licensed to practice as an advocate;
5. **A. Aidarkhanov, A. Aidarkhanova** (licensed to practice as an advocate No. 20016074), **Bayzhanov Sh.** – advocate at the Almaty City Bar Association; **G. Zhauaspayeva**, advocate, Abai Oblast Bar Association, **V. Sadykov**, an advocate of the Akmola Oblast Bar Association;

- On 19/09/2023, the judge of the Almaty City Court issued a special resolution on disciplinary liability of advocates and withdrawal of their licenses to practice as advocates.

**6. V.Zh. Sadykov, an advocate at Akmola Oblast Bar Association:**

- On 27/10/2021 acting Chairman of the Judicial Collegium for Criminal Cases at Karaganda Oblast Court issued a special resolution on infringement of the rule of law and bringing it to the attention of the leadership of the Ministry of Justice of the Republic of Kazakhstan for taking measures aimed at prevention of such violations in future.

**CASE-BY-CASE SUMMARY:**

**1. CASE OF ADVOCATE M. DOSKARAYEV**

On 03/06/2021, the judge of District Court No. 2 of Saryarka district of Nur-Sultan city (currently - Astana) issued a special resolution against the lawyer Doskarayev due to the fact that "he showed contempt of independent justice in court, in particular, to the decisions of the Yesil District Court regarding "DVK" and "Koshe Partiyasy", peaceful opposition political movements, which had been recognized as "extremist" movements by the courts of Kazakhstan, in which connection their supporters and members are being prosecuted under Article 405 of the Criminal Code of the Republic of Kazakhstan allegedly for "participation in the activities of an organization banned for extremism".

The special resolution was appealed on 27/07/2021 in the court of Nur-Sultan (now Astana), where the lawyer Doskarayev indicated that the court failed to explain what exactly was regarded as the contempt of court on his part, that he used the rights of a defence counsel provided by the legislation in the interests of his client. He pointed out that he had adhered only to the legal position of his client Syzdykov, but the court, in violation of the requirements of the law, unreasonably indicated that he had made a number of incorrect statements on the prosecutor's office and the authorities. The lawyer pointed out that according to Normative Decision No. 11 of the Supreme Court of the Republic of Kazakhstan, dated 19/12/2009, a special judgement should not contain general formulations and phrases.

The Panel of the court of appeal found that the special resolution did not specify which statements, in the opinion of the court, contained contempt of the court, the authorities and the prosecutor's office and other manifestations of violations of lawyer's ethics, or the personal political engagement of lawyer Doskarayev in relation to the extremist organizations "DVK" and "Koshe Partiyasy". The Panel considered that the actions and statements of the lawyer are conditioned by the legal position of his client, and the choice of methods of defending the interests of his client is provided by law to the defence counsel based on the interests of his client. 27/07/2021 judicial board for criminal cases of the court of Nur-Sultan (now - Astana) cancelled the special resolution and honoured the special complaint of the advocate Doskarayev.

On 07/06/2023 the investigator of the Police Department of the City of Astana filed to the Akmola Oblast Bar Association with a statement to bring the advocate Doskarayev to disciplinary responsibility for failure to appear for explanation of the rules of Article 201 of the Code of Criminal Procedure of the Republic of Kazakhstan, the inadmissibility of disclosing the information of the investigation and refusal to sign a pledging to the pre-trial investigation body on the inadmissibility of disclosure of materials of the pre-trial investigation against oppositionists Marat Zhylanbayev and Askar Sembai, recognized as political prisoners by the Expert Council of the Kazakhstani Human Rights Defenders.

The Disciplinary Board of the Akmola Oblast Bar Association carried out an inspection and found no grounds for bringing advocate Doskarayev M.A. to disciplinary liability. However, on 14/06/2023, the Disciplinary Board of the Akmola Oblast Bar Association issued a disciplinary sanction in the form of a "reprimand", which was appealed by the advocate to the Republican Bar Association. On 22/09/2023, the Republican Bar Association cancelled the decision on disciplinary sanction due to the absence of violations of the current legislation in the advocate' actions.

**2. CASE OF ADVOCATE A. IBRAYEV**

On 16/11/2023, the judge of Court No. 2 of the city of Taraz issued a special resolution against advocate Ibrayev for disrupting the process, failure to protect the rights and interests of his client, and manifestation of the contempt of the court and violation of the requirements of the Law of the Republic of Kazakhstan "On Advocacy and Legal Aid " (the advocate represented in court the interests and defended civil activist N. Kanatov).

In the course of the trial of this criminal case, the participants of the process were notified in advance of the date and time of consideration of the case, and at the end of each court session the following sessions were planned and discussed with the participants to clarify the availability of advocate Ibrayev given his workload on other cases. However, the judge considered, that advocate Ibrayev did not appear at the court hearings scheduled for 10.00 a.m. on 08/08/2023 and 10.00 a.m. on 31/08/2023, nor did the advocate present any documents confirming the good reason for his failure to appear in court. Thus, in the judge's opinion, advocate Ibrayev disrupted the process, failed to defend the rights and interests of his client, and showed clear contempt of the court. The court decided to inform the Minister of Justice of the Republic of Kazakhstan and the Chairman of the Presidium of the Zhambyl Oblast Bar Association of the repeated disruption of court hearings by advocate Ibrayev, his improper performance of professional duties, manifestation of contempt of the court and the prosecutor, in order to address the issue of his disciplinary liability and withdraw his license to practice advocacy. The advocate claimed that he had sent petitions that he had been busy hearings scheduled for the same dates and time in other courts.

The special resolution was appealed on 28/11/2023 by advocate Ibrayev, who considered that it was not based on the law and issued in favour of the prosecution, and the judge's actions should be regarded as a deliberate and direct violation of the defendant's right to defence. The judge deprived the participants in the trial of the right to challenge the judge, and the advocate believes that the special resolution of the court is "revenge for peaceful opposition" to the accusatory bias of the court and violations of the adversarial nature of the criminal process. The advocate also requested a special resolution against the prosecutor for violation of the professional ethics of the state prosecutor. At the moment, the consideration of the advocate's complaint is pending.

### **3. CASE OF ADVOCATE G. NURPEISSOV**

On 28/09/2020, the investigator of the Investigative Department of the Almaty Police Department issued an order prohibiting advocate Nurpeissov to represent the interests of E.K. Taichibekov, who was suspected of committing an offence under Article 174 of the Criminal Code of the Republic of Kazakhstan. The activist Taichibekov was prosecuted for allegedly inciting ethnic hatred by publishing his posts on social networks, which did not contain any calls for violence. On the same day, the investigator issued a resolution rejecting Taichibekov E.'s application for admission of advocate Nurpeissov G.K. to defence and waiver of services of a state advocate in his criminal case.

On 27/10/2020, advocate Nurpeissov filed a complaint with the Specialized Interdistrict Investigative Court of Almaty regarding the failure by the investigator to act on the grounds that the investigator issued a resolution to reject the petition of Taichibekov E. and refused to accept his notice with the wording that the notice did not contain the details of the contract. The advocate also appealed against the resolution prohibiting the advocate to defend the suspect.

On 13/11/2020, the investigator of the Investigation Department of the Almaty Police Department filed a petition to consider the exclusion of advocate G. Nurpeissov from the disciplinary board of the Almaty Oblast Bar Association with a proposal to review this petition at a meeting of the qualification board of the Almaty Oblast Bar Association. In addition, the investigators demanded to conduct a disciplinary investigation and consider disbarment of G.K. Nurpeissov in compliance with procedure established by law (or other disciplinary sanction) in connection with violations in the pre-trial investigation of the criminal case against E. Taichibekov.

The complaint to the court was considered on 17/11/2020 by the Specialized Interdistrict Investigative Court of Almaty, which decided: to honour the complaint of advocate G. Nurpeissov in the interests of the suspect E. Taichibekov seeking invalidation of the resolution of the investigator dated 28/09/2020 on rejection of E. Taichibekov's petition on the waiver of the appointed advocate and on his consent to

protection of his rights and interests by advocate G. Nurpeissov for the period of pre-trial investigation, and non-admission of the appointed attorney to the criminal proceedings as his advocate. The court set aside the investigator's resolution as unlawful.

On 20/04/2022, an investigator of the Department of the National Security Committee in Shymkent summoned the wife of advocate G. Nurpeissov, advocate Sh. Bekkulova, for interrogation as a witness on the events of January 2022, known as Qantar 2022, in Shymkent, and forcibly brought her to the Investigation Department of the Ministry of Internal Affairs of the Republic of Kazakhstan in Almaty. Bekkulova used the assistance of her husband, advocate G. Nurpeissov. She was summoned several times for investigative actions and was asked to voluntarily provide her mobile phone. The Head of the Department of Special Prosecutors of the Shymkent City Prosecutor's Office also issued an order to authorize a search at Ms. Bekkulova's place of residence. The investigator had been informed of the fact that Ms. Bekkulova's husband Nurpeissov is an advocate, however, on 23/04/2022, the house of the advocate was searched, including the documents of advocate G. Nurpeissov, despite his protests and remarks that such actions were illegal.

The search at the place of residence of advocate Nurpeissov was appealed on 27/04/2022 with the request to rectify the violation. It was stated that Nurpeissov is an advocate, and there are guarantees established by law in respect to his activities, including prohibition to inspect, read, and examine files, documents, materials, and computer equipment of the defence counsel. These actions of the National Security Committee compromised the confidentiality of the criminal defence counsel's files, and the documents examined by the investigator were copied onto a smartphone, which violated the rights of the advocate and his confidants, whose consent had not been obtained. According to Article 232 of the Code of Criminal Procedure of the Republic of Kazakhstan, it is prohibited to conduct covert investigative actions against a defence counsel, including the use of the information obtained during the search to achieve goals and objectives not provided for by this Code. However, on 27/06/2022 the court dismissed the complaint. In addition, earlier, on 05/05/2022, a group of advocates filed another complaint against the unlawful resolution to conduct a search, but it was also dismissed.

#### **4. CASE OF ADVOCATE G. ZHAUASPAYEVA**

On 08/12/2023, the judge of the Turksib District Court of Almaty issued a special resolution against the advocate for disclosure of information from the materials of the criminal case and publication in social networks of data of the closed court session regarding eleven National Security Committee officers pertaining to January events of Qantar 2022 (criminal case on torture, including the death of detainee Otepbayev), and contempt of court, pressure on the court and other participants of the process.

The trial was declared to be held in closed sessions by a resolution of the Turksib District Court of the City of Almaty dated 28/02/2023, on the grounds that former officers of the national security bodies were accused and at their request, to ensure their safety, although no evidence of threats to their safety was presented. It appears from the special resolution that the court allegedly found that advocate Zhauaspayeva had repeatedly published information from the case, organized press conferences and gave interviews accompanied by biased comments on the judge's conduct and personal subjective assessments.

The court also pointed out that on 26/07/2023 advocate Zhauaspayeva refused in court to sign a document on non-disclosure of information of the closed court session. The court stated that advocate Zhauaspayeva showed contempt of the court by her statements and improper behaviour, putting pressure on the court and other participants of the process, thereby undermining the confidence of citizens (in particular, her clients) in the court. The court brought to the attention of the Minister of Justice of the Republic of Kazakhstan and the Presidium of the Bar Association of the Abai Oblast the inadmissible behaviour of the advocate, improper performance of her professional duties, to discuss and take appropriate disciplinary measures and withdraw her license to practice as an attorney.

Advocate Zhauaspayeva filed a special complaint, in which she pointed out that the issued special resolution is one of the methods of pressure on the advocate. Declaring hearings in closed proceedings at the request of the defendants being former officers of the national security bodies contradicts the norms of the Constitution of the Republic of Kazakhstan and the Code of Criminal Procedure of the Republic of Kazakhstan, as the case concerns allegations of torture, which cannot be classified as state secrets, and the

case must be tried in open proceedings. However, the fact that the court declared the trial of the case against the officers of the national security bodies in closed proceedings is considered by the advocate as a way of hiding information from the public, and a discriminatory approach, because according to this logic, trials of cases of military, police and national security officers should be also closed from the public. It was also a flagrant violation of international law, in particular article 14 of the International Covenant on Civil and Political Rights, that the verdict was also announced in closed proceedings. Also, according to the law, 5 days are given for issuance of a judgement, but the advocates received it in electronic format only on the 16th day after its announcement. Advocate Zhauaspayeva believes that the main reason why the judge issued a special resolution was because she had complained of the judge who conducted the trial in a biased manner, and actually treated the defendants' lawyers more favourably and demonstrated improper behaviour. According to the rules, the judge is not allowed to interrupt an advocate during the debate in court, however the judge interrupted advocate Zhauaspayeva at least ten times.

#### **5. CASE OF ADVOCATES A. AIDARKHANOV, A. AIDARKHANOVA, SH. BAIZHANOVA, G. ZHAUASPAYEVA, V. SADYKOV**

On 19/09/2023, the judicial panel on criminal cases of the Almaty City Court issued a special resolution for disruption of the process (lawyers did not connect online to the court session) during the trial of the criminal case against Aigerim Tleuzhanova and others in the appellate instance of the Almaty City Court. When considering in the appellate procedure, the participants of the process were notified in advance of the date and time of the trial on 19 September 2023 at 15.00 hours online.

However, advocates Aidarkhanov, Aidarkhanova, Bayzhanov, Zhauaspayeva and Sadykov did not join the panel meeting, demanding that the trial be held in the courtroom with the personal presence of all participants, including the defendants and their defence lawyers. The advocates insisted that there was no reason to hold the trial online, which violated the right to a fair trial, including the principle of equality of parties and adversarial proceedings, since the defendants were connected online from the pre-trial detention centre and their defenders from offices of their law firms.

The court considered that the advocates violated the requirements of the criminal procedural legislation and disrupted the trial. The Judicial Collegium on Criminal Cases of the Almaty City Court considered it necessary to bring to the attention of the Minister of Justice of the Republic of Kazakhstan, the chairmen of the presidia of the Almaty City Bar Association, the Bar Association of the Abai Oblast, the Akmola Oblast Bar Association the demonstrative disruption of the court session by advocates Aidarkhanov, Aidarkhanova, Bayzhanov, Zhauaspayeva and Sadykov, their improper performance of professional duties in order to address the issue of their disciplinary liability and revocation of their licenses to practice as advocates.

A special complaint against this special resolution was filed by lawyer Sadykov to the Criminal Board of the Supreme Court of the Republic of Kazakhstan, where he asked to cancel the special resolution of the Almaty City Court of 19/09/2023. The advocate pointed out that the inherent rights of advocates were violated by the Almaty City Court, because the advocates appeared in court, but the doors of the court were closed from the inside, and later an additional column of police officers was placed directly at the entrance, preventing the advocates from exercising their professional rights and freedoms. In the evening of the same day, the city court published a press release with a distorted message that allegedly due to the "fault of the advocates the hearing" of the appeal instance in the case was disrupted.

On 19 September, no one explained to the advocates who arrived at 2.15 p.m., the reason for not holding the court session with the participation of all participants in person, the advocates did not receive any notice in advance, there was no announcement at the court building entrance, and it is still unknown why the doors of the court were locked during working hours. Moreover, there was a metal bar outside the closed doors, and outside the building there were police officers, who arrived suddenly.

Since 28 August 2023, when the trial was scheduled in the City Court, the defence submitted petitions for a public hearing in person with the participation of the defendants. The defendants submitted similar applications in advance in August. The advocates informed about their applications in the court chat room, and informed about their intention to attend the court in person, and indicated why they did not agree with

the special resolution of the court. Remote trial of the case entails violation of constitutional and procedural rights of the participants of the trial. The provisions of criminal procedural legislation provide for the responsibility of the body which conducts criminal proceedings to organize the court hearing. The advocate also indicated that while issuing a special resolution the court violated the provisions of Article 72 of the Law of the Republic of Kazakhstan On Advocacy and Legal Aid, dated 5 July 2018. This special complaint was dismissed by the Supreme Court of the Republic of Kazakhstan.

## **6. CASE OF ADVOCATE V. SADYKOV**

On 27/10/2021 the judicial collegium on criminal cases of the Karaganda Oblast Court issued a special resolution on violations of the law and brought to the attention of the senior officials of the Ministry of Justice of the Republic of Kazakhstan to take measures to prevent such recurrences in future. This special resolution was issued during the consideration of the appeal against the verdict of the Kazybek Bi District Court of Karaganda of 10/08/2021 in the interests of the convicted E.M. Gabdullin.

The Judicial Collegium considered that before the start of trial of the case in the court of the appellate instance, the advocate V.J Sadykov spoke at a press conference held on YouTube video hosting site on 23 September 2021, in the course of which the advocate V.Zh. Sadykov demonstrated the materials of the criminal case. The Court considers that any public statements about the illegality of a judicial act that has not entered into legal force are inadmissible and the actions of the advocate V.Zh. Sadykov compromise the image of the judiciary.

On 01/12/2021, advocate V. Sadykov filed a special complaint to the Collegium for Criminal Cases of the Supreme Court of the Republic of Kazakhstan. The advocate V. Sadykov also requested protection of his rights by the Commission for the Protection of the Rights of Advocates of the Republic's Commission of Attorneys (RCA) and the disciplinary commission of the Almaty Oblast Commission of Advocates (AOCA) and to set aside the special resolution as illegal. On 08/12/2021 the Commission received a second appeal of the advocate V.Zh. Sadykov, in which he requested: "To set aside the decision of the Disciplinary Commission of Akmola Oblast Bar Association on reprimanding me, dated 03/12/2021, as groundless and illegal". The Commission concluded that the professional rights of advocate V.Zh. Sadykov were violated. At the same time, the issuance of a special resolution by the court indicates the intention to punish him for his active defence position in court. Also, the Commission believes that the law does not prohibit advocates to participate in such press conferences, on the contrary, the right to freedom of speech is guaranteed (Article 20 of the Constitution of the Republic of Kazakhstan). In accordance with Article 3 of the Constitutional Law "On the Judicial System and the Status of Judges", judges are independent while administering the justice and are only governed by the Constitution and the law.

Practically all presented cases show facts where the right of advocates to freedom of expression were restricted. This right is provided by the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. This right is guaranteed to "everyone". The Covenant emphasizes that the enjoyment of rights should not be restricted on the basis of belonging to any group. In other words, restricting an advocate's freedom of expression solely on the basis of his or her belonging to the advocates' community is in no way permissible, otherwise it could be considered discrimination on professional grounds. This is further supported by the Basic Principles on the Role of Lawyers, which state that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly (Principle 23).

These provisions apply to all ideas, even if they are critical or "offensive, shocking or disturbing". While freedom of expression is not absolute and may be subject to restrictions that pursue a legitimate aim, such restrictions are permissible only if they are duly provided for by law, are necessary to achieve the aim pursued and are proportionate to it, i.e. measures involving the least possible restriction on freedom of expression must be applied to achieve the aim.

Advocating for a client may take place in the courtroom, or it may be through appearances on television or in the press, in which the lawyer may inform the public of deficiencies that could adversely affect the pre-trial process and the litigation process as a whole.

The advocates presented in this communication are known in Kazakhstani society for defending persons prosecuted on political grounds. Almost all of the above cases are politically motivated cases. When dealing with this category of cases, advocates face numerous challenges related to gross violations of the law, lack of adequate response to these violations, and simply the absence of any effective mechanism for the protection of human rights. In such circumstances, they use the public to respond to the unlawfulness by publicizing the case, holding press conferences, and even holding protests to draw attention to it.

Moreover, due to the fact that advocates presented quite often defend political opponents of the authorities, they have a large audience and protest groups interested in information on the results of their efforts. In representing the interests of politically persecuted persons, the defence lawyer also represents the interests of the public. Public interest to such cases is high, and the outcomes of such trials have a direct impact on society and legal practice. Therefore, the coverage of such cases should not be limited and should not be regarded as "interference in judicial process" or "obstruction of justice".

Where issues of public importance are being discussed, freedom of expression may be restricted only within very narrow limits. The UN Basic Principles on the Role of Lawyers state that lawyers "... have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights..." The European Court stressed that lawyers have the right to comment publicly on the administration of justice; however, their criticism should not go beyond certain limits dictated by values such as dignity, honour, high moral standards, and respect for the fair administration of justice. Thus, the debate on the proper functioning of the judiciary – which is a matter of public importance – requires a high degree of protection for freedom of expression.

When defending in and out of the courtroom, advocates presented substantiated facts of violation of their defendants' rights, however, the courts, instead of correcting the gaps, took actions to further suppress them. Defence lawyers almost always work emotionally, which should not be restricted by the court; on the contrary, courts should remain impartial.

Protection of independence, integrity and authority of judges is fundamental to the proper functioning of the legal system. According to the UN Basic Principles on the Independence of the Judiciary, "The Judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". The judiciary must enjoy public confidence in order to fulfil its duties. This includes public respect and public confidence that the courts will be able to resolve legal disputes. Courts must inspire confidence not only in the defendant and other participants in the proceedings, but also in the society as a whole. Hence, judges should, in principle, be protected from particularly harsh attacks, which are largely unfounded, especially in view of the duty of care that arises from their status and prevents judges from responding to criticism.

Therefore, to a certain extent, judges may be subject to personal criticism. It is important to note that, according to the position of the European Court of Human Rights, "a degree of hostility and the potential seriousness of certain remarks do not obviate the right to a high level of protection" in cases of critical remarks, "given the existence of a matter of public interest " in the case of criticism of judges, "taking into account the existence of a public interest". Indeed, it is reasonable to assume that, in the course of their official duties, judges may "be subjected to permissible criticism within limits which are wider than criticism directed at ordinary citizens". The European Court of Human Rights has also held: "notwithstanding the potential need to protect members of the judiciary against particularly harsh attacks which are largely unfounded, and bearing in mind that the duty of care imposed on judges does not allow them to respond to such attacks, this should not have the effect of prohibiting them from expressing their views in the form of value judgements with a sufficient factual basis on matters of public importance relating to the functioning of the judiciary, or of prohibiting them from expressing their views on matters of public importance relating to the functioning of the judiciary.

As noted by the European Court of Human Rights, lawyers who represent the interests of their clients are sometimes compelled to object to or complain about the actions of the court. In this case, the limits of admissibility of criticism of a judge should be wider than in the case of criticism addressed to ordinary

citizens. Not only judges but also prosecutors, who are parties to the proceedings, should "tolerate rather harsh criticism by ... defence counsel" even when the expressions in which they are criticized are incorrect.

The principle of any punishment is adequacy. This affects not only the advocate himself, but also his client and the community in general. Deprivation of an advocate's right to practice his profession is, according to the ECtHR practice, an interference in his private life.

Persecution of a defence counsel may lead to violations of the rights of defendants, including, inter alia, the right to due process (article 14 of the Pact), the right to freedom and legal defence (article 9 of the Pact) or the right to be free from torture or other ill-treatment (article 7 of the Pact).

The UN Basic Principles require 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 "not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics" (Principle 16).

**In view of the above, we urge you to appeal to the government of the Republic of Kazakhstan:**

- 1) so that the Kazakhstani authorities will arrange and conduct a thorough inquiry into the facts outlined above, and bring those responsible for the violation and interfering with advocates' rights to appropriate accountability;**
- 2) to call on the authorities of Kazakhstan to strictly follow the international standards of ensuring the independence of advocates and their work without threats and persecution.**

Annex: special resolutions, special complaints and additional documents on advocates' cases.

Yevgeniy Zhovtis,



Director of Kazakhstan International Bureau for Human Rights and the Rule of Law,  
Member of the Council of the Institute of Human Rights of the International Association of Experts,  
Member of the OSCE ODIHR Expert Panel on the Freedom of Peaceful Meetings and Assembly

Bakhytzhana Toregozhina,

A handwritten signature in blue ink, appearing to read 'B. Toregozhina'.

President of the Ar.Ruh.Hak Foundation

22 January 2024