

International Commission of Jurists

Statement on the decision of the Kazakhstan Collegium of Lawyers in the case of Nurlan Beysekeyev

August 2014

The International Commission of Jurists (ICJ) considers the recent decision of the Collegium of Lawyers of Astana, which found no legal ground to initiate disciplinary proceedings against Nurlan Beysekeyev in relation to his representation of a client in Court, to be in line with international standards on the role of lawyers.

The Collegium's decision followed a ruling of District Court 2 of the Almaty District of Astana, Kazakhstan, on 17 February 2014, ordering that consideration be given to imposing a disciplinary penalty on Nurlan Beysekeyev.

Having examined the Court's ruling and other relevant documents, the ICJ considers that taking disciplinary action against Nurlan Beysekeyev in relation to his conduct set out in the ruling of the District Court would be contrary the duties of the authorities, under international standards to respect and protect the role of lawyers. In particular the UN Basic Principles on the Rule of Lawyers clarify states' duties to ensure that, in protecting the rights of their clients, lawyers can act freely and diligently (Principle 14), are not sanctioned or threatened with sanction for action taken in accordance with recognized professional duties, standards and ethics (Principle 16(c)), and that they enjoy immunity for relevant statements made in good faith in oral or written submissions and appearances before a court (Principle 20).

The Almaty District Court No. 2's intermediate order was made in the course of its consideration of a criminal case against Mr Bakhtzhan Kashkumbayev. It pertained to the conduct of his defence lawyer, Nurlan Beysekeyev, in particular his "alleged violations of professional standards, unjustified delays in the proceedings and contempt of court".

The intermediate ruling stated that Nurlan Beysekeyev had committed "a number of violations of legislation in force, which would be evidence of the non-compliance of the lawyer's behavior with professional norms, established by law".¹

The Court found the following actions of the lawyer to be contrary to law and to professional standards: statements by the lawyer during hearings about the proceedings, including statements that decisions of the court to deny the lawyer's motions were biased or contradicted the law; the lawyer's filing several motions to recuse the judge; presenting to the court an account of the court proceedings that the court disagreed with. Moreover, the Court considered that disciplinary action was necessary, because, in the course of the proceedings, contrary to the order of the judge, the lawyer followed his client's instructions to cease to represent his client before the court.

¹ Interim Ruling, District Court No. 2 for the Almaty District, 17 February 2014, Astana city.

The Court's ruling characterized Nurlan's Beysekeyev's conduct as including "incorrect behaviour and statements", "evaluation of the actions", and "discussion of the personalities". It however failed to provide sufficient detail of which specific statements and actions it considered constituted violations of the law or ethical standards and why they were considered to amount to violations. The ruling does not set out any particular statements made by the lawyer or the context in which they were made, that would allow for an assessment of whether indeed there were grounds for such characterization.

International standards on the role of lawyers emphasize that lawyers play an essential role in upholding the rule of law and ensuring respect for human rights, by facilitating access to justice and seeking to protect the rights of their clients.²

Under the UN Basic Principles on the Role of Lawyers, it is each lawyer's obligation at all times to maintain the honour and dignity of their profession "as essential agents of the administration of justice".³ One of the main duties of lawyers, set out in the UN Basic Principles on the Role of Lawyers, is that they must "always loyally respect the interests of their clients."⁴ They must carry out their professional functions to the best of their ability, diligently, with integrity and independence. They should act freely, in accordance with the law and recognized standards of professional ethics, in protecting the rights of the clients and promoting human rights and the cause of justice, including by challenging laws and practices.⁵

International standards, including the Basic Principles on the Role of Lawyers, clarify that States have an obligation to ensure that lawyers can carry out their functions without intimidation, hindrance, harassment or improper interference, and to ensure that lawyers neither suffer, or are threatened with prosecution or administrative, economic, or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.⁶

In representing their clients, lawyers must thus be able to seek to apply relevant procedural laws and must be protected against retaliation for having diligently and freely acted in accordance with the law and recognized standards of the legal profession. Lawyers "shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority."⁷

Furthermore, international standards clarify that disciplinary proceedings against lawyers shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light

² Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment, of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principles 13-14.

³ Basic Principles on the Role of Lawyers, Principle 12.

⁴ *Ibid*, Principle 15.

⁵ *Ibid*, Principle 14; Draft Universal Principles on the Independence of Justice, para. 83, prepared by the UN Special Rapporteur on the Study on the Independence of the Judiciary in 1989. The Special Rapporteur was entrusted with the preparation of a report on the independence and impartiality of the judiciary and the independence of lawyers by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1980, the UN Commission on Human Rights in resolution 1989/32 invited governments to take account of the principles in implementing the UN Principles on the Independence of the Judiciary; E/CN.4/Sub.2/1985/18/Add.5/Rev.1;

⁶ Basic Principles on the Role of Lawyers, Principle 16(a).

⁷ Basic principles on the Role of Lawyers, Principle 20; The Singhvi Declaration, Principle 89.

of the principles set out in international standards.⁸ Such proceedings must be expeditious and fair.⁹ They must respect the right of the lawyer to be informed of the charges against him or her, to access to the evidence and to defend themselves, including through counsel, to present and to challenge evidence.¹⁰ They must be determined by an independent and impartial body.¹¹ "If proceedings are taken against a lawyer for failing to show proper respect toward a court, no sanction against him shall be imposed by a judge or judges who participated in the proceedings which gave rise to the charge against the lawyer concerned."¹² Furthermore, any decision to discipline a lawyer must be subject to appeal before an independent judicial body, and sanctions imposed must be proportionate.¹³

Lawyers duties towards their client include "[a]ssisting clients in every appropriate way, and taking legal action to protect their interests" and "assisting clients before the courts".¹⁴ Motions are formal requests made to a court. Filing motions, and making legal arguments to the court, are two of the principal tools by which lawyers assist their clients in the presentation of a case before a court.

Therefore, an attempt to discipline a lawyer for filing motions relevant to the conduct of the proceedings and thereby representing the interests of his client is of serious concern. Indeed, it is axiomatic that lawyers must be able to submit motions, including where appropriate, motions for the recusal of a judge, and in the course of legal proceedings to argue whether or not a particular approach, submission or order being challenged, in their professional view, corresponds with the law or human rights standards. While the Court is not obliged to grant a motion, attempts to deprive lawyers of exercising this procedural right on behalf of their clients, interferes with their client's rights and a lawyer's duty to represent their clients effectively. At the same time, the court should "conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision".¹⁵

In keeping with respect and protection of the fundamental right to a trial before an independent and impartial court - a right which Kazakhstan is obliged to respect, including under Article 14 of the International Covenant on Civil and Political Rights - the Singhvi Declaration makes it clear that lawyers "shall have the right to raise objection to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing".¹⁶

In its decision in this case, the Court appeared to be concerned that the lawyer made statements, which according to the court "distort the events which in fact took place". In this connection, it should be stressed that "[l]awyers are not expected to be impartial in the manner of judges, yet they must be as free as

⁸ Basic principles on the Role of Lawyers, Principle 29.

⁹ *Ibid*, Principle 27

¹⁰ International Covenant on Civil and Political Rights, Article 14.

¹¹ Basic Principles on the Role of Lawyers. Principle 28

¹² Draft Universal Declaration on the Independence of Justice, (the Singhvi Declaration), Principle 88.

¹³ See: ICJ, Disciplinary action against lawyers in CIS countries: analysis of international law and standards, <http://www.icj.org/disciplinary-action-against-lawyers-in-cis-countries-analysis-of-international-law-and-standards/>.

¹⁴ Basic Principles on the Role of Lawyers, Principle 13.

¹⁵ ECtHR, *Kraska v. Switzerland*, 13942/88, 19 April 1993, para. 30.

¹⁶ Singhvi Declaration, Principle. 87.

judges from external pressures and interference."¹⁷ This is crucial if litigants are to have trust and confidence in them.¹⁸ It is therefore essential that lawyers are able to present the account of events as they are seen and understood by the client and the lawyer himself or herself.

Furthermore, the Court's finding that it was contrary to professional ethics for Lawyer Beysekeyev's to follow his client's request not to represent him before the Court, runs contrary to the principle that lawyers must loyally respect the interests of their clients¹⁹ and that it is a duty of every lawyer to "assist clients in every appropriate way, and take legal action to protect their interests."²⁰ This, *inter alia*, means that: "The lawyer in discharging his duties shall at all times act ... in accordance with the wishes of his client and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public."²¹

Therefore, the ICJ considers that the decision of the Astana Collegium not to subject lawyer Beysekeyev to disciplinary action was in line with international law and standards on the role of lawyers. This decision is an example of good practice which should be followed in similar circumstances.

¹⁷ Report of the Special Rapporteur on the independence of judges and lawyers, 28 July 2009, A/64/181, para. 12. The Special Rapporteur on the Independence of Judges and Lawyers is an independent expert appointed and mandated by the UN Human Rights Council, to inquire into and report on allegations of attacks on the independence of judges, lawyers and court officials and on progress achieved in protecting such independence, see: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>.

¹⁸ See E/CN.4/2004/60, para. 48.

¹⁹ Basic Principles on the Role of Lawyers, Principle. 15.

²⁰ *Ibid*, Principle, 13(b).

²¹ Singhvi Declaration, Principle 83.