

**PUBLIC FOUNDATION “LEGAL CLINIC “ADILET”**  
**STATEMENT OF VIEWPOINT**  
**Regarding the Pressure Imposed by the Law-Enforcement on Attorneys**

The Kyrgyz Republic’s society has once again witnessed an unprecedentedly flagrant and rampant violation of laws by the General Prosecutor Office of the Kyrgyz Republic expressed by unrelenting pressure imposed on independent attorneys. Despite the prohibition of interference with practice of law provided under the laws of Kyrgyzstan, investigation authorities summon attorneys for questioning and seize documents related to the cases within which the attorneys defend their clients. What is particularly deplorable is that such grave violations originate from the superior constitutional authority responsible for ensuring accurate and uniform compliance with laws by government. This is the most outrageous situation ever admitted by prosecution officers in the history of independent Kyrgyzstan as they have reached a new level of lawlessness.

The institute of legal profession including the principle of non-interference with practice of law is an international human rights standard as it is vested in fundamental international instruments including the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to which the Kyrgyz Republic is a party. Nevertheless, officers of the General Prosecutor Office ignore the constitutional norms stating that duly effected international treaties to which the Kyrgyz Republic is party as well as generally accepted international law principles and standards constitute a part of the legal system of the Kyrgyz Republic.

The above mentioned facts of outrageous and flagrant pressure imposed on attorneys by investigation authorities have been contingent upon the incompleteness of legislation as well as plain violation of legal requirements.

According to the press release issued by the General Prosecutor Office on December 21, 2019<sup>1</sup>, the investigators believe that the former deputy minister of interior Kursan Asanov allegedly took some particularly important documents and valuable items from the bag and, acting in collusion with and in favor of the ex-president Almazbek Atambaev, and passed those to Raisa Atambaeva through the Asanov’s driver D. Paizilda uulu. Furthermore, documents of minor significance left in the bag and the bag itself were passed to the attorneys Sergei Slesarenko and Zamir Khooshev. It further reads that in the course of investigative activities involving the mentioned attorneys, the attorneys will be interviewed about their specific acts, purposes and motives related to the passing of the bag. The General Prosecutor Office also states that these circumstances have in no way been related to the attorney’s professional activities related to their legal assistance to Almazbek Atambaev, nor have they infringed upon the rights of their clients. Furthermore, they refer to the constitutional principle of legal and judicial equity and state that the attorneys have attempted to assign themselves the status of “untouchables”.

1. It should be noted that, according to paragraphs 3 and 4, part 4 of Article 58 of the Criminal Procedural Code, attorney shall not be interrogated as a witness with respect to the circumstances that might have become known to such attorney due to request for or provision of legal assistance. This mandatory provision reflects the adversarial principle and the principle of equality of parties, as well as that of the attorney-client privilege.

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<sup>1</sup> The official website of the General Prosecutor Office of the Kyrgyz Republic, available at <https://www.prokuror.kg/news/4133-generalnaya-prokuratura-kyrgyzskoj-respubliki-soobshchaet-54.html>

As known, the attorneys Sergei Slesarenko and Zamir Zhooshev defend the former head of state Almazbek Atambaev, **therefore they may not be interviewed about the circumstances they might have become aware of through the provision of legal assistance to the latter. Thus, the General Prosecutor Office gives the public a wrong idea as the issues the prosecutors are concerned about are directly related to professional activities of the mentioned attorneys.**

2. At the same time, the General Prosecutor Office staff should have known that the principle of legal and judicial equity is not absolute, i.e. there can be exceptions and waivers. For example, the special procedures of holding the president, members of parliament, judges, the general prosecutor, and attorneys is a waiver within the said principle. Such waivers are caused by the necessity to establish guarantees of due performance of responsibilities the said officials are entrusted with.

3. Furthermore, such a serious violation of law by the prosecution officers with respect to the attorneys as well as the press release issued probably show that the investigation of the case of the defendant D. Paizilda uulu has come to deadlock. Previously, there were media reports containing videos shot by the Safe City surveillance system allegedly showing D. Paizilda uulu passing some items. However, the video quality was so low that one could not identify the car brand, and much less the face. Moreover, there were serious inconsistencies regarding the exact time of the events shot. In the view of the above and given the fact that the period of the defendant's detention at Pretrial Detention Facility 1 in Bishkek was prolonged while the Military Prosecutor Office investigators did not perform any investigative activities involving the defendant for over two months, the above described acts of the prosecution officers probably show that they are at the end of their resources trying to gather evidences against D. Paizilda uulu and have failed to prove his involvement in any offence.

4. What should also be pointed out is the legally established attorney's responsibility to protect the attorney-client privilege and prevent any acts against the client. Therefore, even when appearing at the Military Prosecutor Office for interview, **attorneys are prohibited by law from giving any testimonies related to protection of their clients' rights, and prosecution officers know those legal provisions well.** So, it may be assumed the prosecution officers called the attorneys in for interview being driven by their intent to exert pressure on the latter or bar them from protection of their clients within the subject cases as, according to legal provisions, if interviewed as witnesses the attorneys may not continue providing legal services to their clients. Should the attorneys answer questions asked by the investigators, such attorneys may be deprived of their licenses for violation of the attorney-client privilege.

5. The stage of instituting a criminal case has been excluded from the criminal procedure as part of the judicial and legal reform currently implemented in the country. Previously, nearly all investigative actions including interrogation and seizure could only be performed by investigators once the criminal case is initiated. For the purpose of ensuring the principle of equality of arms, attorneys were given the legal guarantee that criminal proceedings could only be instituted against them by the general prosecutor or deputy general prosecutor, and investigative activities could only be performed with respect to attorneys subject to relevant decision.

Since the Unified Register of Offences and Misdemeanors (UROM) has been incorporated with the Criminal Procedural Code, the complete set of investigative actions with respect to attorneys may be performed as soon as the offence report is entered to the Register. However, the notice of action that is quite similar to previous institution of indictment, should be issued by the head or deputy head of the chief oversight authority. It should be emphasized that, first of all, investigation is a

totality of investigative activities performed for the purpose of gathering and recording proofs of guilt of a specific person. In this view, the notice of action is a kind of the logical end of procedures performed by the investigator to find evidences.

Thus, **the new Criminal Procedural Code has in fact deprived attorneys of the safe conduct guarantees** as they now may be subjected to nearly entire set of investigative actions including search, seizure, etc. Numerous guarantees of independent practice of law have been provided under the Law on the Bar of the Kyrgyz Republic and Practice of Law. For instance, according to the Law, documents pertaining to the legal assistance provided within a specific criminal case may only be required and seized and respective information can only be used if the attorney is indicted<sup>2</sup>. Nevertheless, the Criminal Procedural Code has a stronger legal force comparing to the said Law, therefore, the guarantees provided under the Law are plainly ineffective. Deplorably, the investigating judge allowed the Military Prosecutor Office investigators to seize the documents that the attorney Sergei Slesarenko received in the course of his professional activities.

It should be noted that such a situation fails to meet international standards of human rights to fair trial and seriously infringes upon the principle of adversarial criminal proceedings and equality of arms. In this view, it is necessary for the Criminal Procedural Code to provide relevant guarantees of non-interference with practice of law.

**6.** According to part 6 of Article 104 of the Constitution, the public prosecution service constitutes an integrated system responsible for initiating criminal cases against government officials as per the list specified by the relevant constitutional law, with submission of cases to relevant authorities for supplementary examination, as well as for criminal prosecution holding a military status.

Notably, D. Paizilda uulu is not a serviceman, therefore, the Military Prosecutor Office has no right to administer pretrial proceedings against him as such practice is directly in disregard of the Constitution. Thus, in this case, the issue to raise can be abuse of power by high-rank prosecution officers leading to unlawful indictment and detention.

It should also be noted that facts of pressure imposed on attorneys have immodestly grown in number recently. In the last summer, the attorney Ikramidin Aitkulov who represented Kursan Asanov was arrested and placed to the detention center of the Bishkek Chief Police Department. Recently, the attorney Nurbek Toktakunov reported continuous threats against him and assault against his driver. The attorney Sergei Slesarenko was interviewed by the Military Prosecutor Office investigators, and the court permitted seizure of documents related to his professional activities. The attorney was summoned by the Military Prosecutor Office for an interview. The attorney Bakytbek Avtandil uulu representing the MP Asel Koduranova was also called in for an interview by the Military Prosecutor Office.

Given the above described facts of violation of international law and constitutional guarantees of the human rights to professional legal assistance expressed by the unprecedented pressure imposed on attorneys, the public has no any doubts regarding the ideological bias in investigating authorities, prosecution, and courts.

Furthermore, there is a growing adverse trend of investigators threatening to suspects and accused persons with arrest or other sever actions and forcing them to reject services of counsels who proactively defend their clients, coercing into giving testimonies needed by investigators, and

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<sup>2</sup> Part 5, Article 29 of the Law of the Kyrgyz Republic on the Bar of the Kyrgyz Republic and Practice of Law.

requiring not to file complaints or report to media. In addition, the prosecution and judiciary ignore facts of the hindering of practice of law while such acts must be punished under the criminal law. At the same time, there are serious challenges in implementing the principle of equal arms with registering authorities denying attorneys of any information regarding movable and immovable property owned by citizens, residence registration, etc.

The Kyrgyzstan's society may not keep out and silent, otherwise such adverse trends may develop into regular practices. Given the latest developments and provisions of revised laws, it is a scary thought but at the same time quite a clear prediction that law-enforcement investigators throughout the Kyrgyzstan regions will start summoning for interview attorneys who proactively defend their clients. Furthermore, as part of such procedures, investigators will search attorneys' homes and seize their documents needed for protection of their clients' rights. **Such trends may ultimately lead to complete suppression of the practice of law by law-enforcement which will have desperately negative impact on lives of thousands of people who will actually stay unprotected dealing with authorities.**

We would like to sensitize the Kyrgyzstan's society on the unprecedentedly massive attack of government institutions on human rights in general. Over the last 3-4 months, severe pressure has been faced by freedom of speech and press, freedom of peaceful assemblies, and the right to fair trial. The next target is the right to professional legal assistance. However, it should be understood that the main target is not the attorneys but rather rights and freedoms of citizens as, without high-quality legal assistance, people cannot effectively defend their other rights and freedoms such as the right to justice, guaranteed prevention of torture, the principle of official liability, etc.

We appeal to the President of the Kyrgyz Republic Sooronbai Jeenbekov, members of Jogorku Kenesh, Prime-Minister Muhammedkalyi Abylgaziev, and General Prosecutor Otkurbek Jamshitov to take all necessary steps within their respective powers for proper protection of human rights and interests guaranteed under the Constitution of the Kyrgyz Republic.

We also appeal to the public of Kyrgyzstan and all those who care about their fortunes to pay particular attention to the facts of unprecedented infringement upon fundamental human rights and freedoms. Furthermore, we request members of international community providing such a significant support for promotion of the judicial and legal reform to take a look at the arbitrary practices existing in this sphere which have a disastrous impact on the principles such as rule of law and justice.