



Uniunea Avocaților din Republica Moldova

Союз Адвокатов Республики Молдова

Moldovan Bar Association

December 26, 2016

Chisinau

To:
General Prosecutor's Office,
Mr. Eduard Harunjen, general prosecutor

Superior Council of Magistrates,
Mr. Micu Victor, chair

National Anticorruption Center
Mr. Viorel Chetraru, director

Ministry of Justice of the Republic of Moldova,
Mr. Vladimir Cebotari, minister

Supreme Court of Justice,
Mr. Mihai Poalelungi, chair

The Bar Association sounds the alarm: the violation of rights becomes systemic

Honored dignitaries,

The institute of the Bar in the Republic of Moldova operates within the limits and under the guarantee of the Constitution, the Law on Lawyer's Profession, the status of the lawyer's profession, the international treaties the Republic of Moldova is party to, adopting the principles and rules that are unanimously acknowledged at international level.

Aiming at providing the right to defense, the fundamental rights and freedoms and legitimate interests of the citizens, the Bar Association, as the sole body of lawyers' self-administration, has formulated this message to draw the attention of state institutions on the multiple cases of violation of the legitimate rights and interests of individuals and/or clients, many of which tend to become systemic.

In this context, we see that there are very frequent cases of selective law enforcement and the procedural rules on the circumstances for starting or resuming criminal investigation,

bringing accusations against the individuals and enforcing correlative procedural measures are flagrantly violated. The most frequent and serious violations are:

- starting criminal investigation after the expiry of the statute of limitations for bringing criminal charges;
- successive resumptions of criminal investigation and cancellation of orders to not start criminal investigation or to stop the criminal investigation without pertinent reasons;
- abusive enforcement of preventive measures, seizure/sequestration of assets that are not related to the criminal lawsuit and retention of such assets for undetermined periods;
- intentional leaks of information from the criminal case files to the press in order to manipulate the public opinion and create a negative image to someone;
- public presentation of data, including personal data of individuals under accusation before establishing their guilt and declaring them as perpetrators of crime;
- examination, contrary to the principle of impartiality, of lawyers' claims and recourses by the Court of Appeal and/or Supreme Court of Justice that omit making decisions on important aspects invoked in the use of appeal methods;
- disproportionate enforcement of criminal punishments, inhuman and degrading detention regime, especially, in case of individuals in preliminary arrest;
- criminal classification of civil torts;
- deficiency of the forensic examination system;
- violation of the lawyer's and client's right to meet;
- lack of the minimum required conditions for the lawyers' work in courts and in prisons;
- magistrates' attitude towards the lawyers during the trial – Lawyers are neglected and ignored by the judges who cite them to be at the court at a specific time and are then told to wait for hours on the corridors until the lawsuit they participate in is examined, which creates overlapping of the court sittings and the lawyers cannot efficiently organize their time and bear significant financial losses;
- admission of acting prosecutors and judges to the profession of lawyer through abusive court decisions;
- imposing the lawyers to hand mobile telephones and bags and, sometimes, to show the content of bags to the security personnel of the National Anticorruption Center while in the premises of this Center;
- delay in the adoption of the amendments to the Law on Lawyer's Profession and attempts of some MPs to "extend the range" of persons who will have the right to become lawyers without taking the necessary tests.
- the lawyers themselves are in a state of uncertainty and insecurity, because criminal charges are brought against them for offenses the lawyers cannot be subjects of (e.g., criminal charges were brought against the lawyers Veaceslav Turcan and Maxim Belinschi under art. 352¹ false statements). This provision of the Criminal Code is classified as an offense against the public authorities and the state security and does not include offenses in the field of justice. Consequently, the lawyer cannot be subject of this offense. The lawyer acts in the client's interest and uses the information supplied by the client, but does not have the obligation nor the capacity to check the authenticity and reliability of such information;
- enforcement of a heavy and even discriminatory tax regime in relation to absolutely all categories of taxpayers, by cancelling the intermediate level of 7% and

setting the level of 18% for lawyers, which reflects the increase of the tax burden (income tax).

The specific examples that illustrate the violations listed in this message were presented during our multiple meetings with the leaders of the legal system and in the repeated letters written by them in the past.

The persecution and intimidation of lawyers is a serious and direct violation of the lawyers' guarantees and immunities set forth in:

- Art. 26 par.(4) of the Moldovan Constitution "The interference with the activity of people exercising the defense within the set limits is punished by law"
- Art. 51 of the Law on Lawyer's Profession no. 1260 of 19.07.2002 "When practicing the profession, the lawyer is independent and obeys only the law, the status of the lawyer's profession and the Lawyer's Ethical Code. The lawyer is free to choose their position and is not required to coordinate such position with anybody, except the client"
- Art. 52 of the Law on Lawyer's Profession no. 1260 of 19.07.2002 "It is forbidden to interfere in the practice of the lawyer's profession. The state ensures the observance and protection of freedom when practicing the lawyer's profession, with no discrimination and unjustified interventions by the state authorities or the public".
- Art. 52 par.(4) of the Law on Lawyer's Profession no. 1260 of 19.07.2002 "If the lawyer is arrested or criminal charges are brought against the lawyer, the authority that conducted such actions is required to inform the Ministry of Justice and the Council of the Bar Association within 6 hours from the moment of arrest or from the moment when the criminal charges were brought against the lawyer".
- Art. 52 par.(6) of the Law on Lawyer's Profession no. 1260 of 19.07.2002 "The lawyer cannot be interrogated about the essence of their relations with the person they provide or used to provide legal assistance".
- The Key Principles of the Lawyer's Role, adopted at the 8th UN Congress on the Prevention of Crimes and the Treatment of Offenders, Havana (Cuba), August 27 - September 7, 1990, stipulate:

Art. 16: "Governments make sure that jurists: a) can fulfill their professional duties without the danger of threats, obstacles, intimidation or unjustified interference; b) can travel without obstacles, consult their clients in the country and abroad; are not persecuted by judicial bodies and are not subject to judicial, administrative, economic or other sanctions for fulfilling their duties, in line with the rules and ethics and are not threatened to be persecuted".

Art. 17: "In cases when a danger for the jurists' security arises as a result of fulfilling their professional duties, the state provides the appropriate protection to them";

Art. 18: "Jurists must not be identified with their clients or with the interests of their clients as a result of fulfilling their professional duties".

Finally, ignoring the lawyers' function and mission is not only a blow for each of them, but also directly and immediately affects the quality of legal assistance they provide to the client, which restricts the client's right to defense as guaranteed by art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In the context of the above mentioned, we requested the monitoring of the situation in terms of the lawyer's role in enforcing justice, including CCBE, and solicited urgent support to combat all forms of abuse applied by the national authorities.

Dear Sirs, we want to draw your attention on the fact that the subject of this message can seriously affect the enforcement of justice that must not have any other goal than to correctly apply the law, in line with the provisions, as well as to continuously increase the social values.

We kindly ask you to treat very seriously the cases presented above, contribute to the exclusion of the current deviations from the fundamental principles that govern the justice in a state with rule of law being consistent and principled in the actions of definitive elimination of unacceptable conduct.

We hope that the investiture of the general prosecutor will contribute to the elimination of actions that contradict the legal provisions from the practice of the Prosecutor's Office and will enforce the legal provisions to ensure the human rights and fundamental freedoms, in the spirit of the principle of presumption of innocence. This is the only way to protect the individual from abusive actions, guarantee the individual's freedom, stimulate the state authorities to search the truth by reviewing the belief that the individual who is subject to criminal charges is automatically guilty.

To avoid further violations and intimidation of the lawyers, the Bar Association, as the body of lawyers' self-administration, will act firmly and will use all forms of manifestation that are allowed by the law to ensure the functioning of the legal framework in the lawyers' work.

**Respectfully,
Chair of the Bar Association,**

Nina Lozan