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Brussels, 12 August 2009

By fax/e-mail

Re: Concerns regarding the case of Daniyar Kanafin, member of the Almaty City Collegium of Defence Lawyers

Dear Madam/Sir,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which, through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area, represents more than 700,000 European lawyers. In addition to membership from EU bars, it has also observer and associate representatives from a further ten European countries' bars.

The CCBE places great emphasis on respect for human rights and the rule of law. It monitors actively the defence of the rule of law, the protection of the fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights.

The CCBE writes to express its serious concerns over Mr. Kanafin's case. We understand that Mr. Kanafin has faced disbarment proceedings, initiated by the Committee on National Security and supported by the Department of Justice of Almaty, for critical comments he made in the mass media on the Kazakh law on state secrecy, which requires lawyers to have a special permission to deal with cases involving state secrets. Mr Kanafin was refused representation of a client on the grounds that he had no security clearance required for access to state secrets. The CCBE was informed that Kazakh authorities are of the opinion that Mr. Kanafin, because of making these public statements, has violated the Kazakh law on defence lawyer's practice whereby lawyers should behave correctly vis-à-vis state bodies.

We also understand that the Almaty Collegium of Defence Lawyers meanwhile decided that the initiated disciplinary charges were ungrounded and unlawful, but that the Ministry of Justice of Kazakhstan now intends to submit an application to the court seeking the disbarment of Mr Kanafin.

The CCBE believes that the issue at stake in this case is of a major importance bearing direct effect on the freedom and independence of lawyers and Bar Associations.

In this context, the CCBE wishes to draw to your attention Principles 16 and 23 of the United Nations Basic Principles on the Role of Lawyers (1990):

Principle 16 concerning the guarantees for the functioning of lawyers states that:

“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall 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 23 on the Freedom of expression and association states that:

“Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall 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 and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

Furthermore, CCBE wants to note that Article 19 of the International Covenant on Civil and Political Rights provides that:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

In view of the above, the CCBE respectfully urges you to take immediate and effective steps to guarantee these rights of Mr. Kanafin in order to preserve the independence and integrity of the administration of justice and to ensure that all attempts to discredit lawyers for the legitimate exercise of their professional duties are promptly and effectively stopped.

Yours sincerely,



Anne Birgitte Gammeljord
President