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# KEY CONCERNS AND RECOMMENDATIONS ON THE PROTECTION OF FUNDAMENTAL RIGHTS IN KYRGYZSTAN

**Briefing paper for EU-Kyrgyzstan Human  
Rights Dialogue, June 2018**

This briefing paper has been prepared by International Partnership for Human Rights (IPHR), the Legal Prosperity Foundation (LPF) and the Coalition against Torture in Kyrgyzstan, as a contribution to the EU-Kyrgyzstan Human Rights Dialogue, which is scheduled to take place in Brussels in June 2018. The document provides an overview of current key developments and concerns with respect to freedom of expression and the media, freedom of association, freedom of peaceful assembly and human rights defenders in Kyrgyzstan. It was finalized on 31 May 2018.

**International Partnership for Human Rights (IPHR)** is an independent, non-governmental organization founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities in repressive environments.



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## Introduction

Following the significant deterioration in the climate for freedom of expression and civil society engagement in Kyrgyzstan over 2017, the first months of President Sooronbai Jeenbekov's rule have seen some improvements although it is too early to establish if these are part of a positive trend. Concerns include fabricated criminal cases against independent journalists, moves against TV stations associated with the opposition and initiatives to restrict social media use. During his election campaign, Jeenbekov pledged to respect human rights, guarantee freedom of expression and improve cooperation with civil society. Although such statements raised hopes amongst civil society activists and others that the new president would take concrete steps to address ongoing violations of freedom of speech and human rights in Kyrgyzstan, Jeenbekov has not taken consistent and effective measures to put a halt to the downward trend and ensure respect for freedom of expression, media and internet as protected by the Constitution of the Kyrgyz Republic and international treaties ratified by the country.

## Freedom of media and expression

### LEGISLATIVE DEVELOPMENTS

On 12 April 2018 the Jogorku Kenesh (Parliament) adopted amendments to the *Law On Mass Media*, which shortened the time allowed for the review of registration applications from media outlets from one month to 10 working days. The amendments also provide for the creation of a Unified State Register of Mass Media, which will contain data on registered and re-registered media outlets as well as those which have ceased their activities.

On 6 April 2018, the government, influenced by public opinion, gave a negative assessment of a draft bill which was proposed in February, leading to its withdrawal.<sup>1</sup> In February 2018, the parliamentary Committee on Social Affairs had approved the draft bill "On Amendments to the Civil Code of the Republic of Kyrgyzstan" which introduced new procedures for refuting defamatory information published on the internet, in print or on the television or radio. It provided for a minimum amount of compensation – at least 20 thousand soms (approximately EUR 290) except in cases when the victim sought a smaller amount.<sup>2</sup> Journalists, civic activists and representatives of non-governmental organizations (NGOs) were concerned that the draft legislation would infringe on freedom of expression. They criticized the bill for not only applying to media professionals, but also to users of social networks, who could be held accountable in connection with posts and publications on the internet. The bill was also criticized for providing opportunities for public figures to bring defamation law suits to put pressure on their critics. Cholpon Djakupova, director of the legal clinic "Adilet" said the bill was "*devastatingly harmful*" and called for its withdrawal.

1 Decree No 188 of 6 April 2018, <https://24.kg/obschestvo/82658/>

2 <http://www.kenesh.kg/ru/draftlaw/417220/show>

## RECENT DEVELOPMENTS IN KEY LAW SUITS AGAINST JOURNALISTS, DEFENCE LAWYERS AND HUMAN RIGHTS DEFENDERS

Ongoing repercussions from compensation claims filed by the Prosecutor General's Office on behalf of prominent political leaders against journalists continue to give cause for concern as they damage freedom of expression and perpetuate self-censorship in the country. Positive developments in libel cases in recent months include the withdrawal of claims for moral damages against journalists by first the President Jeenbekov in February 2018 and then former President Atambaev in May 2018. However, material claims remain outstanding in relation to lawyers Taalaigul Toktakunova and Kanatbek Aziz, as well as journalist Daiyrbek Orunbekov from a case in 2015.

### 1. Case for moral damages on behalf of former President Atambaev

On 18 May 2018, in a positive move, former President Atambaev announced that he would be withdrawing the claims for material compensation against journalists of the independent Zanoza news site, Narynbek Idinov, Dina Maslova and human rights defender Cholpon Djakupova because of *"the positive changes that have taken place in the last year in the official registered information resources and the media community in Kyrgyzstan"*.<sup>3</sup> The NGO Committee for the Protection of Freedom of Speech subsequently suggested that Atambayev be consistent and also retract material claims against journalist Daiyrbek Orunbekov, who was ordered in 2015 by court to pay 2 million soms (some EUR 24 000) in his favour, as well as lawyers Taalaigul Toktakunova and Kanatbek Aziz, who were instructed to pay 10 million soms (some EUR 120,000) to Atambayev.<sup>4</sup>

The former President's decision followed appeals by Kyrgyzstani NGOs to the leaders of political parties urging them to raise concerns about violations of freedom of speech in the country.<sup>5</sup> The NGOs were particularly concerned about the practice of courts considering claims for compensation for alleged moral harm lodged against journalists including court decisions against several journalists that had been initiated by the Prosecutor General's Office in defense of the honor and dignity of Kyrgyzstan's ex-President. The NGOs pointed out that in such cases the life and health of individuals against whom the law suits are filed is considered to be less important than the honour and dignity of officials and that the series of cases has led to significant loss of public confidence in both the judiciary and human rights safeguards. Civil society additionally criticized that national legislation requires the Prosecutor General to take legal action on behalf of the President in response to alleged defamation, thereby providing the President with special and inappropriate protection.

The lawsuits had been initiated by the Prosecutor General's Office last year against the independent Zanoza news site, its co-founders and journalists Idinov and Maslova, human rights defender Djakupova, and lawyers from the opposition Ata Meken party Kanatbek

3 [https://kaktus.media/doc/374614\\_atambaev\\_otzyvaet\\_materialnye\\_pretenzii\\_k\\_ychrediteliam\\_zanoza\\_i\\_djakupovoy.html](https://kaktus.media/doc/374614_atambaev_otzyvaet_materialnye_pretenzii_k_ychrediteliam_zanoza_i_djakupovoy.html)

4 [http://kyrgyztoday.org/ru/news\\_ru/komitet-zashhity-svobody-slova-prosit-atambaev-otozvat-iski-ot-zhurnalistov-naryn-ajypa-i-diny-maslovoj/](http://kyrgyztoday.org/ru/news_ru/komitet-zashhity-svobody-slova-prosit-atambaev-otozvat-iski-ot-zhurnalistov-naryn-ajypa-i-diny-maslovoj/)

5 <https://kaktus.media/369965>

Aziz and Taalaigul Toktakunova.<sup>6</sup> The lawsuits were brought in retaliation for articles that reported accusations against Atambayev made by MP Omurbek Tekebayev, a formerly-turned-opponent of Atambayev, and his Ata Meken political party, and an article on a parliamentary debate on Tekebayev's arrest in April 2017.

Over the course of 2017, courts ruled in favour of the prosecution, ordering the defendants to pay a total of the equivalent of several hundred thousand EUR in compensation to Atambayev for alleged moral damages. These rulings were upheld on appeal, including by the Supreme Court, which endorsed the lower-level court decisions on three of the defamation lawsuits in late November 2017.

In early 2018, court bailiffs took measures to enforce the rulings. Idinov, Maslova, Djakupova and lawyers Aziz and Toktakunova were banned from leaving the country. In January 2018, Atambayev's legal representative demanded that Idinov's and Djakupova's property be sold to ensure that they pay the compensation to the ex-president. A local court subsequently approved the request to auction off Djakupova's holiday cottage, while the ex-President's representative withdrew the request in respect to Idinov's property after the journalist proved that the apartment where he lives is his only dwelling, which he shares with his elderly mother and sister. Idinov nevertheless had to pay the compensation ordered by the court. Maslova, Idinov and Djakupova appealed to court for permission to pay the fines in installments but their requests were refused.

In a positive development in April 2018, the Supreme Court overturned the decisions of lower courts and returned the request to pay in installments to court for a new examination. It is important to note that this decision by the Supreme Court is the first time that a higher court cancels decisions of other courts on claims filed in defense of the honour and dignity of the former President.

## **2. Case for moral damages on behalf of President Jeenbekov**

In early February 2018 President Jeenbekov withdrew his claim for moral compensation against news agency 24.kg after the news portal published a rebuttal and an apology. In April 2018, he also withdrew claims for compensation against journalist Kabay Karabekov after he issued a public apology.

In October 2017, then presidential candidate Sooronbai Jeenbekov had filed for damages in relation to an article by Karabekov *"Visit to Sochi. Repeated talks with the Kremlin about successor?"* which was published by 24.kg news. The article discussed the Kremlin's willingness to cooperate with Jeenbekov and referred to issues that may influence this cooperation. On 6 October 2017 Sverdlovsky District Court of Bishkek ordered the news agency 24.kg and Kabay Karabekov to pay 5 million soms (about EUR 60 000) compensation each. Commenting on the decision of the head of state to withdraw his claim, Kabay Karabekov said: *"This is a good precedent and an example for others. The President promised*

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6 In addition to Zanoza being ordered to pay excessive compensation to the outgoing president, a separate court ruling of July 2017 forbade it from using its trademark. Following this, it launched a new online portal, Kaktus Media.

to defend freedom of speech and has proved he will do so.”<sup>7</sup> These positive precedents show some progress in respect of the right to freedom of expression.

### 3. Criminal Case against Kloop

In October 2017, the State Registration Service announced plans to file a lawsuit against the independent Kloop news agency because of its investigative reporting. Based on an investigation carried out in cooperation with Swedish IT experts, the news agency drew attention to the alleged misuse of the server of the Registration Service, which may have granted Jeenbekov’s campaign inappropriate access to a large amount of detailed government-compiled information on voters. The Registration Service dismissed the findings as “speculation”. Kloop insisted that it had solid evidence to back up its claims, and deemed the state body’s intentions to go to court an “attempt to put pressure” on it and to “distract attention” from the issues raised. The national security services opened a separate inquiry into the information published by Kloop and summoned its journalist Rinat Tukhvatshin for questioning. At the beginning of 2018, no further information about the investigation was available, and the Registration Service had yet to file a lawsuit.

## CRIMINAL CASES INSTIGATED AGAINST INDEPENDENT JOURNALISTS

Despite some positive changes, concerns remain regarding two journalists who face charges under a broadly worded Criminal Code provision on “inciting hatred” because of their writings:

In June 2017, the national security services opened a criminal case against independent journalist **Ulugbek Babakulov** on charges of “inciting inter-ethnic hatred” after he drew attention to aggressive nationalism against ethnic Uzbeks on social media. An article of his discussing this topic appeared on the regional Fergana News site on 23 May. Babakulov was subjected to a public smear campaign, labelled an “enemy of the people” and threatened with being deprived of his citizenship by MPs. The Fergana News site was blocked in Kyrgyzstan by court ruling. Because of the risk of arrest and politically motivated imprisonment, Babakulov fled the country. He said that he had been warned that there were plans to initiate a “show trial” against him similarly to the one against ethnic Uzbek human rights defender Azimjan Askarov, who remains imprisoned for his alleged role in the inter-ethnic violence in Kyrgyzstan in June 2010 (see more on Askarov’s case below). Babakulov has continued to face intimidation abroad and his family, who remains in Bishkek, has been subjected to surveillance, threats and attempts at intrusion into their home by unknown people who they believe are from the security services.

In May 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) recommended that Kyrgyzstan took steps to combat racist media coverage and incidents of hate speech against ethnic minorities, stating in their concluding obligations the concern at “the prevalence of stereotyping and stigmatization of ethnic minorities, including Uzbeks, Turks, Uighurs and Mugat, as well as the incidence of hate speech against them in the media and by public and political figures”. CERD also recommended that Kyrgyzstan take measures to

7 <https://Espub.kg/2018/04/18/polozhitelnyj-precedent-komitet-zashityi-svobody-slova-poxvalil-sooronbaya-zheenbekova/>

ensure journalists and human rights defenders working on the rights of ethnic minorities are able to work without fear of reprisals.

On 12 September 2017, a Bishkek district court sentenced journalist and writer **Zulpukar Sapanov** to four years in prison for “*inciting religious hatred*” in relation to a book he wrote about pre-Islamic faiths and beliefs of the Kyrgyz people. The court found that the book, which was criticised by influential representatives of Islam in the country, “*diminishes the role of Islam as a religion*” and “*creates a negative attitude toward Muslims*”. The prison sentence handed down to the journalist caused an outcry, with the Ombudsman calling it “*a return to the time of inquisition*”. On appeal, Sapanov’s prison sentence was replaced by a two-year suspended sentence and he was released.

In a positive move, on 15 April 2018, criminal charges against journalist **Elnura Alkanova** brought by the state in retaliation at her investigative reporting on alleged corruption, were dropped on the grounds of absence of an offense. In December 2017 the State Service for the Fight against Economic Crimes had opened a criminal case on the alleged disclosure of confidential bank information in two articles authored by Alkanova, about the privatisation of elite cottages outside Bishkek. The articles, published on the regional Fergana News site, discussed irregularities relating to this deal and the possible involvement of people close to the prime minister, referring to documents from the BTA Bank. Representatives of the government dismissed Alkanova’s findings dismissing them as “*fictitious*” and demanded that she refute them and apologise, which she refused to do. Coverage in pro-state media backed up the government’s line. Alkanova was summoned for questioning by police and prohibited from leaving the country during the investigation. On 13 February 2018, she was charged with unlawfully receiving and disclosing information constituting a commercial or bank secret, offenses that each carry a penalty of up to five years in prison.

## **MOVES AGAINST TV STATIONS PROVIDING COVERAGE CRITICAL OF THE GOVERNMENT**

The August 2017 court-ordered closure of a TV station reinforced concerns about restrictions on media freedoms. On 22 August 2017, a Bishkek district court ruled in favour of a request from the Prosecutor General and banned the activities of the September TV station on the grounds that it had allegedly disseminated “*extremist*” material. The charges against the TV station concerned an interview with a former regional police chief, who accused later President Jeenbekov and his brother of misappropriating government funds allocated in connection with the June 2010 events in southern Kyrgyzstan. The court ruling was widely criticised, including by the journalistic community and the Ombudsman. The September TV station is affiliated with Ata-Meken party leader Omurbek Tekebayev, a former Atambayevally who was imprisoned in August 2017. On 27 December 2017, the Supreme Court upheld the ruling against the TV station on appeal.

In another case, on 19 December 2017, a group of court bailiffs and police officers arrived at the offices of NTS, Kyrgyzstan’s largest private TV station, with a court order to seize the station’s property. This order was issued by a local court on that day based on a lawsuit filed by an offshore company. NTS is associated with opposition politician Omurbek Babanov, Jeenbekov’s main rival in the October presidential elections. The TV station considered

the move “*restrictive of freedom of expression*”, and Babanov stated that the TV station was seized through a “raid” and “the use of court”. NTS announced that it would appeal the court decision, raising due process violations and said it would continue its operations pending review. Following the presidential elections, prosecutors also opened a criminal case against Babanov on charges of “*inciting ethnic hatred*” and calling for the violent overthrow of the government during a campaign speech he made in Osh. He left the country after the elections and remained abroad at the time of writing. A further criminal case was opened against him on 28 March 2018 for “*plotting riots*” and “*seizure of power*”.

## **FREE SPEECH CONCERNS AROUND THE ELECTION CAMPAIGN**

The campaign ahead of the presidential elections on 15 October 2017, in which Atambayev endorsed candidate Sooronbai Jeenbekov secured a majority of the vote, was characterized by disproportionate attention and favourable coverage to Jeenbekov. The ODIHR-led international election observation mission, which monitored the elections, voiced concerns about biased media coverage and noted that incumbent President Atambayev de facto campaigned for Jeenbekov on public TV broadcasters. The mission also found that public broadcasters provided unbalanced and out-of-context coverage of a speech delivered by candidate Omurbek Babanov in Osh, implying that his speech incited inter-ethnic hatred. As mentioned before, a criminal case was subsequently opened against Babanov in relation to this speech. Moreover, the international election monitoring mission concluded that defamation claims against media outlets filed by the incumbent president and candidates (see above) “*had an adverse effect on public debate and resulted in self-censorship*”. On Election Day, several attacks on journalists were reported in Osh: journalists were threatened, verbally assaulted, forcefully removed from polling stations and had their equipment confiscated by unidentified perpetrators. The OSCE Representative on Freedom of the Media called on the authorities to swiftly investigate the alleged assaults and bring the perpetrators to justice.

## **OTHER RESTRICTIONS ON FREE SPEECH**

In 2017, a criminal case was initiated against the poet Temirlan Ormukov for alleged “*knowingly making false accusations about the commission of a crime*” after a complaint was filed by an MP, whom the poet accused of corruption. Oktyabrsky District Court of Bishkek ruled to detain Ormukov in pre-trial detention and this decision was upheld by the Bishkek City Court in October 2017. However, the poet was not placed in pre-trial detention for health reasons (he is blind and has suffered two heart attacks). On 29 March 2018, Ormukov was summoned to the Central Department of Internal Affairs of Bishkek. While in detention he cut his stomach with a blade to protest the state persecution against him. He was taken to hospital for treatment before being returned to pre-trial detention on 6 April 2018. Among others, the OSCE Representative on Freedom of the Media has criticised the Criminal Code provision under which he was charged for threatening freedom of expression and de-facto representing a form of criminal defamation.

## **FOREIGN GOVERNMENT CRITICS DENIED ENTRY TO THE COUNTRY**

In three recent cases, journalists and human rights defenders from abroad have been denied entry to Kyrgyzstan on arbitrary grounds.



On 4 June 2017, Tajikistani human rights defender **Nigina Bakhrieva** of the non-governmental think-tank Nota Bene, was refused entry to Kyrgyzstan upon arrival at the airport to conduct a training. She was given no explanation about the reason for the ban nor informed about its duration.

In another case, **Vitaliy Ponomarev**, Central Asia Programme Director for the Moscow-based Human Rights Centre Memorial, was denied entry to Kyrgyzstan on 9 August 2017 when arriving to the country via the land border from Kazakhstan. He was not informed about the reason for the ban. Members of the Civic Solidarity Platform, a network of human rights NGOs from across Europe, the former Soviet Union and North America, protested the decision to ban the well-known human rights defender entry, saying it “raises deep concern as to its motivation”.

On 9 December 2017, the Kyrgyzstani authorities denied entry to **Chris Rickleton**, a British journalist working as Central Asia correspondent for Agence France-Presse (AFP) and deported him. Border officials detained him after he arrived at Bishkek’s Manas airport on a flight from Colombo via Dubai and told him that he had to leave on the following flight back to Dubai. The grounds for the deportation order were not clear. In an appeal to new President Jeenbekov published on Facebook, Rickleton said that he had been given no explanation and that he had not violated the 60-day visa free stay allowed for passport holders from the UK. He also said that since he started working for the AFP he has failed to obtain long-term accreditation with Kyrgyzstan’s Foreign Ministry, despite applying several times. He has been questioned by the security services in this context. Rickleton has been based in Kyrgyzstan for eight years and his wife and daughter are both citizens of the country. In early 2018, Rickleton told media that he had received a response from the security services to his complaint about his deportation and was planning to file an appeal.

## RECOMMENDATIONS

The authorities of Kyrgyzstan should implement the following recommendations:

- Public officials should refrain from hostile and stigmatizing rhetoric portraying independent media, journalists, human rights defenders and government critics as threats to national security and instead publicly welcome and encourage open debate on problems and challenges facing the country.
- Public officials should refrain from initiating defamation lawsuits in retaliation against independent media, journalists, human rights defenders and others who criticize their policies, and the country’s courts should ensure that no one is penalized merely for criticizing the authorities.
- The authorities should abolish the role of the Prosecutor General with respect to initiating legal action to defend the honour and dignity of the president, as being inconsistent with national and international human rights standards. All defamation lawsuits initiated by this office on behalf of the president should be withdrawn.
- Any defamation lawsuits submitted to court should be examined in full accordance with fair trial guarantees, and any decision handed down on such lawsuits should be consistent with international provisions protecting freedom of expression and the strict requirements with respect to restrictions on this right. Any amounts awarded

in moral compensation should be reasonable and proportionate to the damage deemed to have been inflicted.

- The authorities should protect the right to freedom of expression on the internet and ensure that no measures are taken to unduly restrict the rights of social media and other internet users in violation of national and international standards.
- The authorities should ensure that journalists are not detained when carrying out their professional activities and investigate all reported cases of detentions carried out on this ground.
- The authorities should ensure that journalists and human rights defenders are not arbitrarily denied access to public events they seek to cover in their professional capacity.

## Human rights defenders

### JUSTICE ELUDES HUMAN RIGHTS DEFENDER AZIMJAN ASKAROV

Imprisoned human rights defender, Azimjan Askarov, who is serving a life sentence for his alleged role in the June 2010 inter-ethnic violence in Southern Kyrgyzstan, appealed a court decision to confiscate his family home. The decision was made as part of the implementation of the 2010 court ruling against Askarov, although national legislation prohibits confiscating property where family members of convicted individuals live and Askarov's wife resides in the house. In September 2017, a local court in the Jalal-Abad region approved Askarov's complaint and repealed the earlier decision sanctioning the confiscation of the house. Askarov's wife, Khadicha Askarova commented on this ruling by saying that it was *"the first step toward justice and rule of law"* taken by authorities in her husband's case.

In a March 2016 decision the UN Human Rights Committee concluded that Askarov had been arbitrarily detained, tortured and subjected to inhumane treatment and that his right to prepare his defence and examine witnesses had been violated. It called for his immediate release and for the conviction to be quashed.

### RECOMMENDATIONS

The Kyrgyzstani authorities should be requested to:

- Fully implement the UN Human Rights Committee's decision in the case of Azimjan Askarov, including by releasing him, quashing his initial conviction and granting him adequate compensation.
- Ensure that the treatment of Azimjan Askarov in detention corresponds to international standards, including by granting him access to adequate medical assistance, as well as all medication he needs for his health problems.
- Ensure that human rights defenders can carry out their work without pressure and properly investigate all allegations of intimidation and harassment targeting defenders.
- Take concrete steps, in accordance with the guidelines and recommendations of

UN bodies, the Venice Commission, the OSCE Office of Democratic Institutions and Human Rights and other international human rights mechanisms to ensure an enabling environment for human rights defenders.

## Freedom of association

The activities of NGOs in the Kyrgyz Republic are regulated by the 1999 *Law On Non-Profit Organizations*. Draft amendments proposed in 2014 which would have enabled the government to label certain Kyrgyzstani NGOs as “foreign agents” if they received financial support from abroad was rejected by Parliament in May 2016. As of April 2018, there are no new legislative initiatives concerning registration, financing, control or other aspects of CSOs, including human rights organizations. Currently there are no reports of restrictions on NGOs regarding the receipt of foreign funding or in relation to opening bank accounts, and registration processes function.

However, the situation of the human rights movement Bir Duino-Kyrgyzstan raises serious concern. The beginning of 2018 saw further developments in the case relating to the defamation claim of human rights movement Bir Duino-Kyrgyzstan against the State Committee for National Security (SCNS). In a press release of 24 January last year, the SCNS accused Bir Duino-Kyrgyzstan of obstructing a law enforcement operation to detain a person suspected of extremism in the Osh region. Bir Duino-Kyrgyzstan rejected this accusation as groundless, stressing that no one from the NGO had been present when the detention took place, and that the SCNS claims were an attempt to discredit the human rights organization. The Pervomaysky District Court of Bishkek partially satisfied Bir Duino-Kyrgyzstan’s complaint, finding the information disseminated by the SCNS to be untrue and ruling that the SCNS should refute the claims in a public statement. However, on 25 January 2018, after an appeal by the SCNS, Bishkek City Court quashed the decision of the court of first instance.<sup>8</sup> Bir Duino-Kyrgyzstan will appeal the decision to the Supreme Court.

### RESTRICTIONS ON NGO MONITORING OF ELECTIONS

Legislative amendments restricting civil society election monitoring were introduced prior to the October 2017 presidential elections. The legislative amendments which were signed into law in June last year limited the number of NGO monitors during elections and restricted their rights to freely move around and be present at polling stations. The amendments also deprived NGO monitors of the right to appeal against decisions, measures or the lack of measures by election commissions. MPs sought to justify the new provisions by claiming that civil society monitors “lack objectivity” and may “disturb” the conduct of elections by favouring certain candidates. Civil society actors criticised the amendments, with a representative of the Adilet legal clinic saying that they rendered it “meaningless” to carry out election monitoring since NGO observers would not be able to respond to documented violations. The ODIHR led international mission, which monitored the presidential elections, also criticised these restrictions.

8 <http://birduino.kg/ru/prensa/683-press-reliz-pd-bir-dujno-kyrgyzstan>

## RECOMMENDATIONS

The authorities of Kyrgyzstan should be requested to:

- Closely cooperate with NGOs on developing and improving the country's legislation and policies, in particular with respect to any instruments or mechanisms that directly affect the operation of civil society organizations;
- Public officials should refrain from hostile and stigmatizing rhetoric portraying human rights defenders as threats to national security and instead publicly welcome and encourage open debate on problems and challenges facing the country;
- Raise concerns about the situation regarding the NGO Bir Duino-Kyrgyzstan.

## Freedom of peaceful assembly

The current *Law on Assemblies*, which was adopted in 2012, protects the right to hold assemblies without advance permission by authorities and obliges authorities to safeguard both planned and spontaneous peaceful assemblies. Authorities may only ban assemblies if these are aimed at promoting unlawful causes or objectives, such as propaganda of war and violence, and they may only restrict the time or place of assemblies in order to ensure the safety of participants and other citizens. Authorities must request a court to review the lawfulness of any decision to ban or restrict assemblies within 24 hours.

However, during the period leading up to the presidential elections in October 2017, courts banned holding protests in key locations in the capital. In July 2017, a Bishkek court ruled in favour of a request from the mayor's office to prohibit assemblies (with the exception of official events) at the central Ala-Too Square, outside the Parliament and Presidential Office, as well as at several other locations in the capital's Pervomaysky District from 27 July to 20 October. The mayor's office argued that assemblies at these centrally located Bishkek venues create discomfort for residents, disturb transport and traffic and lead to violations of sanitary regulations. The mayor's office also referred to the preparations for the Day of Independence on 31 August and the presidential election on 15 October 2017, as well as "recent developments in the world, including increasing manifestations of religious extremism".

In late September 2017, another local court approved a similar request from the mayor's office and banned assemblies in the capital's Oktyabrsky District until 20 October. This measure followed an initiative by civil society activists to organize a peaceful march on 30 September to call on the presidential candidates to ensure fair elections.

On 8 November 2017, the Pervomaysky District Court handed down yet another problematic decision, banning all assemblies from being held outside the Presidential Office and the Parliament, the House of Government, the Central Election Committee, and court buildings in this district of the capital through 1 December. The ban covered the period before and after the inauguration of the new president on 24 November. In its ruling, the court argued that assemblies disrupt "*the stability of vital functions*" in the capital and cause "concern and discontent" on the part of citizens, especially elderly ones.

The court bans described above were highly problematic in the light of both national and international standards on freedom of peaceful assembly. In accordance with international law, peaceful assemblies may only be restricted on certain legitimate grounds, including for reasons of protecting national security, public order, health or morals, or the rights and freedoms of others, and any restrictions must be necessary and proportionate to these objectives and limited to the period when the threats persist.

On 12 April 2018, the Supreme Court granted the complaint of the Green Party of Kyrgyzstan and reversed the unlawful decisions of the lower courts, which established another automatic ban on holding peaceful assemblies in the Leninsky district of Bishkek from 1 to 15 April 2018. The lower courts had justified their decisions on the grounds of “maintaining law and order, security and preventing terrorist acts” during the celebration of the anniversary of the April Revolution. It is important to note that this is the first time that a higher court cancels the decisions of lower courts on allegations of violation of the right to freedom of peaceful assembly.

Additionally, at an NGO roundtable held in December 2017 to discuss challenges to peaceful assembly in the country, human rights activists expressed concerns that individuals who take part in peaceful protests increasingly have been subjected to intimidation, pressure and surveillance by law enforcement authorities.

Since January 2018, dozens of peaceful assemblies have taken place in Kyrgyzstan on a range of economic, social and political issues. For example: a rally of civil activists near the Supreme Court building in support of President Sooronbai Jeenbekov’s undertaking to combat corruption in the law enforcement and judicial system<sup>9</sup>; a picket by civil activist Ondorush Toktonasyrov who held a protest calling for independent medical care for three prisoners on hunger strike;<sup>10</sup> a rally of opposition supporters demanding the resignation of the head of the SNSC;<sup>11</sup> a protest by firefighters calling for higher wages;<sup>12</sup> action in memory of those killed in the Aksy events in 2002;<sup>13</sup> strike of cargo carriers against corruption in the Ministry of Transport and Roads;<sup>14</sup> protest of the residents of Toguz-Torous district of Jalal-Abad region against the construction of a gold mining plant.<sup>15</sup> Most of the meetings were peaceful and conducted without undue interference by the authorities.

However, the authorities’ selective and discriminatory attitude towards imposing limits and bans on peaceful assemblies remains a key challenge. The authorities do not fully take into account their duty to promote the realization of the right to freedom of assembly, and to preserve the balance between the protection of the right of people to express their opinion through meetings and the protection of those who do not participate in the meetings from unjustified encumbrances.

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9 <https://24.kg/vlast/77686/>

10 <https://24.kg/obschestvo/75832/>

11 <https://24.kg/obschestvo/76037/>

12 <https://ru.sputnik.kg/video/20180305/1038019556/bishkeke-miting-pozharnye-trebovaniya.html>

13 <https://24.kg/obschestvo/78808/>

14 <https://kloop.kg/blog/2018/04/02/gruzoperevozchiki-tozhe-bastuyut-obyasnyayem-pochemu/>

15 <https://24.kg/proisshествija/81210/>; <https://kaktus.media/372964>

For example, on 17 April 2018 some 15 employees of the Academy of Experimental and Traditional Medicine organized a protest near the White House, (where Parliament and the Office of the President are situated), against their eviction from the building in which they have been working for ten years. The police and security officials of the White House told the protesters to disperse, as their rally was not sanctioned. The actions of the police in this case violated the Constitution and the *Law On Peaceful Assembly*, according to which everyone has the right to freedom of peaceful assembly and banning or restricting of a peaceful assembly on the grounds of absence of notification, non-compliance with the notification form, content and timing is prohibited.

It is worth noting that the police did not ask residents of the Toguz-Toro District who were protecting against the construction of a new gold mining plant and demanding the release of individuals detained after riots on 11 April. Both meetings took place in the same area (near the “White House”), at the same time and without official notice (“authorization”).

Therefore despite recent improvements there are still restrictions imposed on the right to assembly in Kyrgyzstan.

## RECOMMENDATIONS

The Kyrgyzstani authorities should be requested to:

- Refrain from actions restricting the right to freedom of assembly in violation of national legislation and take all necessary measures to facilitate the conduct of all peaceful assemblies.
- Ensure that any restrictions imposed on the conduct of assemblies are consistent with the requirements of the *Law on Peaceful Assembly* and that such restrictions are promptly reviewed by court.

## Torture and other ill-treatment

Torture and ill-treatment continue to be widely used across Kyrgyzstan. While beatings and hitting with various objects are most frequently used, cases of abuse with electric shock and suffocation also continue to be reported. Our key concerns are outlined below.

### ONGOING USE OF TORTURE AND ILL-TREATMENT

Law enforcement and state security officials often use torture and ill-treatment to extract confessions of guilt from detainees as well as to extort cash payments. Comprehensive research conducted by the Kyrgyzstan Coalition against Torture in 2017 which covered 28 detention facilities in Kyrgyzstan concluded that one third of over 600 respondents reported that they had been subjected to torture or ill-treatment.<sup>16</sup> The annual report of the National Preventative Mechanism which was presented to parliament in April 2018 also confirmed that one third of detainees reported having been subjected to torture or other

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16 Report on use of torture in IVS and SIZOs in the Republic of Kyrgyzstan: <https://notorture.kg/files/pdf/Otchet%20po%20Indeksu.pdf>

ill-treatment.<sup>17</sup> On 11 April 2018, the National Centre of the Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (NPM) reported to Parliament that for the year 2016 they received 209 complaints about torture. The NPM also reported receiving 217 complaints about torture and ill-treatment in 2017. The Prosecutor General's Office reported receiving 435 complaints about torture or ill-treatment in 2017.

## **THE LACK OF EFFECTIVE INVESTIGATORY MECHANISMS AND IMPUNITY FOR TORTURE**

Impunity for perpetrators of torture persists. The lack of comprehensive, effective, prompt and impartial investigatory mechanisms remains the main obstacle faced by torture victims in accessing justice. In many cases courts in Kyrgyzstan continue to ignore reports of torture made by defendants and their lawyers and judges make decisions based on confessions extracted through coercion. Such engrained judicial practices make it very difficult to combat torture and impunity.

The authorities have still not conducted an effective investigation into allegations of torture made by those imprisoned in connection with the June 2010 inter-ethnic clashes in Southern Kyrgyzstan. Another striking example of the lack of comprehensive investigation into allegations of torture is the case of human rights activist Azimjon Askarov (see above).

Although Article 305-1 was introduced into the Criminal Code of Kyrgyzstan in 2003 to specifically punish torture, only nine police officers have to date been convicted for this crime. Others have been charged under other articles of the Criminal Code such as "exceeding official authority" or "negligence", but no comprehensive statistics are available on these cases.

Article 132, part 2 of the Civil Procedural Code of Kyrgyzstan stipulates that for compensation suits the claimant has to provide sufficient evidence. In cases involving torture or other ill-treatment the conviction of the perpetrator qualifies as sufficient evidence. However, for victims of torture in whose cases the perpetrator has not been brought to justice are often not able to receive compensation.

## **ARBITRARY DETENTION AND ARREST**

Law enforcement bodies often arbitrarily detain those suspected of involvement in so-called "anti-constitutional" crimes related to religious extremism and terrorism. The legal definitions of these crimes are vague and often arbitrarily applied.

During investigations of the June 2010 events people were in many cases arbitrarily detained and arrested, threatened and subjected to extortion in exchange for dropping complaints.

Often, important procedural safeguards such as registration procedures in places of detention are not respected. Current procedural legislation does not provide comprehensive rules and terms of arrest, which leads to arbitrary application of the law. Domestic legislation does not provide for a Habeas Corpus procedure.

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<sup>17</sup> <http://npm.kg/ru/analitika-i-dokumenty/ezhegodnye-doklady/>

## **SAFETY AND SECURITY OF DEFENCE LAWYERS AND HUMAN RIGHTS DEFENDERS**

The authorities fail to ensure the safety of defence lawyers during trials. There are dozens of cases when lawyers defending ethnic minorities in litigation cases related to the 2010 June events have been threatened and beaten. The NGO “Spravedlivost” submitted 16 individual complaints to the UN Human Rights Committee regarding violations of Articles 7,9,10 and 14 of the ICCPR. Human rights defenders have also been subjected to prosecution, harassment and interference for their activities.

**For example,** On 28 April 2017, lawyers Mukhaye Abdurupov and Aisalkyn Karabaev were beaten up by a group of unknown people at Osh city court as they represented client Nargiz Rajapova who alleges that she was tortured by police officers after being arrested on suspicion of fraud related to the murder of a police colonel, Tair Ularov. Rajapova reported that in order to pressurize her to confess that she was involved in fraud she was beaten on the stomach with a bottle of water; a bag was put on her head until she lost consciousness and needles were inserted under her fingernails. Rajapova’s brother and husband were found guilty of murder and sentenced to 23 and 7 years of imprisonment. The case against Rajapova involved serious procedural violations – relatives of the deceased colonel exerted pressure on the judge and behaved in a provocative manner. The judge ruled not to allow the defence lawyers to present their case and granted the police investigator’s request to detain Rajapova in pre-trial detention. An aggressive crowd subsequently attacked the lawyers, causing bruising and injuries. The lawyers lodged a complaint about the beating on 2 May 2017 with the Council of Advokatura and the State Committee for National Security. There was some speculation that the police force was involved in orchestrating the beatings.

Furthermore in May 2018, as the trial those accused of murder of the police colonel concluded, several relatives of the deceased attacked defence lawyer Ramazan Kojomkulov in Osh regional Court.<sup>18</sup>

## **DETENTION CONDITIONS EQUATING INHUMAN TREATMENT**

Detainees and prisoners suffer extremely poor food and a lack of basic sanitary facilities and heating. Following his mission to Kyrgyzstan in December 2011, the Special Rapporteur on Torture, Juan Mendez, equated the conditions of Kyrgyzstan’s detention facilities to torture or inhumane treatment and punishment.<sup>19</sup> Since then the authorities have done little to improve the conditions and Kyrgyzstan still fails to adhere to the international standard minimum rules for conditions in detention facilities.

## **FAILURE TO IMPLEMENT DECISIONS BY UN BODIES**

To date, the UN Human Rights Committee has reviewed several individual complaints from victims of torture or ill-treatment in Kyrgyzstan and ruled that effective investigations into the allegations should be carried out; that the perpetrators be brought to justice; and that

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18 [https://24.kg/proisshestvija/84178\\_vgorodeosh\\_izbili\\_advokata/](https://24.kg/proisshestvija/84178_vgorodeosh_izbili_advokata/)

19 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Kyrgyzstan: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61-Add2_en.pdf)



the victims be provided with full reparation, including appropriate compensation. However, none of these rulings has been fully implemented in Kyrgyzstan. Domestic legislation does not provide for the implementation of decisions by international bodies such as the Human Rights Committee although Kyrgyzstan ratified the First Optional Protocol to the International Covenant on Civil and Political Rights and committed itself to recognize the Committee's competence to consider individual complaints.

## **NATIONAL PREVENTIVE MECHANISM**

In June 2012, Kyrgyzstan established a National Preventive Mechanism (NPM) to prevent torture: the National Centre of the Kyrgyz Republic on Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. Civil society organizations play an active role in the functioning of the NPM. However, parliamentarians are currently taking steps to try to limit or revoke the mandate and activities of the NPM, after finding in April 2018 that it was operating in an "unsatisfactory" manner. The latest moves include legislative initiatives which could undermine the independence of the NPM (and the engagement of civil society) and stress that the NPM should remain free from political and state influence.<sup>20</sup>

## **RECOMMENDATIONS**

We urge you to raise the above concerns about torture and ill-treatment with the Government of Kyrgyzstan at the upcoming EU-Kyrgyzstan Human Rights Dialogue and ask what steps are being taken to address them. Specifically, we ask you to put forward the following recommendations to the Government of Kyrgyzstan:

- Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment;
- Introduce clear provisions in domestic legislation on the right of torture victims to reparation, including fair and adequate compensation and rehabilitation for damages caused by torture, regardless of whether perpetrators of such acts have been brought to justice. Legislate that the state must provide compensation for torture or other ill-treatment.
- Implement all decisions the UN Human Rights Committee has made under its Individual Complaints Procedure.
- Ensure that any statement or confession made as a result of torture or other coercion, be excluded by the court, except in proceedings against the alleged perpetrators of torture;
- Reopen proceedings related to the June events of 2010 and ensure that all allegations of torture are investigated, that all evidence obtained through coercion is disregarded and prisoners retried in fair proceedings;
- Take urgent steps to improve conditions in all prisons and other detention facilities to ensure compliance with international standards, including the UN Standard

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<sup>20</sup> [https://kaktus.media/doc/372949\\_pytki\\_v\\_kyrgyzstane.\\_kak\\_parlament\\_vyshel\\_za\\_ramki\\_polnomochiy.html](https://kaktus.media/doc/372949_pytki_v_kyrgyzstane._kak_parlament_vyshel_za_ramki_polnomochiy.html)

Minimum Rules for the Treatment of Prisoners;

- Ensure that human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal, obstruction or legal and administrative harassment;
- Adopt legislative measures, in particular to the CPC and the *Law on Operative Investigations*, to remove all restrictions on access to justice.
- Ensure that the NPM is allowed to continue operating independently and in a manner that is free from political influence.