



FREEDOM OF ASSOCIATION: A DOWNWARD SPIRAL

An Update on Developments in the Countries of the Former Soviet Union since the OSCE Ministerial Council Meeting in Basel, 4-5 December 2014

April 2015¹

Introduction

Last December participants of the Civil Society Parallel Conference issued recommendations to OSCE participating states, political bodies and institutions prior to the Ministerial Council Meeting in Basel, on the need to take decisive steps to protect fundamental rights covered by the OSCE commitments, including freedom of association. However, since then the climate in which NGOs operate across the former Soviet Union region (FSU) has become even more hostile and insecure.

The Russian government's approach towards NGOs, in particular the so-called "Foreign Agents Law", has been an unfortunate source of "inspiration" for governments and lawmakers in the region, who have been quick to share the "worst practices" with each other. States have run smear campaigns to discredit NGOs, calling them "traitors" and the "fifth column" and have further limited the space for civil society in laws and practices. NGOs face increasingly restrictive administrative requirements, problematic registration procedures, and their access to resources and funding is further restricted. This is the case not only for human rights organisations but also those working in such fields as election-monitoring, fighting corruption, protecting the environment, conducting social research, and others.

Bans on the activity of unregistered or informal associations, which exist increasingly in OSCE participating States, contradict international standards on freedom of association and essentially outlaw the activities of volunteer groups and organisations who have lost their registration or been unable to register as a result of decisions by the authorities. Criminal liability for activities on behalf of unregistered associations in several countries increases the risk of prosecution for civil society activists.

In a number of countries civic activists are arrested, charged and convicted under dubious or fabricated charges and others are forced to flee the country for fear of persecution.

¹ This paper has been produced by International Partnership for Human Rights on the basis of contributions from members of the Civic Solidarity Platform for distribution at the OSCE Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association on 16-17 April 2015. For more information about IPHR and the Civic Solidarity Platform, please see iphronline.org and civicsolidarity.org.

This document provides an overview of some of the most significant developments in relation to freedom of association and the situation on human rights defenders in the countries of the FSU region. It is a follow up document to the "Civil Society Recommendations to the Participants of the OSCE Ministerial Council meeting in Basel, 4-5 December 2014".²

Country situations

Since summer 2014 NGOs in **Russia** have come under increasing pressure from the authorities in connection with the law "on foreign agents". Representatives of the Ministry of Justice and Prosecutor's office have begun a new round of inspections resulting in 52 NGOs included in the "foreign agents" register without their consent at the time of writing of this report. According to Russian experts, authorities have classified 70 different types of NGO activities as "political", including the submission of reports to UN bodies. Administrative charges have subsequently been brought against NGOs for carrying out activities without having voluntarily applied to be listed in the register, and fines have been imposed of up to 500,000 roubles for an organisation and 300,000 for the leader of an organisation. Despite the Constitutional Court decision of 8 April 2014, courts do not usually order penalties below the minimum in administrative cases against NGOs. In only three cases did the court rule to impose a lower fine³. In three cases courts found that no administrative offence had been committed and refused to impose penalties, but courts of appeal subsequently overruled the decisions by the courts of first instance in two of those cases⁴. Most NGOs which were included in the register of "foreign agents" without their consent, have appealed or plan to appeal, but in the first cases courts have already dismissed appeals by NGOs as unfounded, including appeals by the "Union of Women of the Don" and the Human Rights Centre "Memorial". The NGOs have lodged further appeals.

In an alarming development in 2015 prosecutor's offices have begun checking for possible violations of the law "On Education". NGOs are aware of at least two audits of organizations (the Free University in Voronezh and the Sakharov Centre) which called into question awareness raising activities such as seminars and discussions. The NGOs could face liquidation if the authorities conclude that activities are not awareness raising but educational activities for which a license is required.

On 20 January 2015, the Russian parliament approved a draft law on "Undesirable Foreign Organisations" in the first reading. If adopted, the law would allow the authorities to ban foreign and international organizations whose activities they deem "threaten the defence or security of the State or public order and the health of the population". These terms are not further defined in the law, and local and international human rights groups believe that the law would provide the authorities with an additional tool to clamp down on foreign and international human rights groups and silence human rights reporting. If an organisation is deemed "undesirable", it is considered on a par with an extremist or a terrorist organisation, prevented from disseminating information, organising or participating in public events or conducting any other activity in Russia. Furthermore, Russian citizens who continue to cooperate with and work in such organisations despite the ban risk stiff fines or even prison sentences while foreign citizens can be banned from entering the Russian Federation. In addition,

² See <http://www.osce.org/cio/129836?download=true>

³ "Ecodefense" in Kaliningrad (100.000 RUR); "Citizens' Watch" in St. Petersburg (200.000 RUR) and the Study Centre for Ecology and Safety in Samara (150.000 RUR).

⁴ Kaliningrad Regional Human Rights Centre, Krasnodar Regional Association of University Graduates, where decisions by the courts of first instance were overturned on appeal, and the Institute for Press Development - Siberia (Novosibirsk), whose case has not yet been heard at appeal.

local and international human rights groups are concerned that the vaguely worded article on treason in the Criminal Code of the Russian Federation (Article 275) adopted earlier in 2012 could be applied to individuals cooperating with international and foreign organisations and citizens to punish them for their legitimate activities as human rights defenders.

In March 2015, President Putin told representatives of the Federal Security Service (FSB) that western special services continue to “use non-governmental organisations” to “discredit the authorities and de-stabilise the internal situation in Russia” and said that there were signs that this activity would increase prior to the election campaigns in 2016-2018. Therefore, there is good reason to believe that the campaign of pressure and harassment of civil society organisations in Russia will increase further.

In **Azerbaijan**, an unprecedented government crackdown on NGOs and civic activists has continued in an atmosphere of increasing hostility towards those NGOs which receive foreign funding in support of their work. In December 2014, Ramiz Mekhdiev, Head of the Presidential Administration, compared the work of NGOs to the “fifth column” activities funded by the USA. Such spurious accusations are increasingly used by the Azerbaijani government to justify its criminalization of fundamental rights such as the right to freedom of association.

2014 amendments to the registration and funding laws in Azerbaijan that restrict NGO access to domestic and foreign funding have led to a growing number of NGOs being forced to suspend their activities, and dozens of activists have had to flee the country or go into hiding. The government has increased powers to dissolve organizations or freeze their bank accounts⁵ for minor administrative infractions, and can deny international funding to NGOs if they deem an activity to “undermine state interests”. In December 2014, the Council of Europe’s Venice Commission published a legal opinion on the legislative amendments, concluding that the stringent registration requirements, new reporting obligations, penalties for relatively minor administrative offences and the requirement to obtain government approval all donors and projects “further restrict the operations of NGOs in Azerbaijan” and would have a “chilling effect” on civil society⁶.

In December 2014 the organisation “Internews-Azerbaijan” closed its mediaforum.az website after failing to get the project registered with the state agencies; in March the Azerbaijani office of the Helsinki Citizens’ Assembly announced it may lose its office due to lack of resources after not being able to register grants.

Continued state harassment, persecution and intimidation of prominent civil society activists and journalists in recent months signals not only further restrictions on the public sphere in Azerbaijan, but also raises fears that anyone who attempts to expose human rights violations may share the fate of imprisoned government critics.

Over the course of 2014, the Azerbaijani authorities convicted or imprisoned at least 34 journalists, bloggers, human rights defenders and civil society activists, including award-winning investigative journalist Khadija Ismayilova, human rights and peace activists Leyla and Arif Yunus, leading civil rights lawyer Intigam Aliyev, Director of the NGO “Human Rights Club” Rasul Jafarov, and journalist Rauf Mirkadyrov. All of these people face the threat of long prison sentences under sham charges such as ‘tax evasion’, ‘high treason’, ‘illegal entrepreneurship’ and ‘abuse of power’. In January 2015,

⁵ Since May 2014 over 50 independent organisations have had their bank accounts frozen.

⁶ European Commission for Democracy through Law (Venice Commission) Opinion on the Law on Non-governmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan.
http://www.coe.int/t/ngo/Source/Venice_Comm_opinion_787_2014_amendments_NGO_law_Az_en.pdf

additional charges were brought against Rasul Jafarov and Intigam Aliyev (forgery and misappropriation of large amounts, punishable by 12 years of imprisonment). Their trials are ongoing at the time of writing. On 30 March a Human Rights Watch representative Giorgi Gogia travelled to Azerbaijan to observe the trials but was held in Baku airport for 31 hours before being denied entry and put on a return flight.

In February, a Swiss television programme reported that Emin Huseinov, Director of the “Institute of Reporters’ Freedom and Safety” has been in hiding in the Swiss embassy in Baku since August 2014. He is wanted by the Azerbaijani authorities on charges of tax evasion and abuse of power.

In December 2014 the NGO watchdog “Centre for Election Monitoring and Democracy Studies” ceased its activities following the arrests and convictions in April of its chair Anar Mammadli and managing director Bashir Suleymanli. On 18 March 2015 President Aliyev pardoned Bashir Suleymanli and he was released from detention.

In **Armenia**, there are fears that the government intends to follow the general trend in the region and tighten legislation governing NGOs. Currently, draft amendments to the Law on NGOs are awaiting government review, after discussion with civil society and the public. Proposed legislative changes include requiring NGOs to publish annual financial and activity reports on a dedicated website; compulsory audits for state funded projects; and compulsory registration of NGO volunteers with the tax services. In addition, NGOs which have twice failed to comply with legislative requirements will be liable to have their registration rescinded. A rare improvement to the NGO law allows NGOs to undertake entrepreneurial activities, provided the income received is used for the purposes stated in the NGO charter.

In **Georgia** in recent months powerful political voices have been attempting to discredit civil society leaders and organizations, with personal attacks against civil society leaders and accusations of corruption against major international development organizations. Polarizing news outlets publish articles discrediting civil society representatives and political figures publically allude to the outsized influence of NGOs – and a worrying trend of mistrust of civil society is emerging in Georgia.

In **Belarus** the already very difficult situation for civil society and human rights defenders continues to diminish further. A framework of restrictive laws is implemented in a manner which violates the right to freedom of association and leaves NGOs with limited operating options. Civil society organizations critical of the authorities and NGOs which the authorities do not consider “useful” find it impossible to register and receive funding and therefore face closure. It is a criminal offence for a non-registered NGO to carry out activities or to violate the procedure for receiving foreign donations. Individual activists face arbitrary detention and prosecution. In October 2014, the UN Human Rights Committee concluded in its views on the case of Ales Bialiatski that his right to freedom of association (ICCPR, Article 22) had been violated when the Belarusian authorities refused to register his NGO “Viasna” on three separate occasions for minor administrative and bureaucratic reasons⁷.

In October, the Belarusian authorities revoked the residence permit of Elena Tonkacheva, a Russian citizen and Head of the Board of the independent NGO “Legal Transformation Centre (Lawtrend)” and informed her that she would be deported in connection with minor speeding infractions. She was forced to leave Belarus in February 2015 and is now banned from entering the country for 3 years.

⁷ UN Human Rights Committee, Communication No. 2165/2012 Views adopted by the Committee at its 112th session (1-31 October 2014) <http://www.ccrcentre.org/doc/2014/11/2165-2012-Pinchuk-v.-Belarus.pdf>

The actions of the authorities were clearly politically motivated. On 22 December 2014 activist Yury Rubtsov was sentenced to 18 months imprisonment for “insulting a judge” at an administrative hearing in April after being arrested during a “Chernobyl Way” opposition rally wearing a T-shirt which read “Lukashenka, Go Away!”. On 8 April 2015 police searched the home of human rights activist Leanid Sudalenka in Homel while he was on a trip abroad to Sweden.

In February 2015 the **Moldovan** Supreme Court of Justice ruled to disband two registered NGOs “Falun Gong” and “Falun Dafa” whose symbols were deemed to be extremist. Falun Gong activists maintain the decision was politically motivated.

Protecting the right of association in the Transnistrian region of Moldova is challenging as Moldovan human rights NGOs are not allowed to carry out activities in the region, and local activists are not allowed to cooperate or communicate with NGOs based in other parts of the country. Since November 2014, Transnistrian authorities have prepared draft amendments to the laws “On non-governmental organisations”, “On state registration of legal persons and individual entrepreneurs”, “On civil associations”, “On Political Parties”, as well as to the Civil and Criminal Codes which are designed to restrict external funding for NGOs. Observers believe that these legislative changes are part of a clampdown on independent NGO activity. Under the draft legislation, organisations wishing to participate in election campaigns will be eligible to receive funding from abroad provided they have registered as a “foreign agent” or as a representative of a foreign organisation, and agree to comply with more stringent reporting requirements.

NGOs are already being portrayed as “foreign agents” by Transnistrian media - on 20 November online news agency “Pridnestrovie Today” posted an article under the headline “Non-profit organisations – Western agents of influence who undermine the social values of the “Russian World” in the region”, and political leaders in Tiraspol urged strengthened counter-intelligence activities and suppression of foreign financing of NGOs who they allege are trying to destroy the “Transnistrian state”. In February 2015 the “Transnistrian Supreme Council” drafted a bill requiring NGOs to publish quarterly information on their sources of funding.

In **Ukraine** the re-registration process for NGOs will continue until 2017, as stipulated in the 2014 amendments to the Law “On Public Associations”. Recent changes in the tax legislation may create difficulties for NGOs who have not voluntarily signed up to the state register of organisations receiving humanitarian aid which is compiled by the Ministry of Social Policy. Some activists are concerned that this could result in some NGOs who implement humanitarian assistance programmes incurring taxes on the assistance they provide, including foreign aid. Legislation governing volunteer activities is increasingly bureaucratic and is complicating relations between “volunteers”, “voluntary organizations”, “recipients of volunteer services” and the state. In practice the majority of volunteers simply ignore the law and work individually or with the help of public organizations of any other legal status.

From 2014 to date there have been instances of Ukrainian courts prohibiting the activities of organizations accused of “separatist activities”. For example, in February 2015 the Odessa City court ruled to end the activities of the organisation “Youth Unity.” Due to the conflict situation, it is currently difficult to assess whether such rulings are unfounded or just, and this new phenomenon needs to be monitored on a case-by-case basis. In the territories under the control of pro-Russian separatists such as the “Donetsk People’s Republic (DPR)” and the “Luhansk People’s Republic (LNR)” there have been reports of the detention, torture, and enforced disappearance of activists involved in Ukrainian NGOs or political parties by pro-Russian armed groups.

Russian laws limiting the right to freedom of association have been extended to Crimea after its annexation by Russia, leading to a clampdown on pro-Ukrainian NGOs, many of whom have ceased to operate or relocated to mainland Ukraine. The Crimean Tatar community has been particularly harshly affected. This was the case for the Crimean Tatar organisation “Crimea Foundation”, which in September 2014 had its bank accounts frozen, in November was made to pay a fine of 4.5 million roubles and in December was refused registration as a non-commercial organisation, on the formal grounds that the organisation had used two names in different documents.

NGOs in Crimea have experienced pressure to re-register under Russian law, although only a few have succeeded in doing so. The Human Rights Ombudsman for Crimea reported that in 2014 fewer than 400 NGOs managed to re-register out of more than 10,000 registered in 2013, and that as of October 2014 only three human rights NGOs had managed to re-register⁸.

The situation for NGOs in **Central Asia** is worrying as civil society organisations operate in an increasingly insecure environment.⁹ In **Turkmenistan** and **Uzbekistan** limitations on access to funding coupled with onerous registration requirements which are not transparent seem to have been designed specifically to entirely repress the activity of independent NGOs and amount to unreasonable interference with the activities of associations. In practice, only NGOs established by or with direct support of the government are able to function in these two countries. Recent problematic draft legislation initiated in Kyrgyzstan, Tajikistan and Kazakhstan gives cause for concern that these countries are intent on following the same path. Existing NGO legislation in these three countries does not provide sufficient safeguards to activists and groups to freely exercise their right to freedom of association. If adopted, draft legislation currently under consideration in the three countries will further limit the space in which they can operate.

In **Kazakhstan**, the new Criminal Code that came into force in January 2015 and other related laws contain provisions that could be used to harass and obstruct the work of NGOs and their members.¹⁰ The new Criminal Code criminalizes involvement in unregistered associations, as well as “unlawful interference” in the activities of state agencies by members of public associations and provides for stiffer penalties for leaders of public associations for a number of crimes. There are also concerns that new legislation restricting access to funding of NGOs may be adopted in Kazakhstan. Draft legislation on state grant-making to NGOs initiated by the pro-government Civic Alliance of Kazakhstan could result in a government-controlled body being entrusted with overseeing grant making to NGOs not only of state funds, but also of funds from other sources, including foreign donors. The draft law has not been introduced in the parliament yet. Last year it was also reported that a government working group had been set up to study the experience of other countries with respect to foreign grants and NGOs, giving rise to concerns that restrictive initiatives from elsewhere in the region may be used as an example.

In **Kyrgyzstan** draft legislation requiring NGOs to register as “foreign agents” if they receive foreign funding and engage in “political activities” - copy-pasted from the infamous Russian law - is currently

⁸ Amnesty International, “Ukraine: One year on: Violations of the rights to freedom of expression, assembly and association in Crimea” p. 19, 18 March 2015, Index number: EUR 50/1129/2015
<https://www.amnesty.org/en/documents/eur50/1129/2015/en/>

⁹ For information on the situation of civil society in Central Asia, see also separate statement by Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, Turkmen Initiative for Human Rights and International Partnership for Human Rights for the OSCE Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association in Vienna on 16-17 April 2015, as well as a joint letter to the EU on Kyrgyzstan by four CSP members and two other NGOs sent on 23 March 2015, at <http://www.iphronline.org/letter-to-eu-leaders-on-brussels-visit-of-kyrgyzstans-president-20150326.html>.

¹⁰ See appeal signed by close to 200 Kazakhstani and foreign civil society organizations and representatives, including many CSP members from June 2014, at http://www.bureau.kz/data.php?page=3&n_id=7177&l=ru

pending review by the parliament. It was approved by the Parliamentary Committee on Law, Order and Crime Prevention in early March 2015. If adopted by the parliament in three readings in plenary and signed by the president, the draft law will enter into force. The draft “foreign agents” law poses a serious threat to Kyrgyzstan’s civil society as it defines “political activities” so broadly that this term could be applied to almost any NGO activities, and most NGOs depend on foreign grants for their important work. NGOs that refuse to register as “foreign agents” would risk being suspended or having to close down. The draft law also grants authorities new, broad powers to inspect and interfere in the internal affairs of NGOs. The draft law has been widely criticized.¹¹ Among others, in a joint legal opinion, the OSCE Office for Democratic Institutions and Human Rights and the Council of Europe’s Venice Commission found it to be in violation of international standards.¹²

On 27 March 2015 the office of the human rights NGO “Bir Duino” in Osh was searched by officials of the State Committee for National Security (SCNS), who confiscated documents and equipment. The apartments of human rights lawyers working for “Bir Duino”, Khusanbay Saliev and Valerian Vakhitov, working on the case of prisoner of conscience Azimjan Askarov, were also searched and legal documents relating to over 100 cases and USB drives were seized. Osh City Court issued the search warrant in relation to forbidden religious materials, but did so in violation of legal procedures for seizing such material.¹³ The actions by the authorities also violated legislation guaranteeing the immunity of lawyers’ professional documents. The families of the two lawyers have also been subjected to intimidation: on 6th and 8th of April Khusanbay Saliev’s brother and father were summoned for questioning to the SCNS department in Osh. Civil society activists believe that the actions are politically motivated and in connection with the recent arrest of American journalist Umar Faruk, who was illegally deported from Kyrgyzstan on 28 March 2015 after criminal proceedings against him were halted. The business cards of Khusanbay Saliev and Valerian Vakhitov were found on Umar Faruk at the time of his arrest.

In the evening of 3 April 2015 the office of the NGO “Labrys” was attacked by unknown persons when three bottles with explosives were thrown into the yard of the human rights organisation, which defends the rights of Lesbians, Gays, Bisexuals, Transgender, Intersex & Queer (LGBTIQ). NGO activists working at “Labrys” have received repeated threats of violence in the past. Draft legislation pending discussion in parliament introduces criminal liability for activities “aimed at forming positive attitudes toward non-traditional sexual relations,” with those found guilty facing up to one year in prison. On 15 January 2015, the European Parliament adopted a resolution calling on the parliament of Kyrgyzstan to reject the draft law.¹⁴

In **Tajikistan** draft amendments to the Law on Public Associations initiated by the government were submitted to parliament at the end of March 2015. The draft amendments stipulate that Tajikistani NGOs would only be able to carry out projects funded by foreign and international sources following the inclusion of these grants in a state register on humanitarian assistance, and that NGOs will be required to notify the authorities before implementing programmes funded from such sources. The amendments leave it unclear whether the same requirement would apply to funds received from local sources. In March 2015 the UN Committee on Economic and Social Rights expressed alarm at

¹¹ See CSP appeal about the draft law from September 2013, at <http://www.iphronline.org/kyrgyzstan-csp-appeal-20130918.html>

¹² This opinion, which was adopted in October 2013, is available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29030-e>

¹³ For more information, see “Expert Opinion on the Defence Lawyers of the Civil Advocacy Organization Bir Duino-Kyrgyzstan” disseminated by Bir Duino on 13 April 2015.

¹⁴ *European Parliament resolution of 15 January 2015 on Kyrgyzstan, homosexual propaganda bill*, 16 January 2015, 2015/2505(RSP).

the draft legislation which it felt could “have an adverse impact on the activities of civil society organizations” and recommended that the Tajikistani authorities ensure that any amendments “strengthen the freedom of association”.¹⁵ The draft law has also been seriously criticized by civil society.¹⁶

RECOMMENDATIONS TO OSCE POLITICAL BODIES, INSTITUTIONS AND PARTICIPATING STATES:

NGOs welcome the adoption of the new Guidelines on Freedom of Association by OSCE/ODIHR and the Venice Commission of the Council of Europe and their official launch in March of this year. Civil society organisations urge OSCE participating States to implement these Guidelines in good faith, to protect space for civil society and to put an end to the persecution of civil society at the domestic level. We ask ODHIR to assist the states in doing so.

- *In particular, we urge participating States to ensure the implementation in practice of **Principle 2** which reiterates that it is the duty of states to respect, protect and facilitate the exercise of the right to freedom of association; including specifically by simplifying regulatory requirements and facilitating access to resources;*
- *Also of key importance to civil society in the countries of the former Soviet Union is **Principle 10** of the Guidelines which outlines the need for **proportionality in any restrictions on the right of freedom of association** and of any restrictions to be based on compelling evidence, and the least intrusive option chosen. Principle 10 emphasises strongly that dissolution of an organisation should be a measure of last resort and only if there is an imminent threat of violence or grave violation of the law, and not in retaliation for minor infractions. Civil society urges participating States to ensure that this Principle of proportionality is applied in practice in all cases;*
- ***Principle 7** of the Guidelines emphasises the need to allow NGOs **the freedom to seek, receive and use resources**. We urge OSCE participating states to ensure that associations have the freedom to seek resources for their activities and ensure that they do not block or restrict the access of organisations to those resources on the grounds of nationality of their source, nor stigmatize those who receive such resources.*
- *In addition, **we recommend that the OSCE Ministerial Council in Belgrade issues an explicit political endorsement of the Guidelines in the form of a decision to protect freedom of association**, to show the serious intent amongst OSCE participating states to safeguard the fundamental right to freedom of association and defend civil society space.*
- *Finally, we recommend that the OSCE and other human rights bodies and other inter-governmental mechanisms **adopt a more systematic, cooperative approach in order to effectively address the issue of freedom of association**. Such an approach has proved particularly successful in developing the Guidelines on Freedom of Association when OSCE*

¹⁵ Concluding observations adopted by the Committee on Economic, Social and Cultural Rights on the combined second and third periodic reports of Tajikistan, 6 March 2015.

¹⁶ See appeal signed by over 90 Tajikistani and foreign civil society organizations, including many members of the CSP from November 2014, at <http://www.iphronline.org/tajikistan-ngo-law-appeal-20141125.html>

worked with the Venice Commission of the Council of Europe and the UN Special Rapporteur on Freedom of Assembly and Freedom of Association.

- *The OSCE institutional framework in this field should be strengthened by establishing a mandate for a Representative on Freedom of Association or a Representative on the Freedoms of Association and Assembly. In anticipation of a consensus-based decision of OSCE participating States, the OSCE Chairmanship should appoint such a representative on a temporary basis.*