



SPOTLIGHT: FUNDAMENTAL RIGHTS IN CENTRAL ASIA

Recent developments in Tajikistan

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This document provides an overview of recent developments concerning freedom of expression and the media; freedom of association and assembly; as well as access to justice, non-discrimination and the protection of vulnerable groups in Tajikistan. It is based on the findings of monitoring conducted by Nota Bene in November 2015-February 2016. International Partnership for Human Rights (IPHR, Belgium) has conducted additional research and prepared the document together with Nota Bene. It has been prepared within the framework of the project “A Transnational Civil Society Coalition in Support of Fundamental Rights in Central Asia” implemented by Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, Turkmen Initiative for Human Rights and IPHR.

Contacts:

Nota Bene
www.notabene.tj

Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR)
www.bureau.kz

Turkmen Initiative for Human Rights (TIHR)
www.chrono-tm.org

International Partnership for Human Rights (IPHR)
www.IPHRONline.org

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Summary

At the end of 2015, Tajikistan's President Emomali Rahmon was declared "Leader of the Nation". In this capacity, he will enjoy life-long political influence and immunity from prosecution. Draft amendments to the constitution, which will be subjected to a referendum in May this year, would abolish all limitations on the number of times Rahmon can be re-elected.

In February 2016, the Supreme Court began hearing the cases against leading members of the Islamic Renaissance Party (IRPT), who have been charged with "extremism" offenses because of their alleged involvement in armed attacks that took place in the country in September 2015. The trial is held behind closed doors and there are serious doubts about the fairness and impartiality of it. The trials against other IRPT members are expected to start soon. Following the September 2015 events, which the authorities have portrayed as a coup d'état, the IRPT was banned as "extremist" and mass arrests of its members were carried out.

There are concerns about growing restrictions on internet and cell phone communications. A requirement for internet and cell phone providers to channel their services through a new national communications center, which is to be established by the end of the year, may enable the authorities to further step up control over such communications. Arbitrary blocking of websites continues, and security services have been granted broad powers to restrict access to internet and cell phone services during counter-terrorism operations.

New media legislation proposed by the government would allow prosecutors to initiate the suspension of media outlets for three months - without a court decision - if the outlets have failed to address alleged violations about which they have been warned. Prosecutors would also be able to request courts to close down media outlets on these grounds. When information about the proposed amendments emerged, representatives of the journalist community voiced strong criticism about them, saying that they risk legitimizing censorship. As a result, the amendments were sent back for additional revision. Media outlets already operate in an environment of intimidation in the country and self-censorship is widespread.

The Ministry of Justice has finally elaborated draft regulations for the implementation of the new requirement for NGOs to report all their foreign grants to the government, which was introduced last August. The draft regulations set out the procedure for reporting information about grants, but they do not clarify whether grants can be used before they have been officially registered nor do they establish any time limit for decisions on registration. These are key points for NGOs, which fear that the new reporting procedure may be used to obstruct the implementation of their activities.

Other new regulations adopted by the Ministry of Justice set out the terms for NGO inspections carried out by this body, an issue that has not previously been regulated in any detail. These regulations provide, among others, that NGOs should be given prior notice of inspections and a written summary of the outcome of them, and that the same NGOs cannot be targeted by inspections more than once in two years. While this is a welcome development, it remains of concern that the grounds for carrying out inspections are very broad and that the new regulations leave room for additional ad hoc inspections, as well as for inspections by other bodies than the Ministry of Justice.

Another remaining concern is that NGOs risk serious sanctions, including closure because of alleged violations of technical and administrative requirements. Following months of uncertainty, Nota Bene was informed in January 2016 that the district court considering the Tax Committee lawsuit brought against it last year had dismissed the case on procedural grounds. The Tax Committee had requested

that Nota Bene be closed down for allegedly using “gaps” in the legislation when registering with the authorities.

New legislation adopted last year introduced a requirement for all lawyers to undergo certification and regular re-attestation with a new non-independent body and broadened the grounds on which lawyers may be denied a license. Practicing lawyers need to re-certify their status by the end of March 2016 in order to continue to work without interruption; however, most lawyers have not yet had their status renewed. The two lawyers defending the rights of arrested IRPT members, Buzurgmehr Yorov and Nuriddin Mahkamov who were arrested on fraud charges in September and October 2015, respectively, remain in pre-trial detention.

The authorities have recently stepped up efforts to decrease the role of Islam in public life and to counter expressions of Islam considered “alien” to the country. Last year there were reports about raids on retailers selling “inappropriate” Muslim clothing, as well as of cases of forcible shaving of bearded Muslim men. While police representatives have previously denied that any official orders have been given for such measures, statements made by the Khatlon region police head in January 2016 reinforced concerns that they have in fact been part of law enforcement practice. He said that 162 veil-selling shops were closed down and the beards of close to 13 000 men “brought to order” in his region in 2015. Later he insisted that this was a result of “awareness-raising”. Over 1000 mosques were also closed down in 2015 under the country’s restrictive legislation on religion, and draft legislation approved by the parliament would prohibit giving children names that are “alien” to national and spiritual traditions.

At the end of his visit to Tajikistan on 3-9 March 2016, the UN Special Rapporteur on the right to freedom of opinion and expression said that he is alarmed about “increasing restrictions on opposition parties, civil society and the media over the past year” and warned that these measures “generate tensions and long term instability”. A detailed report about the findings of his visit is forthcoming.

Recent developments in Tajikistan

General situation

At the end of 2015, the parliament voted to **declare President Emomali Rahmon “Leader of the Nation”**. According to [the law](#) adopted to this end, Rahmon will enjoy immunity from prosecution, have a say on government affairs, and have the needs of him and his family taken care of for the rest of his life.

Shortly after the adoption of the “Leader of the Nation” law, it became known that a number of **draft constitutional amendments** had been elaborated, with a group of MPs proposing to **hold a referendum** about them. These amendments, which were [made public](#) in early February 2016, would abolish the limitations on how many times Rahmon may be elected president. Other proposed provisions would introduce changes to the requirements for candidates for president and other public offices, e.g. by lowering the age limit for presidential candidates and requiring candidates to have only Tajik citizenship. The amendments would also ban political parties of a “national or religious character”, as well as foreign funding of political parties. The Constitutional Court has given its approval to the draft amendments and the referendum has been set for 22 May 2016. It is expected that voters will only be asked one question: whether or not to approve all the proposed amendments.

In his **annual address to the parliament** on 20 January 2016, the president [emphasized](#) the need to **step up efforts to protect national security** in view of global and regional threats and called for

allocating more resources to this end. He again accused the leadership of the Islamic Renaissance Party of Tajikistan (IRPT) of supporting and funding the armed attacks that took place in the country in September 2015, saying that these events showed that “some foreign political circles” “want to carry out their destructive and treacherous plans [in relation to the Tajik nation], using hirelings”. Following the September 2015 attacks, the opposition IRPT was banned as “extremist” and leading party members were arrested on charges related to the attacks (see more below).

A report [published](#) by the International Crisis Group in January 2016 argues that the situation in Tajikistan is increasingly unstable because of both external and internal factors. It points to factors such as security threats at the Afghan border, a growing number of Islamic militants inside the country, and the economic downturn and the failure to integrate returning labour migrants. At the same time, the report emphasizes that the steps taken by the government to ban the IRPT and eliminate the political opposition, as well as to restrict religious expression and enforce a state-approved version of Islam do nothing to improve stability -- as the government is arguing -- but in fact seriously endanger it by fostering resentment and prompting radicalization. The report calls on Tajikistan’s international partners to prioritize accountability in relations with this country and to highlight “the strong link between political oppression and human rights abuses and longer-term instability”.

The UN Special Rapporteur on the right to freedom of opinion and expression, David Kaye [visited](#) Tajikistan on 3-9 March 2016 to assess the protection of these rights in the country. He met with various national authorities, as well as representatives of the media and NGOs. In a [press release](#) issued at the end of his visit, Kaye said that he is alarmed about “increasing restrictions on opposition parties, civil society and the media over the past year in Tajikistan”. While noting that national security concerns are grounds of concern for any government, he emphasized that “banning peaceful political opposition forces and harassing lawyers, journalists and activists undermine security and generate tensions and long term instability”. Kaye will subsequently prepare a **detailed report** on the findings of his visit to be presented to the UN Human Rights Council.

Freedom of expression and the media

Vulnerability of media and proposed amendments to media legislation

Media in Tajikistan operate in a difficult and intimidating environment, in which self-censorship is widespread. The current economic downturn and decreasing revenues of media outlets have further increased their vulnerability, and some outlets have been forced to close down.

Draft amendments to the Law on the Media proposed by the government risk resulting in new restrictions on the operation of media. The proposed provisions would **allow prosecutors to initiate the suspension of the activities of media outlets for three months** in case the outlets have failed to address alleged violations of the law about which they have been warned in writing. No court decision would be required for this. According to the proposed provisions, prosecutors could also turn to court with a request to close down media outlets considered to have failed to address violations about which they have been warned. As information about the amendments, **representatives of the journalist community voiced strong criticism** about the proposed provisions and the non-transparent process in which they were elaborated. In a [joint statement](#) issued on 1 February 2016, four journalist organizations warned that the proposed provisions would violate freedom of expression and serve to legitimize censorship. In response to the criticism, the lower house of the parliament sent the amendments for additional revision.

Blocking of websites and mobile phone services

Arbitrary blocking of websites, such as news sites and social media sites is an ongoing problem in Tajikistan. At a February 2016 press conference, a representative of the government's Communications Service again [insisted](#) that this body is not responsible for such cases. However, internet providers have repeatedly reported receiving informal orders from the service to block sites. For example, the Finnish-Swedish Telia Sonera, which holds a controlling stake in the Tcell company, has publicly [stated](#) that it has blocked dozens of sites at the request of the Tajikistani authorities.

As we have already [reported](#), amendments to legislation on counteracting terrorism adopted in late 2015 [grant](#) the State Committee for National Security powers to block access to internet and cellphone services in connection with anti-terrorism operations. During the consideration of these amendments, the speaker of the lower house [argued](#) that they were needed because the organizers of the September 2015 armed attacks "actively used" internet and cell phone connections to coordinate and carry out these attacks. It is highly problematic that the new provisions will create a legal basis for the security services to restrict internet and cellphone access across the country without any court decision.

A recent government decree [requires](#) internet providers and telecommunications operators to channel their services through a new single communications center, which will be established under the state Tajik Telecom company by the end of the year. While the establishment of such a center has been argued to be needed for security reasons, experts have expressed [concern](#) that it will enable the authorities to further step up control over internet and cell phone communications, including by making it easier to shut down websites and services and to carry out surveillance of online and cell phone activities.

Following his recent visit to Tajikistan, the UN Special Rapporteur on the right to freedom of opinion and expression [cautioned](#) about "the widespread blocking of websites and networks, including mobile services" in the country and expressed concern that these measures are "disproportionate and incompatible with international standards".

Freedom of association and assembly

The situation of NGOs

As we have [reported](#) before, amendments to the Law on Public Associations adopted last August require NGOs to inform the government about foreign grants that they have received prior to using them. The new provisions do not provide any details on the reporting procedure, which has resulted in continued concerns and uncertainty among NGOs with respect to how this legislation will be enforced. In early 2016, civil society organizations obtained a copy of draft implementing regulations currently under consideration. According to these, NGOs should inform the Ministry of Justice within 10 days of the receipt of funds, detailing the type and source of funding, the project for which it is intended, and the beneficiaries and partners in this project. In addition to being included in the new state registry on humanitarian assistance that will be created, this information will be made available to media and the public. The draft regulations, however, do not clarify whether funding can be used before it has been registered and included in the new registry, nor do they establish any time limit for when registration decisions should be made. These are key points for NGOs, which fear that the new registration procedure may be used to obstruct the implementation of their activities.

While authorities have recently carried out a growing number of inspections of the activities of NGOs, it has been a matter of concern that national legislation does not regulate the conduct of such

inspections in any detail. It is therefore welcome that the Ministry of Justice adopted **new regulations** in December 2015, **setting out the terms for inspections** carried out by this body under the Law on Public Associations. According to the regulations, organizations have the right to receive at least three days' notice of an inspection, a copy of the decision setting out the purpose and scope of the inspection, and a written summary of the results of it once it has been finalized. An inspection may not last more than seven days, and actions and decisions related to it may be appealed in accordance with national law. At the same time, **the grounds for inspections remain broad**: inspections can be carried out to check that the activities of public associations are consistent with national legislation and/or their own missions and statutes. Also, while the new regulations state that scheduled inspections cannot target the same organization more than once in two years, they leave room for additional ad hoc inspections, as well as inspections carried out by other bodies than the Ministry of Justice.

Another remaining concern is that **NGOs risk serious sanctions**, including closure **because of alleged violations of technical and administrative requirements**. Last summer the Tax Committee brought a lawsuit against Nota Bene, requesting that it be closed down because it allegedly took advantage of gaps in the legislation when it registered as a “public foundation” rather than as a “public association”, although both types of organizations are foreseen by national law. Following months of uncertainty created by this lawsuit, in January 2016, **Nota Bene was informed that the district court hearing the case had decided to leave it without consideration** on procedural grounds. It is not clear whether the Tax Committee will try to pursue the case further.

Access to justice, non-discrimination and the protection of vulnerable groups

Cases against IRPT members

As we have [reported](#) before, the **authorities have accused the opposition Islamic Renaissance Party of Tajikistan and its leadership of involvement in two armed attacks** that took place in Dushanbe and a nearby city in September 2015. That same month the party was banned as “extremist” and leading party members were arrested and charged with “extremist” offenses in relation to the attacks.

In February 2016, **the Supreme Court began hearing the cases against 13 leading IRPT members**, as well as four other individuals associated with the IRPT. The trial is taking place behind closed doors at a security services detention facility in Dushanbe. Little information is available about the process since it has been “classified” and all parties involved are prohibited from disclosing information. The secrecy surrounding the trial and the investigation preceding it has further reinforced **concerns about the fairness and impartiality of the process**. Independent monitors have not been granted access to either the trial or IRPT members in detention, and many of the defendants are being represented only by state-appointed lawyers. The contacts of the IRPT members with their family members have also been restricted. Only at the beginning of March were relatives of the defendants allowed to see them, as well as to participate in the closed trial in the capacity of witnesses.

In the [press release](#) issued at the end of his recent Tajikistan visit, **the UN Special Rapporteur on the right to freedom of opinion and expression expressed particular concern about the “drastic measures” taken against the IRPT**, saying that they represent “a serious setback for an open political environment”. He urged the government to “release all persons detained on political grounds”, “ensure due process and a fair trial for those charged with serious crimes” and to grant media and civil society “full access to these trials.” In an earlier [statement](#) of 18 February 2016, **the EU said that it “remains deeply concerned”** by the government’s response to the September 2015 violence and its attempt to hold the IRPT responsible for these events. It called on the government to ensure that

criminal proceedings against IRPT members “are conducted in a fair and transparent manner in accordance with Tajikistan’s international obligations”. Other representatives of the international community, including the Office of the UN High Commissioner for Human Rights have also [called](#) on the authorities of the country to respect international human rights law in their response to the September 2015 events.

At a press conference held on 8 February 2016, Chief Military Prosecutor Safarali Mirzozoda [stated](#) that **a total of 199 individuals have been charged** in relation to the September 2015 attacks, out of whom **27 are IRPT members**. He said that these cases have already been handed over to the Supreme Court, and new trials are expected to begin in a near future. In the case of another 40 individuals, international arrest warrants have been issued. Among those wanted is IRPT leader Mukhiddin Kabiri, who resides abroad. The military prosecutor also confirmed that property to a total value of over 150 million somoni (about 17 million EUR) has been seized from individuals suspected of involvement in the attacks.

In November 2015, the Supreme Court handed down a first conviction against an arrested IRPT member charged over the September attacks following a closed trial.

Implementation of the new Law on the Bar and the Practice of Law

As we have [reported](#) before, the new Law on the Bar and the Practice of Law adopted in March 2015, as well as amendments to it passed in November 2015 feature a number of provisions that threaten the independence of the legal profession in the country. In particular, **all lawyers are now required to undergo certification and regular re-attestation with a new qualification commission** in which the Ministry of Justice plays a prominent role. Lawyers already working in the country were given one year from the entry into force of the law to pass the new qualification exam. While lawyers with more than 10 years of experience were initially exempt from this requirement, the November 2015 amendments abolished that exemption. These amendments also introduced additional **restrictions on access to the legal profession**. Among others, individuals who have been convicted of any offense, as well as individuals who have been dismissed from public and judicial bodies or from the bar for “breaching their professional oath” may not practice as lawyers.

As of the beginning of March 2016, a total of some 150 individuals had passed the qualification exam and been certified as lawyers in accordance with the new legislation. There are concerns that many practicing lawyers, whose current status expires on 27 March 2016, will not make this deadline for taking the exam and therefore will not be able to continue their work in an interrupted manner. While no figures of the number of individuals who have failed the exam have been published, the minister of justice indicated at the beginning of 2016 that about one third of those taking the exam have not passed it. Those who fail the exam may re-take it at the earliest in six months.

Among those who have not been able to renew their lawyer’s license is Saidbek Nuriddinov, who was elected **chair of the new national Union of Lawyers** that was established at a lawyer’s congress held in Dushanbe in September 2015. In accordance with the requirements of the Law on the Bar and the Practice of Law, this union was established as a first-ever nation-wide structure bringing together lawyers. Following the entry into force of the new law, Nuriddinov was also elected a member of the new qualification commission for a transitional period and should therefore have been granted the status of lawyer automatically, according to the provisions of the law. However, he has not been certified as a lawyer on the grounds that he was previously dismissed from his position when holding a judicial office. Nuriddinov [believes](#) that this decision reflects an attempt to have him removed as chair of the Union of Lawyers.

The Union of Lawyers was officially registered by the Ministry of Justice in December 2015 and currently the process of registration of five regional branches is under way.

In February 2016, the International Commission of Jurists (ICJ) [published](#) a report highlighting its concerns about the reform of the legal profession in Tajikistan. It **warned that this reform “is in deadlock”** and that urgent measures are required “to secure an independent profession”. The ICJ made a **series of recommendations** to the authorities of Tajikistan, including recommendations to ensure the independence of the qualification commission by making it a body of the Union of Lawyers; to repeal the requirement that already-qualified lawyers re-apply for qualification; and not to permit any discrimination - direct or indirect - as regards entry into the profession.

Detention of lawyers

The two lawyers defending the rights of arrested IRPT members, Buzurgmehr Yorov and Nuriddin Mahkamov who were [arrested](#) on charges of fraud in September and October 2015, respectively, **remain in pre-trial detention**. In late January 2016, the pre-trial detention of Yorov was [extended](#) by two months, with court officials citing the need for additional investigation. International NGOs and representatives of the international community have expressed alarm about the actions taken against the lawyers. For example, in its recent [statement](#) on the trials against IRPT members, the EU said that the arrests of lawyers defending the rights of IRPT representatives “raise significant concerns related to arbitrary detention and fair trial”.

Another lawyer, Shukhrat Kudratov continues to serve a five-year prison sentence after being convicted of bribery and fraud in January 2015. Prior to being arrested, he had worked on a number of high-profile cases.

In late January 2016, Turkish lawyers Gulden Sonmez and Emine Yildirim and Russian lawyer Dagir Khasavov [reported](#) being briefly detained in Dushanbe as they were visiting the country, hoping to meet with arrested IRPT members, and their lawyers and relatives. The Tajikistani authorities [denied](#) that the three foreign lawyers had been detained and called this allegation a “provocation”.

Violations of the rights of believers

The 2009 Law on Freedom of Conscience and Religious Associations, which has been criticized for its restrictive provisions among others by the UN Human Rights Committee, bans religious activity without state permission and imposes serious limitations on the operation of places of worship. With reference to this law, mass closures of mosques considered to be operating unlawfully have been carried out. In the past year, an **increase in the number of checks and closures of mosques** under the law has been [observed](#), with over 1000 mosques having been shut down by the authorities, according to official figures.

Recently the authorities have also stepped up efforts to counter expressions of Islam deemed “alien” to Tajikistan. Last year, there were reports of law enforcement raids on retailers selling Muslim clothing, as well as of cases where law enforcement officials forcibly shaved bearded men. At that time, representatives of the Ministry of Interior [denied](#) that any official orders had been given for such measures and said that any complaints submitted about unlawful actions would be investigated. When speaking at a press conference held in January 2016, the head of the Ministry of Interior of the Khatlon region, however, **indicated that measures to counteract the wearing of veils and beards by believers have been carried as part of the work of law enforcement authorities**. According to him, 162 shops and stalls selling veils [were uncovered](#) and closed down, 1173 women and girls “gave up” wearing a veil, and the beards of 12 818 men with “too long and unkempt beards” were “brought to order” in the region in 2015. Later he [insisted](#) that law enforcement authorities did not use any forcible methods and that all women and men mentioned stopped using the veil vs. shaved their beards voluntarily as a result of “awareness-raising”. Nevertheless, this explanation did not appear convincing

and his statements reinforced concerns about arbitrary and unlawful measures taken in the fight against “non-traditional” religious expressions in the country.

In another recent initiative, a **ban on giving children names that are “alien” to national and spiritual traditions** was approved by the lower house of the parliament in January 2016 and by the upper house at the beginning of March 2016. This ban would, among others, apply to Arabic-sounding names that parents in the country increasingly have chosen for their new-borns. A list of names that parents are “recommended” to use has already been drawn up. The ban would not concern residents who are not ethnic Tajiks.

Child rights ombudsman

In a positive development, a draft law establishing an **Ombudsman on the Rights of the Child** was passed by the lower house of the parliament in December 2015 and by the upper house in March 2016. After being signed by the president, the law will enter into force. The new Ombudsman will function as part of the office of the general Ombudsman on Human Rights.

Compulsory medical testing of future spouses

Draft legislation under consideration by the parliament provides for **compulsory medical testing for individuals wishing to get married** in Tajikistan. The required medical tests are expected to include analyses to determine whether any of the future spouses are infected with e.g. HIV, Hepatitis B and Tuberculosis. The government, which initiated the new provisions, has argued that the new requirement will enable individuals planning to get married to make “informed decisions” and to ensure “strong marriages”. Those diagnosed with tested diseases will not be prohibited from marrying, but there are concerns that the new requirement may result in that HIV-infected individuals and others whose medical record is found “problematic” are **subjected to stigmatization and discriminatory treatment**. There are also concerns that the requirement **may undermine efforts to counteract “unofficial” marriages** conducted through religious ceremonies. Especially women in such marriages, which include polygamous ones, are in a highly vulnerable position given the lack of legal status of their marriages.