

## Key trends in the protection of civil society in Kyrgyzstan

### Briefing paper for EU-Kyrgyzstan Human Rights Dialogue, June 2016\*

This briefing paper provides information on a number of key issues concerning civil society development in Kyrgyzstan. It has been prepared ahead of the annual EU-Kyrgyzstan Human Rights Dialogue, which is scheduled to take place in Bishkek on 7 June 2016.

#### Draft legislation on non-commercial organizations

In a welcome development, members of Kyrgyzstan's parliament **voted down problematic draft amendments to the Law on Non-commercial organizations** in May 2016. This development came after the amendments had been under consideration for two years and was **a victory for the country's civil society**, which had been campaigning against the draft legislation since it was first introduced.

The initial draft law on introducing changes to the Law on Non-commercial Organizations, which was put forward by a group of MPs in May 2014, **drew heavily on the notorious Russian "foreign agents" law**. It required NGOs to adopt the stigmatizing label of "foreign agents" if they receive foreign funding and engage in broadly defined "political activities" and granted authorities new, broad powers to interfere in the internal affairs of NGOs. In spite of widespread criticism by civil society<sup>1</sup> and international human rights bodies, the "foreign agents" law **was passed by the parliament in the first reading** in June 2015. Later the same month, however, it was sent for additional discussion at committee level. The consideration of the draft legislation continued after the October 2015 parliamentary elections, although the major initiators of it were not re-elected.

At a hearing in the parliament in February 2016, serious concerns were expressed about the draft law and a joint appeal signed by over 120 Kyrgyzstani NGOs warned that it was threatening to undermine democratic development in the country.<sup>2</sup> Following this, a **significantly revised version of the draft law** was-

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\* In the preparation of this document, International Partnership for Human Rights (IPHR) has used information from members of the Civic Solidarity Platform (CSP), in particular the Bir Duino Human Rights Movement. This updated version of the document was finalized on 1 June 2016. For more information about the CSP, see <http://civicsolidarity.org/>

introduced and adopted by the parliament in the second reading on 14 April 2016. This version no longer contained the “foreign agents” term and a number of provisions threatening to seriously undermine the right to freedom of association had been abolished from it. It set out the term “foreign non-commercial organization” with respect to foreign NGOs operating in the country and required all NGOs to annually publish a report with detailed information about their finances, sources of funding, and management.

While this version of the draft law was a significant improvement over the previous one, Kyrgyzstani NGOs objected to the fact that the proposed new reporting requirement would add to already existing reporting obligations and, in a discriminatory fashion, apply only to NGOs, not to other legal entities. It was also not clear how the reported information would be processed or whether NGOs found to have failed to meet it could face sanctions. **NGOs therefore continued to call for dropping the draft legislation altogether.** Eventually, in the third reading on 12 May 2016, a majority of members of the parliament (65 vs. 46) **voted in favour of rejecting the draft legislation** in its revised format.

While the draft “foreign agents” law now has been rejected, it remains of serious concern that the discussion surrounding it has contributed to **reinforcing negative and suspicious attitudes toward NGOs**, with long-lasting implications (see more below). It is imperative that lawmakers and the government refrain from any attempts to re-introduce similar problematic legislation and that they instead focus on cooperating with NGOs on improving the country’s legislation and policies in accordance with international standards.

### *Recommendations*

The authorities of Kyrgyzstan should be requested to:

- Refrain from any new attempts to introduce legislation restricting the right to freedom of association of NGOs in ways that are incompatible with Kyrgyzstan’s international human rights obligations.
- Cooperate closely 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.

### **The case of human rights defender Azimjan Askarov**

It has now **been more than five years since a life sentence was handed down** to ethnic Uzbek human rights defender Azimjan Askarov for his alleged role in the June 2010 inter-ethnic violence in southern Kyrgyzstan. After being arrested in connection with these events, he was convicted in September 2010 of participating in mass disturbances, inciting ethnic hatred, and being complicit in the murder of a police officer who died during the unrest. The legal process against him was marred by due process and fair trial violations and was conducted in a hateful atmosphere, where relatives of the dead police officer shouted anti-Uzbek slurs against Askarov and his co-defendants, and intimidated and attacked their lawyers and family members. Credible allegations that he was tortured in pre-trial detention have never been properly investigated. His conviction was upheld on appeal, including by the Supreme Court. There are concerns that Askarov’s health has deteriorated considerably in prison.

After exhausting all domestic remedies, in November 2012, Askarov filed a **complaint against Kyrgyzstan with the UN Human Rights Committee** under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). This was done with assistance of the Open Society Justice Initiative. On 21 April 2016, the Committee **issued its views** on Askarov's complaint, **finding that he had been arbitrarily detained, held in inhumane conditions, tortured and mistreated, and prevented from adequately preparing his trial defence** in violation of the ICCPR (article 7, separately and in conjunction with article 2, paragraph 3; article 9, paragraph 1; article 10, paragraph 1; and article 14, paragraph 3 (b) and (e)). The Committee **called on the Kyrgyzstani State party to immediately release Askarov; quash his conviction** and, if necessary, conduct a new trial, subject to the principles of fair hearings, presumption of innocence and other procedural safeguards; and **grant him adequate compensation**. It requested the State party to provide information about the measures taken to give effect to its views within 180 days.<sup>3</sup>

Following the publication of the views of the UN Human Rights Committee, **Kyrgyzstan's Supreme Court indicated** that this decision constitutes a **reason for renewing the consideration of the criminal case against Askarov**, provided that Askarov files an appeal to this end. The Supreme Court referred to article 41 of the Constitution of Kyrgyzstan, which states that in the event that international human rights bodies confirm the violation of human rights and freedoms in individual cases, the Kyrgyz Republic shall take measures to rectify these violations and/or compensate for the damage suffered. On 27 April, Askarov submitted an appeal to the Supreme Court, requesting that he be released and that his case be reconsidered in view of the new circumstances. It should be noted that previously, in September 2014, the Supreme Court upheld a decision by the General Prosecutor's Office to discontinue a new investigation into Askarov's case that had been initiated on the basis of new evidence.

In a worrying development, in connection with Askarov's case, **representatives of the authorities have made problematic statements concerning Kyrgyzstan's obligation to implement the decisions of international human rights bodies**. In particular, in comments made on national TV, presidential advisor Busurmankul Tabaldiev said that the Human Rights Committee's decision in Askarov's case has shown that there is a need to amend the constitution to protect national sovereignty and security. These remarks, which concerned article 41 of the constitution, were interpreted to reflect those of the president.<sup>4</sup> A few days later, in an interview with Russia's Interfax news agency, President Almazbek Atambayev himself spoke out in favour of amending articles of the constitution that "threaten national sovereignty and national security."<sup>5</sup>

In a further worrisome development, in late May 2016, **authorities took steps to confiscate Askarov's home**, where his wife currently resides. A government body in charge of managing state property reported that such a decision had been made as part of the implementation of the court decision in Askarov's case, although it did not clarify why it was made only now.<sup>6</sup> The Bir Duino Human Rights Movement has deemed this move unlawful, pointing out that national legislation on the execution of court decisions prohibits confiscating property where the family of convicted individuals lives. It believes that the actions of authorities are aimed at intimidating Askarov's family. The organization has filed a complaint with the General Prosecutor's Office.<sup>7</sup>

### *Recommendations*

The authorities of Kyrgyzstan should be requested to:

- Fully implement the views of the UN Human Rights Committee in the case of Azimjan Askarov, including by releasing him, quashing his conviction and granting him adequate compensation.
- In the event that a new review of Askarov's case is undertaken, ensure that is carried out strictly in compliance with international due process and fair trial standards.
- Refrain from statements and measures undermining the obligation of Kyrgyzstan to implement the decisions of international human rights bodies

## Pressure on NGOs

The environment in which NGOs operate has deteriorated in the last few years as negative and suspicious sentiments against NGOs have increasingly been expressed in public debate. Similarly to in other post-Soviet countries, public figures and media have, among others, accused NGOs and their representatives of “serving the interests” of foreign donors, betraying “traditional” national values and posing a threat to national security. Such arguments have been used in the discussion of the draft “foreign agents” law described above, as well as another problematic draft law prohibiting so-called propaganda of non-traditional sexual relations, which has been pending in the country's parliament since March 2014 and been approved in two readings by the full parliament.

Although the “foreign agents” law has now been rejected by the parliament, hostile rhetoric of this nature remains of serious concern. It is particularly worrying that also high-ranking officials have been using inflammatory language. In a speech delivered on the occasion of Mother's Day on 14 May 2016<sup>8</sup>, President **Almazbek Atambayev suggested that leading Kyrgyzstani human rights defenders Aziza Abdirasulova and Tolekan Ismailova** are part of a movement that is seeking to destabilize the situation in the country and is prepared to use violent means to topple the government. He also suggested that they are “working off their foreign grants” to this end. He made these accusations when speaking about the so-called People's Parliament, a meeting of which Abdirasulova and Ismailova attended and monitored on 12 May in their capacity as human rights defenders. Following that meeting, the security services announced that criminal cases had been initiated against some of the leaders of the National Parliament.

In response to the president's statements, Abdirasulova and Ismailova issued an appeal<sup>9</sup>, stating that they were shocked by his discrediting and unfounded accusations and requesting that he retract them. They emphasized that it is the role of human rights defenders to monitor the actions of both those in power and the opposition. The two human rights activists also filed a defamation lawsuit against the president. At the end of May 2016, Ismailova reported being called for questioning by an individual claiming to work for the security services, but refused to comply in the absence of an official request. She believed that this development was linked to her professional activities.<sup>10</sup>

Aziza Abdirasulova (who heads “Kylym shamy”) and Tolekan Ismailova (who heads the Bir Duino Human Rights Movement) have been at the forefront of human rights promotion in Kyrgyzstan for many years. They have not refrained from addressing highly “sensitive” issues, such as issues relating to the miscarriage of justice in the aftermath of the 2010 inter-ethnic violence and the rights of minorities and they have continued to call for the release of imprisoned ethnic Uzbek human rights defender Azimjan Askarov (see more on his case above). They have both also previously been subjected to discrediting attacks by public figures.

According to a recent study published by the Bir Duino-Kyrgyzstan Human Rights Movement, basically all of over 50 NGO leaders surveyed in the country confirmed experiencing growing pressure because of the negative public discourse surrounding NGOs. The survey responses also indicated that a **growing number of NGOs have been subjected to undue interference** by authorities in the implementation of their activities.<sup>11</sup>

One case of undue interference is that of the **Osh branch office of Bir Duino**. In March 2015, security service officials carried out searches of this office, as well as the homes of two of the organization's lawyers, confiscating case material related to dozens of individual cases. These actions, which were of serious concern in view of the integrity of lawyers and the principle of confidentiality of lawyer-client communication protected by national and international standards, were believed to be an attempt to put pressure on Bir Duino and its lawyers because of their efforts to defend the rights of individuals in "sensitive" cases.<sup>12</sup> The searches were subsequently deemed unlawful by court in three separate rulings that were upheld by the Supreme Court in June 2015. However, to date, none of the numerous complaints submitted by Bir Duino's lawyers about procedural and substantial violations in this case have been properly examined and no law enforcement official has been held accountable for unlawful actions in relation to the searches.

### *Recommendations*

The authorities of Kyrgyzstan should be requested to:

- Refrain from using rhetoric that stigmatizes, discredits and falsely accuses NGOs and their members of threatening national security, and instead publicly express support for their work and their efforts to improve the lives of citizens in different areas.
- Ensure that NGOs are not subject to undue interference into their work and that allegations of such interference are promptly, thoroughly and impartially investigated and those responsible held accountable, including in the case of the March 2015 searches of the Osh office of Bir Duino and the homes of its two lawyers.
- 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 civil society.

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- <sup>1</sup> See, for example, joint appeal by members of the Civic Solidarity Platform, May 2015, at <http://iphronline.org/kyrgyzstan-reject-foreign-agents-bill-in-plenary-20150526.html>
- <sup>2</sup> The appeal (in Russian) is available at <http://vof.kg/?p=29936>
- <sup>3</sup> Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2231/2012
- <sup>4</sup> Radio Ozzadlik, “Власти Кыргызстана заговорили о необходимости изменить Конституцию после оглашения решения КПЧ ООН по делу Аскаророва,” 29 April 2016, <http://rus.ozodlik.mobi/a/27705869.html>
- <sup>5</sup> Interview with President Atambayev (in Russian), 4 May 2016, <http://www.interfax.ru/interview/506800>
- <sup>6</sup> Кыргызстан: Фонд по управлению госимуществом прокомментировал попытку конфискации имущества Азимжана Аскаророва
- <sup>7</sup> See more details in Voice of Freedom, «Жилье осужденного пожизненно правозащитника Азимжана Аскаророва пытаются конфисковать незаконно», 31 May 2016, at <http://vof.kg/?p=31073>
- <sup>8</sup> The full text of the president’s speech (in Russian) is available at: [http://zanoza.kg/doc/338166\\_atambaev\\_perechislil\\_vragov\\_naroda\\_i\\_nazval\\_ih\\_derokratami.html](http://zanoza.kg/doc/338166_atambaev_perechislil_vragov_naroda_i_nazval_ih_derokratami.html)
- <sup>9</sup> The appeal (in Russian) is available at: <https://www.facebook.com/bir.duinokyrghyztan/posts/946925378762559>
- <sup>10</sup> For more details, see «Правозащитница Толекан Исмаилова вызвана в ГКНБ», 1 June 2016, <http://rus.azattyk.org/a/27771696.html>
- <sup>11</sup> Bir Duino Human Rights Movement, *The Right to Freedom of Association: The Most Recent Trends and Perspectives in Civil Society Development* (in Russian), p. 12-13, available at <http://birduino.kg/wp-content/uploads/2016/02/Otchet-po-rezultatam-issledovaniya.pdf>
- <sup>12</sup> For more detailed information about this case, see IPHR briefing paper from May 2015, [http://iphronline.org/wp-content/uploads/2015/05/iph\\_r\\_submission\\_on\\_civil\\_society\\_issues\\_to\\_eu-kyrgyzstan\\_human\\_rights\\_dialogue\\_2015.pdf](http://iphronline.org/wp-content/uploads/2015/05/iph_r_submission_on_civil_society_issues_to_eu-kyrgyzstan_human_rights_dialogue_2015.pdf)