

**Notes for the statement  
of Cholpon Djakupova  
Director of the Public Foundation “Legal Clinic “Adilet”**

**On: “General trends in development of democratic space in the Kyrgyz Republic”  
January 29, 2020. Bishkek**

Dear participants of the Round table!

As far as I am concerned, the draft law under consideration today that aimed to tighten reporting for non-commercial organizations is only one fragment of a general, wider picture of the processes taking place in the country.

Over the past months, we have seen how much the situation is heating up, a climate of fear and intimidation are being formed, which in general is aimed at substantially narrowing the democratic space in the country.

Various independent civil society institutions are simultaneously subjected to the tremendous pressure, accompanied by unprecedented violations of fundamental human rights guaranteed by the Constitution, including freedom of speech and association, freedom of peaceful assembly, access to fair justice, etc.

**Putting pressure on freedom of speech.**

Once again, there are trends of strict cleansing of the information space with the use of state institutions. Prosecutions are carried out by forcing criminal cases against independent media, journalists and bloggers who are arrested on trumped-up charges. Mechanisms are also used for filing complaints to protect honor and dignity for multi-million unaffordable amounts, and the courts are pleased to encounter certain cases by imposing arrests on property with “meteoric speed”. Websites of press agencies are subject to hacker attacks. There are also incidents of physical attacks on journalists. All these cases of harassment occur against independent media and journalists who criticize representatives of the authority or disclose serious corruption schemes. As a result, this pressure leads to self-censoring.

**Infringement on the independence of the attorneys.**

Particular attention should be given to the outrageous pressure imposed on independent attorneys. Despite the prohibition of interference with practice of law provided under the laws of Kyrgyzstan, investigation authorities summon attorneys for questioning and seize documents related to the cases within which the attorneys defend their clients.

Furthermore, there is a growing adverse trend of investigators threatening to suspects and accused persons with arrest or other severe actions and forcing them to reject services of counsels who proactively defend their clients, coercing into giving testimonies needed by investigators, and requiring not to file complaints or report to media. In addition, the prosecution and judiciary ignore facts of the hindering of practice of law.

The above mentioned facts have been contingent upon the incompleteness of legislation as well as plain violation of legal requirements.

We support the ongoing judicial and legal reform in the country, which is now an objective requirement. We have seen that the new criminal-law concepts significantly increases the level of protection of human rights and freedoms, but only if it ensures strict compliance with all legal norms.

Notwithstanding, there occur serious legal gaps and shortcomings that we should speak out frankly. In particular, we were discouraged by the exclusion of the Public Defense Institute from the Criminal Procedural Code, which previously was used extensively by the representatives of human rights organizations.

Furthermore, eliminating the stage of instituting a criminal case significantly changed order of investigation procedure that caused substantial reduction in guaranteed inviolability of attorneys. Previously, nearly all investigative actions including interrogation and seizure could only be performed by investigators once the criminal case is initiated. For the purpose of ensuring the principle of equality of arms, attorneys were given the legal guarantee that criminal proceedings could only be instituted against them by the general prosecutor or deputy general. Investigative actions against attorneys could only be carried out after such decision. Since the investigative actions with respect to attorneys may be performed as soon as the offence report is entered to the Unified Register of Offences and Misdemeanors (UROM). However, the notice of action that is quite similar to previous institution of indictment, should be issued by the head or deputy head of the chief oversight authority.

Numerous guarantees of independent practice of law have been provided under the Law “On the Bar of the Kyrgyz Republic and Practice of Law”. However, as the investigation procedure is regulated by the Criminal Procedural Code and the regulations of other laws containing rules governing the procedure of criminal proceedings are subject to application only if they are included in the said Code<sup>1</sup>. Given that the Criminal Procedural Code has a stronger legal force comparing to the said Law, therefore, the guarantees provided under the Law are plainly ineffective. Deplorably, the investigating judge allowed the Military Prosecutor Office investigators to seize the documents that the attorney Sergei Slesarenko received in the course of his professional activities.

### **Institutional development of the Bar of the Kyrgyz Republic.**

It is particularly disheartening that various destructive initiatives are being taken by those institutions that, on the contrary, should protect the independence of the Bar along with the financial support of some international organizations. Thus, the Bar Council is making at least the third attempt within three years to increase its own power in order to establish a system of strict control over independent attorneys. Recently, a draft law was posted on the official website of the Bar, the main purpose of which is an expansion of the Bar Council’s competences to review decisions of the Disciplinary Commission, to approve the amount of registration fees, just to remind now amount to 20 thousand soms (KGZ), and appoint the leadership of the territorial bar. Since we have published our analysis, the Bar reported that “this draft law was mistakenly displayed on the website in its raw form”, whereas the text of this draft was removed. It is deplorable that such a vision of further development of the Bar is enshrined in the Concept of institutional development of the Bar of the Kyrgyz Republic for 2018-2022, approved by the Congress of attorneys<sup>2</sup>.

### **Infringement of freedom of associations.**

On October 3 of last year, the Jogorku Kenesh adopted a new draft law “On trade unions” in the second reading. Since the very beginning, the consideration of this draft law was

---

<sup>1</sup> Article 1 of the Criminal Procedure Code of the Kyrgyz Republic.

<sup>2</sup> Concept of institutional development of the Bar of the Kyrgyz Republic for 2018-2022, approved by the Congress of attorneys adopted at November 27, 2017 – available at <http://advokatura.kg/news/rezultaty-pervogo-ocherednogo-sezda-advokatov-kyrgyzskoy-respubliki>.

accompanied by major scandals and there is a serious conflict of interest in lobbying this draft law. Representatives of various trade union organizations in Kyrgyzstan, the non-profit sector, as well as the authoritative international institutions note that this document seriously contradicts international human rights standards and the Constitution. The draft law, in particular, violates the fundamental principles of freedom of association, including the voluntariness, independence and autonomy of trade unions, equality of member organizations, and accountability of elected bodies. An additional point is that the regulations of the draft law requiring the establishment of a rigid vertical of power of the Federation of Trade Unions of Kyrgyzstan over all trade union organizations of the Republic, as well as the unjustified strengthening of the sole legal authority of the Chairman of the Federation, are causing concern. We cannot fail, either, to mention that there are many contradictions to the current legislation and violations of the requirements of legislative technique. All the announced inconsistencies were identified by our lawyers following the results of the legal analysis of the mentioned draft law, which we have sent to the Jogorku Kenesh, but, unfortunately, our comments were ignored by the deputies.

### **Freedom of peaceful assembly.**

The institutions of state authorities remain the illegal practice of prohibiting peaceful assembly. In certain cases, the State does not preclude the holding of peaceful actions, but then law enforcement agencies persecute the organizers, participants, and their relatives. There have been attempts to hold contractions by engaging the representatives of sports clubs and various nationalist activists. At the same time, several press agencies spread rumors about various conspiracy theories and the preparation of mass riots with the help of human rights organizations.

### **Pressure on non-profit sector.**

In Kyrgyzstan, attempts are periodically made to establish tighter control over the non-profit sector. In 2016, thanks to the active position of civil society and international organizations and after a two-year-old struggle, the Parliament was forced to reject the so-called law on “foreign agents”.

In August 2019, the Ministry of Economy launched a similar initiative, offering to extend the law “On the procedure for conducting inspections of business entities” also to the non-profit sector. Our lawyers have revealed many regulations in the initiative that unreasonably and disproportionately restrict the right to freedom of association, as well as some other fundamental human rights. Following the examination of proposals and comments to the draft law received from civil society and business representatives, the Ministry of Economy decided to suspend and withdraw the draft law in the wording presented.

Now the members of Parliament are initiating two draft laws with similar ultimate goals. The draft law initiated by a deputy B. Rayymkulov does not meet the requirements of the Constitution regarding the grounds and limits of restrictions on human rights to freedom of association, it is proposed to duplicate rules of the NGOs reporting, and there is clear discrimination in determining only three forms of non-commercial organizations to which additional requirements will be imposed. Furthermore, the regulations of the draft law do not meet the requirements of legislative technique.

Nevertheless, the proposed document suggests to oblige certain forms of non-commercial organizations to provide a new form of reporting on funding sources and main directions of funds expenditure, i.e. to indicate its program activities. Moreover, the reports will be publicly

posted on the website of the Ministry of justice, which is the main goal. This is very dangerous initiative that can lead to mudslinging, harassment and violence. Unfortunately, there are variety of different marginal groups in our society that are extremely aggressive towards certain social groups or international organizations. For example, if the website indicates that an individual organization is engaged in protecting the human rights of injecting drug users or members of the LGBT community, this can be used as an open call to various illegal actions and even violence. However, as is well known, the Ministry of justice databases display the addresses of all legal entities, information on their founders and directors. Furthermore, information regarding the citizens' actual residence can be found on the websites of some state agencies. This appears as a violation of the rights of citizens to privacy and protection of personal data.

Notably, those reports that are currently provided by non-commercial organizations to the tax service or statistical agencies constitute a secret protected by law, and therefore are not subject to public dissemination.

During the public discussion of this draft law, organized by a group of deputies of the Jogorku Kenesh on January 24, 2020, many representatives of various non-commercial organizations, as well as activists strenuously urged the initiators to tighten the regulations of the draft law and necessarily provide the status of "foreign agents" with all that it implies.

Regarding the second draft law, which was initiated by deputy G. Asylbayeva, I would like to note that the international organizations, as well as Small and Medium Enterprises might actually be affected in an attempt to strike at the non-profit sector. Thus, the draft law envisages to prohibit the application of the tax payment regime based on a voluntary patent to individuals who provides services in international projects and programs. Such regulation challenge the implementation of many different projects, including those approved by the Government and other state agencies.

Moreover, need to understand that non-commercial organizations during their activity purchase a lot of goods and services, for example, stationery, printing services, transport, translation companies, etc.

For example, our organization does not work on patents, we fully pay all taxes and social contributions. In doing so, the purchase of goods and services is a direct and significant support for both the state budget and our entrepreneurs.

Any normal democratic and legal state is interested in creating an enabling environment for all subjects to pay full taxes. In our country the situation right opposite, the state consistently suggests more and more tougher measures against taxpayers, which are very broad sectors of the population throughout the country.

Even more recently, in Kyrgyzstan an initiative to change certain types of tax regime was proposed, which will negatively affect law-abiding citizens. Another suggestion from the member of Parliament G. Asylbaeva was made. Such initiatives can lead to serious and negative impacts for the state considering the stable complicated socio-economic situation in the country, as well as the tense socio-political situation, which will be escalating in view of the forthcoming parliamentary elections.

Summing up the block on these legislative amendments, we consider it necessary to invite the members of Parliament and the Ombudsman to apply to the Venice Commission and the OSCE ODIHR with a request to provide a conclusion on draft laws regarding compliance with international human rights standards.

### **Non-state agent of persecution.**

The significant strengthening of various groups and movements that involved in persecution of civil society activists and the media is particularly alarming. Previously, the non-governmental sector was subject to pressure from law enforcement or judicial authorities. Now, in addition to the machinery of government, there are non-state agents of persecution. For example, these are representatives of non-commercial organizations or movements of a nationalist nature, which consist of extremely aggressive people who put forward jingoistic and even fascist slogans, representatives of sports clubs, individual activists, religious figures, etc. Such movements have become very active and hold various actions. In certain cases, senior officials publicly demonstrate their support for such activities or do not respond at all to obvious offenses. This may indicate that some officials are affiliated with these forces, or that the state authorities are unwilling or unable to control these processes and take measures, as stipulated by law. In both cases, the situation is of serious concern for the public.

The suggestions that these forces are artificially opposable to human rights organizations and might be used to achieve political goals are well founded.

### **Conclusion.**

The listed facts and circumstances collectively constitute an integrated assault on various democratic institutions: independent media, journalists, attorneys, and human rights organizations.

There is a tendency that such assaults most often occur during the pre-election period. For example, the law on foreign agents was initiated before the 2015 parliamentary elections. In 2017, before the Presidential election, independent media and human rights activists were subjected to unprecedented pressure and were charged with multi-million-dollar claims to protect the honor and dignity of the former Head of State.

The growing influence of non-state agents of persecution, informal groups and movements poses a serious threat to the entire state and society, including the government itself, since it can lead to their gaining a certain strength and spin out of control.

We cannot say that there is a certain center that coordinates all these processes. However, various democratic institutions simultaneously come under pressure, both from the authorities and non-state actors. The inability of the state to prevent illegal actions in accordance with the requirements of the law indicates the weakness of the government and the lack of common policy to protect the constitutional human rights and freedoms. In any case, the responsibility for compliance with the Constitution, ensuring the rule of law and public order lies only on state bodies.