

2014 OSCE HUMAN DIMENSION IMPLEMENTATION MEETING

September 22 - October 3, 2014

Written contribution of

**The International Federation for Human Rights (FIDH)
and
The World Organisation Against Torture (OMCT)**

**Within the framework of their joint programme,
The Observatory for the Protection of Human Rights Defenders**

Under Working session 3: Fundamental freedoms I (continued),
including freedom of peaceful assembly and association

September 23, 2014

The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), within the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, wish to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) on the ongoing threats and obstacles faced by human rights defenders in OSCE Participating States.

In 2013 and 2014, human rights defenders in Eastern Europe and Central Asia continued to operate in a difficult, and sometimes hostile environment.

The situation particularly deteriorated in **Azerbaijan, Hungary, Kyrgyzstan**, and the **Russian Federation**, where the civil society has continued to face acts of reprisals by the authorities and where domestic legal frameworks and practices governing the exercise of the right to freedoms of assembly and association were drastically restricted. In other countries, human rights defenders have continued to be subjected to arbitrary detention following blatantly unfair trials, in particular in **Kyrgyzstan** and **Uzbekistan**, or to lengthy pre-trial detention, as in **Azerbaijan**. Judicial harassment has also been an ongoing phenomenon, including in **Turkey**, while threats and attacks have continued to stifle human rights activists, especially in **Azerbaijan** and **Kyrgyzstan**.

Obstacles to human rights defenders' freedoms of association, peaceful assembly, expression and information

In 2013-2014, in a number of countries, the authorities continued to resort to a variety of repressive or restrictive laws to impede the work of human rights defenders with the aim to control civil society organisations.

In **Azerbaijan**, on December 17, 2013, the Parliament adopted a set of amendments of the Law on NGOs, Grants and Taxation, aiming at seriously restricting NGO work. These amendments provide that non-registered NGOs cannot be considered recipients of grants. They further state that all grants and sub-grants must be registered, and that the permission to withdraw grants be only given upon a documented grant agreement issued by the Ministry of Justice. While working under non-registered grants is an administrative offence, the courts can consider such funds as personal income and persecute their recipients for tax evasion under criminal law. In April, the bank accounts of dozens NGOs were blocked. On February 3, 2014, the Azeri President signed further amendments to the NGO Law, which now provides the authorities with additional powers for temporary suspension and permanent banning of national and foreign NGOs in Azerbaijan, and introduces new offences punishable by fines. The amendments also introduce additional administrative requirements and increased checks. A criminal case was opened against more than ten NGOs that had received foreign grants.

In **Hungary**, since April 2014, the Hungarian Government has led a smear campaign against Hungarian human rights NGOs and is striving to gain control over them or silence them by hindering their access to funding. On May 30, 2014, the Government also made public the list of 13 grant recipients it considered to be problematic for their "left-leaning" political ties. These were all organisations working on anti-corruption, human rights, gender equality and freedom of speech. The move follows a series of actions and legislative reforms undertaken by the government in the past years since its first election, aimed at progressively restricting the space of civil society and independent critical voices in Hungary¹.

In **Kyrgyzstan**, in May 2014, three draft laws were introduced in Parliament: a bill on so-called "foreign agents", another on so-called "homosexual propaganda", as well as proposed

1

This included the adoption in 2010 of a Media Law that significantly restricted freedom of expression and media freedom in Hungary, and a series of constitutional reforms that progressively eroded the powers of independent authorities and curtailed civil liberties in the country.

amendments to the law on “non profit organisations”. If adopted, they would severely restrict freedoms of association and expression in the country. The bill on “foreign agents” largely draws inspiration from a drastic Russian legislation on the same matter. It provides that NGOs receiving funds from abroad shall register as “foreign agents” and be subjected to tougher reporting requirements, the violation of which is punishable by a up to six-month suspension. This text also provides for the criminalisation of NGO leaders “inciting citizens to disobey their civic duties or commit other unlawful acts”, a vague wording that could allow for the repression of the legitimate expression of dissent or criticism. Offenders charged under this provision risk up to three years in prison. In addition, on May 19, 2014, the Ministry of Justice proposed legislative amendments to the law on non-profit organisations in Parliament, which include a provision requiring all non-profit organisations to register. Finally, the the bill on “homosexual propaganda”, would, for its part, impose administrative and criminal penalties on the media and on any group or individual expressing “a positive attitude towards “non traditional sexual relations” through the media or information and telecommunication networks”. The vagueness of this wording could, here again, allow for the repression of any action carried out in defense of LGBT rights and/or persons.

In the *Russian Federation*, since 2012, the Law on Non-Profit Organisations imposes all NGOs receiving funds from foreign sources for any kind of “political activities” (defined as anything likely to “influence public opinion in order to change the policy”) to register as “foreign agents” or face administrative and civil sanctions. Over the past years and months, hundreds of NGOs have been subjected to unannounced inspections by government officials which have interrupted and obstructed their legitimate work with dozens currently embroiled in lengthy court hearings. On April 8, 2014, the Saint Petersburg City Court upheld that the Anti-Discrimination Centre (ADC) “Memorial”, an NGO at the forefront of the fight against all forms of discrimination, was performing the functions of a “foreign agent” by submitting a report on police abuses to the UN Committee Against Torture, following unfair proceedings. Subsequently, the NGO refused to register under this unfair label, and decided to liquidate its structure and continue its work without registration in the Russian Federation.

Judicial harassment and arbitrary detention of human rights defenders

Throughout the region, a number of human rights defenders have continued to be subjected to judicial harassment and arbitrary detention as a means to sanction their human rights activities.

Over the past months, the authorities in *Azerbaijan* launched a series of arrests of human rights defenders. On August 2, 2014, Mr. **Rasul Jafarov**, engaged in the defence of the rights of political prisoners since 2006 and an active participant in “Sing for Democracy” and “Art for Democracy”, a campaign that employs all forms of artistic expression to promote democracy and human rights, was summoned to the Investigation Department for Serious Crimes, under the Prosecutor General's Office, on criminal charges related to “tax evasion”, “illegal entrepreneurship” and “abuse of authority” (under Articles 213, 192 and 308.2 of the Penal Code respectively). On the same day, Mr. Jafarov was brought to the Nasimi District Court, which decided to place him on pre-trial detention for three months pending investigation into the charges against him. On July 25, 2014, a travel ban had been issued against him after he presented a report on political prisoners in Azerbaijan to the Parliamentary Assembly of the Council of Europe (PACE) in Strasbourg, in June 2014. In the morning of July 29, 2014, border guards of the Beyuk Kiasik checkpoint had not allowed him to leave the country. Furthermore, on July 30, 2014, the Prosecutor's office employees arrested Ms. **Leyla Yunus**, Director of the Institute of Peace and Democracy (IPD) and a member of OMCT General Assembly, who was charged with “treason” (Article 274 of the Criminal Code), “large-scale fraud” (Article (178.3.2), “forgery” (Article 320), “tax evasion” (Article 213), and “illegal business” (Article 192), and sentenced to three months pre-trial detention. Her husband, Mr. **Arif Yunusov**, Head of the Conflictology Department of IPD, faces similar charges of “treason” and “fraud”, and was initially barred from traveling, but not

jailed for health reasons. However, on August 5, 2014, the court eventually decided to arrest him too, and to place him in pre-trial detention for three months. Serious concerns have been raised regarding the denial of effective medical care to both Leyla Yunus and Arif Yunusov. The set of charges against Mr. Jafarov and part of the charges against Ms. Yunus are similar to the accusations which were brought against Mr. **Anar Mammadli**, Chairperson of the Election Monitoring and Democracy Studies Centre (EMDSC), and Mr. **Bashir Suleymani**, Executive Director of EMDSC. Both were sentenced for “tax evasion”, “illegal entrepreneurship”, and “abuse of authority” respectively to 5,5 years' and 3,5 years' imprisonment on May 26, 2014 by the Court on Grave Crimes. On another note, Mr. **Hilal Mammadov**, a defender of the rights of the Talysh ethnic minority, has remained detained since 2012 on spurious charges of “high treason” in relation with his minority rights activities.

In **Belarus**, on June 21, 2014, Mr. **Ales Bialiatski**, President of the Human Rights Center “Viasna” and Vice-President of FIDH, was finally granted an amnesty, and released after almost three years spent in arbitrary detention. He had been arrested on August 4, 2011 on politically motivated charges of “tax evasion”, and sentenced three months later to four and a half years of imprisonment in a high security penal colony under especially harsh detention conditions.

In **Kyrgyzstan**, Mr. **Azimjan Askarov**, Director of the human rights organisation “Vozdukh” (Air) based in Jalal-Abad region, is still serving a sentence to life imprisonment. On September 3, 2014, the Kyrgyz Supreme Court rejected Mr. Azimjan Askarov's appeal for a review of the case against him. Mr. Askarov was unfairly accused of having allegedly ordered the blockade in 2010 of the Bishkek-Osh Highway by some 500 armed protesters, and having attacked police officers causing the death of one of them. On July 11, 2012, the Jalal-Abad Regional Prosecutor's Office had refused to allow the re-opening of the investigation, after new facts were brought to its knowledge, including new testimonies, unanimously asserting that Mr. Askarov was not present on the bridge where the policeman was assassinated.

In **Turkey**, on June 11, 2014, the Criminal Chamber No. 9 of the Supreme Court decided to overturn the decision of a lower court to sentence to life imprisonment Ms. **Pinar Selek**, an academic known for her commitment towards the rights of vulnerable communities in Turkey. After 16 years of judicial harassment, four trials and countless procedural defects, the charges against the famous Turkish sociologist, currently in exile, remain baseless and the case will have to be re-tried before a lower court for the fifth time. The hearing is due to resume on October 3, 2014. In addition, a number of human rights lawyers are still prosecuted in the country under spurious terrorism-related charges.

In **Uzbekistan**, human rights defenders continue to serve long prison sentences, most often in strict regime penal colonies. Their health usually deteriorates due to their conditions of detention and to the regular abuses inflicted upon them. Most recently, on March 29, 2014, Mr. **Ganikhon Mamatkhanov** was sentenced to two years, six months and six days in a penal colony for having “disobeyed orders of the prison administration”. Mr. Mamatkhanov already spent five years in arbitrary detention, on the basis of unfair proceedings marred by a number of irregularities. Other detained Uzbek human rights defenders include Messrs. **Azam Formonov**, **Nasim Isakov**, **Yuldosh Rasulov**, **Zafar Rakhimov**, **Ganikhon Mamatkhanov**, **Gaybullo Jalilov**, **Solijon Abdurakhmanov**, **Dilmurod Saidov**, and **Azam Turgunov**. Another defender, Mr. **Abdurasul Hudoynazarov** died on June 26, 2014 of illnesses that he developed while in prison, as a result of torture and inhuman treatment.

Attacks and threats against human rights defenders

In the OSCE region, several human rights defenders remain frequently threatened, attacked or intimidated as an attempt to sanction their human rights activities.

In **Azerbaijan**, on August 21, 2014 in the evening, Mr. **Ilqar Nasibov** was found seriously wounded, and his office was destroyed. He was placed in the intensive care unit of a local hospital while he sustained a severe concussion, broken cheekbones, nose and ribs, bleeding wounds in the head and body, and lost sight in one eye. Mr. Nasibov is a human rights defender and journalist working for the Resource Centre for Development of Democracy and NGOs in Nakhchivan City, involved in the support of rare cases of ECtHR related to the torture and ill-treatment of local residents by the branch of the Ministry of National Security. Moreover, on September 6, 2014, Leyla Yunus was reportedly attacked by her cellmate who verbally harassed her and threw plates and dishes at her. No measure has been taken by the prison authorities to either punish the cellmate nor to ensure the protection of Leyla Yunus.

In **Kyrgyzstan**, Ms. **Tolekan Ismailova**, leader of “Bir Duino” and FIDH Vice-President, has been intimidated and threatened since December 2013. In the night of December 26, 2013, unknown perpetrators broke into the office of the Human Rights Movement “Bir Duino” in Isanova Street in Bishkek. They broke two safes and stole some money (33,000 som - around 485 EUR) as well as the video surveillance camera and five laptops that contained a lot of key data of “Bir Duino”. A criminal investigation was opened on December 27 by the Investigation Department of the Pervamaysky District of Bishkek, which has not led to any result as of today. Back in July 2013, unknown perpetrators had already broken into “Bir Duino” second office on Juvenal Justice, in Sydykova Street in Bishkek. They stole two computers and data from the computer of Mr. Ashirov Abdykerim, a lawyer who had worked with “Bir Duino” on strategic cases and suddenly died on June 28, 2013. An investigation opened by Leninski District Police Department has brought no results as of today.

Alongside these ongoing violations, 2013 and 2014 also witnessed the positive development of Guidelines on Human Rights Defenders by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The text, which was launched on June 10, 2014 under the Swiss Chairmanship of the OSCE in Bern, provides for a solid corpus of recommendations based on existing international and regional law, standards and practices, and constitutes a major progress for the protection of human rights defenders within the OSCE area.

The Observatory calls upon all OSCE Participating States genuinely implement all the provisions of these newly-adopted Guidelines on Human Rights Defenders, and believes that these should pave the way for the development of a human rights defenders’ protection mechanism at the OSCE level, which would be in charge of monitoring the implementation of these commitments.

Recommendations

In view of the situation of human rights defenders in the OSCE area, the Observatory for the Protection of Human Rights Defenders urges OSCE Participating States to:

- **Guarantee in all circumstances the physical and psychological integrity of human rights defenders in the OSCE Participating States, including by ensuring that all human rights defenders under detention are granted access to appropriate medical care;**
- **Put an end to the continuous repression and harassment of human rights defenders and their organisations;**
- **Release immediately and unconditionally all human rights defenders since their detention is arbitrary and only aims at sanctioning their human rights**

activities;

- Carry out immediate, thorough, impartial and transparent investigations into the threats, attacks and acts of intimidation mentioned above, in order to identify all those responsible and sanction them according to the law;
- Fully recognise the vital role of defenders in the promotion and consolidation of democracy and the rule of law;
- Review their national legislation to conform with international and regional human rights instruments, in particular regarding freedoms of association and assembly;
- Comply with the provisions of the OSCE/ODIHR Guidelines on Human Rights Defenders and of the Declaration on Human Rights Defenders, adopted on December 9, 1998 by the United Nations General Assembly;

With respect to the implementation of the OSCE/ODIHR Guidelines on Human Rights Defenders, the Observatory also calls upon:

- The OSCE Chairmanship to nominate an OSCE Personal Representative on the situation of human rights defenders, who could be in charge of:
 - monitoring the implementation of the Guidelines;
 - raising individual cases of violations with national governments
 - undertaking country visits
 - publishing periodic reports
- The OSCE Chairmanships to publish, at the end of their presidency, a self-assessment on its degree of implementation of the OSCE/ODIHR Guidelines
- OSCE Participating States to develop protection mechanisms both nationally and in third-countries, through their diplomatic representations, in coordination, where required, with mechanisms that already exist on the basis of the EU, Swiss and Norwegian Guidelines
- OSCE Participating States to make public pledges on their commitment to implement the OSCE/ODIHR Guidelines
- OSCE Participating States to systematically raise cases of violations of the Guidelines within the framework of the OSCE weekly Permanent Council in Vienna, and ensure regular follow-up.

Contacts:

- E-mail: Appeals@fidh-omct.org
- Tel and fax FIDH: + 33 (0) 1 43 55 25 18 / +33 1 43 55 18 80
- Tel and fax OMCT: + 41 (0) 22 809 49 39 / + 41 22 809 49 29

PRESENTATION - THE OBSERVATORY

THE OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS: AN FIDH AND OMCT JOINT PROGRAMME

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break their isolation. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a) a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- b) an observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of investigation and solidarity;
- d) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- e) the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- f) sustained action with the United Nations (UN) and with various regional and international intergovernmental institutions.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are referred to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT:

"Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".