

## **EXPERT WORKING GROUP (EWG), TASHKENT, UZBEKISTAN**

### **FREEDOM OF MOVEMENT, ASSEMBLY AND ASSOCIATION**

*A Policy Brief for the 2009 OSCE Human Dimension Implementation Meeting. Warsaw, 28 September to 9 October 2009*

*Working Session III – Freedom of assembly and association; Freedom of movement;*

*The Expert Working Group (EWG) is a non-governmental, non-commercial network of independent experts in Uzbekistan who focus on studying how law and public interests affect each other. The EWG's main objectives are to: monitor and analyze trends in the interaction of law and public interests; raise public awareness of the meaning of ongoing legal reforms; assist in establishing a local expert community and independent policy groups; and help stimulate free debate and discussion on ongoing reforms among the general public.*

#### **Right to liberty of movement and freedom to choose one's residence:**

Article 28 of the Constitution states: "Citizens of the Republic of Uzbekistan have the right to liberty of movement throughout Uzbekistan and to enter and leave the Republic, subject to the restrictions established by law".

However, under the Cabinet of Ministers Decision # 8 (January 6 1995) Uzbekistan still retains the complicated and bureaucratic exit visa system. Citizens intending to travel abroad apply to the office of the Ministry of Internal Affairs in their place of residence, presenting a completed application form in due order and an Uzbek passport. The office in question processes the application within 15 days and endorses the passport with a stamp authorizing travel abroad valid for two years for temporary trips out of the country.

The Uzbek government sometimes denies issuing exit visas to political dissidents and outspoken critics from among the Uzbek citizens in order to prevent from traveling abroad.

During the consideration of Uzbekistan's third periodic report at the session of the UN CAT in November 2007 the official delegation of the country have mentioned that the government was discussing to abolish the exit visa system in 2-3 years.

#### **Right of peaceful assembly and grounds for its restriction:**

The work of the human rights defenders and NGOs has been more directly impacted by other bylaw act - Decree # 15 of the Cabinet of Ministers of Uzbekistan on public gatherings and other public events from January 13 2003<sup>1</sup> that was adopted after the Islamic rebels incursions into Uzbekistan from Kyrgyzstan and Tajikistan on summer of 2001. This bylaw has mostly effected on freedom of movement, freedom of assembly and freedom of expression of Uzbek human rights defenders. Still another decree № 9306-XI of the Soviet Parliament from July 28 1988 "On the Procedure for Holding Meetings, Processions and Demonstrations in the USSR" was found in Internet (the bylaw was adopted in *perestroika* times, when public activity reached its

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<sup>1</sup> Collection of Decrees of the Cabinet of Ministries of Uzbekistan for 2003. Also available at electronic system of the law of Uzbekistan "Pravo", Tashkent, Uzbekistan, more detailed information about the product dealer is available via fax (998-71) 1449454.

peak and the scared regime began to tighten control). It seems to be the case that it's still in force, as the Uzbek national legislation was not a *tabula rasa* story.<sup>2</sup> The Department of legislation of the Ministry of Justice was contacted on this issue but they reported that the only legislative source on freedom of assembly in Uzbekistan is the Constitution (the Ministry seemed not to know about the aforementioned governmental decree of 2003).

Art. 33 of the Uzbek constitution contains a provision on the right of citizens to assembly which is formulated in a manner which actually flaws this freedom. "All citizens shall have the right to engage in public life by holding rallies, meetings and demonstrations in accordance with the legislation of the Republic of Uzbekistan. Bodies of the public authority shall have the right to suspend or ban such undertakings exclusively on the motivated grounds of security".<sup>3</sup> The Constitution itself makes explicit reference to possible restriction of the right of citizens to assembly. Moreover, restriction may stem from legislation (and the term comprises acts of both the legislature and executive) and be imposed by the authorities which is likely to create grounds for using discretionary powers in determining potential threats for security (and no much use to refer to the right of appeal of acts of the authorities, as courts simply won't ever stand against those in power).

According to the Soviet decree, indeed it is required to address local executive authority for permission to hold a public event. The application should be made in written and not less than 10 days before it takes place and specify aim, venue (and route for procession), timing of the event, number, home and work address of the participants.

According to the Uzbek decree of 2003, public gatherings (the definition of the public events is not identified by the decree) are such events that can be organized by legal entities and citizens on different occasions and the number of participants of which exceed 100 persons. An organizer of such event must submit a written application to the local government explaining purpose of the event, program, number of the participants and venue prior to one month. The application will be considered and answered by a special commission at the local government during 10 working days. The commission will include representatives of local National Security Service, Interior department and other relevant governmental bodies. The commission is entitled to refuse if the applicant doesn't meet all requirement of the decree.<sup>4</sup>

Thus, the constitutional guarantee of the freedom of citizens to assembly seems to be only declarative and strictly regulated by the executive power in Uzbekistan. Restriction of the freedom of assembly is imposed on the constitutional level and the decree on public gatherings enacted by the Uzbek government in 2003 sets even stricter rules for those citizens and groups who wish to use their freedom of assembly. Main governmental bodies and structures which apply the aforementioned decree think that it is only for internal use and are not eager to make it public (it was very difficult to find out the decree in the electronic system of law of Uzbekistan until we were not told the number and date of the decree by our source in the Uzbek police). Still some other governmental organization turned to be unaware of the existence of such a decree (Legislation department of the Ministry of Justice is responsible to register all bylaw acts in Uzbekistan). Those restrictions imposed by the Uzbek government and the decree adopted in the aftermath of the global campaign against international terrorism are extremely harmful for the implementation of basic freedoms and rights of the citizens and creating great obstacles for the work of human rights defenders in Uzbekistan.

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<sup>2</sup> This draconian law was repealed in the Russian Federation by courts and later abolished.

<sup>3</sup> Constitution of the Republic of Uzbekistan, Tashkent, 1999.

<sup>4</sup> Decree # 15 of the Cabinet of Ministers of Uzbekistan on public gatherings and other public events, 13. 01. 2003.

## **Freedom of association in Uzbekistan:**

It is much easier in Uzbekistan to register a business entity, including banks and insurance companies, rather than a NGO. The following reasons explain why NGO groups face a lot of bureaucratic and political resistance while applying for registration through the Uzbek Ministry of Justice. Under the national legislation those individual activists who are without registration are considered illegitimate groups and can be brought before the court for this. They are deprived of any official status. The following laws and bylaws regulate registration and activity of NGO including human rights NGOs in Uzbekistan: Law on public Associations of February 02 1991, Law on NGO of April 14 1999, Decree # 132 of the Uzbek Cabinet of Ministers of March 12 1993 on Regulating of state registration of charters of NGOs, and Rules the Ministry of Justice of March 12 1993 on considering applications of state registration of charters of NGO in Uzbekistan.<sup>5</sup> Ministry of Justice is responsible for registering national NGOs and political parties. Regional NGOs (those operating within premises of a region), Karakalpakstan Republic and Tashkent city NGOs <sup>6</sup> are registered accordingly by regional, Karakalpakstan Republic and Tashkent city departments of the Ministry of Justice.

The main legislative act the ministry and its departments operate by while registering documents of NGO initiative groups are above mentioned Rules of the Ministry of Justice of March 12 1993. According to provision # 2 of the Rules, the NGO initiative group must attach the following registration documents to the application about registration and submit them to the Ministry or its department: charter, initiative group meeting protocol with an outlined decision of the group members to form an NGO, bank certificate about payment of the registration fee, list of the initiative group members (showing their names, dates of birth, address, passport data, place of work), list of the main administrative persons of the NGO (a person can't hold main administrative position in two NGOs simultaneously), protocols of the initiative group members about forming regional departments of the NGO (if the NGO is meant to operate on the national level), declaration of the income sources of the initiative group, and a warrant letter from the proprietor of the place where the future office of the NGO will be located.

According to provision # 3 of the Rules, the registration documents submitted to the Ministry or its regional departments will generally be considered and reviewed during 2 months. The Rules entitle the Ministry or its regional departments to send the registration documents of the initiative group to one of the state agencies working in the relevant field for receiving their expert opinion on the registration documents (in case of human rights NGOs it is usually the National Center for Human Rights of the Uzbek Government). Such state agency can recommend the Ministry to register the initiative group or to refuse registration. Actually, such expert's opinion received from a state agency is only for internal use and the initiative group members have no access to it. The Rules don't say anything about this.

If registration documents are sent for such expertise the term of consideration can be prolonged to another month by the Ministry or its regional department. Very often even this long term is violated by the Ministry of Justice.

Provision # 3 of the Rules also sets the following three types of the answers the Ministry of Justice can give after considering registration documents of the initiative group:

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<sup>5</sup> Electronic system of the law of Uzbekistan "Pravo", Tashkent, Uzbekistan, more detailed information about the product dealer is available via fax (998-71) 1449454.

<sup>6</sup> Uzbekistan is administratively divided into 12 regions and Karakalpakstan sovereign Republic. Karakalpakstan Republic and Tashkent city have equal administrative and territorial status with the regions. Articles 68, 69, 70, 73 and 75 of the Uzbek Constitution.

- register documents;
- refuse to register documents;
- or leave registration documents without consideration because of shortcomings and mistakes in them.

In case of human rights and political opposition parties' initiative groups in its answers the Ministry of Justice has always operated with the above mentioned third type of response. No case of direct denial in registration has been registered. In its official letter the Ministry of Justice usually brings several shortcomings of the reviewed registration documents on the bases of which the documents were left without consideration. Usually one of the main shortcomings pointed out by the Ministry is incompliance of the charter of the initiative group with article 10 of the Law on public Associations of February 02 1991 which sets requirements for the charter of a NGO. Another usual shortcoming the Ministry brings in its letters is forgery in the protocols of the meetings of the initiative group. As the Ministry along with other registration documents receives also a list of the initiative group members with all their contact data those members are usually contacted by the Ministry or directly law-enforcement agencies and pressed. Such pressure will eventually force the members of the initiative group deny their participation in the meeting for a formation of a NGO. The letter of the Ministry usually states at the end that after correcting the mentioned shortcomings the registration documents can be re-submitted for consideration. The Rules do not restrict the number of such possible re-submissions. It usually appears that the Ministry will have to re-invent new types shortcomings and mistakes in the registration papers.

Some mistakes the Ministry finds in the registration papers are just absurd and insane. For example, in its official letter denying an official state registration for human rights group "Mazlum" the Ministry of Justice wrote "...the group can't put as its goal protection of human rights since article 43 of the Constitution secures the State's role in promotion and protection of the rights and freedoms of citizens..." Or in other occasion the Ministry's letter denying the official registration to one of the human rights groups argued that the applicant could not choose combating torture as one of its objectives because the Uzbek laws outlaw torture and there is no torture in Uzbekistan.

In the considered period the Uzbek Government has also continued demonstrating highest level of intolerance to all forms of heterodoxy and criticism, coming both from the representatives of the civil society and non-traditional religious groups. Such groups have regularly been persecuted by the authorities; sometimes the persecutions resulted in arrests and further criminal charges under trumped-up cases.

In 2008 more than 20 political prisoners have continued to be serve prison terms. The authorities have blocked access to a legal counsel and relatives for the majority of them. Defense attorneys and relatives of such prisoners have often reported about the facts of torture and similar ill-treatment against their clients or family members. The authorities have continued using political prisoners in two main ways: first, for terrorizing independent representatives of the civil society; and second, for political negotiations with western countries.

During that period no independent and critical new NGO or human rights group has been registered by the government. Moreover, more than 50 existing NGOs were forced to close down under the authorities' pressure. The public association of the lawyers of Uzbekistan which had been able to keep its independent and non-governmental status more or less has turned into a GONGO after creation of the new Chamber of lawyers in its place.

Generally, civil society is highly fragmented, with no access to factual and analytic information, often uses superfluous materials with poor argumentation and analysis; there is high turnover in Uzbek organizations, also due to the poor organizational capacity and strategic planning and lack of financial sustainability; coupled with the fact that some of the Uzbek CSOs are made up from soviet style personalities. The hope is in engaging talented young people.