



19 September 2017

Business meeting 13. Rule of law II, including:
– right to a fair trial.

In Tajikistan, there arose a practice whereby an investigating officer provided a judge with all procedural documents already filled out, starting from the arrest warrant all the way through conviction. This was done in electronic format, using a USB stick, and the role of the judge was to rubber-stamp the documents and announce the pre-determined decisions. It meant that the judge didn't provide justice and, in fact, was simply engaged in the printing out of procedural documents. These judges were commonly described as "judges of the USB stick". During bail hearings, defendants would show the judge their torture wounds, tell the judge where they were subjected to torture and by whom, but the judge would neither grant relief nor investigate the allegations of torture.

In 2016, a resident of Isfara, Okhunov Furkat, was brought to the Organized Crime Control Department where he was subjected to electrical torture and forced to confess to extremism. Then, in the sub-basement of the Organized Crime Control Department, electrical wires were attached to his back, the thick gut, and male genitals, all of which were damaged. Torture was stopped only after his confession. When authorizing the arrest, the judge of Isfara, Farrukh Ganiyev, did not react to the defendant's recantation, his display of torture marks, and his lawyer's request to have a doctor inspect the wounds.

The same judge, Farrukh Ganiyev, authorized the arrest and detention of 10 other residents of Isfara for suspected extremism, all of whom had shown the judge evidence of beating and bodily injuries.

In practice, there was not a single case where the judge denied the investigator's petitions and chose any other type of release condition other than detention. Judges admit that it is forbidden for them to choose other measures of restraint except for continued incarceration.

This is the sheer absence of due process and justice. The judicial process is not led by a judge but, as was the case during Tajikistan's time in the Soviet Union, by the prosecutor. Evidence presented to prove that an accused isn't guilty is prohibited. All this is being done to intimidate citizens, to make them afraid to protest, afraid to demand their legal rights and afraid of being arrested without any reason, although the authorities do not realize that the consequences of all these repressive measures will be that they have the opposite effect.

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People become embittered, feelings of hatred for the authorities appear and ultimately breed extremism. Because of excessive punishment and unreasonable persecution, people will be driven to radical communities.

Such interpretation of the law runs counter to national and international law. According to the legislation of Tajikistan, post-arrest detention as a measure of restraint is applied to suspects and defendants, to prevent the commission of a crime or acts that impede the proceedings in a criminal case, and to ensure enforcement of the judgment of court.

According to Part 2 of Article 111 of the Code of Criminal Procedure of the Republic of Tajikistan, if it is necessary to oppose bail or seek restrictive bail conditions, the prosecutor, investigator and preliminary investigator, with the consent of the prosecutor, submit an application to the court specifying the reasons and grounds for arrest. The grounds for obtaining an arrest warrant are set out by Article 102 of the CCP RT. In practice, everything operates contrary to this. Even though the Supreme Court of RT in 2013 decided that the Court needs to require proof of the need for detention and impossibility of any other type of bail conditions to ensure the defendant's appearance at trial.

Judges, unfortunately, not only do not follow the guidance set out by the law and the decision of the Supreme Court, but also ignore the text of conscience clause of investigator at all. For example, on September 19, 2015, the judge of military court of the Dushanbe garrison, major of Justice Makhmadzoda H.B., authorized the arrest of Makhmadali Hayit, the deputy leader of the Islamic Revival Party of Tajikistan (IRPT), without reviewing with the conscience clause of the investigator's application.

In part of this document, it is literally written:

"Zhobir Rakhmatuloi Razhab is detained as the person suspected of committing a crime and at present is being held in the pre-trial detention center of SCNS RT (*author's note* - State Committee of National Security of the Republic of Tajikistan). In view of the fact that Zhobir Rakhmatuloi Razhab has committed a high crime, he could hide from justice, intimidate witnesses, or hide material evidence necessary for the administration of justice, thereby impeding justice...The investigator has decided to provide the military court of the Dushanbe garrison with a request to deny bail and return to custody the suspect Hayit Makhmadali Rakhmonovich, born 10/20/1957."

This document is to be submitted in the 25th volume on the 4th page of the criminal case concerning high councilors of IRPT.

Thus, in view of the fact that the initial arrest of Makhmadali Hayit was illegal because of non-compliance with the requirements for obtaining an arrest warrant, it is necessary to recognize that Hayitov Makhmadali still is illegally under arrest in Tajikistan.

On August 23, 2016, Yurov Jamshed Ravshanovich's lawyer was detained on suspicion of committing a crime under article 311 of the Criminal Code of the Republic of Tajikistan (CC RT) - disclosure of state secrets.

On August 24, 2016, the Amnesty Law came into force, according to the third part of Article 6, under which the criminal proceedings against first-time offenders who committed minor crimes which are being investigated, tried, or which are under deliberation, should be dismissed.

However, in violation of this law and the above-mentioned international legal acts, the proceedings against Djamshed Yorov continued to take place even on August 26, 2016. The court of the Xin Region of Dushanbe has even held court sessions in the building of temporary detention center of Dushanbe, during which it authorized his detention for a period of 2 months. As well, in the case of Makhmadali Hayit, no evidence supporting the legitimacy of his arrest has been submitted to court by the investigator of the Prosecutor General's Office of Tajikistan.

It is well known that courts in Tajikistan are not independent and depend directly on executive power.

This is clearly shown in the following example: on September 28, 2015 the lawyer Yorov Buzurgmekhr Ravshanovich was detained by police officers on allegations of fraud of 2800 US dollars. On September 30, 2015, the Court of the I. Somony area issued a warrant for his arrest. The court did not consider his marital status, the presence of kids, his place of work and position, his medical condition, his promise to appear for the investigation and in Court, when denying him bail.

By contrast, in another case at the beginning of February, 2016 the brother of the head of the Customs service of Tajikistan, Nadzhmidinov Said, was detained when caught taking a bribe. The sum of the bribe was 600 000 US dollars. Contrary to any expectations, Nadzhmidinov Said was not arrested and, until the case was resolved, he was released on his own recognizance on a promise not to leave town. Ultimately, the Court has fined him 30 000 US dollars. Although Yorov Buzurgmekhr and Nadzhmidinov Said's charges are identical, except that a lawyer was arrested, rather than a banker who happened to be the relative of the head of Customs Service.

The decision to appoint a judge or remove from office is taken by the president. In case of improper or unreasonable removal from office, the decision to appeal cannot be subject to appeal. In Tajikistan, the decisions of the country's first person cannot be appealed. There are several cases where a judge intended to appeal against unlawful dismissal decision made as a result of the judge's refusal to defend the interests of the SCNS, the prosecutor and other law enforcement authorities during the consideration of the case materials, which in essence ran counter to the principles of justice. In the end, the judge, for his refusal, himself was accused of a criminal case against him, and was forced to flee the country.

Summing up, on behalf of Human Rights Vision Foundation, we appeal to the authorities of Tajikistan to fulfill their obligations in the sphere of human rights for uniform fair trials according to international human rights acts. We appeal to the President of the Republic of Tajikistan to demand that investigators from all law enforcement agencies provide evidence and identify grounds for arrest when applying for a warrant. The government of Tajikistan should give true independence to courts in order to ensure that warrants for arrest and denial of bail will be granted only on the basis of law, not based on the whims of governments and agents concerning suspects or defendants.

To eliminate government control over the activity of judges, it is necessary to provide the public, both media and citizens, access to court proceedings. These proceedings have to take place in the courthouses, but not in pretrial detention centers or the temporary detention centres.

We also appeal to the international community to pay closer attention to illegal arrests and unlawful detention in Tajikistan and to react urgently to violations of the right to a fair trial.

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Lawyer

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