

Toktaiym Umetalieva? Non-gavorment and Non Commerzial Organization^s**Adoption of unlawful decisions against opponents as a prosecution tool in Kyrgyzstan****Ladies and gentlemen!**

There was a peaceful change of power in Kyrgyzstan in 2017. Like all the people, we, the human rights defenders, expect new changes in the protection of the rights of every citizen, regardless of his/her kind of activities and origin, with the change of the country's leadership. We wait for the return proceeding by the courts and the conduct of investigative actions by the law enforcement agencies not compulsory, but with observance of the norms of law, the principles of thoroughness, objectivity and impartiality, as the Constitution of the Kyrgyz Republic requires itself. We hope these principles will form the basis for the fight against corruption announced by the new President of the country.

Since 2005, in the period of the former country's leaderships, the prosecution and initiation of criminal cases on the far-fetched grounds against the opponents has, unfortunately, become the universally recognized practice in law for Kyrgyzstan. The country's authorities were limited by the fact that the legislation did not contain articles on bringing to direct responsibility for public statements or public human rights protection activities. However, from a formal point of view, the socio-political situation was always designated as free and democratic in the country. This approach has opened up the opportunities for opponent defamation, whether they are politicians, NCO (noncommercial organization) or media representatives, with the initiation of criminal charges, put forward with the support of the power resource and strict control of the President and government over the law enforcement bodies, prosecutors and courts of Kyrgyzstan.

Almost 90 percent of cases, which have received international resonance, are of a political nature. In 2017, a group of opposition politicians from the People's Parliament was convicted "for preparing a coup d'état". The leaders of the People's Parliament and the El kunu movement: Bektur Asanov, Dastan Sarygulov, Kubanychbek Kadyrov, Ernest Karybekov, Toigonbek Kalmatov, Bekbolot Talgarbekov, Tolubai Kolubaev, Aleksandr Gusev and Marat Sultanov, were given long terms of imprisonment on espionage charges (!) and an attempt to forcibly seize power as a result of two separate closed trials:

Bekbolot Talgarbekov and Torobai Kolubaev, the leaders of the People's Parliament, were sentenced to 14 years, Marat Sultanov - to 10 years, Toigonbek Kalmatov - to 5 years. The authorities did not provide sufficient and indisputable evidence of their guilt, and those that were presented turned out to be either confused denunciations, testimonies of operating executives, or grossly manipulated falsifications. Other "evidence" was obtained with numerous procedural violations. In fact, the defendants were only blamed for the words (statements against the authorities and telephone

conversations). Neither criminal actions, nor unlawful preparations to criminal activities were imputed to them even by a biased pro-government court.

In 2016, under similar circumstances and completely with the same accusatory rhetoric, such opposition politicians as Bektur Asanov and Kubanychbek Kadyrov were sentenced to 12 years, and the trial was conducted **without their participation and in a closed session**. The basis for the initiation of both criminal cases, as well as all subsequent ones, was an audio-video recording posted by the "unidentified persons" on the YouTube page.

The consideration of the case of another politician Sadyr Zhaparov, who announced his participation in the elections, and his 5 family members, or the same ex-member Maksat Kunakunov, convicted on false accusation of the State Committee for National Security in terrorism, is delayed for many years.

It is possible to enumerate the remaining names of ordinary Kyrgyz citizens separately for a long time, especially those detained and held in custody only for the fact that they had literature of a religious nature, which has appeared to be questionable to the law enforcement bodies of the country.

Recently there appeared such unspoken form of evidence **as a testimony of operating executive, as well as an unspoken system of forming the expert examinations under direct pressure of law enforcement bodies and special services. The experts, especially linguists, are forced to write certificates under orders.**

The decisions against the well-known journalist Naryn Aiypa, Daiyrbek Orunbekova and others were taken according to such "linguistic" expert conclusions. The decisions were made with respect to the editors of *Zanoza*, news agency www.24.kg. The Kyrgyz authorities regularly use accusations of wrongdoing to silence their opponents. At the same time, they are judged by public and known people who do not hide their views (it is known that coupists and conspirators prefer to stay in the shadows, they do not need fame and public attention). The indiscriminate and indisputable accusations are obediently accepted by the courts, which have long become an instrument of the power machine, referring to the established practice.

Individual cases acquire not only political coloring, but are also used in the growth of interethnic tension.

A well-known international example is the life sentence of Azimzhan Askarov, human rights activist and journalist. This is an open and frankly public example of punishment, with the direct use of a state machine imposed without regard to either legal formalities or appeals of the world community. The Askarov case was examined by the UN (the United Nations) Human Rights Committee, which made a

determination on the responsibility of the Kyrgyz authorities in infringing him in all of his rights. The Supreme Court of Kyrgyzstan ignored the definition of the UN Committee, without considering it on the merits and initiating an additional investigation on the non-essential circumstances. The case with Azimzhan Askarov is also noteworthy in that the authorities' reaction to the "interference" of the UN Committee in the prisoner's fate has led to the subsequent abolition of the rule on the implementation of international legal decisions specified in Article 41, clause 2 of the current Constitution of the Kyrgyz Republic. It also accelerated the introduction of amendments to the Constitution of the Kyrgyz Republic in 2017. However, the civil human rights community has repeatedly raised the problems of legal contradictions in the Constitution of the Kyrgyz Republic in 2010, and of the loss of its primary sources before this time for 5 years. **The new version adopted in 2017 has left the interarticle contradictions in both languages and the same contradictions in the translation, which are used in corruption interests by the authorities, especially law enforcement bodies and courts.**

At the same time, the leaders of different states repeatedly expressed their support for Askarov, for example, Angela Merkel raised this issue in the negotiations with the President Atambaev. The US State Department awarded him a special prize in the field of human rights, the International Organization for the Protection of Journalists gave him the award "For the Freedom of the Printed Word". Such representatives of civil society as Tolekan Ismailova from Non-Government Organization "Civil Society Against Corruption" and Aziza Abdrasulova from Non-Government Organization "Kylym shamy" became the objects of open information prosecution. Simultaneously, this pressure grew into accusations against the country's noncommercial organizations protecting the human rights.

The prosecution intentionality with the pressure on the state bodies is proved by a judicial decision against Adil Toiganbayev, a Kazakh citizen and politician, Askar Akaev's son-in-law, which is nothing more than blackmail and pressure on his relatives and is considered as a threat to the family of the persecuted as a whole in both domestic and international legal practice. In addition, the leaders and heads of the relevant structures of the Kyrgyz Republic did not hide their personal hostile attitude towards Toiganbayev and thereby made some pressure on the court by the country's President and government. How can a court be considered unbiased and impartial in such a situation? The charges against Toiganbayev were to be considered in an independent court.

The Kazakh citizen was accused in committing a set of classical economic crimes, which was regularly practiced in Kyrgyzstan for political point-scoring. At the same time, the words "taking into account the defendant's identity" given in the preamble of the court decision sounded as an explanation of the decision basis. The Kyrgyz authorities, demanding Toiganbayev's extradition, repeatedly asserted that his case would be examined on a general basis and there were no political motives in the

charges brought against him. However, the decision directly contradicts such statements.

In fact, the above preamble frankly denies the equality of all before the court, rejects the fairness and impartiality of the trial. Thus, the court removes itself the question of legal quality of the sentence delivered by it.

Especially we want to take out attention at the affairs related to the election process... An example is the case of the Kyrgyzstan party's leader, Kanat Isaev. The case against him was provoked by the indicative operations of the special services of Kyrgyzstan from the beginning to the end. Acting member and party leader K. Isayev was also accused of "preparing" the seizure of state power, which was an absurd accusation against one of the leaders of the parliamentary majority two weeks prior the nationwide presidential elections. Also, a video record found on the Internet was used as a basis of the case. The closed court was organized under the guise of preserving a state secret. To date, the pre-trial restriction was changed to Isaev.

The special services have brought out not one, but two criminal cases, one after another, against Omurbek Babanov, the presidential candidate. The basis was the distribution of video clips on the Internet with the speeches of O. Babanov superimposed on the similar speeches of the President A. Atambayev with the words "we will never drop on our knees", which demonstrated the contrariness and bias of this case.

Another example is the sensational case of O. Tekebaev on the issues of the private company "Megacom", when the future presidential candidate from the opposition party was neutralized as in Bakiyev's time in a criminal charge scenario similar to the "Russian doll-gate". This time he was convicted in a softer form on the fraud and corruption article. One of the prosecution's tasks is the prosecution on the eve of the elections, which was an attempt to exclude an influential public figure from the presidential campaign, and not to observe the rule of law.

Another deputy leader Duishonkul Chotonov and Almanbet Shikmamatov, the member of Aid Saliyanov's party, were prosecuted, brought to responsibility and imprisoned, which served as the basis for the statement made by the political council on "organizing political prosecution of "Ata Meken" members and other political parties and figures that laid in the basis of the fabrication of criminal cases for the removal of objectionable persons, intimidation of society and clearing the road for their successor in the election of the head of state".

In recent years, Kyrgyzstan, which has been a full-fledged member of the OSCE (the Organization for Security and Co-operation in Europe) for many years, signed and ratified a number of agreements and committed itself to respecting human rights and promoting the conditions for their improvement, finally lost the status of a "democracy island" and was recognized as a consolidated authoritarian country by

the international observers last year. The state-run media and the fake communities formed with the participation of special services began to practice a disclosure of the investigation "secrecy" in the form of placing personal data with an aim of publicly pressuring the results of decisions taken by the law enforcement bodies and courts immediately when detaining their opponents in cases having no official, public and other confirmation.

In this regard we consider it necessary to raise the question before the new country's leadership:

- on the abolition of the current dangerous practice of using the legitimate law enforcement and juridical institutions to prosecute their opponents by the Kyrgyz authorities, leading to a politically unstable situation in the country
- on conducting the independent international monitoring with the involvement of professional lawyers and independent human rights organizations, and prominent human rights defenders of Kyrgyzstan itself, on matters that have acquired an international nature and caused political resonance not only in the country.
- on the basis of such monitoring, put the issue of legal responsibility of law enforcement and juridical officials who, by virtue of their own interests, step over the constitutional powers entrusted to them and jeopardize the legal image of the country at the international level.

To recommend the Parliament holding an extended meeting on the cases of the above mentioned persons and express its open position as the main governing institution of the country.

To include a separate block in the subsequent work plan of the OSCE, in particular - in the annual reports on the human dimension.

- on the formation of an information agenda that makes well known all the known cases of illegal and false accusation of innocent people, and propose the ways to eradicate them. The findings of such conclusions, taking into account an expert opinion, should form the basis of legal norms for the consideration of issues on the newly discovered circumstances. It is so, since the international documents are recognized by the Constitution of the Kyrgyz Republic as a constituent part of the Kyrgyz legislation without preferential rights.
- to recommend the OSCE countries making some proposal to the legislation to conduct, when adopting the laws, an expert evaluation on the possible **exclusion of dangerous norms that may indirectly or directly affect the political decisions.**
- to consider the issues on supporting projects implemented not by one NCO, but by a block of NCOs protecting human right within the country, involving internationally-known lawyers and representatives of the international organizations to monitor cases similar in this statement. To provide maximum support at the level of the OSCE countries to open and mass information among the population.

- on active measures at the level of the OSCE, the UN, the European Union of EEU (the Eurasian Economic Union), PACE (Parliamentary Assembly of the Council of

Europe) and other organizations to stop any such abuses and prevent them in the future.

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