

Human Rights Movement: Bir Duino-Kyrgyzstan

Review of the KR legislation on creation of a list of extremist materials¹

The procedure for establishing a list of extremist materials

In Article 1 of the Law of the Kyrgyz Republic "On Countering Extremist Activity" (hereinafter the Law) the following is meant by the extremist organization and extremist materials:

extremist organization - public associations or religious organizations or other organizations in respect of which, on the grounds provided for in this Law, the court has adopted an enforceable decision to liquidate or prohibit their activities due to performance of extremist activities;

extremist materials - documents intended for promulgation or information presented in another form, calling for implementation of extremist activities or justifying or defending the need to carry out such activities, publications that justify or defend national (ethnic) and (or) racial superiority or justify the practice of committing military or other crimes aimed at the total or partial destruction of any ethnic, social, racial, national or religious group.

The current legislation of the Kyrgyz Republic envisages maintaining of the list of extremist materials by the Ministry of Justice of the Kyrgyz Republic (Article 13 of the Law).

According to paragraph 1 of this regulation, publication, storage, transportation and distribution of certain printed, audio, audio-visual and other materials is prohibited on the territory of the Kyrgyz Republic. These include:

a) official materials of banned extremist organizations;
b) materials, authored by persons convicted in accordance with international legislation for crimes against peace and humanity and containing the signs provided for by Part 1 of Article 1 of the Law (see below);

c) **any other materials**, including anonymous, **containing the features** provided for in Part 1 of Article 1 of the Law, **namely**:

"1) activities of public associations or religious organizations or other enterprises, organizations and institutions, as well as mass media, regardless of the form of ownership, or individuals on planning, organizing, preparing and carrying out actions aimed at:

violent change of the foundations of the constitutional order and violation of integrity of the Kyrgyz Republic;

undermining the security of the Kyrgyz Republic;

seizure of power or usurpation of authority;

creation of illegal armed groups;

unfolding terrorist activities;

inciting racial, interethnic or religious hatred, as well as social discord connected with violence or calls for violence;

humiliation of national dignity;

calls for mass riots, acts of disorderly conduct and acts of vandalism based on ideological, political, racial, ethnic (or) religious hatred or enmity, as well as on motives of hatred or enmity towards any social group;

propaganda of exclusivity, superiority or inferiority of citizens based on their religion, their social, racial, ethnic, religious or linguistic affiliation".

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Article 299² of the Criminal Code of the Kyrgyz Republic provides for imprisonment for the period of three to five years with deprivation of the right to hold certain posts or engage in certain activities for acquisition, production, storage, distribution, transportation and sending of extremist materials, as well as willful use, including demonstration of symbols or attributes of extremist or terrorist organizations.

Besides that, if this act was committed by a group of persons or through abuse of official position or using financial or other material assistance received from foreign, public associations and religious organizations or other organizations, as well as foreign citizens, or during public events or by a person previously convicted for extremist or terrorist crimes (extremist activity), it is punishable by imprisonment for a period between seven and ten years with deprivation of the right to hold certain positions or engage in certain activities according to part two.

According to article 258⁴ of the Civil Code of the KR, information materials are considered extremist by the court in response to the prosecutor's application at the district where they were found, distributed or where the organization is located that produced such materials.

In response to the prosecutor's application, the court has the right to temporarily restrict access to information materials before making a decision (part 2 of the same article).

To execute examination to detect extremist content in certain information materials and oral statements, a coordinating expert committee is created; the Regulations for the committee and its composition are approved by the Government of the Kyrgyz Republic (art. 4 of the Law).

In accordance with Article 258⁵ of the Civil Procedure Code of the Kyrgyz Republic, the application is reviewed by the court with participation of the prosecutor who made the claim and the persons indicated in the application if their whereabouts are known. Failure of the persons mentioned in the application to appear in court, in case they have been duly notified of the time and place of the court session, does not prevent the court from consideration of and making a resolution on the case.

If the location of the persons indicated in the application is unknown, the court considers the application in their absence.

A copy of the judicial decision, that has entered into legal force, on the extremist nature of the information materials is sent to the executive authority in the area of justice. The list of extremist materials is subject to periodic publication in the mass media, as well as on official websites of authorized state bodies in the sphere of justice, which counteract extremist activities.

Materials included in the list of extremist materials are not subject to dissemination on the territory of the Kyrgyz Republic.

Persons responsible for illegal manufacture, distribution, transportation and storage of these materials for the purpose of further dissemination are subject to criminal prosecution.

Case of ADC Memorial and Human Rights Movement: Bir Duino-Kyrgyzstan

In March this year, during the review of the official website of the KR Ministry of Justice, a list of extremist materials was found in the Activities section. Upon careful examination, it was revealed that in the document entitled "List of legal entities and Internet sites banned on the territory of the Kyrgyz Republic" item No. 26 in the column "Name of legal entity (organization)" contained the following: Report of ADC Memorial submitted by the Human Rights Movement: Bir Duino-Kyrgyzstan and the human rights organization Freedom House entitled: "A Chronicle of Violence: the Events in the South of Kyrgyzstan in June 2010 (Osh region)", and in the column "Grounds for including a legal entity in the List": "Decision of Oktyabrskiy District Court of Bishkek as of 05.01.17", and in the final column "Category of legal entity (organization)" it is indicated: "Extremist".

It is noteworthy that in the Activities section of the website of the KR Ministry of Justice there is a link to the "List of Extremist Materials", and a completely different document is being downloaded entitled "List of legal entities and Internet sites banned on the territory of the Kyrgyz Republic".

It should be noted that this list consists of three columns: 1) Name of legal entity (organization); 2) Grounds for inclusion of a legal entity in the List and 3) Category of legal entity (organization). However, there are no references to "extremist materials" in any of the titles of the above mentioned columns.

Thus, **along with such worldwide known terrorist and/or extremist organizations** as Akromiya (No. 1 on the list), Al-Qaeda (No. 2), the Taliban Movement (No. 7), the Islamic Party of Turkestan, the Islamic Movement of Uzbekistan, the IMU, the Islamic Renaissance Party (No. 10), the Islamic State or the Islamic State of Iraq and the Levant (No. 11), Hizb ut-Tahrir al-Islami, Hizb ut-Tahrir (No. 14), Jabhad al-Nusra (No. 16) and many others, **now** there are the **ADC Memorial, NGO "Human Rights Movement: BirDuino-Kyrgyzstan"** and **human rights organization "Freedom House"** included as No. 26 on the List.

In the course of acquaintance with the Decision of the Oktyabrskiy District Court of Bishkek dated 05.01.17, it was found out that:

The materials of the alternative report of ADC "Memorial", submitted jointly with the NGO "Human Rights Movement: Bir Duino-Kyrgyzstan" to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the survey report of ADC "Memorial" prepared in collaboration with the Norwegian Helsinki Committee and the human rights organization "Freedom House" published under the title: "A chronicle of Violence: the Events in the South of Kyrgyzstan in June 2010 (Osh region)", have been recognized as extremist and stirring up ethnic hatred on the territory of the Kyrgyz Republic.

It is prohibited to publish, replicate, store, transport and distribute in electronic, audio, audiovisual and printed form, including posting on the Internet, of the alternative report of the ADC "Memorial" submitted together with the NGO "Human Rights Movement: Bir Duino-Kyrgyzstan" to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the survey report of ADC Memorial, prepared in collaboration with the Norwegian Helsinki Committee and the human rights organization Freedom House, published under the title: "A Chronicle of Violence: the Events in the South of Kyrgyzstan in June 2010 (Osh Region)".

The ADC "Memorial" is prohibited to carry out its activities on the territory of the Kyrgyz Republic.

Execution of the court decision is entrusted to the SCNS and the Ministry of Internal Affairs of the Kyrgyz Republic.

On May 29 this year we filed an appeal against the decision of the Oktyabrskiy District Court of Bishkek dd 05 January 2017, and an application was submitted to restore the missed period of appeal against the decision.

However, on 05 July 2018, the Judicial Board for Civil Cases of Bishkek City Court chaired by A.N. Kudaibergenov and the judges N.A. Iliyazova and M.B. Dzheenbekova, without going into the merits of the case, refused the application of the NGO "Human Rights Movement: Bir Duino-Kyrgyzstan" to restore the period of appeal against the decision of the Oktyabrskiy District Court of Bishkek dated 05 January 2017.

Despite the obvious justification of not meeting the deadline for appeal, since in fact the court decision was received by the NGO "HRM Bir Duino-Kyrgyzstan" on May 14, 2018 according to the letter of the Ministry of Justice of the Kyrgyz Republic, and that was the moment when the period for appeal began, and there is no objective evidence that the NGO "HRM Bir Duino-Kyrgyzstan" knew or should have known about the existence of this decision, the judicial board decided that the NGO "HRM Bir Duino-Kyrgyzstan" unreasonably missed the term of appeal.

Chronology of persecution

Every year in Kyrgyzstan, the fight against religious extremism intensifies, and it is not uncommon to see, that activities are hidden behind it, that are carried out to suppress the rights of ordinary believers and ethnic minorities, to persecute human rights defenders and specifically our organization "Bir Duino-Kyrgyzstan", which protects vulnerable citizens from ethnic minorities, believers accused of extremism.

Religious persecution. Article 299-2.

The majority of criminal cases connected with religious extremism, where employees of HRM "Bir Duino-Kyrgyzstan" provided legal assistance, are related to article 299-2 of the Criminal Code of the Kyrgyz Republic – the one on storage or dissemination of extremist material. In almost all of these cases, religious information materials that allegedly were found during a search were presented to substantiate the charges.

As a basis for charges in these criminal cases, the conclusions of a religious expert examination were presented, made by non-professional staff of the State Commission for Religious Affairs. None of the criminal cases that our organization worked on, brought a judicial decision on recognition of the alleged material as extremist, i.e. people were convicted and are being convicted at the moment for the storage of allegedly prohibited extremist materials, although these materials were not prohibited.

Despite the recommendations of human rights defenders on the unconstitutionality of the Article 299-2 of the Criminal Code, the State Committee for National Security of KR, the General Prosecutor's Office of KR and the Ministry of Internal Affairs of KR extensively use this article of the Criminal Code of KR to persecute dissidents, journalists and human rights activists as well as ethnic minorities.

Vulnerable citizens from ethnic minorities, believers accused of extremism.

Rashod Kamalov's case. On October 7, 2015 the Kara-Suu district court recognized imam Rashod Kamalov as guilty of inciting to religious hatred, as well as of storage and dissemination of extremist materials, and imposed a five-year prison sentence in a settlement colony. Then the prosecutor's office submitted an appeal to increase the prison term. Therefore, on November 24 the Osh regional court increased the length of punishment to 10 years of imprisonment. On September 14, 2016 The Supreme Court of the Kyrgyz Republic rejected the appeal of the lawyers and upheld the sentence of the Osh regional court.

Abdullokh Nurmatov. In 2015, a resident of Kara-Suu Abdullokh Nurmatov was accused of extremism and forced by torture to give his password to his page in the social network Odnoklassniki. Nurmatov did not plead guilty, and all his activity in social networks was "liking" the materials on cases of Dilier Dzhumabaev convicted for extremism and photos of imam Rashod Kamalov. In May 2016 the Osh City Court found Nurmatov guilty of distributing extremist materials, and sentenced him to three years in prison with application of suspended sentence with a probation period of 1 year. Two months later the court of second instance upheld the verdict. On April 10 this year, the Supreme Court conducted a supervisory review and upheld the previous sentence.

Threats to human rights defenders

Persecution of HRM "Bir Duino-Kyrgyzstan"

The offices of HRM "Bir Duino-Kyrgyzstan" have been robbed twice, which was connected with the attacks of nationalists and control performed by the special services over the "Bir Duino" activities during the trials of the well-known human rights activist Azimzhan Askarov in 2013.

Searches conducted in 2015:

- 1) On March 26, 2015 the Osh city court issued a warrant authorizing a search in the Osh office of HRM "Bir Duino-Kyrgyzstan";
- 2) On March 27, 2015 Osh city court issued a warrant authorizing a search in the houses of lawyers of HRM "Bir Duino-Kyrgyzstan" V. Vakhitov and Kh. Saliev;
- 3) On March 27, 2015 investigators of OSCNS of Osh and Osh region A. Dzhenbaev and A. Shadybekov conducted searches at the work places as well as homes of lawyers V. Vakhitov and Kh. Saliev (HRM "Bir Duino-Kyrgyzstan"). Four laptops, flash cards, dictaphones, disks, etc. containing data on more than 100 lawyer cases were seized during the searches;
- 4) On April 30, 2016 the Osh oblast court abolished the warrants of the Osh city court to conduct searches, did not permit the investigators of the SCNS to conduct the searches.
- 5) On May 18, 2015 the Osh city court recognized the refusal to return the attorney's materials (21 disks) as illegal and unjustified; it also recognized the appointed religious expert examination of the seized attorney's materials as illegal and unjustified;
- 6) On June 22 and 24, 2015 the Supreme Court upheld the refusal to grant permission for conducting a search at the offices of Bir Duino-Kyrgyzstan (BDK) and its lawyers.

On withdrawal of the brochure published by BDK (2016):

- 1) Within the framework of the project on improvement of the situation on the roads, a social project was implemented to improve knowledge of traffic rules and to protect violated rights. As a result, brochures were published in the Russian, Kyrgyz and Uzbek languages. On April 7, 2016 A. Sydykov, Senior investigator from the Osh City Department of Internal Affairs, seized the brochure in the Uzbek language from the car of the BDK's employee under the pretext that the publication in Uzbek was not permitted. He did not present any claims regarding the similar materials in the Kyrgyz and Russian languages.
- 2) On June 23, 2016 the Osh city court recognized the actions of the investigator of the Osh City Department of Internal Affairs A. Sydykov on seizure of BDK's brochures as lawful and justified. The court refused to recognize withdrawal of the BDK's brochures in Uzbek as discrimination, but ordered to return the seized brochures in the Uzbek language to Bir Duino-Kyrgyzstan.

Regarding the false information of the SCNS (2017-2018):

- 1) On January 24, 2017 a press release of the State Committee for National Security stating that during the search in the house of the person under investigation, materials related to the activities of the NGO Bir Duino were found. In the course of ongoing search operations, representatives of this non-governmental organization gathered the local population at the moment of arrest of A.Sh. to prevent the search at his place of residence and tried to provoke a conflict situation. I.e. they accused BDK and its employees of committing a crime.
- 2) On October 30, 2017, the Pervomaisky District Court of Bishkek, in its ruling, recognized that the information disseminated in the press release of the OSCNS was untrue and ordered the department to refute them in mass media.
- 3) On October 30, 2017 the Bishkek City Court overturned the decision of the Pervomaisky District Court of Bishkek and dismissed the claim of the head of BDK T. Ismailova to the State Committee for National Security.
- 4) On June 20, 2018 the Supreme Court dismissed the appeal in cassation submitted by the head of BDC T. Ismailova, thus rejecting the complaint filed by BDK against the OSCNS.

Entering into the list of extremist materials

In March 2018, during review of the official website of the Ministry of Justice of KR, a list of extremist materials was found in the "Activities" section. Upon careful examination, it was revealed that in the document entitled "List of legal entities and Internet sites banned on the territory of the Kyrgyz Republic" item No. 26 contained the following information in the column "Name of legal entity (organization)": "Report of Anti-discrimination Center "Memorial" presented together with "Human Rights Movement: Bir Duino-Kyrgyzstan" and the human rights organization "Freedom House" titled: "A Chronicle of Violence: The events in the south of Kyrgyzstan in June 2010 (Osh Region)", in the column "Grounds for including a legal entity in the List": "Decision of Oktyabrskiy District Court of Bishkek as of 05.01.2017", and in the final column: "Category of legal entity (organization)" it is indicated: "Extremist". Bir Duino for a long time had no opportunity to get acquainted with the Court's decision and the case materials. Currently, a lawyer is working on protecting the organization.

Human Rights Advocacy Center. In 2014 the State Committee for National Security (SCNS) initiated a criminal case against the Human Rights Advocacy Center, which conducted its work in cooperation with the American human rights organization Freedom House. The purpose of the project was to monitor the implementation of civil rights of ethnic minorities in Batken and Jalal-Abad oblasts. The criminal investigation against the Advocacy Center was conducted during the period of KR's active participation in the Eurasian integration processes. Recently, Kyrgyzstan has also been copying Russia's actions in terms of social and political issues.

Currently Kyrgyzstan is planning to adopt the new law "On Freedom of Religion and Religious Organizations" in this regard, "Bir Duino Kyrgyzstan" recommends to the Kyrgyz authorities to develop it base on the OSCE Guidelines on Freedom of Association.²

Should you have any questions, please, contact the Human Rights Movement "Bir Duino Kyrgyzstan", tel.: + 996 312 383330, e-mail: birduinokyrgyzstan@gmail.com

² https://www.legislationline.org/download/id/8071/file/Guidelines_Freedom%20of%20Association_FINAL_2014_ru.pdf