



OSCE Human Dimension Implementation Meeting

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Working Session 1: Rule of Law I

THE JUDICIARY IN TAJIKISTAN

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The Judiciary in Tajikistan

In 2007, the European Union adopted a 'Strategy for a New Partnership' with Central Asia, aimed at developing further co-operation with the Central Asian region. One of the main objectives of this initiative is the promotion of human rights, rule of law, good governance and democratisation in Central Asia through enhanced exchanges in civil society.

In 2008, the European Union and Tajikistan agreed to establish an annual human rights dialogue. On 31 October 2008, the first session of the dialogue took place in Dushanbe. In July of this year, human rights seminar between civil society representatives from Tajikistan and the EU was organized in Dushanbe and the EU invited our NGO to take part in it.

At this seminar, the following topics could be discussed such as:

- pre-trial rights (prohibition of arbitrary arrest, prohibition of torture, access to lawyer)
- guarantees of independence of judiciary
- prohibition of the use of evidence obtained in violation of law, including under torture
- post-trial rights (right to appeal)

We want to use this forum of the OSCE/ODIHR to repeat the recommendations that we formulated in Dushanbe.

Human Rights Without Frontiers recommends

Pre-trial rights

- To align the Criminal Procedure Code to the international standards so as to protect individuals from arbitrary arrest or detention;
- To make compulsory judicial approval of an order for pre-trial detention;
- To forbid any detention without a warrant;
- To reduce the length of the pre-trial detention in exceptional cases (currently 15 months);
- To reduce the power of local prosecutors in ordering pre-trial detention (currently up to 2 months) by making it a joint decision with a higher level prosecutor;
- To grant the right to an effective judicial review of a detention order;
- To put an end to incommunicado detention without formal charges;
- To prosecute law enforcement officials arresting an individual without a warrant;
- To grant the right to an attorney upon arrest;
- To guarantee the independence of government-appointed lawyers;
- To introduce a bail system;
- To allow family members to have access to prisoners at any stage of the detention;
- To apply the law saying cases should be brought before a judge within 28 days after indictment.

Civil Judicial Procedures and Remedies

- To address the lack of access to justice for the poor and vulnerable layers of the population;
- To clarify the limits of the jurisdictions of the various courts (civil courts, economic courts, military courts). A case of confiscation by the customs of issues of The Watch Tower sent to Jehovah's Witnesses is being treated by a military court because evidence presented by the SCNS involved national security;
- To guarantee the impartiality of the judiciary.

Independence of the judiciary

- To reduce the disproportionate powers granted to the prosecutor by the Criminal Procedure Code in relation to judges and defense lawyers;
- To deprive the prosecutor of the right to protest a court decision outside of normal appeal;
- procedures, to have it annulled and reexamined by higher courts indefinitely after the expiration of appeal periods;
- To prosecute politicians exerting pressure to prosecutors and judges;
- To give a decent wage to judges in order to make them less vulnerable to bribery.

Training of the members of the judiciary

- To have them trained in Tajikistan and outside about international standards;
- To increase the competence and professionalism of Tajikistan's judges and improving their ability to render justice in accordance with the law;
- To grant them access to legal reference materials.

Protection of the rights of the detainees in custody or serving a prison term

To sign an agreement with the International Committee for the Red Cross (ICRC) to allow free and unhindered access to prisons and detention centers.

Torture, inhuman and degrading treatment during the detention period

- To define torture in the criminal code;
- To collect data about allegations of torture while in detention;
- To open investigations about allegations of torture in detention facilities and to prosecute possible violators (policemen, security officials, detention staff, etc.);
- To give access to the 4 pretrial facilities and 8 prisons of the country to representatives of the international community (i.e. UN Special Rapporteur on Torture, ICRC's staff,

foreign fact-finding missions) and of the Tajik civil society in cases of allegations of torture, inhuman or degrading treatment.

Police and Security Apparatus

1. To clarify by law the mandates of
 - the Ministry of the Interior, (MOI)
 - the Drug Control Agency (DCA)
 - the Agency on State Financial Control and Fight Against Corruption
 - the State Committee for National Security (SCNS)
 - the State Tax Committee (STC)
 - the Customs Services (CS)to solve the current overlapping problems.
2. To evaluate the efficiency of these agencies and publicize the results.

Corruption

The implementation of the following laws and regulations should be assessed and the evaluation should be publicized :

- *Presidential Decree of the Republic of Tajikistan No.1343 of 14 June 2004 approving the Public Servant's Ethics Code directed at preventing corruption, ensuring probity and impartiality of public service;*
- *On Approval of the Form of Declaration of Incomes and Assets of a Public Official and Instruction on the Order of Filing that Declaration;*
- *On Approval of Procedures for the Placement of Public Officials' Assets in Trust Management;*
- *On Approval of a Model Provision on the Personnel of a Public Institution.*