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Working Session 4: Rule of Law I, including the independence of the court, the right to a fair trial, democratic law-making

The situation with respect for human rights, one of the aspects of which is the right to a fair trial and an independent court, remains one of the most important and urgent tasks in Tajikistan.

Tajikistan, being a member of the OSCE, signatory to the Helsinki Final Act, has undertaken to act in the field of human rights and fundamental freedoms in accordance with the purposes and principles of the UN Charter and the Universal Declaration of Human Rights, to abide by the provisions of the International Covenant on Civil and Political Rights. Over the past year, after the ODIHR meeting in 2017, unfortunately there have been no improvements in this issue. The judiciary still remains dependent on the authorities and investigative bodies.

The degree of independence of the judiciary is one of the main indicators of the country's democratic system. On the one hand, its sound functioning strengthens the state power, and on the other hand it is called upon to limit this power, protect the rights and freedoms of citizens from any encroachments, including on the part of state bodies. In their activities, courts should be limited from the influence of other branches of government. The process of the administration of justice should not interfere with the personal interests of individual actors, officials, organizations or any structures.

Until 2010, the judicial system in Tajikistan was relatively independent in its activities, but after 2010, dependence on the executive branch began to grow with geometric progression. At this time, we can state with full certainty that there is absolutely no independent judiciary in Tajikistan.

But the degree of independence of judges is determined not only by non-interference in their activities, but also by a special order of their election, appointment, release; inviolability of the judge; the implementation of justice in the manner established by law (Article 8 of the Constitutional Law of the Republic of Tajikistan "On the Courts of the Republic of Tajikistan"). It is indisputable that courts in Tajikistan issue sentences in criminal cases in accordance with the interests of investigative bodies and the prosecutor's office. The only area where the influence of investigative bodies is absent is in resolving civil disputes. However, corruption prevails in this sphere, therefore it is not necessary to count citizens for impartiality and justice of judges.

The bodies of the Prosecutor's Office and the preliminary investigation not only tell the judges about the degree of guilt of the defendant, the necessity of arresting the suspect, but also what sentence must be taken.

According to the explanations of the Resolution of the Plenum of the Supreme Court of Tajikistan No. 20 of 2013 "On the practice of the courts applying legislation on the application of arrest as a preventive measure", and in accordance with the rules of criminal proceedings (Article 102 of the Code of Criminal Procedure), the suspect's arrest is carried out only on the basis of collected in the criminal case of evidence, which give sufficient grounds to believe that

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the suspect, accused, defendant may abscond from the criminal investigative body and the court; or may prevent a preliminary investigation of a criminal case or its consideration by the court, including concealment or falsification of materials relevant to the case, or unlawfully influence the persons participating in the criminal procedure without valid reasons, not on the authority of the body conducting the criminal proceedings, commit another crime, oppose the execution of the sentence. In their petition to the court, investigators and prosecutors are tied to present such evidence to court. But, in practice, such cases of providing evidence are negligible. Courts, as usual, satisfy such unreasonable petitions of the investigating authorities, and this leads to a huge number of unreasonably detained persons.

Due to the dependence of courts on law enforcement bodies and authorities, the same category of cases, depending on the persons brought to justice, is treated differently.

On October 1, 2015, the Ismoili Somoni district court authorized the arrest of lawyer Buzurgmohar Yorov, suspected of fraud in the amount of about \$ 7,500 and forgery of documents. At the beginning of the same month he was detained on suspicion of fraud in the amount of \$ 600,000 Najmiddin Saidov, the brother of the head of the Tajik Customs Service Fattoha Goib (Saidov), but he was not arrested, and on October 23, 2015 the criminal case against him was terminated.

On August 23, 2016, Jamshed Yorov was illegally detained by the Prosecutor General's Office according to order of Attorney General. The next day, on August 24, the Law "On General Amnesty" came into force. But, on August 26, 2016, the General Prosecutor's Office filed a motion to apply the arrest against Jamshed Yorov, although, according to the Amnesty Law, further proceedings on his case had to be terminated. At the court session, the judge presiding in the trial tried to explain to the representatives of the Prosecutor's Office that the petition was not justified and illegal. But, due to the pressure exerted on him, he, nevertheless, on August 26 authorized the arrest of Yorov for a period of two months.

On May 12, 2012, the Vahdat city court refused to authorize the arrest of the son of the leader of the Islamic Revival Party of Tajikistan (IRPT) Muhammad Tillozod, who committed the crime through negligence. On the next working day, the prosecutor's office had already prepared and filed a complaint against the decision to the Supreme Court, and the court, due to the pressure exerted on him, sanctioned the arrest of Muhammad Tillozoda by his decision. In the same situation that occurred on February 13, 2018, when the captain of the Kulobb police department Saidmumin Islomov knocked down a teenager to death, he was not even detained. The city prosecutor's office then immediately announced that the case was classified. In the future the case against him was terminated.

A similar case occurred on July 14, 2018 in the Vose District, an investigator of the prosecutor's office Izzatullo Shamsullozoda made a two-person attack with a fatal outcome. Similar cases of double execution of the law, due to the dependence of courts in decision-making, are many.

Another aspect of the courts' dependence on the executive and legislative power in Tajikistan is the manner and procedure for their election and dismissal. Although, according to the legislation, the Supreme Court of the Republic of Tajikistan is the supreme body of the judiciary, but its judges are appointed to the post of the ruling People's Democratic Party of Tajikistan (PDPT), whose members occupy almost all the seats in the Majlisi Oli (parliament) of the country.

The judges of the Court of the Badakhshan Autonomous Region, the courts of the provinces, the city of Dushanbe, military garrison courts, courts of cities and districts on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan, judges of the Economic Court of the Badakhshan Autonomous Oblast, economic courts of the regions and the city of Dushanbe are appointed by the President and, part-time, chairman of the PDPT. This order of appointment

puts the courts in direct dependence on the legislative and executive power, which is in the hands of representatives of only one party.

Another aspect that affects the independence of courts is their direct dependence on local authorities, providing them with premises and buildings for ships. Most of the courts in Tajikistan do not have sufficient facilities for meetings. In the building of the courts there are no specialized rooms for lawyers, there are no normal conditions for keeping the defendants. Basically, the defendants, before and after the trial, are placed in the basement of the buildings of the ships, without proper access to light and fresh air.

In the existing system of admission to court buildings, representatives of authorities, investigations and prosecutors have an advantage over ordinary citizens or the side of protection. If citizens, witnesses and lawyers are carefully checked at the entrance to the court building, they take away telephones, sound recording equipment, etc., this rule does not apply to the authorities or investigation bodies and the prosecutor's office. The right of access to court sessions to representatives of the public and journalists is severely restricted. Before and during the breaks in the trials, often representatives of the state prosecution are in the offices of the judges, which also calls into question their further decisions on the case as an independent one. Another aspect that testifies to the dependence of the judicial system on the authorities is the lack of information and the hidden nature of the activities of the courts in the country. Although February 21, 2018g. in the building of the Supreme Court of Tajikistan an official launch ceremony of the project "Access to judicial information" for the period 2018-2019, but at this time, no significant results are not noted. This project is a joint project of the Supreme Court of the Republic of Tajikistan, the Ministry of Foreign Affairs of the Kingdom of Norway and the UN Resident Coordinator / UNDP Resident Representative. The main objective of the Project was to enhance the capacity of judges and judicial personnel to provide quality services, including the provision of timely and reliable information to the public, as well as support in developing a legal framework for the openness of judicial information. In the framework of the Project, it was planned to modernize the websites of the Supreme Court, the court of Dushanbe, regional courts in Sughd, Khatlon and GBAO with the aim of providing information on the activities of the judiciary and increasing public confidence in the judicial system. It was also planned to train about 100 members of the judiciary and media representatives to work with the public, prepare and transmit timely and reliable information through local and international media.

In addition to the Judicial-Legal Reform Program (JWP) for 2011-2013, issues of information openness of courts are regulated by the resolution of the Plenum of the Supreme Court of the Republic of Tajikistan of September 29, 2014 "On publicity and openness of the trial and the right to access information on the activities of the courts" Government of the Republic of Tajikistan dated April 1, 2011 "On Approving the Procedure for Uniform Requirements for Websites and Local Area Networks of Governmental Authorities" and the Law of the Republic of Tajikistan "On rights to access information".

According to the research conducted by the Center for Human Rights in Tajikistan, 56 sites have been registered at courts of various levels, however, for those who use the above sites, their shortcomings are now evident. First and foremost: lack of information on the movement of specific civil cases and the content of judicial acts that have entered into force, the irregularity of the placement of updates, technical problems, the unresolved issue of the use of elements of electronic justice in the performance of certain procedural actions.

For example, according to the monitoring conducted by the Center on May 13, the city court of Dushanbe last updated the information on March 12, reprinting an article from the newspaper Minbari Khalk. The websites of the courts of the capital districts of Firdavsi and I. Somoni were unavailable, and on the site of the court of the Sino district the list of the cases in question was exposed in July 2016. The last update of the site is the news of March 3, 2018 about the work done by the employees of the court.

The military court of the Dushanbe garrison gave the latest news in December 2017, and the Economic Court of Dushanbe - in November.

Websites of Vahdat, Roghun, Sughd and other cities are unavailable. The Khatlon regional court updated the list of cases recently, on May 10, but unfortunately, this news is not available. The Supreme Court of the Republic of Tajikistan last updated its site in April this year, placing an announcement about the competition for the position of a trainee judge. The last update of the Supreme Economic Court - in May 2018 on the participation of judges at the meeting of the Committee on Investments.

It is practically impossible to obtain information about the activities of the court, the progress of the cases under consideration and their movement, not only through official websites, but also by writing directly to the courts.

All socially significant trials in the country are classified as "secret". Although the legislation has clear criteria for determining the notion of closed court sessions, courts do not adhere to these norms. The law is not prohibited from receiving information, except for state secrets. Frequent use of this method of conducting judicial investigation testifies to the inadequacy and unreasonableness of the presented evidence and accusations from the state prosecution, and the consent of the courts to hold such meetings is a sign of their dependence on the desire of the prosecutor's office and the authorities. Sometimes some court hearings are declared open, but they take place in closed institutions, such as SIZO, where public access is prohibited. In January of this year, the Prosecutor General of Tajikistan Yusuf Rahmon said that in 2017 in the Republic of 10 criminal cases was given the classification of secrecy.

This statement by the Prosecutor General is not true. The number and practice of appropriating the "secrecy" neck has increased at times, both during the preliminary investigation and during the trials.

The topic of respect for human rights in the light of a fair trial is one of the cornerstones of the independence of the courts. In the course of the so-called "fight against terrorism and extremism", official Tajikistan commits acts that infringe on the basic norms of fair trial. Such actions include the restriction of the right to information about the crime committed and persons committing them, violation of the principle of presumption of innocence, closed access to trials, secrecy of the investigation and trial, pressure on lawyers and defenders, conduct of judicial investigations without due assessment and verification of evidence presented by the prosecution, not responding to allegations of torture and ill-treatment in the course of the investigation, misapplication of the rule of law, etc.

Under the pressure of the authorities, courts in the country superficially conduct criminal cases concerning political opponents of the authorities. In September 2015, in order to please the authorities and the ruling ruling PDPT, it was decided to recognize the IRPT as a terrorist-extremist organization. The analysis of this decision clearly shows the degree of dependence of the Supreme Court on the authorities. One of the main reasons for this decision was, allegedly, the participation of top leaders of the IRP in the attempt of a coup in 2015. The decision was made on September 29, 2015, just 13 days after the start of the criminal investigation against the members of the Supreme Council of the IRPT. Their participation in these actions has only just begun to be investigated, but the Supreme Court already by its decision of September 29, 2015 recognized the terrorist party, and their actions qualified as terrorist and extremist. And this illegal decision, adopted by the civil court, later served as a basis for recognizing them guilty and condemning them for long and life-long terms.

In this regard, the Human Rights Vision Foundation draws your particular attention to this issue, a problem that is paramount in a democratic society. After all, it is the independent independent judiciary, backed by the general trust of the population, that serves as the main foundation for the construction of a democratic and lawful state, where the rights and legitimate interests of

everyone will be guaranteed equally protected, regardless of their social status or property. We call upon the OSCE participating countries to pay attention to Tajikistan's failure to comply with its obligations regarding the UN Basic Principles on the independence of the judiciary, non-interference in the activities of the courts, open access to court information and court sessions, the possibility of giving equal rights to lawyers and public prosecutors, participating in the trial in accordance with the principle of adversariality of the parties.

Tajikistan needs to move from declaring to the implementation of such principles of criminal justice as the principle of equality before the law, the presumption of innocence and the right to a fair and fair trial by a competent, independent and impartial court established in accordance with the Law.

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