

OPEN LETTER - THE OBSERVATORY

KYRGYZSTAN: OPEN LETTER TO THE AUTHORITIES

To:

Mr. Atambayev A.Sh.
President of the Kyrgyz Republic
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Mr. Jeenbekov A.Sh.
**Speaker of the Jogorku Kenesh of the
Kyrgyz Republic**

All Members of Parliament

Paris-Geneva, July 26, 2013

Re: Concerns over the draft law on Introducing Changes and Amendments into some Legislative Acts of the Kyrgyz Republic

Excellencies,

The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), is writing to you to express concern regarding the draft law on Introducing Changes and Amendments into some Legislative Acts of the Kyrgyz Republic (henceforth "draft law"), and in particular regarding a provision in Part 2 of Article 3 of the draft law, which would result in the incorporation of an Article 395-2 to the Code on Administrative Liability.

According to the information received, the primary aim of the draft law, authored by the State Committee of National Security of the Kyrgyz Republic (SCNS) in July 2013 and posted for public discussion on the website of the Government of the Kyrgyz Republic, is to protect the Kyrgyz people from religious extremism. As such, it has been supported by the public.

However, if adopted, the proposed Article 395-2 will impose administrative liability on citizens who lead or participate in the activities and funding of unregistered public organisations. Thus, Part 2 of Article 3 of the draft law specifies that leading an organisation which "*has not been registered in accordance with the legislation of the Kyrgyz Republic or whose activities have been suspended or banned*" can lead to fines between 70-100 of the Kyrgyz calculation index units (about 110-160 Euros). Participants in such organisations risk fines ranging between 50-70 units (80-110 Euros). The same Article provides that fines for financing such organisations would be ranging from 50-70 units (80-110 Euros) for individuals, 50-200 units (80-315 Euros) for officials and 400-500 units (630-790 Euros) for legal entities.

The broad terms of this Article would actually go beyond the issue of religious extremism and would *de facto* prohibit the exercise of freedom of association by citizens who participate in the activities of unregistered public organisations, by subjecting them to heavy fines.

The Observatory recalls that the Constitution of the Kyrgyz Republic in Article 35 reads that "everyone has the right to freedom of association", and that the law of the Kyrgyz Republic on Non-commercial Organizations explicitly provides citizens with the right to establish unregistered public organisations. In accordance with Part 2 of Article 6 of this law, "Non-

commercial organisations can be created with or without the formation of a legal entity in the form of public associations, foundations and institutions".

The Observatory further recalls that the right of non-governmental organisations (NGOs) to freedom of association is a fundamental and universal right enshrined in numerous international treaties and standards, especially Article 22 of the International Covenant on Civil and Political Rights (ICCPR). Although this right is naturally accompanied by certain responsibilities on the part of NGOs, especially in terms of transparency and good governance, as in any other sector of society, legitimate restrictions on this right must always be "prescribed by law" and "necessary in a democratic society", and respect the primacy of the general interest and the principle of proportionality (Article 22.2 of ICCPR and case-law of the United Nations Human Rights Committee). Moreover, while certain restrictions may be imposed, freedom should be the rule, while restrictions should be the exception.

Excellencies, the proposed Article 395-2 therefore contradicts international law as well as the Constitution and laws of the Kyrgyz Republic. If the draft law is adopted in its current version, we fear that it would establish a set of harsh restrictions towards unregistered NGOs which would go far beyond what is permissible under international law as well as under the Kyrgyz legislation.

Accordingly, the Observatory respectfully urges you to:

- Immediately repeal the Article 395-2-related provisions from the draft law of the Kyrgyz Republic on Introducing Changes and Amendments into some Legislative Acts of the Kyrgyz Republic;
- Comply in all circumstances with the constitutional rights of the citizens of Kyrgyzstan as well as with international and regional human rights standards, such as the rights to freedom of association and peaceful assembly;
- Guarantee in all circumstances the development of a safe and enabling environment in which independent NGOs, civil society, and the media can operate free from any hindrances and reprisals.

We hope that you will take these elements into account.

Yours Sincerely,

Karim LAHIDJI
FIDH President

Gerald STABEROCK
OMCT Secretary General