

2015 OSCE HUMAN DIMENSION IMPLEMENTATION MEETING

Written contribution of

**The International Federation for Human Rights (FIDH)
and
The World Organisation Against Torture (OMCT)**

**Within the framework of their joint programme,
the Observatory for the Protection of Human Rights Defenders**

September 23, 2015

Under Working session 4: Fundamental freedoms I (continued), including:
Freedom of peaceful assembly and association
National human rights institutions and the role of civil society in the
protection of human rights

The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), within the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, wish to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) on the ongoing threats and obstacles faced by human rights defenders in OSCE Participating States.

In 2014 and 2015, human rights defenders in Eastern Europe and Central Asia continued to operate in difficult and hostile environments. Repressive laws sanctioning legitimate human rights work, judicial harassment and annihilation of human rights defenders continued to be particularly acute in Azerbaijan, Kyrgyzstan, the Russian Federation, and Uzbekistan.

The situation particularly deteriorated in *Azerbaijan* and the *Russian Federation*, where the civil society has continued to face acts of reprisals by the authorities while Kyrgyzstan undertook efforts to introduce restrictive legislation drastically reducing human rights defenders possibilities to support victims of violations. The situation in Uzbekistan remains dramatic with human rights defenders community either imprisoned, exiled or silenced. Human rights defenders have continued to be subjected to lengthy pre-trial detention and arbitrary detention following blatantly unfair trials, in particular in *Azerbaijan* and *Uzbekistan*, while attacks and threats against human rights defenders continued, most of the time with impunity, especially in *Kyrgyzstan* and the *Russian Federation*.

Arbitrary detention of human rights defenders

Throughout the region, human rights defenders have continued to be subjected to lengthy arbitrary detention as a means to sanction their human rights activities.

In *Azerbaijan*, the authorities have continued an unprecedented crackdown against human rights defenders. The latter have been subjected to punitive detention on spurious charges and are now serving harsh prison terms, following blatantly unfair trials. On September 1, 2015, award-winning investigative journalist Ms. **Khadija Ismailova** was sentenced to 7,5 years imprisonment on charges of “embezzlement”, “illegal entrepreneurship”, “tax evasion”, and “abuse of office” by the Baku Court of Grave Crimes. On August 13, 2015, Ms. **Leyla Yunus**, Director of the Institute of Peace and Democracy (IPD) and a member of OMCT General Assembly, and her husband Mr. **Arif Yunusov**, Head of the Conflictology Department at IPD, were sentenced to 8.5 and 7 years in prison respectively. On July 31, the Supreme Court of Baku upheld the 6.3-year prison sentence against Mr. **Rasul Jafarov**, engaged in the defense of the rights of political prisoners and an active participant in “Sing for Democracy” and “Art for Democracy”, on criminal charges of “tax evasion”, “illegal entrepreneurship” and “abuse of authority”. On July 21, 2015, the Baku Appeal Court upheld the 7.5-year sentence against Mr. **Intigam Aliyev**, a prominent human rights lawyer heading the Legal Education Society. In addition, Mr. **Anar Mammadli**, Chairperson of the Election Monitoring and Democracy Studies Centre (EMDSC), sentenced to 5.5 years' imprisonment on May 26, 2014 for “tax evasion”, “illegal entrepreneurship”, and “abuse of authority”, as well as Mr. **Hilal Mammadov**, a defender of the rights of the Talysh ethnic minority sentenced in 2012 to 5 years in jail on charges of “high treason”, also remain behind bars.

In *Kyrgyzstan*, Mr. **Azimjan Askarov**, Director of the human rights organisation “Vozdukh” (Air) based in Jalal-Abad region, is still serving a sentence to life imprisonment. On September 3, 2014, the Kyrgyz Supreme Court rejected Mr. Azimjan Askarov’s appeal for a review of the case against him. Mr. Askarov was unfairly accused of having allegedly ordered the blockade in 2010 of the Bishkek-Osh Highway by some 500 armed protesters, and having attacked police officers causing the death of one of them. On July 11, 2012, the Jalal-Abad Regional Prosecutor's Office had refused to allow the re-opening of the investigation, after new facts were brought to its knowledge, including new testimonies, unanimously asserting that Mr. Askarov was not present on the bridge where the policeman was assassinated. Mr. Azimjan Askarov is arbitrarily detained since June 15, 2010.

In *Uzbekistan*, human rights defenders continue to serve long prison sentences, most often in strict regime penal colonies. Their health usually deteriorates due to poor detention conditions and due to

the regular abuses inflicted upon them. Due to be released on April 29, 2015 after serving nine years in prison, Mr. **Azamjon Formonov** was convicted to additional five years in prison for "violating prison rules". His wife was informed about the additional sentence on May 21, 2015. Mr. Azamjon Formonov is the former Chairman of the Syrdarya regional branch of the Human Rights Society of Uzbekistan (HRSU). Accused of attempted blackmail he was tried on June 15, 2006, in the absence of a lawyer of his choice or even of a court-appointed lawyer and sentenced to 9 years in prison for extortion. Other detained Uzbek human rights defenders include Messrs. **Ganikhon Mamatkhanov, Nasim Isakov, Yuldash Rasulov, Zafar Rakhimov, Ganikhon Mamatkhanov, Gaybullo Jalilov, Solijon Abdurakhmanov, Dilmurod Saidov, Azam Turgunov, and Abdurasul Hudoynazarov.**

Judicial harassment, attacks and threats against human rights defenders

Human rights lawyers judicially harassed

In the OSCE region, several human rights lawyers remain judicially harassed, threatened, attacked or intimidated as an attempt to sanction their human rights activities.

In **Azerbaijan**, on July 10, 2015, the Nizami District Court upheld the request filed by the Presidium of the Azerbaijan Bar Association (ABA) to disbar Mr. **Khalid Bagirov** for alleged inappropriate conduct in court. Mr. Khalid Bagirov is a prominent human rights lawyer who represented human rights defenders Ms. Leyla Yunus, Mr. Arif Yunusov, and Mr. Rasul Jafarov. Mr. Bagirov was notified of the date of the hearing on the eve of July 10. As a consequence, he did not have sufficient time to prepare his defence and alert potential independent trial observers, which constitutes a violation of his right to a fair trial. In December 2014, the ABA Presidium suspended Mr. Bagirov's licence, thereby preventing him from further representing the Yunus couple, Mr. Jafarov and opposition leaders Mr. Ilgar Mammadov. Mr. Bagirov intended to defend human rights lawyer Intigam Aliyev. Other human rights lawyers continue to face constant obstacles to their activities.

In **Kyrgyzstan**, on April 14, 2015, an investigator of the Department of Internal Affairs of Karakol City issued a decision ordering the removal of human rights lawyer, Ms. **Nurkyz Asanova**, from the representation of her client, Mr. Ishen Abdrashev. The decision came after Ms. Asanova filed a lawsuit on behalf of her client against police officers, accusing them of acts of torture and forced labour.

Previously, on March 27, 2015, officers from the Osh Office of the SCNS had searched the Osh offices of the Human Rights Movement "Bir Duino", and seized material including computers, material related to criminal cases and USB drives containing working documents on human rights issues. On the same day, SCNS officers also searched and seized material at the place of residence of human rights lawyers Mr. **Khusanbay Saliev** and Mr. **Valerian Vakhitov**, who work with FIDH member organisation "Bir Duino". Both lawyers have been working on the violations committed during the Osh events in June 2010, and notably on the case of Ashirov Abdykerim, a lawyer who had worked with "Bir Duino" on strategic cases and suddenly died on June 28, 2013. On June 24, 2015, the Supreme Court of Kyrgyzstan confirmed the unlawfulness of both searches that took place on March 27.

Judicial harassment and attacks against other human rights defenders and NGOs

In the **Russian Federation**, on June 3, 2015, the Grozny office of the Joint Mobile Group (JMG) was violently attacked and destroyed by an organised mob. JMG, final nominee for the Martin Ennals Award 2013, is a human rights defenders' platform led by the Committee Against Torture (CAT), member organisation of the OMCT and one of the few human rights organisations providing legal aid to the victims of torture in Chechnya. During the attack that lasted for a whole hour, the equipment of the JMG, including a vehicle and a security camera, were savagely crushed, incurring important material damage. The police reportedly took no action to prevent the criminal acts despite multiple attempts to reach them by phone. The attack took place the same day on which about two hundreds protesters gathered in Grozny to attend a demonstration denouncing "the information war against Russia and the Republic of Chechnya". This is not the first attack against the JMG in Grozny. In

December 2014, the JMG premises were set on fire, causing significant damage while members of the JMG were chased by armed assaulters.

Still in the *Russian Federation*, the NGO “Planet of Hopes” (Planeta Nadejd) and its Director Ms. **Nadejda Kutepova**, Nuclear-Free Future award winner in 2011, faced continuous judicial and media harassment. Since 2000, "Planet of Hopes" has been defending the rights of victims of exposure to increased radiation and has been advocating for the review of the legal regime put in place under the Law "On Closed Administrative-Territorial Units" (CATU). On May 26, 2015, the Ozersk City District Court (Chelyabinsk region) sentenced “Planet of Hopes” to pay a fine up to 4,760 Euros for refusing voluntary registration as a "foreign agent". Starting from the next day following the court ruling, a series of defamatory reports on national television groundlessly accused Ms. Kutepova of espionage and violated her right to privacy. This is not the first time that "Planet of Hopes" is subject to harassment. On May 20, 2014, Ms. Kutepova was summoned by a local police division, following instructions received from the Ozersk Prosecutor’s Office. Her criminal record was verified as well as the NGO's office lease.

In addition, on April 17, 2015 in *Moldova*, the *de facto* Transnistrian Committee for State Security (Transnistrian KGB) issued a [statement](#) announcing that "on the territory of the Transnistrian Moldovan Republic, some civil society organisations financed by the West are engaged in activities hostile to the Transnistrian statehood". The statement further targets the human rights organisation Promo-LEX calling its activities subversive for *de-facto* Transnistrian security. It further reveals that a criminal case has been open, without specifying against whom exactly. Since its establishment, Promo-LEX has been involved in human rights activities in the Transnistrian region by providing legal protection to human rights defenders, by assisting Transnistrian inhabitants - Moldovan, Russian and Ukrainian citizens - in obtaining justice and by building capacity of local Transnistrian NGOs to promote and defend human rights. It is not the first time that a human rights organisation working for the development of NGOs in the Transnistrian region is described as subversive by the Transnistrian *de facto* administration. Last year, the local *de facto* Parliament initiated a draft law on "foreign agents" that specifically targeted civil society organisations working on election monitoring and receiving funding from abroad. The draft bill was adopted in the first plenary reading back in November 2014 but has been put on hold.

The situation is equally worrying in *Hungary*, where, since its re-election on April 6, 2014, the Hungarian Government has led a smearing campaign against Hungarian human rights NGOs in an attempt to gain control over them or silence them by hindering their access to funding. On May 30, 2014, the Government made public a list of 13 NGO grant recipients it considered to be problematic for their so-called “left-leaning” political ties. The list included prominent NGOs such as Hungarian Civil Liberties Union, Transparency International and the investigative journal *atlatszo.hu*. These are all organisations working on anti-corruption, human rights, gender equality and freedom of speech. All of these organisations had been receiving grants from *Norway*, for amounts ranging from 4,000 to 120,000€ each. From May to July 2014, many Hungarian high-level government officials, including the Prime Minister himself, further accused these NGOs of being “political activists [...] paid by foreign interests groups” and “attempting to enforce foreign interests [...] in Hungary”. These acts of harassment were followed by an extraordinary audit of 59 NGOs carried out by the Hungarian Government Control Office (KEHI), to which the Norwegian Government later reacted by accusing the Hungary of attempting to “limit freedom of expression”. On May 28, 2015, after having audited its NGO programme in Hungary, the Norwegian Government officially declared that such NGO programme “funded by Norway under the EEA and Norway Grants scheme is being run effectively and in line with the legal framework”¹.

1

In **Turkey**, a strong security offensive launched by the authorities over the past two months under the pretext of countering terrorism following the Turkish government's resolve to mobilise against ISIS has led to grave violations of the right to life, severe limitations to the right to freedom of assembly and expression, crackdown on independent media and repressive actions targeting human rights organisations and activists. Human rights organisations and activists have been prevented from conducting their activities, particularly when monitoring the situation and providing free legal and medical aid. The risk of them facing administrative charges and judicial investigations, possibly imprisonment, is high. Recently, the house of IHD Şırnak Branch's President **Emirhan Uysal** was raided by police forces and lawyer **Deniz Sürgüt** was arrested and sent to prison. Both are charged with accusations of joining a press conference on "autonomy" and being member of an illegal organisation and carrying and commercialising guns, respectively.

Obstacles to human rights defenders' freedoms of association, peaceful assembly, expression and information

In 2014-2015, in a number of countries, the authorities continued to resort to a variety of repressive or restrictive laws to impede the work of human rights defenders with the aim to control civil society organisations. These practices breach Articles 5 and 13 of the United Nations Declaration on Human Rights Defenders, which guarantees freedom of association and access to funding for human rights purposes.

In **Azerbaijan**, on December 17, 2013, the Parliament adopted a set of amendments to the Law on NGOs, Grants and Taxation, aiming at further restricting NGO work. These amendments provide that non-registered NGOs cannot be considered recipients of grants anymore. Here we should note constant ungrounded refusal by the Azerbaijani authorities to register NGOs, as was the case with R. Jafarov Human Rights Club. Refusal to register NGOs that are critical of the regime is a commonly used method of repression by Azeri authorities. Unregistered organisations are barred from opening a bank account, work and receive funding legally. Thus any funding is considered as personal income of NGO leaders and any NGO activity is seen as illegal entrepreneurship. The authorities use this very convenient repressive legal framework to prosecute activists and human rights defenders for tax evasion and thus silences critical voices, as they did against **Rasul Jafarov**, **Intigam Aliyev** and many other detained human rights defenders. Furthermore, registered NGOs are also obliged to register any funding from abroad with the Ministry of Justice - a measure that allows the regime to exercise full control of SCOs

On February 3, 2014, the President of Azerbaijan signed further amendments to the NGO Law, allowing the authorities to temporarily suspend and permanently ban national and foreign NGOs in Azerbaijan, and introducing new offences punishable by fines. Criminal cases were opened against several NGOs that had received foreign grants. New amendments were signed on November 19, 2014, further shrinking the capacity of NGOs to operate independently, by posing additional obstacles to their ability to receive funding.

In **Kyrgyzstan**, on June 4, 2015, the Kyrgyz parliament voted in favour of the proposed "foreign agents" bill in first reading. The bill will need to pass two more readings and get the president's signature before it comes into law. The bill on "foreign agents" largely draws inspiration from the restrictive Russian legislation on the same matter. The provisions of the bill could be used to force any NGO that receives foreign funding to either adopt the stigmatising label of "foreign agent" or otherwise put an end to its activities. The provisions provide for tougher reporting requirements, the violation of which would be punishable by a suspension up to six-month. This text also provides for the criminalisation of NGO leaders "inciting citizens to disobey their civic duties or commit other unlawful acts", a vague wording that could allow for the repression of the legitimate expression of dissent or criticism. Offenders charged under this provision would risk up to three years in prison.

On May 19, 2015, the Human Rights Committee of the Kyrgyz Parliament was due to release its conclusions regarding the amendments to the law. In a very concerning pattern, the Human Rights Committee did not take any position on the bill even though it blatantly contradicts the Constitution of the Kyrgyz Republic (Art. 4.2, Art. 52) and undermines the right to freedom of association, including the right to access funding laid out in Art. 22 of the International Covenant on Civil and Political Rights to which the Republic of Kyrgyzstan is a party.

Moreover, a bill on “homosexual propaganda” was adopted by a large majority of Parliament in first reading in October 2014. The bill aims to impose administrative and criminal penalties on the media and on any group or individual expressing “a positive attitude towards “non traditional sexual relations” through the media or information and telecommunication networks”. Offenders charged under this provision would be subject to administrative and criminal penalties of up to one year of imprisonment. A second reading vote took place on June 24, 2015. This bill was condemned by civil society and human rights organisations as discriminatory and infringing the freedoms of expression, assembly and other fundamental freedoms protected by the Kyrgyz Constitution and international instruments ratified by Kyrgyzstan.

In the *Russian Federation*, in 2015, additional repressive laws were adopted by legislative bodies to further restrict the work of civil society, including human rights advocacy conducted in the country. On May 19, 2015, the Russian Parliament adopted the law on “undesirable foreign and international organisations”, to criminalise the work of foreign non-profit organisations that “threaten the constitutional order, security of the State or its defence capacity”. If labelled as “undesirable”, the activities of such organisations will now be banned on the territory of Russia, and banks and other financial institutions will be prohibited from authorising any financial operation originating from or destined to such an organisations. One of the main goals of the law is to undermine the cooperation of Russian human rights defenders and civil society activists with foreign NGOs that make their voices heard inside and outside the country. Working for an “undesirable organisation” will be sanctioned by a fine of 900 euros. The repeated violation of the law would lead to the criminal responsibility of the NGO’s directors and is punished by up to six years of deprivation of liberty. This bill adds to an already very restrictive legislation for civil society organisations further shrinking the space for freedom of association in the country. Indeed, in 2012 the State Duma adopted a law that required NGOs to register as “foreign agents” if they engage in “political activity” and receive foreign funding. Because “foreign agent” can be interpreted only as “spy” or “traitor”. Such label aims at discrediting NGOs and obstructing their working environment. Since 2012, over 70 organisations were forced to shut their doors.

On July 8, 2015, the Upper Chamber of the Russian Parliament (Federal Council) requested the Prosecutor General and the Ministry of Foreign Affairs to check the compliance of 12 foreign non-profit organisations with the new law on “undesirable foreign organisations”. The Federal Council's list includes several American organisations such as the Open Society Foundation (OSF), the National Endowment for Democracy (NED), Freedom House, the International Republican Institute (IRI) and the National Democratic Institute (NDI), two NGOs uniting Ukrainian diaspora around the world, and an informal group monitoring human rights in Crimea. The inclusion of the latter unregistered group with no organisational structure or staff demonstrates the clumsiness of the Russian decision makers in their efforts to silence all critical voices. To date, NED is already included into the said list.

On the same day, the Regional Court of Nijegorod (Nijegorodskaya oblast) upheld the previous city court decision to include the Committee Against Torture (CAT), OMCT member organisation, into the list of 'foreign agents'.

Alongside these ongoing violations, 2014 and 2015 also witnessed the positive development of Guidelines on Human Rights Defenders by the OSCE Office for Democratic Institutions and Human

Rights (ODIHR), which was launched on June 10, 2014 under the Swiss Chairmanship of the OSCE in Bern, and of the Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association. These documents provide for a solid corpus of recommendations based on existing international and regional law, standards and practices, and constitute a major normative progress for the protection of human rights defenders within the OSCE area.

The Observatory calls upon all OSCE Participating States genuinely implement all the provisions of these newly-adopted Guidelines, and believes that these should pave the way for the development of a human rights defenders' protection mechanism at the OSCE level, which would be in charge of monitoring the implementation of these commitments.

Recommendations

In view of the situation of human rights defenders in the OSCE area, the Observatory for the Protection of Human Rights Defenders urges OSCE Participating States to:

- **Guarantee in all circumstances the physical and psychological integrity of human rights defenders in the OSCE Participating States;**
- **Put an end to the continuous repression and harassment of human rights defenders and their organisations;**
- **Release immediately and unconditionally all human rights defenders since their detention is arbitrary and only aims at sanctioning their human rights activities;**
- **Carry out immediate, thorough, impartial and transparent investigations into the threats, attacks and acts of intimidation mentioned above, in order to identify all those responsible and sanction them according to the law;**
- **Fully recognise the vital role of defenders in the promotion and consolidation of democracy and the rule of law;**
- **Review their national legislation to conform with international and regional human rights instruments, in particular regarding freedoms of association and assembly;**
- **Comply with the provisions of the OSCE/ODIHR Guidelines on Human Rights Defenders, the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association and of the Declaration on Human Rights Defenders, adopted on December 9, 1998 by the United Nations General Assembly;**

With respect to the implementation of the OSCE/ODIHR Guidelines on Human Rights Defenders, the Observatory also calls upon:

- **The OSCE Chairmanship to nominate an OSCE Personal Representative on the situation of human rights defenders, who could be in charge of:**
 - **monitoring the implementation of the Guidelines;**
 - **raise individual cases of violations with national governments**
 - **undertake country visits**
 - **publish periodic reports**
- **OSCE Participating States to develop protection mechanisms both nationally and in**

third-countries, through their diplomatic representations, in coordination, where required, with mechanisms that already exist on the basis of the EU, Swiss and Norwegian Guidelines

- **OSCE Participating States to make public pledges on their commitment to implement the OSCE/ODIHR Guidelines**
- **OSCE Participating States to systematically raise cases of violations of the Guidelines within the framework of the OSCE weekly Permanent Council in Vienna, and ensure regular follow-up.**

Contacts:

- E-mail: Appeals@fidh-omct.org
- Tel and fax FIDH: + 33 (0) 1 43 55 25 18 / +33 1 43 55 18 80
- Tel and fax OMCT: + 41 (0) 22 809 49 39 / + 41 22 809 49 29

PRESENTATION - THE OBSERVATORY

THE OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS: AN FIDH AND OMCT JOINT PROGRAMME

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break their isolation. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a) a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- b) an observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of investigation and solidarity;
- d) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- e) the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- f) sustained action with the United Nations (UN) and with various regional and international intergovernmental institutions.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are referred to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT:

"Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".