

***HRM Bir Duino-Kyrgyzstan***  
***Trends in restricting the right to freedom of association in Kyrgyzstan***  
***2021-2022***

In 2021-2022 we can see unprecedented trends to restrict political space for NGOs and human rights defenders in Kyrgyzstan, which are aimed at suppressing civil society and civic participation in the decision-making process:

- On 17 June 2021 the Jogorku Kenesh of the Kyrgyz Republic (Parliament) amended the Law on Non-Profit Organizations, establishing additional discriminatory reporting requirements for non-profit organizations.
- On 2 November 2022, a draft Law of the Kyrgyz Republic on Non-Profit Non-Governmental Organizations was submitted for public discussion and published on the official website of the Cabinet of Ministers of the Kyrgyz Republic. It is aimed against freedom of association in the KR, contradicts the Constitution of the KR, international standards and obligations of Kyrgyzstan, it is aimed at creating artificial barriers, corruption control mechanisms and bureaucracy in relation to civil organizations.
- On 21 November 2022, deputy of the Jogorku Kenesh of the KR Nadira Narmatova submitted for public discussion a draft Law on Amendments to Certain Legislative Acts of the Kyrgyz Republic (the Law of the Kyrgyz Republic on Non-Profit Organizations, the Law of the Kyrgyz Republic on State Registration of Legal Entities, Branches (Representative Offices), the Criminal Code of the Kyrgyz Republic), similar to the draft Law on Foreign Agents, initiated by her in 2014.

***2021 initiative***

***Law on Non-Profit Organizations dd 17 June, 2021.*** On 17 June 2021, the Jogorku Kenesh of the Kyrgyz Republic (Parliament) amended the Law on Non-Profit Organizations, establishing additional discriminatory reporting requirements for non-profit organizations. In accordance with the legislation, NGOs whose activities are funded by donor organizations are required to annually provide information on the sources of funding, the purpose of their expenditure, as well as information on acquired, used and alienated property on the website of the tax authority by 1 April. The tax authority may apply to the court with an application for compulsory liquidation of a legal entity in case of failure to submit reports within 1 year.

Prior to making this change, the tax authority could apply for compulsory liquidation of a legal entity if they did not provide their report within two years. I.e., the new changes reduced the term to one year. **The introduced amendments do not apply to religious organizations, political parties and trade unions.**

In order to protect the constitutional rights of citizens to freedom of association, the Human Rights Movement "Bir Duino Kyrgyzstan" appealed to the judicial authorities with a request to declare the amendments invalid due to the lack of the required quorum of deputies at the moment of its adoption.

During the period from 16 August 2021 to 20 January 2022, the Human Rights Movement "Bir Duino-Kyrgyzstan" appealed to the Administrative Court, Bishkek City Court and Supreme Court, which did not support our requests regarding the annulment of the amendments.

Therefore, the head of the Human Rights Movement "Bir Duino-Kyrgyzstan" Tolekan Ismailova appealed to the Constitutional Court. By the ruling of its Board of Judges dd 7 July 2022 the Constitutional Court refused to take action based on Tolekan Ismailova's appeal, since part 4 of Article 8 of the Constitution states that public associations should ensure transparency of their financial and economic activities.

An appeal was filed against this refusal. Consequently, by the decision of the Constitutional Court dd 3 November 2022 Tolekan Ismailova's complaint was satisfied, and proceedings were initiated on the case.

Therefore, it is currently proposed to adopt a new law on NGOs. Thus, if it is adopted, the old law will no longer apply. Therefore, during the consideration of the case, the Constitutional Court can terminate the proceedings concerning the old law on NGOs since it lost its force. However, as to the Law on State Registration of Legal Entities, Branches (Representative Offices), the court hearing should take place.

### ***2022 initiatives***

**On 2 November 2022, a draft Law of the Kyrgyz Republic on Non-Profit Non-Governmental Organizations was submitted for public discussion,** published on the official website of the Cabinet of Ministers of the Kyrgyz Republic. The draft law contains many provisions that discriminate against NGOs:

Representatives of a foreign non-profit non-governmental organization are required to register with the Ministry of Justice;

Foreign citizens; persons included in the lists of extremists and terrorists cannot be founders, participants or members of non-profit organizations;

The Ministry of Justice and the Prosecutor's Office will exercise control and supervision over the activities of non-profit organizations, the extent to which they operate according to the charter, constituent documents and the law.

According to the analysis conducted by the HRM "Bir Duino Kyrgyzstan", the proposed amendments contradict Article 36 of the Constitution, which guarantees the freedom of activity of public associations.

Therefore, when exercising the law-making powers, the legislator should provide citizens with the widest possible opportunities to use their right to association and free activity guaranteed by the Constitution, and any restrictions thereof should be applied in a democratic society in the interest of national security or public safety, in order to prevent riots and crimes, ensure proper recognition, respect and protection of rights and freedoms of other persons, protection of health,

morality and public welfare, as well as to meet the just moral requirements (Part 2 of Article 23 of the Constitution of the KR, Part 2 of Article 22 of the ICCPR).

None of the reasons specified in the certificate of justification falls within the conditions provided for in Part 2 of Article 23 of the Constitution. Therefore, the proposed amendments to the laws on non-profit organizations are aimed not at protecting human rights, but at suppressing civil society.

**On 21 November 2022, deputy of the Jogorku Kenesh of the KR Nadira Narmatova** submitted for public discussion a draft Law on Amendments to Certain Legislative Acts of the Kyrgyz Republic (the Law of the Kyrgyz Republic on Non-Profit Organizations, the Law of the Kyrgyz Republic on State Registration of Legal Entities, Branches (Representative Offices), the Criminal Code of the Kyrgyz Republic)<sup>1</sup>, similar to the draft Law on Foreign Agents, initiated by her in 2014.

The draft law proposes to introduce the concept of a "non-profit organization performing the functions of a foreign agent", while this concept includes any non-profit organization that has received income from foreign sources to achieve its statutory goals.

Also, the concept of a "non-profit organization performing the functions of a foreign representative" includes the implementation of political activities carried out on the territory of the Kyrgyz Republic. A non-profit organization is recognized as participating in political activity if, regardless of the goals and objectives specified in its constituent documents, it participates (including through financing) in organizing and conducting political actions in order to influence the adoption of decisions by state bodies aimed at changing their state policy, as well as in shaping public opinion for such purposes.

The structural divisions of the foreign non-profit organizations annually submit to the media or post on the Internet a report on their activities, including their founders, the composition of property, sources of formation and purposes of expenditure of funds, and the non-profit organizations performing the functions of a foreign representative do it once every six months.

The authorized body in the field of state registration makes sure that non-profit organizations work in accordance with the goals stipulated by their constituent documents. Scheduled inspections of a non-profit organization performing the functions of a foreign agent are carried out no more than once a year. The draft law provides for an unscheduled inspection.

If a non-profit organization does not submit a report on the correction within the stipulated period as required by the legislation, it can be excluded from the register of branches and representative offices of international organizations and foreign non-profit organizations by the decision of the authorized body in the field of state registration.

It is prohibited to use bank deposits to repay fines. The authorized state agency will have the right to prohibit the transfer of money and property to certain recipients.

An article is introduced into the Criminal Code of the KR, which states that the creation of a non-profit association, or a branch whose activities involve violence against citizens or

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<http://www.kenesh.kg/ru/article/show/9730/na-obshtestvennoe-obsuzhdenie-s-21-noyabrya-2022-goda-vinositsya-pr-oekt-zakona-o-vnesenii-izmeneniy-v-nekotorie-zakonodatelnyie-akti-kirgizskoy-respubliki-zakon-kirgizskoy-respubliki-o-nekommercheskih-organizatsiyah-zakon-kirgizskoy-respubliki-o-gosudarstvennoy-registratsii-yuridicheskikh-lits-filialov-predstavitelystv-ugolovniy-kodeks-kirgizskoy-respubliki>

encouraging them to refuse to perform their duties, with incitement to illegal actions, is punishable by a fine of up to 100 thousand soms or imprisonment for up to five years.

**The HRM "Bir Duino Kyrgyzstan" believes that all the adopted amendments to the law and the draft laws being initiated are aimed at limiting the right of citizens to freedom of association and narrowing the political space for non-profit organizations and human rights defenders.**

**The HRM "Bir Duino Kyrgyzstan" will continue to conduct advocacy at the national and international levels on the abolition of the unconstitutional amendments and draft laws, through appeals to the judicial authorities of Kyrgyzstan, as well as appeals to the international mechanisms of the UN and OSCE.**

**It is necessary to do the following:**

- State bodies, deputies of the Jogorku Kenesh of the KR should abandon initiatives to promote and adopt unconstitutional laws aimed at restricting the basic civil and political rights of citizens, including freedom of association;
- It is necessary to follow the recommendations of the Venice Commission <sup>2</sup>in the future when initiating amendments affecting freedom of association;
- The Constitutional Court of the Kyrgyz Republic should promote the right to freedom of association when considering the complaint of the HRM "Bir Duino Kyrgyzstan" on the amendments to the Law on Non-Profit Organizations;
- Put an end to excessive control and undue interference in the activities of non-profit organizations, as well as intimidation and harassment of individuals and groups that deal with human rights issues;
- International organizations, the UN, the OSCE/ODIHR should call on the Kyrgyz authorities to respect the right to freedom of association, in accordance with their international obligations;
- The state and local authorities of the Kyrgyz Republic should create favorable conditions for the work of non-profit organizations in accordance with principle 2 (the duty of the State to respect, protect and promote the exercise of the right to freedom of association) and other principles provided for in the OSCE/ODIHR Guidelines on Freedom of Association;
- In accordance with the OSCE/ODIHR Guidelines on Freedom of Association, ensure that associations, their founders and members, as well as individuals seeking to exercise their right to freedom of association, have access to effective legal remedies in order to appeal against decisions or seek judicial review of decisions affecting the exercise of their rights;
- The Jogorku Kenesh and Government of the Kyrgyz Republic should support initiatives to adopt national legislation to protect the rights of human rights defenders in accordance with the UN Declaration on Human Rights Defenders, the EU Guidelines on Human Rights Defenders and the OSCE Guidelines on the Protection of Human Rights Defenders.

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<sup>2</sup> [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2016\)009-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2016)009-e)

*OSCE Parallel Civil Society Conference 2022. 30 November, 2022  
The OSCE Ministerial Council Meeting in Lodz. 1-2 December, 2022*

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