



Fundamental rights and torture in Tajikistan

Short briefing for EU-Tajikistan Cooperation Committee Meeting, October 2016

Fundamental rights

Recently **the human rights situation in Tajikistan has seriously deteriorated** because of repressive measures taken against the political opposition, as well as growing pressure on media, civil society, lawyers and those considered to endorse so-called non-traditional religious views. The authorities have **used arguments about protecting national security to restrict the legitimate and peaceful exercise of fundamental rights.**

Further strengthening the authoritarian rule of the country, President Rahmon was declared a “Leader of the Nation” in late 2015 granting him immunity against prosecution, while amendments to the constitution approved in a May 2016 referendum abolished the limitations on how many times he may be re-elected.

The Islamic Renaissance Party of Tajikistan (IRPT), a moderate Islamic party and the country’s largest opposition party was banned as “extremist” by the Supreme Court in September 2015 after the authorities linked the party and its leadership to two armed attacks that took place in Dushanbe and a nearby city that month. After the September attacks, mass arrests of IRPT members were carried out and at least some 30 party members were criminally charged.¹ Following a trial that was shrouded in secrecy and fell short of international fair trial standards, 14 IRPT leaders were given lengthy prison sentences on multiple charges relating to their alleged involvement in the September 2015 events.²

In an alarming development, several **lawyers defending the rights of arrested IRPT members have been arrested and criminally charged** in what appears to be retaliation for their professional activities. Buzurgmehr Yorov and Nuriddin Mahkamov were both arrested in autumn 2015 and the trial against them on extremism and other charges began in May 2016. In July 2016, their family members reported that the trial would be re-commenced on the grounds that one of the judges in the case had to be replaced. Independent monitors have not been granted access to the trial. Dzhamshed Yorov, who is the brother of Buzurgmehr Yorov, was again arrested on charges of disclosing state secrets in August 2016. He is currently in pre-trial detention. Shukhrat Kudratov, another lawyer who was criminally charged after working on high-profile cases, is now due to be released under a general



amnesty after being imprisoned since January 2015. These cases all demonstrate a pattern of using criminal charges to retaliate against lawyers defending the rights of clients in cases that are inconvenient to the authorities. At the same time, the adoption of a new Law on the Bar and the Practice of Law in 2015 has endangered **the independence of the legal profession** in the country. In order to practice law, all lawyers are now required to pass a qualification exam administered by a non-independent body under the Ministry of Justice and regularly undergo re-certification with this body. Lawyers who have been criminally convicted are no longer eligible to practice law.

In the 2016 **World Press Freedom Index** published by Reporters without Borders, Tajikistan was **one of the countries whose ranking fell most** from the previous year: the country plunged 34 places to place 150 out of 180 due to growing pressure on independent media and journalists.³ **Self-censorship** is widespread and journalists have been subjected to intimidation, including online attacks aimed at discrediting them. While libel was de-criminalized in 2012, **insulting the president and government officials is still subject to criminal liability**, which has a chilling impact on freedom of expression. Civil **defamation lawsuits** are used as a form of retaliation against outspoken media and journalists.

Amendments to the Law on the Media adopted this summer **set out broad grounds for suspending and closing down media outlets**, including non-compliance with any provisions of national law.⁴ However, following criticism by representatives of the journalist community a provision that would have allowed prosecutors to initiate the suspension of media outlets without a court decision was abolished. The final provisions require a court decision both for the suspension and closure of media outlets.

Arbitrary blocking of news sites, social media sites and other online resources has become a regular occurrence in Tajikistan in the last few years. The government's Communications Service has consistently denied responsibility for the unavailability of these types of sites, which do not feature on official lists of banned sites. However, **internet providers have reported receiving informal orders** from this service to block sites. **Text messaging services have also repeatedly been restricted** in connection with particular political developments in the country, such as the launch of the special security operation after the armed attacks in September 2015.⁵

Recently tax and other authorities have carried out a **growing number of inspections and checks of NGOs** with reference to national security concerns. For example, NGOs have been subjected to excessive scrutiny when seeking to re-register with the authorities, which they are required to do e.g. when changing their legal address, and they have only been granted re-registration with consent by security services. Several **NGOs have been warned, fined and/or issued with lawsuits** because of their alleged failure to comply with registration and other technical requirements.

Amendments to the Law on Public Associations that entered into force in August 2015 **introduced a new scheme requiring such associations to report information about foreign and international grants** for inclusion in a special government registry. Implementing regulations that were finally adopted this spring set out broad powers for the Ministry of Justice with respect to processing reported information and concerns remain that implementation of this legislation **may result in undue interference into the work of NGOs**. This has yet to be seen as NGOs have now only started reporting information about grants, using a government-approved reporting form.

The Tajikistani authorities **strictly control the practice of religion** and have recently **stepped up efforts to counter so-called non-traditional religious beliefs**, in particular forms of Islam that are considered "alien" to the country. Legislation in force, inter alia, bans the activities of unregistered religious organizations and seriously restricts the

operation of places of worship, the preparation and distribution of religious literature, the organization of religious education and other religious activities. Mass closures of mosques considered to be operating unlawfully have been carried out, with over 1 000 mosques having been shut down by the authorities in 2015, according to official figures.⁶ There have been reports of law enforcement raids on retailers deemed to be selling “inappropriate” Muslim clothing, as well as of cases where law enforcement officials forcibly have shaved bearded Muslim men.

Torture and ill-treatment

The authorities have made **some positive steps** to address concerns about torture in recent years. For example, earlier in 2016 Tajikistan passed legislation strengthening safeguards against torture in detention; in 2014 the Ministry of Health obliged medical personnel to examine detainees in line with the standards of the UN Istanbul Protocol; and several victims of torture or their bereaved families received compensation payments for moral damages sustained through torture following rulings by civil courts.

However, **torture and other forms of ill-treatment continue to be widespread and impunity is the norm**. From January to September 2016 the NGO Coalition against Torture in Tajikistan has registered **60 new cases of torture and ill-treatment**. It is believed that this figure **only reflects the tip of the iceberg** since many victims of torture and their relatives refrain from lodging complaints for fear of reprisals or because they have no hope to attain justice.

Below are three concerns that the NGO Coalition against Torture has identified as particularly pressing.

1) Excluding torturers from amnesty laws

The Criminal Code of Tajikistan **does not exclude perpetrators of torture from benefitting from amnesties**: each amnesty law provides a list of allegable criminal offences. The NGO Coalition against Torture is aware of **many cases where perpetrators of torture or ill-treatment were released from prison** in recent years following such amnesties or had their sentences reduced.

The recent amnesty issued in August 2016 in connection with the 25th anniversary of Tajikistan’s independence was the first amnesty in Tajikistan that explicitly stated that those convicted of “torture” (Article 143-1 of the Criminal Code) were not eligible. However, since in Tajikistan many perpetrators of torture/ill-treatment are convicted under other articles of the Criminal Code **many had their sentences reduced under the 2016 amnesty**. The NGO Coalition is aware of 25 people convicted of torture or ill-treatment in the army or their superiors who benefitted from the amnesty.

In March 2014 military conscript Shakhbol Mirzoev was beaten so severely by Usmon Gayratov, a serviceman and medical attendant of the Border Guards Unit where the young man served, that Shakhbol was left paralysed. In June 2014 the Military Court of Dushanbe Garrison convicted Usmon Gayratov of “violating the code of military conduct” (Article 373, part 2) and **sentenced him to nine years’ imprisonment**. **Thanks to the application of two amnesties**, in October 2014 and in August 2016, **he has less than three years left to serve in prison**.

2) Failure to conduct effective investigations

When Tajikistan was last reviewed by the UN Committee against Torture in 2012, the Committee **recommended establishing an independent mechanism** tasked with conducting prompt, thorough and impartial investigations

into allegations of torture and ill-treatment. No such mechanism has yet been set up and **the NGO Coalition continues to document many cases where no effective investigations are carried out.**

When complaints are filed with the Ministry of Internal Affairs or other law enforcement agencies, they are usually **sent for preliminary checking to the internal security services** of the same institution that is implicated in the complaint. In practice, such checks are **highly superficial** and typically consist of interviews with the alleged perpetrators only. Bodily injuries, if documented, are usually ascribed to accidents or natural causes. As a result, the allegations are frequently found to be unsubstantiated and not meriting full investigation.

When prosecutors lead investigations into allegations of torture the investigations are also often not conducted effectively. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links, which often pose an obstacle to thorough and impartial investigations into violations committed by police. In many cases prosecutors task police with carrying out investigative activities, a practice that raises serious concerns about the independence of the investigation. Investigators often fail to engage in gathering evidence about the circumstances of the alleged torture from all involved parties, such as interviewing witnesses and medical personnel or ordering a forensic medical examination; they do not interview the victims nor do they carry out cross questioning of the police officers allegedly responsible in the presence of victims. Instead, investigators often simply rely on statements obtained from the alleged perpetrators and their colleagues.

We are also concerned that the **existing investigation mechanism lacks accountability and transparency.** When investigators close a criminal investigation, victims and their lawyers usually do not have access to the case materials and sometimes they are not even informed that the case has been dismissed.

Prosecutors, like the police, have a vested interest in achieving a high rate of crime resolution. In order to achieve this goal, **prosecutors may be inclined to overlook human rights violations committed by police, such as torture and other ill-treatment.** In those cases where torture or ill-treatment are revealed during court hearings prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture and other ill-treatment) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

3) Compensation for moral damages

In recent years the Coalition against Torture has pushed for progress in facilitating access to compensation for moral damages sustained through torture. So far **six victims or their bereaved families have received compensation payments for moral harm.** While these are **important precedents** we are concerned that the **amounts of compensation were neither fair nor adequate.** For example, Firdavs Rakhmatov died after being subjected to torture by fellow-soldiers of the Ground Forces of Tajikistan's army in June 2015. On 5 August 2016 the Military Court of Dushanbe Garrison granted the bereaved family compensation for moral damages of only 5 000 Somoni, the equivalent of approx. 560 EUR.

Recommendations on fundamental rights:

The authorities of Tajikistan should:

- Stop repressing the political opposition and ensure that no one is convicted for their legitimate political activism or exercise of freedom of association and other fundamental rights.
- Uphold fair trial rights, including the right to appeal and the right to freedom from torture and ill-treatment in accordance with international standards in all cases involving IRPT members.
- Ensure that no lawyer is arrested, charged or imprisoned in retaliation for his or her work; and promptly release those held on such grounds.
- Revise the Law on the Bar and the Practice of Law in accordance with the recommendations of national and international experts and ensure that its implementation does not undermine the independence of the legal profession.
- Refrain from measures obstructing the work of media and journalists; put an end to the practice of arbitrarily blocking access to websites and cell phone services; and ensure that residents have unhindered access to information on- and offline.
- Ensure that the recent amendments to the Law on Public Associations are not implemented so as to impede access to funding of NGOs.
- Refrain from undue interference into the work of NGOs and ensure that NGOs are not arbitrarily closed down in violation of Tajikistan's international human rights obligations.
- Refrain from measures infringing the right to freedom of religion or belief in the name of counteracting "religious extremism" or "non-traditional" religious expressions; repeal restrictive legislation in this area that is not consistent with international human rights law.

Recommendations on torture/ill-treatment:

The authorities of Tajikistan should:

- Ensure that no perpetrator of torture and other forms of ill-treatment benefits from amnesties.
- Legislate that all investigative activities into allegations and complaints about torture and other forms of ill-treatment are carried out by prosecutors and that the investigations are conducted promptly, thoroughly and impartially.
- Ensure that victims of torture or their bereaved families receive fair and adequate amounts of compensation.

The Dushanbe-based Public Fund “**Nota Bene**” is one of the first think tank organizations in the field of human rights and democratization in Tajikistan. The core goal of the organization is to promote human rights principles and the development of civil society.

Website: www.notabene.tj

The **NGO Coalition against Torture in Tajikistan** unites 12 human rights groups and five independent experts across Tajikistan. The Coalition monitors, documents and analysis the situation of torture in Tajikistan, advocates against it and takes up strategic cases for litigation.

Website: www.notorture.tj

International Partnership for Human Rights (IPHR) is a Brussels-based non-profit organization. It was founded in 2008 with a mandate to support local civil society groups and help them raise human rights concerns at the international level.

Website: www.IPHRonline.org

¹ «Генпрокуратура Таджикистана закончила расследование дела Абдухалима Назарзода,» *Ozodagon*, 8 February 2016, at <http://catoday.org/centrasia/24811-genprokuratura-tadzhikistana-zakonchila-rassledovanie-dela-abduhalima-nazarzoda.html>

² Amnesty International, “14 high-ranking members of political opposition party sentenced to long prison terms in unfair trial,” 7 June 2016, at <https://www.amnesty.org/en/documents/eur60/4214/2016/en/>

³ See <https://rsf.org/en/tajikistan>

⁴ The text of the amendments is available (in Russian) at: <http://www.news.tj/ru/news/v-tadzhikistane-uporyadochili-protsess-zakrytiya-smi>

⁵ «В Таджикистане сотовые операторы отключили услугу смс-сообщений,» *Asia Plus*, 6 September 2015, at news.tj/ru/news/v-tadzhikistane-sotovye-operatory-otklyuchili-uslugu-sms-soobshchenii

⁶ See «Мечети, попавшие в немилость,» *Asia Plus*, 12 December 2015, at <http://news.tj/ru/news/mecheti-popavshie-v-nemilost>