



To:

Mr. Donald Tusk, President of the European Council
Mr. Jean-Claude Juncker, President of the European Commission
Mr. Martin Schultz, President of the European Parliament

Cc: Ms. Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy

23 March 2015

Dear Presidents,

We write in advance of your meetings with Kyrgyzstan's President Almazbek Atambayev this week to urge you to raise human rights issues prominently with him, in line with the EU's commitment to place human rights high on the agenda of all bilateral political dialogue with third countries.¹ We urge you to convey concerns about key issues affecting human rights in Kyrgyzstan to President Atambayev, to seek concrete commitments from him in these areas and to make clear to him that the failure to uphold the country's human rights obligations may affect EU-Kyrgyzstan relations, as called for by the European Parliament in a recent resolution.²

While Kyrgyzstan has a more open political system than the other countries in Central Asia, and its authorities have shown more willingness to implement democratic and human rights reforms than neighbouring regimes, serious threats to human rights protection nevertheless exist in the country.

We are particularly concerned about Russian-inspired draft laws on "foreign agents" and "propaganda of non-traditional sexual relations" currently under consideration in the parliament of Kyrgyzstan. If adopted, these would seriously undermine the rights to freedom of association, assembly and expression in the country and deliver a heavy blow to its civil society, which for most of the post-Soviet period has operated in a more enabling environment than elsewhere in the region. The latter draft law would also serve to legitimize intolerance and discrimination of members of the country's highly vulnerable LGBTI community.

Another alarming issue is the continued lack of accountability for gross human rights abuses perpetrated in the context of the June 2010 inter-ethnic conflict in the south of the country, as well as the justice process that followed it. Ethnic Uzbeks have been selectively targeted for prosecution on charges of

involvement in the violence, and systematic fair trial violations, allegations of torture, and courtroom threats and attacks against defendants and lawyers have marred these trials. A victim of the miscarriage of justice related to the events in the south, human rights defender Azimjan Askarov remains imprisoned after a new investigation into his case was stalled last year. Torture and ill-treatment continue to be widely perpetrated with impunity and prompt access to safeguards against such practices is not guaranteed to individuals deprived of their liberty.

Our concerns on these issues are outlined in more detail below. We urge you to address them both privately and publicly with President Atambayev during his visit, in order to emphasize the importance that the EU attaches to human rights in its relations with Kyrgyzstan. As you know, the EU-Kyrgyzstan Partnership and Cooperation Agreement sets out human rights as an essential element of the partnership, and the EU is supporting rule of law reforms in Kyrgyzstan, having committed €38 million for this purpose for the years 2014-2020. In view of this, we believe that it is especially important that the EU speaks out on threats to fundamental freedoms in the country and insists that Kyrgyzstan complies with its international human rights obligations.

Draft law on “foreign agents”

A draft law requiring NGOs to adopt the stigmatizing label of “foreign agents” if they receive foreign funding and engage in “political activities” is currently pending in the parliament. It was first initiated by a group of MPs in autumn 2013 and re-initiated in May 2014. In early March 2015, the parliament’s Committee on Law, Order and Crime Prevention approved it, thus paving the way for its continued consideration. If adopted by the parliament in three readings in plenary and signed by the president, the draft law will enter into force.

The draft “foreign agents” law poses a serious threat to Kyrgyzstan’s civil society as it defines “political activities” so broadly that this term could be applied to basically any NGO activities, while most NGOs depend on foreign grants for their important work. NGOs that refuse to register as “foreign agents” would risk being suspended or having to close down. The draft law also grant authorities new, broad powers to inspect and interfere in the internal affairs of NGOs.

The draft law, which heavily draws on similar Russian legislation, has been widely criticized as infringing the right to freedom of association and other fundamental rights guaranteed by national and international law. Among others, in a joint legal opinion, the OSCE Office for Democratic Institutions and Human Rights and the Council of Europe’s Venice Commission found it in violation of international standards.³ The corresponding Russian law has had a seriously chilling impact on NGOs in this country, where it has been used to target a broad range of groups whose activities have nothing to do with politics.

When visiting Brussels in September 2013, President Atambayev said that a “foreign agents” law is “not needed” in Kyrgyzstan.⁴ However, in an interview in December 2014, he used similar arguments as those advocating this draft law by suggesting that some NGOs carry out political activities in the interests of foreign governments and linking the issue of transparency of NGO funding to national security.⁵ This alarmed local civil society, which expressed dismay with the president’s comments and appealed to him to opt for cooperation rather than confrontation with NGOs.⁶

Recommendation: President Atambayev should be called on not to endorse the draft “foreign agents” law and, if needed, to use his veto against it given its incompatibility with the country’s human rights obligations. He should also be encouraged to refrain from rhetoric that fuel suspicion and mistrust against NGOs, to use every opportunity to express support for civil society and to promote the participation of civil society and rights groups in decision-making processes.

Draft law on “propaganda of non-traditional sexual relations”

Another highly troubling draft law initiated by Kyrgyzstani MPs prohibits “propaganda of non-traditional sexual relations” through the media or the internet, at public assemblies or in other ways and provides for administrative and criminal sanctions in the form of fines and imprisonment of up to one year. This draft law, which is even harsher than the Russian law that inspired it, was approved by a large majority of MPs at the first reading in the parliament in mid-October 2014. A second plenary vote is expected in the near future.

If adopted by the parliament and signed by the president, this draft law would basically outlaw advocacy for the rights of sexual and gender minorities and render all NGOs that promote such rights vulnerable to prosecution. It would also hamper discussion on LGBTI issues and would be likely to further reinforce intolerance, discrimination and violence against LGBTI members, who are already in a highly vulnerable situation in Kyrgyzstan and frequently face harassment, including by law enforcement authorities.⁷ These fears are underscored by the demeaning and hateful language used by some of the supporters of the draft law, who e.g. have branded homosexuals as “sick” and said they should be “isolated.”⁸ The entry into force of a similar law in Russia in 2013 has contributed to an increase in hostility against LGBTI members and those who defend their rights in this country.

The draft “propaganda” law has been condemned by civil society, international human rights bodies and other international actors as being inherently discriminatory and infringing freedom of expression, freedom of assembly and other fundamental rights protected by Kyrgyzstan’s Constitution, as well as international human rights treaties to which Kyrgyzstan is a party. Among others, several UN human rights rapporteurs⁹, the office of the UN High Commissioner for Human Rights and the UN representation in Kyrgyzstan have spoken out against it. The European Parliament has also called for its withdrawal.¹⁰

Recommendation: President Atambayev should be called on not to endorse the draft law on “propaganda of non-traditional sexual relations” and, if needed, to use his veto against it as it runs contrary to fundamental human rights principles that Kyrgyzstan is bound to uphold. He should also be asked for assurances that enhanced measures will be taken to prevent intolerance and discrimination against sexual and gender minorities.

Access to justice regarding June 2010 violence and the case of Azimjan Askarov

To date the authorities of Kyrgyzstan have failed to ensure a full and fair investigation into the June 2010 inter-ethnic violence in the south of the country, which left hundreds of people dead and thousands injured. They have also failed to ensure accountability for serious human rights violations characterizing the justice process that followed these events.

Members of the ethnic Uzbek minority have been selectively and disproportionately targeted for prosecution on charges of involvement in the violence, and numerous reports from local and international organizations indicate that the right to a fair trial has been systematically violated in cases related to it. Allegations that defendants have been subjected to torture and ill-treatment while in custody have not been investigated, threats and attacks against defendants and lawyers have taken place with impunity even in courtrooms, and long prison sentences have been handed down after hasty investigations and trials.

International human rights bodies have repeatedly raised concerns about the lack of access to justice and accountability in relation to the 2010 events. For example, when examining the situation in Kyrgyzstan in March 2014, the UN Human Rights Committee called on the authorities of Kyrgyzstan to ensure that “all alleged human rights violations related to the 2010 ethnic conflict are fully and impartially investigated, that those responsible are prosecuted, and that victims are compensated without any discrimination based on ethnicity.” It also called on the government of the country to urgently strengthen efforts to “address the root causes of obstacles to the peaceful coexistence between different ethnic groups on its territory and to promote ethnic tolerance and mutual trust.”¹¹

It is of outmost concern to us that human rights defender Azimjan Askarov continues to serve a life sentence handed down to him for his purported role in the 2010 inter-ethnic violence following a legal process plagued by fair trial violations and torture allegations that have not been investigated. In September 2014, the Supreme Court confirmed a decision by the General Prosecutor’s Office to discontinue a new investigation into Askarov’s case launched in 2013, thus quashing hopes for a fair reconsideration of his case. A complaint in his case is pending with the UN Human Rights Committee.

Recommendation: President Atambayev should be asked for assurances that human rights abuses perpetrated during the 2010 inter-ethnic violence and in its aftermath will be fully and impartially investigated, those responsible brought to justice in accordance with international fair trial standards, and the root causes of this violence effectively addressed. The EU should call for the immediate release of Azimjan Askarov and a thorough and impartial investigation into his allegations of torture.

The widespread use of torture and ill-treatment

Although Kyrgyzstan has taken several noteworthy steps in its fight against torture in recent years, such practices continue to be widely used and impunity is the norm. Continued international attention and political will of the Kyrgyzstani authorities to implement recommendations by international human rights bodies, including UN human rights procedures and mechanisms are needed to make significant progress towards the eradication of torture.

Torture or other forms of ill-treatment mainly take place at the early stages of detention when detainees are often de facto held incommunicado, although torture is also reported from later stages of detention and imprisonment.

International human rights law clearly states that a person is considered a detainee as soon as he or she is “depriv[ed] of liberty [...] in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.¹² From the moment the detention

starts, safeguards against torture and ill-treatment must be in place, including prompt access to a lawyer of the detainee's choice, access to independent medical assistance and notification of family.

However, Kyrgyzstan's legislation is not consistent with these requirements of international human rights law. The country's Criminal Procedure Code (CPC) considers a person to be detained when entered into a police detention facility without providing any information on how much time may elapse between the actual arrest and this moment. Detainees have no access to legal safeguards enshrined in the Code until they have been entered into a detention facility and their detention has been recorded.

In its March 2014 Concluding Observations on Kyrgyzstan, the UN Human Rights Committee expressed concern about "the ongoing and widespread practice of torture and ill-treatment (...), particularly in police custody" and "the lack of prosecution and punishment of perpetrators." It also voiced concern about the failure to register all detainees immediately upon their apprehension and the lack of implementation of basic safeguards to all persons deprived of their liberty.¹³

Recommendation: President Atambayev should be asked to give assurances that recommendations pertaining to the eradication of torture issued by the UN Human Rights Committee, the UN Committee against Torture and the UN Special Rapporteur on Torture will be fully implemented. As a matter of urgency, Kyrgyzstan should amend its CPC to ensure access to legal safeguards for individuals as soon as they are deprived of their liberty, in line with international human rights standards.

We thank you for your attention to the concerns outlined in this letter. We would be happy to provide additional information if requested. We wish you fruitful discussions with President Atambayev and look forward to learning about the outcome of your exchanges with him.

Sincerely,

International Partnership for Human Rights (Belgium)

Norwegian Helsinki Committee

Netherlands Helsinki Committee

Helsinki Foundation for Human Rights (Poland)

International Federation for Human Rights (FIDH), within the framework of the Observatory for the Protection of Human Rights Defenders

World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

¹ As set out, in particular in the EU Strategic Framework and Action Plan on Human Rights.

² European Parliament resolution P8_TA(2015)0008 adopted on 15 January 2015.

³ This opinion, which was adopted in October 2013, is available at: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29030-e>

⁴ See “Atambaev says no need for ‘foreign agents’ law,” 19 September 2013, at <http://www.rferl.org/content/kyrgyzstan-atambaev-foreign-agents-ngos/25111001.html>

⁵ See “Prezident uveren, chto v interesah nabezopasnosti u Kyrgyzstana dolzhna byt' prozrachnost' v voprosah finansirovaniya NPO,” 2 December 2014, at <http://kabar.kg/rus/society/full/87185>

⁶ See appeal by over 40 Kyrgyzstani NGOs and civil society representatives from December 2014, at <http://vof.kg/?p=17922>

⁷ Such practices were documented in detail in the Human Rights Watch report “They Said We Deserved This,” published in January 2014: “<http://www.hrw.org/reports/2014/01/28/they-said-we-deserved>. The UN Human Rights Committee also expressed concern about violence against LGBT people when reviewing Kyrgyzstan in March 2014,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fkGZ%2fCO%2f2&Lang=en

⁸ Such comments were, for example, made by an MP when the parliamentary Committee on Law, Order and Crime Prevention approved the draft law in February 2015. See “V parlamente predlagajut izolirovat' ljudej netradicionnoj orientacii,” 17 February 2015, at http://www.vb.kg/doc/303400_v_parlamente_predlagajut_izolirovat_ljudej_netradicionnoj_orientacii.html

⁹ “Kyrgyzstan: ‘Don’t condemn LGBT people to silence’ – UN rights experts urge Parliament to withdraw anti-gay bill,” 26 November 2014, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15349&LangID=E>

¹⁰ European Parliament resolution P8_TA(2015)0008 adopted on 15 January 2015.

¹¹ Human Rights Committee, Concluding Observations on the Second Periodic Report of Kyrgyzstan, 25 March 2014:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fkGZ%2fCO%2f2&Lang=en

¹² Article 4(2) of the Optional Protocol to the Convention against Torture (OPCAT).

¹³ Human Rights Committee, Concluding Observations on the Second Periodic Report of Kyrgyzstan, 25 March 2014.