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Changes in legislation on NGOs in Kyrgyzstan: projects and prospects

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As of June 2023, 29,130 non-profit organizations were registered in the unified database of legal entities of the Ministry of Justice of Kyrgyzstan, including about 18,500 in Bishkek. The inability of the state not only to exert a regulatory influence, but also to simply monitor the activities of this array of NGOs (Non-Governmental Organisations) is perceived by part of the political elite as a threat to internal political stability and the positions of the ruling tandem of President S. Zhaparov and Chairman of the State Committee for National Security (SCNS) K. Tashiev. Exceptionally liberal legislation in the field of registration of NGOs and establishing requirements for their reporting has turned Kyrgyzstan into a regional base for the work of foreign NGOs, and maintaining this regime is an important goal of US and EU policy towards Kyrgyzstan. A significant portion of officials are connected with NGO employees through financial interests, have relatives working in NGOs, or have collaborated with NGOs themselves.

The Kyrgyz government sees the uncontrolled activities of the NGO sector as a threat, especially considering the established practice of unconstitutional changes of power and the active participation of a number of NGOs in these processes. The politically active part of the NGOs, which is the most supported by Western grants, contributes to the delegitimization and undermining of the social support of the Japarov administration. In this regard, the Kyrgyz authorities have made three attempts in recent years to strengthen their leverage over the NGO sector.

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1) In July 2021, despite the resistance of NGOs and criticism from the United States and EU countries, amendments to the laws on NGOs and “On state registration of legal entities, branches (representative offices)” were adopted, which obliged NGOs to annually submit information about sources of funds, directions of their expenditure as well as information about acquired, used and alienated property. The changes made did not lead to an increase in the transparency of NGO financing, since the compliance of the reports provided with reality, in the absence of actual verification, raises serious doubts. The state's ability to influence the NGO sector has not been expanded.

2) In November 2022, the administration of the President of Kyrgyzstan developed a bill amending the Law on NGOs. In particular, the following are provided:

- the obligation of NGOs to provide information about their activities, documents on the expenditure of funds and the use of other property, including those received from international and foreign organizations and foreign citizens, not only to state statistics bodies and tax authorities, but also to the Ministry of Justice and the Prosecutor's Office. According to the bill, the size and structure of income of NGOs as well as information about the size and composition of the property of the NGO, its expenses, the number and composition of employees, and their remuneration, cannot be the subject of a trade secret. State bodies receive the right to request and receive information about the financial and economic activities of NGOs from banking institutions;
- prohibition for foreign citizens and stateless persons to act as founders of NGOs;
- complicating the registration of NGOs, branches and representative offices of foreign NGOs,
- introducing the concept of “foreign NGO”, establishing a separate register of branches and representative offices of foreign NGOs;
- mandatory re-registration of all existing NGOs until December 31, 2023;
- simplifying the procedure for liquidating NGOs, vesting the General Prosecutor's Office with the function of overseeing the accurate and uniform implementation of laws and other regulations by NGOs.

Faced with a wave of protests from NGOs and pressure from the US and EU and Western-controlled international structures, the Kyrgyz government has demonstrated a willingness to find a compromise. In February 2023, by presidential decree, a working group was created to finalize the bill with the participation of representatives of NGOs. The revision was to be completed by June 1, 2023.

In May 2023, the human rights movement «Bir Duino Kyrgyzstan», sponsored by Western foundations, challenged the provisions of the bill in the Constitutional Court of Kyrgyzstan. On June 7, 2023, the Court found that the bill does not contradict the Constitution.

On June 14, 2023, the President extended the deadline for finalizing the bill until October 1, 2023. On October 4, the deadline for finalizing the bill was extended again, this time until February 1, 2024.

3) In May 2023, a group of parliament deputies led by N. Narmatova (a faction of the ruling Ata-Jurt party) introduced bills to amend the Law on NGOs and the Criminal Code. It was proposed to introduce the categories of “foreign non-governmental organizations” (foreign NGO), which would be included in a separate register of branches and representative offices of international organizations and foreign NGOs, and “NGOs performing the functions of a foreign representative” (with a separate register). The annual financial statements of an NGO performing the functions of a foreign representative must be subject to mandatory audit. Structural divisions of foreign NGOs — annually, and NGOs performing the functions of a foreign representative — once every six months must submit to the media or post on the Internet a report on their activities, including the founders, composition of property, sources of formation and directions of expenditure of funds. Scheduled (once a year) and unscheduled (upon the receipt of information about violations of the law) inspections of foreign NGOs performing the functions of a foreign representative are provided. The authorized body in the field of state registration of NGOs should receive the right to suspend for up to six months the activities of NGOs that have not submitted an application for inclusion in the register of NGOs performing the functions of a foreign representative.

It has been proposed to add an article to the Criminal Code of Kyrgyzstan, according to which “the creation of a non-profit association or branch, the activities of which involve violence against citizens or inducing 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.” “Active participation in the activities” of such associations, “as well as propaganda of the actions of such organizations, are punishable by a fine in the amount of 100 thousand to 200 thousand soms or imprisonment for up to 10 years”¹.

The group of deputies who signed up for Narmatova’s initiative gradually grew to 39 people (there are 90 deputies in total in the Kyrgyz parliament, the Jogorku Kenesh). Their number included Sh. Tashiev, brother of K. Tashiev, president's relative A. Tumonbaev, I. Matriaimov, a representative of an influential family, brother of former deputy of the State Customs Service R. Matraimov, notorious as one of the “main corrupt officials” of modern Kyrgyzstan. At the same time, the presidential administration emphasized that it had nothing to do with the bills, presenting them as an ordinary parliamentary initiative.

Narmatova’s bills provoked a stormy and coordinated sharply negative reaction from leading western NGOs, foreign policy agencies of the United States, EU countries and Great Britain, and

¹ Text of the bills. URL: https://24.kg/vlast/251272_zakon_obinoagentah_nadira_narmatova_initsiiovala_popravki_vugolovnyiy_kodeks/

international structures associated with Washington and Brussels. Particularly active in opposing the bill were Legal Clinic “Adilet”, largely funded by the Soros Foundation and the American National Endowment for Democracy, and Bir Duino Kyrgyzstan movement. The bills were declared repressive, copying Russian legislation, violating Kyrgyzstan’s international obligations, and jeopardizing the country’s citizens’ access to healthcare, education, drinking water and quality government services. The bills were opposed by influential international NGOs: International Partnership for Human Rights, the Norwegian Helsinki Committee, the Helsinki Committee for Human Rights, Front Line Defenders, Freedom Now, Human Rights Watch, the International Federation for Human Rights and World Organization Against Torture.

The bills were condemned by the UN Resident Coordinator in Kyrgyzstan A. Grave, who hinted at a reduction in assistance provided to Kyrgyzstan by the UN system (the bills “risk undermining the achievement of sustainable development goals”¹). The OSCE ODIHR issued a negative opinion on the bills. The American embassy and the EU mission joined the efforts to disrupt the adoption of both Narmatova’s bills and the presidential administration’s bill. Apparently, the question of withdrawing the bills was raised during the visit to Bishkek of the President of the Federal Republic of Germany F.-W. Steinmeier in June 21-23. The European Parliament adopted a resolution condemning the bills and calling on the European Commission to reconsider Kyrgyzstan's membership in the EU system of trade preferences if the bills are adopted.

Already from the beginning of June, NGOs and Western embassies began to carry out “targeted” processing of the initiators of the bills, many of whom, according to some information, were threatened with non-issuance of American and Schengen visas in the future and a ban on the education of their children in the West. One by one, deputies began to withdraw their signatures on the bills. By mid-June, the bills had only 20 co-sponsors left. In particular, Sh. Tashiev dropped out from among the initiators.

Under pressure from Western representatives, the government of Kyrgyzstan began to show signs that it was ready to back down. Narmatova’s bills were unexpectedly removed from the agenda of the meeting of the parliamentary committee on law and order, scheduled for June 27, 2023. Consideration of the bills was thus postponed to the autumn session. The Ombudsman of Kyrgyzstan recommended the authors of the bill to withdraw the document.

In July 2023, the government of Kyrgyzstan, noting that it supported the “concept” of Narmatova’s bills, gave a negative opinion on them. The government proposed eliminating the term “foreign NGO” and the requirement to maintain a separate register for them. It was indicated that the bill “does not disclose the mechanism of how and based on what criteria it will be determined that a non-profit organization operates in the interests of foreign sources”. The government considered

¹ Speech by A. Grave. URL: https://24.kg/obschestvo/268878_zakonoproektyi_obino-agentah_ismi_riskuyut_podorvat_dostijenie_tsur_ante_grave/

the provision on the right of government bodies to request information about the financial and economic activities of NGOs from banks to be contrary to law. It was noted that the Ministry of Justice is incompetent to conduct audits of financial statements of NGOs. The government also gave a negative opinion on the amendments to the Criminal Code.

It is significant that the government conclusion openly points at the main reason for the negative assessment of the bills: “previously, when considering similar bills... international partners expressed fears that after the adoption of this document, political «persecution of undesirable persons» and non-governmental organizations would begin in the Kyrgyz Republic. In this context, it should be noted that if such a scenario repeats, taking into account the Kyrgyz Republic’s membership in the UNHRC, political pressure from international partners may increase on the Kyrgyz Republic, including one on international platforms”¹. It should be noted that the provisions of Narmatova’s bills, to which the government gave a negative opinion, also include a number of provisions proposed in the bill developed by the presidential administration.

In the autumn of 2023, the political struggle around Narmatova’s bills resumed. On September 19, the meeting of the Jogorku Kenesh Committee on Law and Order, at which it was planned to consider the bills, did not take place due to lack of quorum. It is hardly a coincidence that in the second half of September, President S. Japarov, who had previously travelled to the West only twice², took part in the first ever summits of the «C5+1» format (USA — Central Asian countries) in New York and «Germany — Central Asia» in Berlin. Apparently, having not received bonuses for Kyrgyzstan as a result of these meetings, the country’s government decided to continue moving towards tightening the operating regime of NGOs in the country.

On October 3, the Parliamentary Committee on Law and Order supported the bills in the first reading; all 5 members of the committee present were in favor (there are 8 deputies in total on the committee). Three deputies said they would propose their amendments for the second reading. On October 10, the bills were supported by a majority vote in the first reading by the Committee on Constitutional Legislation. On October 17, at parliamentary hearings on the bills, the Supreme Court and the Prosecutor General's Office presented negative opinions on the proposed innovations regarding the introduction of criminal liability for the creation of NGOs that infringe on the personality and rights of citizens. A. Grave, who spoke at the hearing, again stated that the bill does not comply with the international obligations of Kyrgyzstan.

On October 25, the Jogorku Kenesh adopted Narmatova’s bills in the first reading without discussion. 52 deputies voted “for”, 7 “against”, 13 did not vote, 18 were absent. Among those who voted “against” are the sons of the last leader of Soviet Kyrgyzstan I. Masaliev and former president S.

¹ Conclusion of the Government of Kyrgyzstan. URL: https://kaktus.media/doc/487234_zakonoproekt_ob_ino-agentah_vnesli_v_povestky_profilnogo_komiteta_jogorky_kenesha.html

² To attend the UK Climate Summit in November 2021 and the UN General Assembly session in September 2022.

Atambaev. It is significant that Chairman of the Jogorku Kenesh N. Shakiev spoke out in support of the bills, calling on the deputies “not to be afraid of anything”¹. The second reading of the bills has not yet been scheduled.

As the bills moved towards adoption, the NGO sector and their sponsors intensified their pressure campaign on the Kyrgyz authorities. Kyrgyz media published information compromising Narmatova — the facts about her connections with R. Matraimov. Non-governmental organizations called on the embassies of the United States, EU countries, Great Britain and Switzerland to impose visa sanctions against the initiators of the bills and members of their families — in particular, against Narmatova, Shakiyev, and the chairmen of the parliamentary committees on constitutional legislation and law and order. The British Ambassador in Bishkek hinted that the introduction of visa sanctions is possible. At a meeting of the Committee on Cooperation between the EU and Kyrgyzstan, EU representatives noted that “the adoption of the law... may affect the ability of the European Union and other international donors to carry out cooperation activities in the Kyrgyz Republic”². Narmatova called on the State Committee for National Security to bring to justice citizens who advocate visa sanctions against deputies.

Among the initial group of co-sponsors of Narmatova’s bills, 41% were representatives of the Ata-Jurt faction, 22% of the Mekenchil faction, 19% of the Eldik faction (all three support President S. Japarov). Only two deputies from the Butun Kyrgyzstan faction opposed to Japarov and one deputy from the Yiman Nuru faction associated with the Muslim clergy were among the co-authors, and both representatives of Butun Kyrgyzstan withdrew their signatures. Accordingly, it is the small (six deputies) Butun Kyrgyzstan faction, whose leader A. Madumarov was arrested in September on charges of treason and fraud, that constitutes the main parliamentary opposition to Narmatova’s bills. The amendments to the legislation on NGOs are opposed by the extra-parliamentary opposition – the Azattyk party, “fragments” of the Social Democratic Party close to former President Atambaev, and representatives of the United Democratic Movement of Kyrgyzstan (UDMK), created in March 2022.

Counteraction to the proposed amendments by the party opposition does not have a significant impact on the legislative process. In essence, both Azattyk and the UDMK are the projects of western NGOs. The NGO sector in Kyrgyzstan is more influential, organized and financially secure than political parties, and it is its resistance, combined with powerful external pressure, that is hindering changes to legislation.

¹ Law on Foreign Agents. URL: https://24.kg/vlast/278254_zakon_obinoagentah_jogorku_kenesh_prinyal_dokument_vpervom_chtenii/

² Law on Foreign Agents. Kyrgyzstan was warned about its impact on work with donors. URL: https://24.kg/obshchestvo/279947_zakon_obinoagentah_kyrgyzstan_predupredili_oego_vliyanii_narabotu_sdonorami/

In the unlikely adoption of the amendments in the original version, it is possible to predict an attempt to change power in Bishkek through mass protests organized by NGOs with the coordinating role of Western embassies, the imposition of sanctions on Kyrgyzstan (probably, the reason will be a violation of the anti-Russian sanctions regime) and a split in the parliamentary faction of the ruling party by bribing its members and threats against them.

According to our assessment, Narmatova's bills will be adopted by the Kyrgyz parliament in a significantly emasculated form and without the amendments to the Criminal Code, and the adoption process itself will be delayed. Thus, the Kyrgyz authorities will not acquire new, truly effective legal levers of influence on the NGO sector.

The most likely scenario, in our opinion, is an attempt by the authorities — by abandoning legislative innovations or significantly softening them, to gradually get rid of NGOs that present the greatest threat to the ruling tandem. An attempt by the Bishkek prosecutor's office to achieve the closure of the Kloop Media public foundation at the end of August 2023, which was waging an open campaign to discredit the president and the head of the State Committee for National Security personally, can be considered as a trial step. The success or failure of the authorities in this enterprise will indicate the possibility of further action. In the meantime, as of early December 2023, the trial of the prosecutor's office's claim against the fund has been suspended indefinitely.