



« POSITIVE DIALOGUE »
PUBLIC FOUNDATION

Kyrgyzstan

Report for Universal Periodic Review

The Third Cycle

This report is prepared by the Positive Dialogue Public Foundation for consideration within the Universal Periodic Review of the UN Human Rights Council of the progress made by the Kyrgyz Republic in the implementation of human rights recommendations.

The report is based on the information obtained as a result of activities carried out in the framework of actions to protect human rights and freedoms with the support of the public health programs of the Soros Foundation-Kyrgyzstan.

Positive Dialogue Public Foundation is an independent non-governmental organization established in 2011. The goal of the organization is to promote compliance with international norms regarding the rule of law and human rights. It is a member of the National Coalition against Torture in Kyrgyzstan.

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This report is submitted for inclusion as part of the documents of the third Universal Periodic Review of Kyrgyzstan. The report highlights the problems identified by the UN Human Rights Committee while considering the report on Kyrgyzstan about the implementation of the International Covenant on Civil and Political Rights in June 2015. Each section of the report analyzes current situation and is concluded by providing recommendations.

Summary

The report provides an analysis of the implementation status of some recommendations made by the Human Rights Council in June 2015 when considering the Second Report on Kyrgyzstan in the framework of the Universal Periodic Review (UPR).

Problem areas:

- I. Prohibition of torture, inhuman and degrading treatment and punishment;
- II. Prohibition of discrimination;
- III. The right to a fair trial in the context of combating drug trafficking;
- IV. Palliative care;
- V. Attacks on human rights defenders.

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The Constitution of the Kyrgyz Republic as of 2010 includes the fundamental rights and freedoms guaranteed by the International Covenant on Civil and Political Rights. Article 6 of the Constitution declares that international obligations of the Kyrgyz Republic are an integral part of the legal system of the state. But despite the obligation of the state to respect and protect human rights stipulated in the Constitution, authorities as a whole and their individual representatives systematically violate the rights and freedoms of an individual and a citizen.

I. Prohibition of torture, inhuman and degrading treatment and punishment

On 14 April 2008, the Kyrgyz Republic ratified the Optional Protocol to the UN Convention against Torture. However, the Kyrgyz Republic did not make a declaration under Article 22 of the Convention to recognize the competence of the Committee to consider statements of the individuals who allege being the victims of the Convention provisions violation by the State Party;

Cases of pressure and attacks on lawyers protecting victims of torture by investigators and other persons have been noted. Lawyers protecting the victims of torture are limited in their access to investigation materials.

For the individuals arrested or detained while awaiting trial, the access to an independent doctor and lawyer is not guaranteed as it is not supported by sufficient procedural guarantees.

Medical personnel is not trained on the principles of identifying and documenting signs of torture, including special training on preparing forensic medical reports regarding acts of torture and other forms of physical and psychological abuse in accordance with the Istanbul Protocol.

Preventive mechanisms of the National Center for the Prevention of Torture (NCPT) demonstrate poor progress. According to the NCPT, in 2018, the center's employees made 991 visits to places of deprivation and restraint of liberty, 1,506 people were interviewed, 238 reports of torture or ill-treatment were received, and 11 criminal cases were initiated.

Investigations of substantiated allegations of torture do not meet the requirements in terms of speed, efficiency, impartiality and thoroughness.

Despite the legislative measures adopted in 2019 to exclude evidence obtained as a result of torture, the execution of this guarantee is made dependent on the verdict against the perpetrators.

In case of self-incrimination, tortured individuals are deprived of the right to compensation if acquitted.

The legislation of the Kyrgyz Republic does not provide for the definition of "ill-treatment" and, accordingly, liability for ill-treatment is not provided for.

Recommendations:

- The state should intensify its efforts to improve detention conditions for individuals arrested or detained while awaiting trial by providing all individuals deprived of their liberty, by

law and in practice, with legal guarantees for medical examination by an independent physician and unhindered access to a lawyer from the time of their restriction of freedom;

- The State should continue its efforts to harmonize its legislation with the Convention by ensuring that the definition of torture covers all the elements contained in Article 1 of the Convention;
- The State should recognize the competence of the Committee against Torture in accordance with the rules of Article 22 of the Convention against Torture;
- Provide all relevant personnel, especially medical personnel, with training and equipment in detecting signs of torture and ill-treatment and applying the provisions of the Istanbul Protocol;
- Ensure prompt and effective, unbiased, independent and thorough investigation of allegations of torture, including the suspension of perpetrators for the period of investigation;
- Legally prohibit the use of evidence obtained as a result of torture without any conditions, and ensure that this principle is respected in practice;
- Ensure judicial review and verification of any self-incriminating testimony of the accused;
- Establish a statutory ban on the interrogation of drug addicts and those in the state of intoxication or abstinence;
- Establish a ban on the testimony of the defendant at a court hearing which was obtained out of judicial control if the defendant does not support it in court proceedings regardless of whether it was obtained in the presence of defense lawyer or not.

II. Prohibition of discrimination

Despite the constitutional prohibition of all discrimination, there is no corresponding framework law in the Kyrgyz Republic to combat discrimination.

HIV/AIDS

The number of people with HIV in Kyrgyzstan in 2015 is estimated by joint United Nations Program on HIV / AIDS as ranging from 6,400 to 10,000 people.

People living with HIV are disadvantaged by discriminatory laws.

People living with HIV cannot legally adopt children or establish guardianship of them.

Detainees with HIV should be separated from the rest of the prison population, and their freedom of movement is restricted to a greater extent than among those who are not sick.

Detainees with HIV cannot be set free on parole from further serving of punishment until they complete a full course of treatment for HIV.

Setting free on parole from further serving of punishment of people suffering from HIV at the terminal stage is made dependent on the served minimum prison term.

Foreign citizens and stateless persons in the event of evasion from compulsory HIV testing are deported.

Foreign citizens and stateless persons who apply for citizenship or a residence permit of the Kyrgyz Republic are required to take an HIV test.

The principles of confidentiality of information guaranteed by the law provide for unjustified exceptions for HIV as an infectious disease.

Recommendations:

- Repeal all discriminatory norms related to HIV;
- Take measures to set free people living with HIV / AIDS at the terminal stage of the disease from further serving of punishment.

Psychiatry

The facts of excessively prolonged detention of patients at the psychiatric clinic in Kyzyl-Jar village through regular re-registration of voluntary hospitalization have been recorded.

The law allows a ten-day stay of involuntarily hospitalized citizens in a psychiatric institution without judgement of the court.

Discharge of voluntarily hospitalized persons is made dependent on the opinion of the doctor.

The law lacks clear and specific provisions guaranteeing the patient's right to a lawyer. The patient's communication with the lawyer is made dependent on the opinion of the hospital administration.

An independent monitoring body for the protection of patients' rights has not been created.

Recommendations

- Ensure regular review of diagnoses and provide alternative treatment options based on the interdisciplinary team model providing mental health services at the outpatient level;
- Ensure the right of a patient to making independent decisions regarding treatment;
- Make a review of all departmental regulatory documents on the provision of mental health care and repeal them if they conflict with the Constitution;
- Establish an independent body to protect the rights of patients and raise funds for its operation.

III. The right to a fair trial in the context of combating drug trafficking

In 2019, the Kyrgyz Republic took significant measures to humanize the criminal law in the field of combating drug trafficking and, in particular, the period of maximum sentences is reduced. Simultaneously with the deprivation of liberty, a convicted person is sentenced to a fine ranging from about 215 to 3,700 US dollars.

Convicted drug users, in addition to the primary punishment, are forced to undergo rehabilitation on the basis of the expert opinion. Refusal from compulsory rehabilitation is grounds for not applying amnesty acts.

Since 2019, positive measures have been noted to specify the definition of the minimum weight of prohibited substances and items for liability purposes. However, the Government has

included the concept of "derivatives of narcotic drugs and psychotropic substances", substances not controlled by the Law, which creates conditions for bringing to criminal responsibility for trafficking the indefinite number of substances with no names and unknown chemical composition.

Drug users deprived of their liberty are in a particularly vulnerable position. Drug addiction is considered to be a person's condition which requires medical assistance based on ethical norms and considering stress factor, drug users have the right to independence and privacy .

In the field of combating illicit drug trafficking, law enforcement officers use the "test purchase" method, which is factually provocation, not admissible as evidence in a criminal case. At the same time, the test purchase is carried out beyond judicial and prosecutorial control. Examination of narcotic drugs is carried out by experts without any methods approved by the Government.

The investigation of drug-related crime is carried out formally. The evidence in court is the documents of police officers, the agent, examination results, testimony of the accused obtained as a result of violence or threats, and interrogations of a drug user in the state of abstinence without a lawyer. Such evidence is a standard evidence package. At the same time, the testimony of the suspect receives hypertrophied value.

If the size of substance is greater than the daily dose, the crime is classified as drug sale, without investigating other circumstances and the identity of the accused. Very often there are cases when the accused claim planting drugs and falsification of the criminal case, which is not excluded due to the low standard of evidence base.

Illegal detentions, provocations, falsifications of criminal cases, dubious quality of examinations, self-incrimination as a result of threats of violence and actual violence , poor prosecutor's supervision leave no chances for the defense to ensure an adversarial and fair process to verify the evidence and its quality. The law allows disclosing the testimony of persons who did not appear in court and testify against the accused, or making the testimony of witnesses secret referring to state secret. Absence of video recordings of arrests and interrogations is not critical. Conducting operational activities regarding drug cases does not require judicial control. Acquittals for such offenses have not been noted.

A case of the creation of a criminal gang by police officers for planting drugs on citizens and extortion of money has been noted . The facts of detaining police officers with drugs for planting are not isolated and they allow drawing conclusions about the mass manipulation of drugs and the falsification of evidence, and threaten the safety of civic activists and citizens.

Recommendations

- Continue positive measures to humanize punishment for crime related to possession and use of drugs;
- Prohibit the initiation of criminal prosecution for selling drugs without the facts of their transfer to others in order to guarantee the presumption of innocence in practice and exclude falsification of drug selling charges;
- Revise the size of medium-sized single doses of narcotic drugs prohibited for trafficking, taking into account the real, scientifically-based degree of impact on human;
- Exclude from the list of prohibited substances and items the derivatives of narcotic drugs and psychotropic drugs, as substances not existing in nature;

- Exclude from the criminal legislation the norm on compulsory treatment of drug addiction without the consent of a drug user;
- Adopt legislative measures to recognize provocation of crime in the sphere of drug trafficking as inadmissible evidence and change judicial and administrative practice on this issue;
- Take legislative measures to approve suitable from a human rights perspective forensic and other scientific guides for experts;

IV. Palliative Care

The study on the status of palliative care in the Kyrgyz Republic is summarized as “a right that cannot be exercised”.

Due to significant legal restrictions, there are serious barriers to the availability of opioids to palliative patients, which lead to the fact that the majority of patients who need anesthesia suffer unjustifiably from unbearable pain.

Other difficulties are relatively expensive costs for the purchase of tableted morphine imported to Kyrgyzstan from Ukraine, and the lack of tableted morphine in the pharmacies in the country’s regions where private pharmacies do not want to deal with opioids to avoid problems with the police, paper bureaucracy and the complicated reporting system. So, given the number of patients who need this drug, more than 18 kilograms of morphine is needed per year, and only about 500 grams of this drug is used.

Recommendations

- Increase the availability of low-cost opioid analgesics for palliative care by reforming the legal and regulatory framework on this issue.

V. Attacks on human rights defenders

From 21 to 23 May 2019 the Coalition against Torture in Kyrgyzstan was conducting a regular working meeting of lawyers and attorneys with the participation of renowned international experts Karina Moskalenko and Oksana Preobrazhenskaya. Nine people broke into the room, interrupted the meeting and began demanding to stop the meeting. These individuals introduced themselves as members of the youth patriotic movement of Kyrgyzstan. The group claimed that the meeting had been financed by Western countries and international organizations and was aimed at destabilizing peace in Kyrgyzstan.

The meeting was dedicated to the discussion of the issues related to current practice of dealing with torture cases at the national and international levels, and using the potential of lawyers in criminal proceedings related to changes in legislation.

The actions of this vigilant group of activists were conducted outside of the legal sphere and demonstrate their appropriation of the control and judicial functions of the state.

Recommendations

- Investigate allegations made by human rights defenders about interference in their activities;
- Provide human rights defenders with the opportunity to conduct legal human rights activities.