

(Translated from Russian)

**General information related to the communication by the United Nations Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, on the prosecution of and ban on foreign travel by Ms. C. Djakupova**

The Office of the General Prosecutor of Kyrgyzstan (hereinafter the General Prosecutor's Office) has examined materials related to the communication by the United Nations Special Rapporteur on the situation of human rights defenders, Mr. M. Forst, concerning judicial proceedings in the lawsuit by the General Prosecutor of Kyrgyzstan against Ms. C. Djakupova on the protection of the honour and dignity of the President of Kyrgyzstan, Mr. A. Atambaev.

At a round-table discussion on "The right to peaceful assembly and freedom of speech", held on 30 March 2012, Ms. Djakupova made several unfounded and assertive statements and accusations that defame and insult the honour, dignity and business reputation of the President of Kyrgyzstan. On the same day, without checking the information expressed by Ms. Djakupova in her public statement, the online publication "zanoza.kg" published an article with additional distortion of Ms. Djakupova's statements, to strengthen the negative presentation of information.

In this connection, on 20 April 2017 the General Prosecutor of Kyrgyzstan filed an application to the Oktyabrsky District Court of Bishkek in defence of the honour and dignity of the President of the country against Ms. Djakupova, the "ProMedia" public foundation and its founders, asking the court to rule that the information disseminated by Ms. Djakupova was inconsistent with reality and discredited the honour and dignity of the President of Kyrgyzstan, to require that the above article be removed from the content of the website "zanoza.kg" and to have each defendant pay monetary compensation for moral injury in the amount of 3 million soms. On 30 July 2017, the application by the Prosecutor General's Office was upheld in full by the court.

In submitting its application and during the subsequent judicial proceedings and decision-making, the General Prosecutor's Office and the court strictly complied with the requirements laid down by national legislation, while not violating international standards establishing freedom of speech and expression, in particular the requirements of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, as well as of the International Covenant on Civil and Political Rights.

It should be noted that in some of its decisions the European Court of Human Rights has observed that the right to honour and dignity is one of the limitations on freedom of expression. In other words, freedom of expression ceases where the right to reputation or privacy begins.

For example, in the case of *Prager and Oberschlick v. Austria* of 26 April 1995, the Court considered that the conviction of a journalist and a publisher for damaging comments against a judge did not violate Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Despite the role that the press plays in a State governed by the rule of law, it must adhere to certain frameworks.

In the case of *Flux v. Moldova (No. 6)* of 29 July 2008, the Court held that there had been no violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court observed that, although the article referred to a public person, it had been based on an anonymous letter, and the printed publication had made no effort to contact the person concerned and find out his point of view, in order to verify the facts stated in the anonymous letter, and had refused to publish a retraction.

With regard to the adoption of measures to secure its claim, the General Prosecutor's Office, together with its application, submitted a motion to secure its claim by seizing the



defendants' property within the amount of the claim and legal costs, since if the application was upheld in full, this interim measure could serve as a guarantee for confiscation of property against their obligations, if they were unable to pay the amount of compensation for moral injury.

In this case, the court was guided by Articles 142 and 144 of the Civil Procedure Code of Kyrgyzstan (hereinafter the Civil Procedure Code), according to which, upon application of the persons participating in a case, the court may take measures to secure a claim, including the seizure ("arest") of a defendant's property or money within the amount of the claim and legal costs.

It should be noted that, in accordance with Articles 281 and 287 of the Civil Code of Kyrgyzstan (hereinafter the Civil Code), the impoundment ("izyatie") of property against the will of the owner (compulsory impoundment) may take place only by decision of a court in cases specified by law, including cases of confiscation ("konfiskatsiya") in the form of punishment for the commission of a crime or other offence. In this connection, the claim filed by the General Prosecutor's Office and the court judgments handed down do not envisage the confiscation of Ms. Djakupova's property; this points to the inadequacy of these arguments by the defendant and excludes the conclusions of the Special Rapporteur, Mr. Forst, concerning confiscation or the intention to confiscate the defendant's property in this case.

At the same time, the claims of the General Prosecutor's Office for moral injury against Ms. Djakupova and others are not an end in themselves, as stated in the communication by the Special Rapporteur, Mr. Forst, but are dictated by the requirements laid down by national legislation.

Thus, Article 29 of the Constitution states that everyone shall have the right to protection of his or her honour and dignity, while Article 11 of the Civil Code refers to compensation for moral injury as one of the ways to protect civil rights.

Articles 16 and 18 of the Civil Code establish a citizen's right to demand monetary compensation for moral injury in the case of violation of his or her personal non-property rights, as well as in other cases provided for by law.

In addition, under Article 1027 of the Civil Code, moral injury is compensated, regardless of the guilt of the injurer, when the injury is inflicted by the dissemination of information discrediting his or her honour, dignity or business reputation.

In order to exclude further dissemination of the contested information contained in the article, the General Prosecutor's Office also made an application for injunctive relief, with the demand to block and remove the specified article from the content of the "zanoza.kg" website, as well as for a temporary restriction on leaving the territory of Kyrgyzstan before the case was heard.

Taking into account the specific nature of the defendant's main activity related to frequent trips abroad, the court imposed a temporary restriction on Ms. Djakupova leaving the territory of Kyrgyzstan before the case was heard, for the purpose of ensuring full and complete consideration of the case with the direct participation of the defendant, since the departure of the defendant abroad could complicate and prolong examination of the merits.

Under Article 46 (8) of the International Migration Act, a citizen of Kyrgyzstan may be temporarily denied departure from Kyrgyzstan in cases where a civil claim is brought against an applicant before court proceedings are completed.

Ms. Djakupova's arguments about violation of the requirements of civil procedural law concerning non-compliance with a court ruling are also groundless because, at the time of the initial conversation in the Oktyabrsky District Court of Bishkek, on 2 May 2017, Ms. Djakupova's representative, who was present, already filed a private complaint about ruling on the granting of the temporary injunction of 26 April 2017, which indicates the defendant's knowledge of this application being lodged and of the results of the court's consideration of the temporary injunction.

Proceeding from the above, and taking into account the subject of the matter under consideration by the court, it follows that the grounds for the application lodged by the

General Prosecutor's Office are the unacceptable statements made by Ms. Djakupova, and are not in any way connected with her human rights work or other activities.

At the same time, we note that, under Article 40 of the Constitution, everyone shall be guaranteed judicial protection of his or her rights and freedoms as envisaged by the Constitution, laws, international treaties to which Kyrgyzstan is a party, generally recognized principles and norms of international law. Everyone shall have the right to defend his or her rights and freedoms by any means that are not prohibited by law.

According to Article 4 of the Act on Guarantees of the Activities of the President of Kyrgyzstan, the President is under the protection of the State, and his honour and dignity are protected by law. In this connection, and in accordance with the requirements of Article 104 (4) of the Constitution, the General Prosecutor's Office exercised its power of representation in court to protect the honour and dignity of the President.

It should also be noted that the Supreme Court of Kyrgyzstan, having considered the letter of the UN Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, concerning the prosecution of and foreign travel ban imposed on Ms. Djakupova, reports the following.

On 20 April 2017, the General Prosecutor of Kyrgyzstan filed a lawsuit against Ms. C.I. Djakupova, the public foundation ProMedia and the founders of the Public Foundation ProMedia, [REDACTED], in defence of the honour and dignity of the President of Kyrgyzstan.

At the same time as filing the application, the representative of the General Prosecutor, Mr. R. Abdyrakhman, petitioned the court to take measures to secure the claim by seizing the cottage located at the address: [REDACTED], owned by Ms. Djakupova, and by prohibiting Ms. Djakupova, [REDACTED] from leaving Kyrgyzstan before the end of the proceedings.

By the decision of the Oktyabrsky District Court of Bishkek on 26 April 2017, the application by the representative of the General Prosecutor, Mr. Abdyrakhman, concerning the adoption of measures to secure the claim was upheld.

The cottage located at the address: [REDACTED], owned by Ms. Djakupova, was seized.

Ms. Djakupova, [REDACTED] were prohibited from leaving Kyrgyzstan before the end of the proceedings.

Under Article 140 (1) of the Civil Procedure Code, upon application by the parties in a case, a court may take measures to secure a claim. The securing of a claim is permitted at any stage in the case, if the failure to take such measures might make it difficult or impossible to enforce a decision by the court or by an arbitration court.

By virtue of Article 141 (2) of the above-mentioned Code, a court may, where necessary, take other measures to secure a claim that meet the purposes specified in Article 140 of the present Code. Several types of measures to secure a claim may be taken by a court.

Article 142 of this Code states that an application to secure a claim shall be considered by the court not later than the day following its receipt in court, without informing the defendant and the other parties in the case. According to the standards set out in the above-mentioned articles, several types of measures to secure a claim may be taken, where necessary. An application to secure a claim shall be considered by the court not later than the day following its receipt in court, without informing the defendant and the other parties in the case.

By its ruling of 18 May 2017, the Civil Division of Bishkek City Court upheld the decision of the Oktyabrsky District Court of Bishkek of 26 April 2017, while the private complaints of Mr. [REDACTED], the representative of Ms. Djakupova, and of Mr. [REDACTED], the representative of the "ProMedia" public foundation and of Mr. [REDACTED], were not upheld.

By its Decree of 19 June 2017, the Civil Division of the Supreme Court of Kyrgyzstan upheld the decision of the Oktyabrsky District Court of Bishkek of 26 April 2017 and the ruling of the Civil Division of Bishkek City Court of 18 May 2017.

A division of the highest court has thus given a legal assessment of the validity and legality of the judicial instruments adopted.

Under Article 359 of the Civil Procedural Code, a decision by a division of the Supreme Court takes effect immediately after its adoption, is final, is not subject to appeal and is enforced in accordance with the procedure laid down by the legislation of Kyrgyzstan on enforcement proceedings.

In accordance with Article 94 (3) of the Constitution of Kyrgyzstan, no one shall have the right to demand a report from a judge on a particular case. Any interference in the administration of justice shall be prohibited.

At the same time, the Supreme Court of Kyrgyzstan notes that the above-mentioned judicial instruments did not confiscate the private property owned by Ms. Djakupova but only seized it during judicial proceedings. In this connection, and with regard to the lawsuit by the General Prosecutor of Kyrgyzstan against Ms. C. Djakupova, the "ProMedia" public foundation and [REDACTED] the founders of the "ProMedia" public foundation, in defence of the honour and dignity of the President of Kyrgyzstan, the information that private property was confiscated is inconsistent with reality.

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