

## Mandate of the Special Rapporteur on the situation of human rights defenders

REFERENCE:  
AL KGZ 1/2017

20 June 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 25/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged judicial harassment, the travel ban imposed upon and legal prosecution directed against Ms. **Cholpon Djakupova**, a prominent woman human rights defender, which appear to be closely linked with her active public engagement in human rights advocacy work.

Ms. Cholpon Djakupova is the director of the Public Foundation "Legal Clinic Adilet" which provides legal services for the protection of journalists and media outlets facing lawsuits initiated by the General Prosecutor of Kyrgyzstan. She conducts advocacy work for the protection of human rights in the country, notably freedom of expression and peaceful assembly, the rights of refugees, migrants and people with disabilities. In 2015 she was elected as a member of the Parliament of Kyrgyzstan. On 1 January 2017, Ms. Djakupova voluntarily resigned from her position as a member of the Parliament, as an act of opposition towards the controversial constitutional amendments adopted in 2016.

According to information received:

On April 20 2017, the General Prosecutor of Kyrgyzstan filed a lawsuit to the Oktyabrsky District Court of Bishkek to demand a sum amounting to 3 000 000 Kyrgyzstan Som (approximately 44 200 USD) from Ms. Djakupova as a compensation for moral damage for critical public statements made by her on the relationship between the President of the country and public authorities with journalists and mass media outlets.

On 26 April 2017, The Oktyabrsky District Court of Bishkek accepted the additional request made by the representative of the Prosecutor General's Office concerning measures to ensure the payment of compensation, and decided (a) to seize a cottage belonging to Ms. Djakupova as measure to prevent its alienation and to secure payment of compensation if the lawsuit against her is upheld by the court, and (b) to prohibit Ms. Djakupova from leaving the country before the finalization of proceedings initiated against her.

The ruling was allegedly not delivered to Ms. Djakupova by the court. She learned about it from reports in the media. This fact appears to be in contradiction with the requirements of Articles 149 and 150 of the Code of Civil Procedure of Kyrgyzstan, which state that the court shall send or hand over the copy of a lawsuit with all attachments to the defendant, who shall be invited and suggested

to provide his or her comments, explanations and counter arguments to the lawsuit.

On 18 May 2017, the Bishkek City Court dismissed an appeal submitted by Ms. Djakupova's representative on 28 April 2017. Subsequently, on 19 June 2017, the ruling of the Oktyabrsky District Court of Bishkek was upheld by the Supreme Court of Kyrgyzstan.

The rulings by the District Court and the Bishkek City Court regarding the prohibition for Ms. Djakupova to leave Kyrgyzstan before the finalization of proceedings against her appear to be in contradiction with Article 140 of the Code of Civil Procedure, enforcing that prohibition to leave the country shall be allowed if the failure to take such measures makes it difficult or impossible to execute the enforcement of court decision. The Court has seized immovable property belonging to Ms. Djakupova, the market value of which allegedly fully covers the amount of the sum which she was due to pay according to the Court ruling. Therefore, the imposition of the travel ban can be interpreted as a disproportional measure in comparison to the requirements of the lawsuit. Moreover, according to the Article 52 of the Code of Civil Procedure, a defendant can be represented by his or her representative or lawyer, therefore personal participation in court hearings is not mandatory.

While I do not wish to prejudge the accuracy of the information received, serious concern is expressed at the apparent judicial harassment directed against Ms. Djakupova, the seizure of her private property and the travel ban imposed on her, which bear signs of apparent contradictions with relevant legislation of Kyrgyzstan and which appear to be linked to her active engagement in the protection and promotion of human rights in Kyrgyzstan.

Further concern is expressed at the chilling effect that the legal prosecution and travel ban imposed on Ms. Djakupova may have on the legitimate exercise of the right to freedom of expression in Kyrgyzstan, particularly by journalists, human rights defenders and civil society activists.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.

2. Please provide information on the legal basis and evidence which lead to seizure of private property belonging to Ms. Djakupova as well as the travel ban imposed on her, and explain how this is compatible with Kyrgyzstan's obligations under international human rights law.
3. Please indicate what measures have been taken to ensure that human rights defenders in Kyrgyzstan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Michel Forst  
Special Rapporteur on the situation of human rights defenders

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to draw your Excellency's Government's attention to the following human rights standards:

I would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kyrgyzstan on 7 October 1994, which guarantee the right to freedom of opinion and expression, including the right to seek, receive and impart information. In this regard, I reiterate the principle in Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on reporting on human rights; discussion of government policies and political debate; government activities and corruption in government; and peaceful demonstrations or political activities.

Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration on Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Moreover, I would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Likewise, I would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

-article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;

-article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and

-article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary

action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.