

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL KGZ 5/2023
(Please use this reference in your reply)

27 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 52/9, 50/17 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the judicial harassment, threat of closure and imposed website blocking against independent news site Kloop Media**. It is reported that these developments take place in the context of legislative developments that may adversely affect freedom of association and freedom of expression.

Kloop Media is a Kyrgyz news website, established in 2007, consisting of majority students and graduates of the Kloop Media Public Foundation School of Journalism. It is an independent media outlet, registered as a public foundation for developing journalism and fostering political awareness among youth. It is known for publishing reports on alleged corruption within governmental bodies and providing training on fact-checking and investigative journalism to national and international journalists. Kloop Media is also a partner of the global investigative network Organized Crime and Corruption Reporting Project (OCCRP), which frequently publishes investigative reports critical of Kyrgyz authorities.

According to information received:

On 22 August 2023, the city prosecutor of Bishkek applied to the courts to liquidate Kloop Media on the basis that the foundation's charter allegedly did not list media activity among its statutory activities. In a request made to the court, the Bishkek prosecutor claimed that Kloop Media's reporting is "negative in character, aimed at discrediting representatives of state and local authorities". According to Kyrgyzstan's civil law code, the liquidation of legal entities by court ruling is permitted if they "systematically" conduct activities inconsistent with the purpose set out in their charters. In response, Kloop Media maintained that its charter does state its mission as "providing young people and other representatives of civil society with an information platform for free expression of their opinions on socio-political and economic processes."

On 28 August 2023, Kloop Media received notice of the motion. The motion itself focused largely on the tone and scope of Kloop Media's work rather than the media outlet's charter. It alleged that Kloop Media's publications included "sharp criticism" of the authorities, demoralised the public and aimed to incite

a revolution. These allegations quoted opinions from several state-solicited linguistic experts engaged in the pre-trial investigation into the allegedly existing criminal case accusing Kloop Media's publications of containing "hidden manipulation of social opinion...constant negative statements...and false and negative information" which provoked "dissatisfaction" and "distrust" for national authorities and could lead to instability and revolution.

The motion also blamed the independent media outlet for current societal issues in Kyrgyzstan, including the economic situation in the country's Batken region, which has allegedly worsened due to Kloop Media's publications. The claim included allegations that Kloop Media published statements "containing propaganda of the inferiority of citizens of the Kyrgyz Republic with the Russian nation" and "statements that are hostile and humiliating in relation to citizens of Russian nationality". Since 2021, the Kyrgyzstani authorities have reportedly commissioned two psycho-psychiatric forensic investigations into the publications of the media outlet.

The motion highlighted that a State Committee for National Security registered pre-trial proceedings on 2 November 2021 to investigate Kloop Media's publications on the grounds that the outlet allegedly made public calls for the violent seizure of power. It has not been made clear if the outlet and its staff will face charges for these separate allegations.

On 22 August 2023, Kloop Media published an article which alleged that some State officials participated in the creation of a branch of the Barcelona Academy (in association with a Spanish football club), which would use 16 hectares of state land.

On 7 September 2023, Kloop Media received a letter from the Ministry of Culture, Information, Sport and Youth Policy demanding the removal of material from an article they published on 1 September 2023 regarding allegations of ill-treatment in detention of an opposition politician that has been in detention since October 2022. The Ministry demanded that the Kloop Media remove the article as it contained "false information". The Ministry demanded that this information be removed from its website within two business days, threatening it would otherwise suspend the website for two months, in line with the 2021 Law "On the Protection of False Information".

On 8 September 2023, Kloop Media's lawyers filed an administrative complaint with the Ministry of Culture. On 11 September, the Ministry maintained its earlier decision to block the media outlet's website on the basis of the "fake news" legislation. This law authorises the Ministry of Culture to block any site alleged to be spreading false information if the site does not remove the said content within 48 hours. If appealed, the burden of proving the challenged material is not false is on the owner of the site/media. On 13 September 2023, the order to block Kloop news website came into effect. On 19 October, the Commission under the Ministry of Culture rejected Kloop Media's administrative complaint against the imposed blocking of their website.

On 23 October 2023, the Oktiabrskiy district court in Bishkek concluded preliminary hearings on the civil lawsuit of Bishkek Prosecutor on Kloop's

liquidation. The court rejected the motion of Kloop lawyers to suspend the civil lawsuit until the pre-trial investigation into the criminal case against Kloop led by the State Committee for National Security is completed. Kloop lawyers claimed that since the civil lawsuit is based on material from the said criminal case, the civil lawsuit is inherently linked to it. Kloop lawyers also filed a motion to summon the investigator from the State Committee of National Security, and 12 witnesses, including 11 experts in various fields, who provided linguistic and other types of forensic expert opinions in the pre-trial investigation of the parallel criminal case. These expert opinions are the basis for the civil lawsuit of the Bishkek prosecutor. The court partially satisfied the motion, and the experts will be summoned to the next civil trial session. It is unclear whether the investigator will be summoned. The next hearing will take place on 3 November 2023.

This is not the first attempt to block the Kloop Media website on the basis of the controversial Law on the Protection from False Information. In February 2023, the Community Development and Investment Agency (ARIS) submitted a similar statement to the Ministry of Culture. The ARIS complained about an article named: “ARIS denied the overestimation of the cost of social facilities, which Orunbekov previously announced”. However, the Agency soon withdrew its complaint without explaining the reasons. On this occasions, Kloop Media’s website was not blocked, but some claimed it was an attempt to interfere with the content of publications of the media outlet.

It is reported that these developments take place in the context of legislative developments that may adversely affect freedom of association and freedom of expression. On 25 October 2023, the Kyrgyzstan parliament passed in a first reading a bill requiring all nonprofits that receive foreign funding to register as “foreign representatives”. The bill would require organisations to provide regular and detailed reports on their activities, including an audit of funds received from foreign sources, the use of funds, as well as details on the organisation’s management and employees, including information on salaries. It would also require organisations to publish a report on their activities in the media every six months. The bill also introduces a fine or 5 years imprisonment for creating a nonprofit that “incites citizens to refuse to perform civil duties or commit other illegal acts” and 10 years imprisonment for “active participation” in or “propaganda” of such nonprofits. Finally, under this proposed law, state authorities would have the right to request internal documents from nonprofits and government representatives to participate in nonprofit’s internal activities.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned about the repeated attacks against Kloop Media which seem related to their work as an independent media outlet that is registered as a public foundation under the “Law on Non-Commercial Organisations”. The civil lawsuit also poses a grave risk of violating the right to freedom of association of Kloop Media’s members. We are particularly concerned about the chilling message the legal proceedings against Kloop Media may send to other independent media, activists and human rights defenders reporting critically on matters of public interest. We are further concerned about the blocking of Kloop Media’s website, as well as the potential criminalisation of Kloop Media staff.

It is particularly concerning that although the motion is against Kloop Media for the alleged inaccuracies in their charter, the majority of the allegations focus not on the content of Kloop Media's charter, but rather on the content of Kloop Media's journalistic work, which offers a critique of Kyrgyz authorities and state politics. We wish to remind your Excellency's Government that the Human Rights Committee has held that the freedom of expression includes 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions of Article 19 (3) of the ICCPR.

In this context, we would also like to raise our concern over the use of the Law "On the Protection from False Information Act", which was adopted in 2021, which appears to be used by the authorities to try and silence dissenting voices in the media, unduly limiting the freedom of expression in Kyrgyzstan. We remind your Excellency's Government of the Human Rights Committee's Concluding observations from November 2022, in which the Committee expressed concerns about the provisions of the Law on the Protection from Unreliable (False) Information, which allows executive bodies to block any internet resource without due process and judicial oversight.

Finally, we would like to reiterate our concern regarding the recently passed draft legislation which would require nonprofits to register as "foreign representatives". In a recent communication KGZ 4/2023, we raised our concern that this legislation may stigmatizing, criminalizing and target non-profits and media rights organisations. We are concerned that some of the provisions of this bill appear to be contrary to standards related to the rights of freedom of association and freedom of expression; see Human Rights Council resolution 22/6 which called upon States to ensure that reporting requirements "do not inhibit functional autonomy [of associations]" and "do not discriminatorily impose restrictions on potential sources of funding".

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.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legality of shutting down Kloop Media's website and how this complies with Kyrgyzstan's obligations under international human rights law.
3. Please provide detailed information about the alleged "false statements" in Kloop Media's publication which may be the basis for the suspension of the outlet, and explain how this complies with your international human rights obligations, including under ICCPR articles 19 and 22.

4. Please explain how the proposed “foreign representatives” bill complies with international human rights law, specifically in relation to the right to freedom of expression, freedom of association, the right to privacy and the right to non-discrimination.
5. Please indicate what measures have been taken by your Excellency’s Government to ensure that journalists and independent media outlets in Kyrgyzstan can access information, operate in an enabling environment and can carry out their legitimate activities free from harassment, intimidation, stigmatisation, criminalisation or reprisals of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we 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.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the norms, principles and standards applicable to this communication. The above-mentioned allegations appear to be in violation of articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan acceded on 7 October 1994 which guarantees the right to freedom of opinion and expression.

In the General Comment 34, the Human Rights Committee stated the right to freedom of opinion and expression, includes *inter alia* 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Additionally, in her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression raised concern about the rise in the criminalisation of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation. In this report, The Special Rapporteur emphasises that "the societal relevance of independent, free and pluralistic news media – as a pillar of democracy, a tool to support accountability and transparency, and a means to sustain open deliberation and encourage the exchange of diverse views – underscores the importance of journalism as a public good. Journalists are not above the law, but by virtue of their function and the public interest in disclosure, they are entitled to specific legal protection. States are obliged not only to refrain from arbitrary restraints, but also to put in place legislative and regulatory measures in line with international human rights standards to enable journalists to carry out their work safely and without hindrance."

We wish to refer to Human Rights Council's resolution 12/16, in which the Council calls on States to refrain from imposing restrictions which are not consistent with article 19(3) ICCPR, including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including be persons belonging to minorities or vulnerable groups.

Additionally, we would also like to recall that article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the right of association but also have a positive obligation to facilitate and protect the right in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that freedom of association is enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the ICCPR).

In addition, we refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27, which clearly stated that "the suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association," and "should only be possible

when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law ” (para. 76). Any restriction of freedom of association must be strictly proportional to the legitimate aim pursued and used only when alternative measures would be insufficient, in accordance with ICCPR art. 22 (2).

Furthermore, we remind your Excellency’s Government of its commitment to upholding the right to privacy, as outlined in article 17 of the ICCPR, which states that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, not to unlawful attacks against their honour and reputation and that everyone has the right to the protection of law against such interference or attacks.

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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.

Furthermore, we 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;
- 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.