

31 March 2015

Kyrgyzstan: Searches of lawyers' premises are contrary to international law and standards

The International Commission of Jurists (ICJ) expresses concern at searches of lawyers' homes and workplace by Kyrgyz investigators in the city of Osh. The home of lawyer Valerian Vakhitov and the office of the human rights organization "Bir-Duyno-Kyrgyzstan" where lawyers Valerian Vakhitov and Khusanbay Saliyev worked, were searched and materials of the lawyers' cases were seized. The ICJ considers that the searches are violations of the right to confidential communication between a lawyer and his or her client.

The confidentiality of lawyer-client communications and lawyers' files is protected in international human rights law as part of the right to a fair trial, as well as the prohibition of arbitrary interference with correspondence, privacy and (in this case) home.

The searches followed the arrest of Umar Farooq, a US citizen and journalist who reportedly conducted research on inter-ethnic tensions in the Kyrgyz Republic, in particular near the border with Uzbekistan. On 25 March 2015, he was arrested by officers of the State Committee of National Security (SCNS) and a number of items in his possession were seized including recordings containing "statements on religious topics and clips of military activities", copies of charges filed against clients of the two lawyers, A.M. Yusupov and I.I. Salibayev, and the business cards of the two lawyers. On 28 March, Umar Farooq was expelled from the Kyrgyz Republic on grounds of collection of information without accreditation.

The investigator sought a search warrant for the lawyers' premises on the grounds that they could contain documents "necessary for the investigation" in criminal case No. 082-15-0236.

Warrants to search the NGO premises where the lawyers worked and to search the residence of Valerian Vakhitov, were issued in separate proceedings on 26 and 27 March by judges K.M. Matisakov and B.T. Satybaldiyev. According to the search warrant issued by the Court, the search of Lawyer Vakhidov's home was authorized taking into account the "the need for a full, objective, comprehensive resolution of the crime, obtaining evidence necessary for the investigation of the case, inevitability of the punishment for a crime committed and for the purposes of national security". The same reasons were given to authorize searches of the office of "Bir-Duyno-Kyrgyzstan" Investigators seized computers, memory sticks, dictaphones and disks with information on cases in which the lawyers represented clients. Lawyer Vakhitov reported that among other documents, files relating to nine cases in which he represented individuals before the UN Treaty Bodies, including communication with the UN bodies, had been seized.

The ICJ notes that the State Committee of National Security of the Kyrgyz Republic officially stated, on 30 March, that the searches of work and residence places of lawyers were "legal and within the framework of the CPC of the KR [Criminal Procedure Code of the Kyrgyz Republic]". On the same day, the Council of Advokatura, its main executive body, issued a

statement calling on the Prosecutor General Indira Zholdubayeva “to take the strictest measures provided by law in regard to the officers of the State Committee of National Security which violated the guarantees of the independence of lawyers’ activity and integrity of lawyers”.

The ICJ considers that the searches are a clear violation of the law of the Kyrgyz Republic. According to Article 29 of the Law On Advokatura and Lawyers’ Activity the Kyrgyz Republic “requisitioning, seizure, examination, inspection, copying documents, collection and use of information related to legal assistance in a particular criminal case are allowed only in the case involving a lawyer as a defendant ...”. A criminal case against a lawyer may be initiated only by the Prosecutor General or her deputy (Article 29.3). According to article 30 of the Law, information related to providing legal aid to clients is protected as lawyer-client privilege.

The ICJ recalls that lawyer-client privilege is a well-established principle under international human rights law, including the International Covenant on Civil and Political Rights, to which Kyrgyzstan is a party.¹ The UN Basic Principles on the Role of Lawyers specifically affirm that “governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.² The UN Special Rapporteur on the Independence of Judges and Lawyers has affirmed that in order to guarantee the confidential nature of the lawyer-client relationship, “Lawyers’ files and documents should be protected from seizure or inspection by law and in practice”.³ The confidentiality of lawyer-client communications and lawyers’ work files can only be qualified in the most exceptional circumstances, and cannot be set aside solely on the grounds that a case concerns national security.⁴ In this case, as there was no criminal charge against the lawyers themselves, the search and seizures violated Kyrgyz law and as such, clearly violated the prohibition on arbitrary or unlawful interference with correspondence, privacy and home under art 17 of the ICCPR

The seizure of documents relating to cases before UN treaty bodies raises the further concern of hindrance of the right of complaint to these bodies, in violation of the Kyrgyz Republic’s obligations under the relevant treaties or protocols.⁵

The ICJ calls on the relevant authorities of the Kyrgyz Republic to ensure in a most expedited manner the return of the materials to lawyers Vakhidov and Saliyev and to take steps to ensure that lawyers are able to represent their clients independently, effectively and in confidence.

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¹ See for example UN Human Rights Committee, General Comment 32, para.34 on the Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, 23 August 2007; and the Committee’s decision in *Gridin v Russian* UN Doc.CCPR/69/D/770/1997 (2000) para.8.5. The Human Rights Committee is the body of independent experts established by the Covenant and mandated to interpret and apply its provisions. See also European Court of Human Rights, *S v Switzerland*, Application no.12629/87, para.48.

² UN Basic Principles on the Role of Lawyers, Principle 22.

³ UN Special Rapporteur on the Independence of Judges and Lawyers, Report to the General Assembly, UN Doc A/64/181 (2009), para 110(b).

⁴ See for example UN Special Rapporteur on Human Rights and Counter-terrorism, Report to the General Assembly, UN Doc A/63/223 (2008) para.39.

⁵ See for example, *Alzery v Sweden*, CCPR/C/88/D/1416/2005, 10 November 2006, para.11.11