Kyrgyzstan: draft law on “foreign agents” modeled on the Russian model

Description

Since Sadyr Japarov arrived as the head of the Kyrgyz state in 2020, authoritarian practices have intensified in this small mountainous country in Central Asia, long described as an “island of democracy” in the region. A government intent on stifling checks and balances is now targeting civil society.



The recent modification of the flag in Kyrgyzstan, justified by its central element being more reminiscent of a sunflower – a symbol of dependence and servility – than of a sun, is a fine metaphor for the priorities of the country’s authorities. Obsessed by the risk of their legitimacy being challenged, they seek to pass a law on foreign agents. The non-governmental organizations (NGOs) that emerged after the fall of the USSR, when the country was looking for new alliances to compensate for Russia’s withdrawal, are now regarded by the government as agents of influence that need to be contained. On 25 October 2023, the Kyrgyz parliament passed its first reading (52 votes in favor, seven against) of a draft law on “foreign representatives,” copied from the infamous Russian law on “foreign agents.” The bill is one of a series of legislative texts and arbitrary arrests that have marked President Sadyr Japarov’s term in office as a step backward for democracy.

Kyrgyzstan, Central Asia’s only democracy?

Following its independence, Kyrgyzstan quickly established its international commitments and created a political and legal environment conducive to developing civil society and media pluralism. After Kazakhstan, it was the second country in the region to join the World Bank in 1992 and the first to join the World Trade Organisation (WTO) in 1998. Its integration into the international fabric was completed by ratifying the UN’s International Covenant on Civil and Political Rights in 1994 UN’sInternational Covenant on Civil and Political Rights and its membership of the Council of Europe’s Venice Commission in 2004. As a result of this openness, Kyrgyzstan has been described as an island of democracy(1), and international observers interpret its alignment with international standards as the expression of a desire for democratization and liberalism. On this basis, thousands of NGOs, encouraged by Western donors, have been set up in the country.

The bill on foreign representatives was drafted as part of a far-reaching legislative change led by S. Japarov since his accession to power. In 2021, the new Head of State initiated a change to the Constitution by referendum, which reorganized powers in favor of the President. The change to the Basic Law was complemented by a process of “amending certain legislative acts,” under which this bill was introduced. It echoes a similar process in 2013, proposing legislative amendments and a law on foreign agents. However, after four years of discussions, the latter was rejected by Parliament, which had complied with the negative opinions issued by the Venice Commission and the OSCE. Ten years later, an almost identical bill is being proposed.

What is the justification for this bill?

Copied 69 % from the Putin model, which helped bring down Russian civil society, the Kyrgyz bill aims, as its name suggests, to classify NGOs that receive money from foreign sources as “foreign representatives.” According to the law, the latter “participate, including in the interest of foreign sources, in political activities carried out on the territory of the

Kyrgyz Republic"(2).

Watchdog organizations that have analyzed the draft law point to what they see as its dangerous vagueness of terminology: the notions of political activity and foreign funding are skilfully employed without precise contours, leading them to fear a politicized application of this law. The justification for this law seems to be based on subjective criteria.

For the authorities, on the other hand, the current law governing the activities of NGOs, which dates from 1999, "no longer meets today's realities." The bill's initiator, Nadira Narmatova, a member of parliament, stated, "The current law on NGOs is inadequate, and it is necessary to strengthen control over these organizations."

The authorities are, therefore, wary of NGOs in principle. According to opponents of the law, it reflects a dissonance between the authorities' perception of their activities and reality. NGOs are said to compensate for the state's shortcomings thanks to foreign funding unavailable at the national level. Those seeking to influence the government politically would not be doing so to interfere but to improve the economic and social conditions of the citizens of Kyrgyzstan. The legislators' argument of the need to protect national security is invalidated by the fact that there are no recorded cases of NGOs whose activities are intended to undermine the State. Similarly, the logic of monitoring foreign funding is hypocritical, given that the bulk of foreign funds arriving in Kyrgyzstan, in any case, passes through state coffers and commercial organizations, which are not targeted by this bill.

An approach that has been recognized both nationally and internationally

Applying this law would lead to solid government interference in NGO affairs, countering national and international rules. The term "foreign representative" violates the non-discrimination clause of the Kyrgyz Constitution. This text transgresses the right to association enshrined in the country's Basic Law and protected by two international covenants to which Kyrgyzstan is a party, namely the Declaration of Human Rights (art. 20) and the International Covenant on Civil and Political Rights (art. 22). Article 17 of the Covenant, which protects against arbitrary or unlawful interference in private life, would also be disregarded: the government could demand internal documents from NGOs and arbitrarily send official representatives to them.

Organizations that do not meet the conditions of the law on foreign representatives may have their activities suspended without going to court and without the possibility of appealing against this decision.

Penalties for breaching the law would not be limited to suspending the activities of the NGOs in question but would also involve the criminal liability of those involved. The law provides for a fine of up to 100,000 soms (around €1,000) and five years imprisonment for setting up an NGO whose activities *"involve violence against citizens or other harm to their health or incite citizens to refuse to perform their civic duties or commit other illegal acts"*(3). Participation in or promotion of the activities of such an organization can be punished by a fine of up to 200,000 soms (around €2,000) and ten years imprisonment.

Nadira Narmatova's argument that this law will not harm anyone as it was designed to guarantee order and discipline in the country is not convincing many people. Voices have been raised against the bill not only by international institutions but also by Kyrgyz political elites. Several MPs have withdrawn their signatures from the draft, and the Ombudsman has called for the text to be removed in the interests of compliance with international standards and the Kyrgyz Constitution. The media, commercial companies, and around a hundred Kyrgyz NGOs have also opposed the draft law. At the international level, several NGOs and international organizations, including the European Union and the United Nations, have denounced a draft law that is based on vague and dangerous foundations and wording.

On 8 December 2023, the President's administration sent a reworked version of the bill to the working group charged with studying it: the group reports that the new text ignores the criticisms of local and international stakeholders and puts forward additional restrictions on the activity of NGOs, which will have to declare themselves as having a social or political vocation. Those with a social vocation cannot access foreign funding and lose the right to organize peaceful

gatherings, an unconstitutional measure. The preliminary analysis of this new draft version has had little resonance beyond a few articles in independent media. The working group will send a detailed analysis of comments and recommendations to the President's administration and other interested parties on 10 January 2024. Although it has not been announced that the text will be sent to Parliament for a second reading, the date of entry of the law into force has been postponed to 1 January 2025.

Notes:

(1) John Anderson, *Kyrgyzstan: Central Asia's Island of democracy?* Routledge, 2013, 107 p.

(2) Kyrgyzstan Parliament website.

(3) "UN special rapporteurs have urged the government of the Kyrgyz Republic to reconsider and withdraw the draft law 'On Foreign Representatives'," *United Nations, 6 October 2023*.

Thumbnail: Aerial view of Bishkek (credits: Mike Dudin/Unsplash)

* Alice Deasy is a Master 2 student in International Relations at INALCO. She specializes in journalistic coverage of the post-Soviet space (internships and freelance work for Reporters sans frontières and Kometa magazine).

Link to the French version of the article

Translated from French by Assen SLIM (Blog)

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