

## **Briefing paper by International Partnership for Human Rights and Kazakhstan International Bureau for Human Rights and Rule of Law for EU-Kazakhstan Human Rights Dialogue, November 2013\***

The human rights situation in Kazakhstan has deteriorated since the last EU-Kazakhstan Human Rights Dialogue took place in November 2011. The December 2011 Zhanaozen events marked a human rights crisis that has yet to be resolved, and these events have been followed by a widening crackdown on free speech and dissent. This paper provides an overview of major concerns with respect to the lack of a fair, impartial and thorough investigation of the Zhanaozen events, the renewed attack on the political opposition, the decline in media freedoms, harassment of civil society activists, and continued violations of freedom of assembly in Kazakhstan. It also describes in more detail a number of individual cases that require particular attention by the EU and makes recommendations for steps the EU should request the Kazakhstani authorities to take to address existing problems.

### **Overview of concerns**

#### ***The lack of a fair, impartial and thorough investigation of the Zhanaozen events***

The Kazakhstani government has to date **failed to ensure an impartial and thorough investigation** of the December 2011 events in the city of Zhanaozen in western Kazakhstan. During these events more than a dozen people were killed and many more wounded as police used arms to put down riots that broke out following a several months-long peaceful oil worker strike, which the authorities had [sought to repress](#). The authorities have acknowledged that the use of force in response to the riots was disproportionate “in some cases,” and a number of police officers have been convicted for “abuse of power.” However, other officers alleged to have participated in the use of [excessive force](#), or to have given orders about it have not been held accountable.

In June 2012, 34 oil workers and other individuals accused of involvement in the unrest were convicted on various charges, with 13 sentenced to imprisonment of two and more years. An international monitoring mission from the Civic Solidarity coalition [concluded](#) that the trial did not clarify the circumstances of the riots and was **unfair and biased** in favour of the prosecution. The credibility of

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the trial was also undermined by the extensive use of **questionable police and anonymous witness testimony** as the basis for the verdicts, as well as **allegations of torture and ill-treatment** by defendants that have not been investigated. The longest prison term was given to strike movement leader **Roza Tuletaeva**, which reinforced the impression that she and other strike participants were punished for their role in the peaceful labour protest. (See more about her case in the section on “individual cases” below). In May 2013, the Supreme Court reduced the sentences for six of the oil workers by turning their 3-year-sentences into suspended ones, but upheld the other sentences unchanged.

Among others, the UN High Commissioner for Human Rights Navi Pillay has [called for](#) an independent, international investigation into the Zhanaozen events, their causes and their aftermath, saying that she believes that “it is extremely damaging to Kazakhstan’s reputation to have so much uncertainty hanging over such a serious episode resulting in substantial loss of life.” She has also noted that these events highlighted “many of the human rights concerns and critical gaps in the country’s laws and rule-of-law institutions” such as due process and fair trial concerns, allegations of torture, and violations of freedom of expression and assembly.

### ***Renewed attack on the political opposition***

Following the Zhanaozen events, the authorities launched a **renewed attack on the political opposition**, which it has sought to blame for masterminding and fomenting the riots. A number of representatives of political opposition movements were summoned for interrogation, detained and criminally charged in the months after the events. Among them was **Vladimir Kozlov**, leader of the country’s most vocal opposition party, Alga that has been denied registration by the authorities. In October 2012, he was sentenced to 7.5 years in prison for his alleged role in the Zhanaozen events following an unfair and politically motivated trial. In August this year, the Supreme Court refused to review his case, concluding that there were “no grounds” to do so. (See more below in the section on “individual cases”).

In the recent period, the Kazakhstani authorities have also actively **pursued the extradition of exiled opponents** residing in Europe. There are credible concerns that these individuals, if extradited, could similarly face unfair trials and other human rights violations, including ill-treatment and torture.

Among those wanted by the Kazakhstani authorities is Mukhtar Ablyazov, a well-known opponent of the Nazarbaev regime who has been criminally charged in absentia, inter alia, in relation to the Zhanaozen events. In a development that appeared to unfold from an attempt by Kazakhstani authorities to put pressure on Ablyazov, his wife Alma Shalabayeva and their 6-year-old daughter were returned from Italy to Kazakhstan in May 2013 in a process flawed by irregularities. The Italian government has since officially evoked the deportation order and launched an investigation into the return, which UN experts have [depicted](#) as an **extraordinary rendition**. Shalabayeva is now under criminal investigation in Kazakhstan and has had to sign a plea not to leave Almaty, while Ablyazov was

arrested in France in July and requests for his extradition issued by Kazakhstan, Russia and Ukraine are pending consideration.

In a further related development, on 8 November, Spain's High Court ruled that Aleksandr Pavlov, former security guard of Ablyazov, may be extradited to Kazakhstan [despite the risk](#) that he may be subjected to torture and other human rights violations upon return. A final decision on his case had yet to be made at the time of writing.

### ***Decline in media freedoms***

Media freedoms in Kazakhstan took a hard hit when the activities of **a number of leading opposition media outlets were banned by court** for alleged "extremist" propaganda in a series of trials held in December 2012. The prosecutor's office [claimed](#) that these media outlets had featured "extremist" content in their coverage of developments in Zhanaozen. They include 8 newspapers and 22 internet resources grouped together as a "unified" outlet under the name *Respublika* as well as the *Vzglyad* newspaper and its internet resources, the satellite K+ TV channel and its website and the online Stan TV video portal. The court decision in the case of *Respublika* also banned "other" media used to disseminate material of this "unified" outlet, leaving it unclear to what all media it applies.

In the subsequent period, **media and journalists who are critical of authorities have continued to face harassment**. Numerous newspapers and journals experience problems with being issued as publishing houses are under pressure by authorities to refuse to print them, and the work of media outlets have been obstructed through new court cases. For example, in August-September 2013, the activities of three different newspapers were **suspended** for three months **on formal grounds**. While *Ashik Alan - Tribuna* (an independent newspaper that began publication last year) was sanctioned for its [alleged failure to inform](#) relevant authorities in writing about the vacation of editorial staff, *Pravda Kazakhstanana* (issued by the oppositionist Communist Party) and *Pravdivaya Gazeta* (another new independent newspaper) were held accountable for [alleged violations](#) of the rules concerning the inclusion of publishing information in their editions.

It also remains of concern that outspoken media and journalists are targeted by **punitive defamation suits**, which are brought by government officials who demand excessive sums as compensation for alleged damages to their reputation. Among those repeatedly targeted by such suits is Lukpan Akhmedyarov, who works for the *Uralskay Nedeleya* newspaper. In September 2013, a court prohibited him from travelling abroad because of his failure to pay moral damages imposed in a defamation case in July 2012. At that time, he was ordered to pay five million Tenge (about 25.000 EUR) to a high-ranking regional-level official over an article about family connections within the structures of regional authorities. He was not able to pay this large sum at once, as requested by the court.

New cases of **physical attacks on journalists** continue to be reported, with the free speech foundation Adil Soz [documenting](#) a total of 10 attacks on media representatives in the first eight months of 2013. In a common pattern, investigations into attacks on journalists fail to identify those responsible, as a result of which they go unpunished. In a rare exception, four perpetrators of the brutal April 2012 attack on Lukpan Akhmedyarov were [convicted](#) in July 2013 and given sentences ranging from 11 to 14 years in prison. This decision was upheld on appeal the following month. However, while it was established during the investigation that the attack on Akhmedyarov was ordered, the masterminds are yet to be brought to justice. A separate investigation into this matter is reportedly under way.

As part of the broader trend of stifling alternative views, **access to internet sites containing information challenging the official line is blocked**. For example, in December 2012, a court [ordered](#) the opposition news site guljan.org to be blocked for three months because it had posted information about an unsanctioned peaceful protest earlier during the year. Access to the site was restored only in July 2013, several months after the court-ordered blockage had ended, and shortly after this readers again experienced problems accessing it. This site has also previously faced harassment, including defamation cases against its journalists and cyber attacks. The website of Kazakhstan's Socialist Movement (socialismkz.info) became unavailable in the country in July 2013 after it had provided coverage of developments relating to a labour conflict in the city of Zhezkazgan. This gave rise to concerns that the authorities were trying to obstruct the movement's efforts to report about the workers' position in this conflict, in a development reminiscent of efforts to obstruct coverage of the 2011 oil worker strike that preceded the Zhanaozen events.

### ***Harassment of civil society activists and violations of freedom of assembly***

As illustrated by several recent cases, civil society activists who are engaged in efforts to promote human rights, justice and accountability in Kazakhstan are **vulnerable to retaliatory actions by authorities** such as politically motivated criminal charges, detention, and forcible psychiatric examinations and treatment.

Lawyer **Zinaida Mukhortova** was subjected to a new episode of forced psychiatric hospitalization this autumn in a saga that began after she publicly took action to defend the rights of citizens in relation to a ruling party member in 2009. She was released on 1 November 2013, but is at risk of being hospitalized again with an appeal hearing now under way regarding the decision sanctioning her most recent detention. Absurd charges of inciting religious discord have been levelled against journalist and human rights defender **Alexander Kharlamov**, who has campaigned against corruption among local officials. He has also had to undergo forcible psychiatric examinations. He was released from detention in September 2013 after being held for six months, but the case against him is still pending, with a new investigation currently under way. Activist **Vadim Kuramshin** is serving a 12-year prison sentence that appears to represent retaliation for his work to promote prisoners' rights, including at a 2012 OSCE human rights conference. Concerns about his safety and well-being are reinforced by the fact that he is

held in a prison where he has previously reported about abuse. (For more details about these three cases, see the section on “individual cases” below).

The right to **freedom of assembly continues to be restricted**. While advance permission is required to hold any public meeting, local authorities enjoy wide discretion to reject applications to organize assemblies. In a well-established pattern, permission to hold rallies on political or other sensitive issues are denied on arbitrary grounds or actions are only allowed in specifically designated locations outside city centres. Unsanctioned assemblies are dispersed and organizers and participants are detained and penalized through fines or administrative arrest. In some cases, journalists have also been subjected to such measures.

Several large opposition rallies took place in different cities of Kazakhstan at the beginning of 2012 and were met with repressive measures by authorities such as intimidation, “preventive” house arrests, detentions and administrative penalties targeting participants. As [monitoring](#) by Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) shows, no similar rallies have been held since mid-2012 given the weakening of the opposition that has resulted from the government’s crackdown on it. However, KIBHR has documented new cases of **disproportionate and unlawful law enforcement responses** to other assemblies. These are a few recent examples:

- Prior to an opposition meeting organized in Almaty on 12 July 2013 for the purpose of discussing current political issues, activists planning to attend were [summoned by police](#), questioned and warned not to participate. Hotel and restaurant owners were apparently also pressured by local authorities not to rent space for the meeting.
- On 1 October 2013, police and special squads dispersed a peaceful gathering organized by the movement “Give people housing” in Astana to demand government action to help out mortgage-holders affected by the economic crisis and to hand over a petition to the president. Some 170 participants were detained, with police reportedly using forceful means, as a result of which several participants required medical assistance, among others for fractures. Two activists from the organizing group were sentenced to administrative arrests and three participants were fined for violating the procedure for holding assemblies.
- On 9 November 2013, a group of relatives of prisoners gathered spontaneously outside the prison in the city of Aktobe following reports of brutal treatment of prisoners in this colony. They demanded to meet the prison management and to see their relatives. In the situation that developed, the circumstances of which are not fully clear with some reports suggesting that some individuals threw stones at special police forces that cordoned off the prison building, mass detentions began with some 80 people apprehended. Many detainees were [allegedly badly beaten, ill-treated](#) and forced to confess to having initiated a “riot.” Over 20 people were subsequently convicted of “disobeying the lawful orders of police” and given administrative penalties in the form of arrests or fines.

- On 20 November 2013, two participants were detained when about a dozen elderly members of the public association “For Justice” held a peaceful protest outside a court building in Almaty, where a high-security trial apparently was under way at the time. Three journalists present to observe and document the assembly, including [a KIBHR representative](#) were also detained without explanation. Police attempted to confiscate the camera of one of them and erased all recorded material from the video camera of another one. They were all released the same day.

## Individual cases that require particular attention

### *Vladimir Kozlov*

On 8 October 2012 an Aktau court sentenced opposition Alga party leader Vladimir Kozlov to 7.5 years in prison with confiscation of his property on charges of “inciting social discord,” “calling for the violent overthrow of the constitutional order” and “creating an organized group for the purpose of committing one or several crimes” (Criminal Code articles 164, 170 and 235). The charges were brought against Kozlov for his alleged role in fomenting the Zhanaozen events. On 19 November 2012, the Mangistau Regional Court upheld the ruling in the case on appeal. On 5 August 2013, the Supreme Court refused to review the case, concluding that there were “no grounds” to do so.

A mission from the Civic Solidarity Platform that monitored the trial against Kozlov [found](#) that the proceedings were marred by procedural violations, bias against the defence and the **lack of an impartial, fair and thorough consideration of the case**. The mission noted that the “evidence” presented during the hearing only showed that Kozlov had engaged in actions that fall within the framework of legitimate political opposition activities in a democratic state when he publicly supported the participants in the oil worker strike that preceded the Zhanaozen events. KIBHR likewise [observed](#) serious violations of due process and fair trial standards during the appeal hearing. Overall the conduct of the trials reinforced the impression of the **political nature of the case**. Criminal Code article 164, under which Kozlov was charged, is of particular concern as it is vaguely and ambiguously worded, which gives rise to concern in view of the principle of legal certainty and leaves it open to enforcement restricting free speech.

Kozlov is serving his sentence in a prison in the city of Petropavlovsk in northern Kazakhstan, close to 2000 km from his home town Almaty, which restricts Kozlov’s opportunities to contacts with his family. KIBHR and other human rights groups consider the decision to transfer him to this prison to be in violation of the Criminal Procedure Code, which sets out as a basic rule that prisoners should serve their sentence in the region where they lived prior to their conviction.

## ***Roza Tuletaeva***

When the sentences in the Zhanaozen oil workers case were handed down in June 2012, the longest prison term (seven years) was given to Roza Tuletaeva, a leader of the oil worker strike movement who had actively provided information about the movement's struggle to media. This reinforced the impression that she and other strike participants were **punished for their role in the peaceful labour protest**. She was convicted of "organizing mass riots" (under article 241 of the Criminal Code).

Tuletaeva **testified in court that she had been subjected to torture**, among others suffocation in pre-trial detention but requests by her lawyer for a criminal investigation into these allegations have been rejected. On appeal, Tuletaeva's sentence was reduced to five years, a sentence that was upheld by the Supreme Court in May 2013. Currently Tuletaeva is planning to submit a new complaint to the Supreme Court in her case.

Tuletaeva is serving her sentence in a prison facility in the city of Atiray. According to information from her family, her health has deteriorated while in prison and she has **not received adequate treatment for her medical problems**, including a benign liver tumour with which she has been diagnosed. In view of these concerns, KIBHR and other human rights groups sent a letter in April 2013, [calling](#) on the authorities to allow independent medical experts to visit Tuletaeva and examine and diagnose her. At this time, she has yet to be allowed such an examination.

## ***Vadim Kuramshin***

On 7 December 2012, civil society activist Vadim Kuramshin was sentenced to 12 years in prison on extortion charges following a legal process characterized by **violations of due process and fair trial standards**. The [circumstances of the case](#) suggest that he was **penalized for his efforts to highlight abusive treatment of prisoners**.

On 28 August 2012, a jury threw out the same charges against Kuramshin and he was released after spending several months in pre-trial detention. After his release Kuramshin continued his earlier activities to expose prison brutality and defend the rights of prisoners. In late September-early October 2012, he attended the annual OSCE Human Dimension Implementation Meeting in Warsaw, where he [drew attention](#) to recent cases of torture and deaths in prison in Kazakhstan. Shortly after he returned from Warsaw, on 31 October, an appeal court cancelled the August decision in his case and ordered a re-trial with a new jury, referring to "procedural violations" during the earlier proceedings. He was re-arrested the same day.

The new sentence against Kuramshin was upheld in February 2013. A Supreme Court hearing in Kuramshin's case is set to begin on 25 November 2013. Kuramshin is serving his sentence in a high security prison in northern Kazakhstan, where he has previously reported about violations of the rights of prisoners. In view of this, there are **concerns that he may be subject to reprisals** by prison staff.

## ***Zinaida Mukhortova***

Zinaida Mukhortova is a lawyer and human rights defender who for many years has provided citizens free legal assistance. In the last few years she has **repeatedly been subjected to forced psychiatric hospitalization** on what appear to be politically motivated grounds.

On 9 August 2013, Mukhortova was forcibly detained in a psychiatric clinic in the city of Balkhash, allegedly because she had refused out-patient treatment for a psychiatric condition she had previously been diagnosed with as a part of a legal case **related to her efforts to protect the rights of citizens**. This legal case has since been closed. For several days Mukhortova's lawyer and relatives were denied access to her and only on 16 August 2013, after she had been held for 11 days, a local court decision was issued to sanction her detention.

On 2 September 2013, Mukhortova was examined by a medical expert commission from the regional health department, which concluded that she was no longer in need of forcible treatment and should be released. However, the leading doctor at the Balkhash psychiatric hospital [refused to dismiss](#) her. On 9 September 2013, an examination conducted at the local hospital found that Mukhortova was still in need of forcible treatment, contrary to what the regional experts had concluded. Two weeks later, KIBHR [was informed](#) that the General Prosecutor's office was investigating a complaint in Mukhortova's case and on 30 September she was sent for a new psychiatric examination to a medical center in Astana. She was held there until 1 November, when she was released.

On 13 November, the trial hearing of Mukhortova's appeal against the August court decision to sanction her detention began in the Karaganda Regional Court. At the hearing, the results of the examination of her conducted at the Astana centre [were announced](#). According to these, the doctors at the centre confirmed the previous diagnosis of "delirious confusion" given to her (see more below), while they left it open whether she is in need of forcible treatment at the local level, saying that this is outside of their competence to assess. In view of this, Mukhortova currently is **at risk of renewed forced hospitalization** if her appeal against the August decision is turned down. The appeal hearing is set to continue on 3 December.

Mukhortova has faced problems since 2009 when she was among the signatories of a letter to Kazakhstan's president, which complained about unlawful actions by a parliamentary deputy from the ruling Nur Otan party. In connection with this, a legal case was opened against her and her co-signatories and in 2010 they were found guilty of "deliberately false denunciation in relation to the commission of a crime" (under article 351 of the Criminal Code). While the others were given suspended prison sentences, Mukhortova was ordered by court to forcible psychiatric treatment on the basis of the results of a psychiatric examination that she was made to undergo during the investigation. The examination concluded that she suffers from "delirious confusion in relation to concrete people." After this, she was forcibly held in psychiatric care during several episodes.

Following her efforts to challenge her forcible detention, a Balkash court finally ruled in July 2012 that the case against her should be closed and that she should not be subjected to forcible treatment any more. This decision was made on the basis of an earlier Supreme Court ruling that overturned the initial court decision and sent back the case for new consideration. An independent examination of Mukhortova carried out by a Russian doctor in 2012 concluded that she does not suffer from any psychiatric disorder.

### ***Alexander Kharlamov***

Human rights activist and journalist Alexander Kharlamov from the east Kazakhstan city of Ridder was arrested in early March 2013 and charged with “inciting religious discord” (under Criminal Code article 164), a vaguely defined offense that carries a maximum sentence of several years in prison. According to the charges against Kharlamov, [his “crime”](#) was that he published his own interpretation of world religions such as Christianity, Islam, Judaism and Buddhism, “understanding that his opinion is diametrically opposed to the opinion and faith of the majority of religious people and that his actions may result in negative consequences in the form of religious hatred and discord.”

The accusations against Kharlamov **run foul to international standards protecting freedom of expression and freedom of thought and religion** as writing about religion, criticizing religious ideas and presenting one’s own views on religious matters are perfectly legitimate ways of exercising these rights.

Moreover, there are grounds to believe that the case against Kharlamov may be an **attempt to silence him** because of his journalist and human rights activities, with his writings on religion being used as a pretext. Kharlamov runs a blog, contributes to several newspapers, leads a human rights group and has campaigned against corruption and abusive practices among local authorities in Ridder by writing articles on such issues and providing legal assistance to citizens who have suffered violations.

It is a further issue of serious concern that Kharlamov was forcibly subjected to psychiatric examinations during the investigation, without any apparent grounds, raising concerns that local authorities were trying to have him declared insane while realizing that the case against him was flimsy. Following a first set of examinations in his home region, Kharlamov was transferred to Almaty in April for a second set of examinations, which found him “sane” and fit to stand trial. The hearing in the case began on 19 July in a Ridder court, and was expected to be concluded the following month. However, on 13 August, the court sent the case back for additional investigation, with reference to supposedly new circumstances in the case. In early September, Kharlamov was released after spending six months in detention on condition that he signed a statement not to leave his home city. At this time, the **case against him remains pending**, and no results of the additional investigation have been announced.

## **Recommendations:**

### ***General recommendations***

The authorities of Kazakhstan should be requested to take the following steps:

- Conduct a thorough and independent investigation into all aspects of the December 2011 events in western Kazakhstan and bring to justice all officials responsible for injuries and loss of lives that could have been avoided.
- Promptly and impartially investigate all allegations of torture and ill-treatment against those charged with involvement in the Zhanaozen riots and ensure that the convictions handed out to these individuals are reviewed in a fair process.
- Initiate reconsideration of the “extremist” bans of the Alga party and major opposition media with full respect for Kazakhstan’s obligations with respect to freedom of expression under international human rights law.
- Take adequate measures to put an end to harassment of outspoken media and journalists, including by ensuring that media outlets cannot be suspended or closed down without weighty reason; establishing upper limits for the amounts of moral damage that can be awarded in any defamation lawsuits; and undertaking prompt, impartial and thorough investigations into any physical attacks against journalists with a view to holding all responsible accountable.
- Ensure that websites are not blocked simply because they contain information critical of authorities and that any measure to limit access to online content deemed illegal is strictly limited to that specific content, is absolutely necessary, and is sanctioned through an impartial court decision subject to appeal.
- Abolish existing restrictions on freedom of assembly that are in violation of international standards and allow peaceful protests to take place without undue interference by authorities or harassment of organizers and participants. Ensure that journalists who are covering protests can carry out their professional duties without hindrance. Thoroughly investigate any allegations of violations perpetrated by law enforcement officials against individuals who take part in or observe assemblies.
- Ensure that no one is prosecuted, detained or convicted in retaliation for their criticism of the authorities and immediately and unconditionally release all individuals who have been charged on such grounds.
- Put an end to the use of forcible psychiatric detention as a means of punishing and putting pressure on inconvenient individuals and revoke or revise Criminal Code article 164 to prevent misuse of it stifling internationally protected rights.
- Cooperate with the investigation launched by Italian authorities into the deportation of Alma Shalabayeva and her daughter and allow these two to safely leave Kazakhstan, in accordance with the recommendations made by UN experts.

- Drop extradition requests based on politically motivated charges and take effective measures in accordance with recommendations made by international human rights bodies for ensuring respect for due process and fair trial standards in the country.

### ***Recommendations regarding individual cases***

The authorities of Kazakhstan should be requested to take the following steps:

- Free Vladimir Kozlov. As long as he remains imprisoned, allow him to serve his sentence in a prison facility closer to his home city.
- Free Roza Tulataeva. While she remains in prison, allow her to be examined by independent medical experts and to receive all necessary treatment for her liver condition and other health problems.
- Free Vadim Kuramshin. As long as he remains imprisoned, take adequate measures to ensure his well-being and safety.
- Ensure that Zinaida Mukhortova is not subjected to any new instances of forcible psychiatric treatment or criminal prosecution in retaliation for her civic activism and hold accountable all those responsible for her unlawful detention in psychiatric care.
- Drop all charges against Alexander Kharlamov, close the case against him, and ensure that he is not punished for exercising his fundamental rights to freedom of expression, thought and religion.

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