

## Briefing paper by International Partnership for Human Rights and Kazakhstan International Bureau for Human Rights and Rule of Law for 2014 EU-Kazakhstan Human Rights Dialogue

### Freedom of expression and the media

#### Media pluralism and persecution of opposition media and journalists

Media pluralism took a serious blow when a number of leading opposition media were banned by court for alleged “extremist” propaganda in late 2012. Following this, opposition media outlets have continued to be subjected to pressure. In 2013-2014, several opposition newspapers have been suspended or closed down on questionable grounds. For example, the *Pravdivaya Gazeta* was closed down by court in February 2014 for receiving three warnings in one year for technical issues such as that its print run had been wrongly indicated and that publishing information had been printed unclearly in one of its editions. In April 2014, the *Assandi Times* was ordered by court to stop its activities after being found to constitute a “structural part” of the opposition *Respublika* newspaper, which was banned for alleged “extremism” in late 2012. Both decisions were upheld on appeal.

The office of the OSCE Media Freedom Representative has **recommended** the Kazakhstani authorities to remove disproportionate penalties against media from the country’s Code on Administrative Offenses. However, to the disappointment of civil society, the new Administrative Code that was adopted this summer and will enter into force in January 2015 retains sanctions in the form of the suspension and closure of media outlets for violations of a technical nature. It is also of concern that new Criminal Code, which similarly was adopted in the summer and will enter into force as of next year, retains criminal sanctions for defamation, with special protection afforded to government officials in this regard. In the recent period, a number of journalists have faced criminal defamation charges. Among them is Natalia Sadykova (see more under “individual cases”). Outspoken media outlets and journalists also continue to be targeted by punitive civil defamation suits, which are brought by public figures who demand excessive sums in compensation for alleged damages to their reputation. As a rule, courts rule in favour of such lawsuits. For example, in March 2014, the *Tribuna* newspaper was ordered by court to pay two million Tenge (about 8000 EUR) over an interview with a military officer in the reserve.

New cases of threats, attacks, and attempts to obstruct the professional activities of journalists have been reported, as **documented** by the Adil Soz Foundation for the Protection of Freedom of Speech. Such cases are typically not investigated and those responsible not punished. In several cases, journalists have been detained and treated roughly by police when covering peaceful protests (see also the section on

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“Freedom of assembly” below). Journalists from the online channel *16/12* are among those who have been subjected to such treatment. This summer the channel also had its offices searched and technical equipment confiscated, allegedly as part of a money laundering investigation.

## Internet censorship

The practice of blocking of websites without any court decision continues. In the past year, such measures have affected, among others, news sites, sites associated with the political opposition and social media and online community sites. For example, in February 2014, the online petition site Avaaz became unavailable in Kazakhstan after a petition calling for the resignation of President Nazarbayev appeared on the site and collected over 2000 signatures in three days. In August 2014, access was blocked to the popular Russia-based news site Fergananeews.com after it covered an incident in southern Kazakhstan involving a confrontation between ethnic Uzbeks and ethnic Kazakhs. The site remains blocked at this time. The same month the Central Asian news site ca-news.org was also blocked. According to representatives of the site, they have made inquiries to internet providers about the reasons for this without receiving any answers.

## Restrictions of freedom of expression over alleged “LGBT propaganda”

In a development that is of concern in the light of freedom of expression, as well as tolerance against members of sexual minorities, an advertising agency has been taken to court and convicted over a poster showing Russian writer Alexander Pushkin and Kazakh composer Kurmangazy Sagyrbayuly kissing. This poster was designed as creative, promotional material for the “Studio 69” club located on the corner of the Pushkin and Kurmangazy streets in Almaty. It was designed specifically for participating in an advertising competition and has not been used in advertising as such.

- On 24 September 2014, a local court ruled in favour of a suit filed by the the Almaty mayor’s office, alleging that the controversial poster constituted “unethical advertising” and violated the law on advertising. The Havas Worldwide Kazakhstan agency was fined an equivalent of 800 EUR and its director an equivalent of 550 EUR. The following month, on 28 October 2014, an Almaty court ruled to satisfy a civil suit filed against the advertising agency by employees and teachers at the national conservatory and state academic orchestra named in honour of Kurmangazy Sagyrbayuly. The court thus sided with the plaintiffs, who argued that the poster “offends the feelings and dignity of them, as individuals who are not indifferent to the work” of the composer, and imposed stiff penalties by ordering the agency to pay 1 million Tenge in moral damages to each of the 34 plaintiffs (amounting to about 145 000 EUR in total). The court also ordered the agency to publish a public apology. None of the plaintiffs reportedly attended the hearings, and in response to a media request for more information about the lawsuit, a representative of the national conservatory reportedly referred to the mayor’s office.

## Freedom of assembly

Kazakhstan’s current law on assemblies requires the organizers of protests to obtain permission in advance, while such permission is denied on different pretexts, occasionally also in venues that have been specifically designated for holding assemblies. Such venues are typically located far from city centres,

contrary to the principle that assemblies should be facilitated within the “sight and sound” of their target audience.

Because of the repressive approach of the authorities, most peaceful protests that are held in Kazakhstan are “unsanctioned.” Monitoring conducted by Kazakhstan International Bureau for Human Rights and Rule of Law shows that while some “unsanctioned” protests are allowed to go ahead, others are dispersed by police and organizers and participants brought to justice, resulting in warnings, fines and administrative arrests against them. Trials in these cases have frequently been reported to be marred by procedural violations. When conducting monitoring of dozens of hearings in freedom of assembly cases in 2012-2014, the NGO International Legal Initiative **documented** a range of fair trial violations, such as violations of the right to a public hearing, the right to legal assistance and the right of defendants to call witnesses.

Law enforcement authorities also continue to apply the tactics of “preventive detentions” whereby civil society activists are detained ahead of protests. In a number of cases, journalists have been detained and brought to justice when covering peaceful assemblies.

These are only a few examples of the restrictive approach by law enforcement authorities to peaceful protests:

- On 15 February 2014, over 100 people held a peaceful protest in Almaty against the decision to de-evaluate the national currency, the Tenge. Some 30 people **were detained** and fined for participation in an unsanctioned assembly and allegedly disobeying the orders of police. One person was given an administrative arrest of 10 days. The following day protests against the de-evaluation continued, also featuring a flash mob around the ban on the sale of lace underwear initiated within the Belarus-Russia-Kazakhstan Customs Union. Several participants were reportedly detained through the use of force and fined in trials characterized by procedural violations, in particular violations of the right to have access to legal assistance. Two civic activists were **fined** for “minor hooliganism” for attempting to place lace underwear at a public monument, while a third one was fined on the same grounds for wearing lace panties on the head.
- On 29 May 2014, the day when the agreement on the Eurasian Economic Union was signed, civil society activist Ermek Narymbaev and his wife, blogger Nurali Aytelenov, journalist Andrey Tsukanov and civil society activist Rinat Kibraev were detained in Almaty and held for several hours. This was apparently done for the purpose of preventing them from participating in possible protests against the signing of the agreement. A number of civil society activists, as well as *Azzatyk* journalist Orken Bisenov, who was working on a story about a planned protest, were also **detained** in Astana on the eve of the signing of the agreement and sentenced to arrests for alleged administrative offenses. Other activists **were given written warnings** not to participate in unsanctioned protests.
- On 15 July 2014, some 50 mortgage holders from different cities in Kazakhstan held a picket outside the ATF Bank in Almaty to demand that interest be written off on their mortgage loans. Law enforcement authorities responded to the protest by detaining part of the protesters and bringing them to court. While 11 of those detained were given a warning, activist Dilnar Insenova from the “Ensure housing for the people” movement was fined an equivalent of 375 EUR.

## Freedom of association and civil society development

Civil society organizations have **expressed concern** that the new criminal and administrative codes adopted this summer contain provisions curtailing freedom of association. The new Criminal Code classifies creating, leading, participating in or financing unregistered public associations as criminal offences; sets out penalties for members of public associations for “unlawful interference” in the activities of state agencies, a term that is not defined and therefore open to arbitrary interpretation; and characterizes “leaders” of public associations as a separate category of offenders and provides for harsher penalties for them for a number of crimes. The new Code on Administrative Offenses again retains vaguely worded provisions under which any violation of national law, no matter how minor, could result in the suspension or termination of the activities of public associations.

A third new law signed by Kazakhstan’s president this summer, the new Law on Trade Unions, has been criticized for facilitating de-facto monopolization of the trade union space and undermining independent trade union activity -- including efforts to defend labour rights -- by requiring unions to be part of industry- and nation-wide structures.

Information from Kazakhstan’s government **made public in July 2014** indicated that NGO legislation may be further tightened. In particular, civil society organizations were concerned that the establishment of a Ministry of Foreign Affairs working group to study the experience of other countries with respect to foreign grants and NGOs may result in the elaboration of repressive draft legislation in this area similar to that initiated elsewhere in the former Soviet Union, such as in Russia. NGOs have not received any further information on this matter.

As in other countries of the former Soviet Union, civil society organizations and their representatives have increasingly become the targets of negative and hostile rhetoric by public figures and pro-government media, as well as other forms of intimidation. Moreover, a number of human rights defenders are currently locked up on grounds deemed to be politically motivated. These include Roza Tuletaeva, Vadim Kuramshin and Zinaida Mukhortova. Another human rights defender, Yevgeniy Tankov, was given a disproportionate sentence of three years in prison in July 2014 on charges of threatening and using violence against a judge. (See more on these cases under “individual cases of concern” below).

## Freedom from torture and ill-treatment

Despite several positive developments in the recent period, Kazakhstan fails to meet its international legal obligations as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and torture continues to be widely used across the country.

The definition of torture included in the new Criminal Code that was adopted this the summer is, as previously, not fully in line with the definition contained in the Convention against Torture. The law allows overly broad exemptions and punishments remain incommensurate with the gravity of the crime. Kazakhstan took a positive step by abolishing the statute of limitations applicable to the offence of torture in its new Criminal Code. The new Criminal Code also excludes those convicted of torture from benefitting from amnesties.

Torture mainly takes place during the first hours of detention when detainees are in many cases held incommunicado, without access to legal counsel and medical personnel, although torture cases are also reported from later stages of detention and imprisonment. Often torture is used by police to obtain confessions at an early stage of criminal proceedings. These problems are exacerbated by the absence of effective legal safeguards against unlawful deprivations of liberty.

Kazakhstan lacks an independent mechanism to promptly, thoroughly and impartially investigate all reports of torture and other ill-treatment. Most complaints involving such allegations are dismissed and less than two percent of complaints are prosecuted. Those who lodge complaints regularly face threats.

The problem of widespread impunity for torture is further exacerbated by frequent violations of international fair trials standards and the lack of an independent judiciary. During trials, judges continue to treat defendants' complaints of torture as attempts to avoid prosecution and punishment. Civil courts generally deny compensation claims of victims against law enforcement agencies in the absence of a criminal conviction.

In 2008, Kazakhstan ratified the Optional Protocol to the Convention against Torture and in 2013, it adopted the necessary legislation to set up a National Preventive Mechanism (NPM). Earlier in 2014, the NPM started visiting detention facilities across the country. However, its current monitoring mandate does not cover all places of deprivation of liberty. The monitoring group has no access to orphanages, nursing homes for the elderly and disabled and is not permitted to inspect offices of police departments. The NPM is not entitled to publish reports on its findings when it deems necessary, but only once per year in a general report.

Penitentiary and pre-trial detention facilities came under the jurisdiction of the Ministry of Interior by a presidential decree adopted in 2011. As a result, law enforcement agencies have unrestricted access to prison facilities in violation of international standards. Some security procedures used in prison facilities have been deemed to constitute inhuman and degrading treatment. Protests about prison conditions have in some cases taken the form of self-mutilation, which has been outlawed. The number of deaths in custody has remained more or less unchanged in the last few years.

The principle of *non-refoulement* is typically disregarded with respect to cases from CIS states that are signatories to the Minsk Convention. Kazakhstan lacks administrative and judicial guidelines and criteria for determining the risk of torture in destination countries, and appeals against returns on the grounds of the risk of torture routinely fail.

## Individual cases of concern

The following cases are of particular concern to us:

- On 29 July 2014, an Aktau court rejected a request to grant oil worker rights defender **Roza Tuletaeva** early, conditional release. The judge justified this decision by referring to reprimands made against Tuletaeva for violations of the detention regime in 2012 and 2013, although these reprimands had expired. The decision was upheld on appeal in September, with the same argumentation. Currently Tuletaeva is held in a colony settlement in the city of Atyrau. She is serving

a five-year sentence that was handed down to her on charges of organizing mass riots following an unfair trial and investigation, when she allegedly was tortured.

- On 2 July 2014, lawyer and human rights defender **Zinaida Mukhortova** was again forcibly placed in a psychiatric hospital in the city of Balkhash. According to Mukhortova's daughter, six men disguised as electricians knocked on the door of their apartment in the morning and detained Mukhortova, who had come from Almaty for a few days' visit. While detaining Mukhortova, the men allegedly hit her 14-year-old grandson on the head and shoved away her 5-year-old granddaughter. Mukhortova's sister only found out where Zinaida was held when she went to the prosecutor's office to file a complaint about the detention and ill-treatment. Mukhortova has repeatedly been subjected to forced psychiatric hospitalization since she sent an appeal to the president about the unlawful actions of a ruling party member in 2009. Currently Mukhortova remains in the psychiatric hospital.
- Human rights defender **Vadim Kuramshin** remains imprisoned. He was sentenced to 12 years in prison on extortion charges in December 2012 following a legal process characterized by violations of due process and fair trial standards. The sentence was upheld on appeal. The circumstances of the case suggest that he was penalized for his efforts to highlight abusive treatment of prisoners. Kuramshin has allegedly been subjected to pressure and ill-treatment in the prison facility in northern Kazakhstan where he is serving his sentence. In June this year, he went on hunger strike to demand medical assistance and transfer to another prison. In connection with this, he was briefly transferred to a prison hospital. In late September, he reportedly carried out another hunger strike to protest the lack of responses to complaints he has filed about the treatment of him in prison.
- On 24 July 2014, a district court in the city of Karaganda sentenced lawyer **Yevgeniy Tankov**, who is well-known for his human rights activities, to three years in prison for showing disrespect to a judge and threatening and using violence against a judge (Criminal Code articles 342, part 2 and 341, part 3). The case against him was opened following an incident during the trial in a case he was working on in March 2014. During that trial, he invited the judge to participate in a "fly swatter duel" and when the judge declined, he hit him a few times with a plastic fly swatter. Tankov described the incident as an art act and denied the charges of threatening and using violence against the judge, while admitting to showing disrespect to him. Civil society representatives found the sentence against the lawyer unfair and disproportionate and believe that it may have been motivated by his professional and civic activities, including his open criticism of problems in Kazakhstan's justice system and his non-traditional and creative tactics in court. On 7 October, the verdict was upheld at an appeal hearing, in which Tankov himself was not allowed to participate.
- On 5 March 2014, a criminal defamation case was opened against independent journalist **Natalia Sadykova** under par. 3 of Criminal Code article 129, which carries a penalty of up to 3 years in prison. The case was initiated on the basis of a complaint from a former parliamentary deputy who claimed that an article published at the *Respublika* online portal, which he accused Sadykova of authoring under a pseudonym, was aimed at defaming him. Sadykova has denied writing this article. On 17 March, the Aktobe City Court sanctioned Sadykova's arrest in her absence. Since 9 March, Natalia and her family have been in Ukraine, from where she fears returning given the charges against her. Her lawyer was initially denied access to case materials, which eventually resulted in that a disciplinary sanction was imposed on the judge presiding over the case by the Aktobe Regional

Court. In September, the lawyer **requested** that the judge be removed from the case because of this sanction and other procedural violations she referred to in the administration of the case.

## Recommendations

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

- Decriminalize defamation; establish upper limits for the amounts of moral damage that can be awarded in any defamation lawsuits; and restrict the opportunities of public officials who are acting as plaintiffs in such cases to require pecuniary damage.
- Remove disproportionate penalties against media from the Administrative Code, such as suspension/closure for technical violations; refrain from abusing “extremism” allegations to stifle freedom of expression and media; and put an end to harassment of outspoken media and journalists.
- Respect the freedom of artistic expressions and ensure that freedom of expression is not unduly restricted in the case of artistic works or speech that may be perceived as provocative or offensive by some.
- Stop blocking websites simply because they contain information that is critical of authorities or inconvenient to them. Ensure 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.
- Bring legislation and practice on freedom of assembly into line with international standards and guidelines, including the OSCE Guidelines on Freedom of Peaceful Assembly. In particular, put in place a simple notification procedure for holding assemblies and refrain from restricting the holding of assemblies to remote locations outside of the “sight and sound” of target audiences.
- 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; and thoroughly investigate allegations of abusive treatment by law enforcement officials against individuals who take part in or observe assemblies.
- Revise legislation affecting the right to freedom of association to ensure consistency with relevant international human rights standards; ensure that any new draft legislation on NGOs put forward meet these requirements; and involve and consult with civil society on any efforts to adopt or amend legislation on freedom of association and other fundamental rights.
- Publicly acknowledge the importance of the work of civil society organizations; refrain from statements and initiatives that negatively portray and stigmatize NGOs and their members; and condemn intimidation and hostility targeting them.
- Ensure that any legal proceedings against human rights defenders, lawyers and journalists are conducted in full accordance with international fair trial standards and that such individuals are not arrested, convicted or imprisoned in retaliation for carrying out their professional activities or for exercising freedom of expression and other fundamental rights. Drop the charges against and release all those who are held on such grounds, and investigate all allegations of abusive and unlawful treatment of human rights defenders deprived of their liberty.

- Ensure that the main safeguards against torture are guaranteed to anyone in detention, including immediate access for detainees to a lawyer of their choice, registration of detentions at the actual moment they start, routine medical examinations of those admitted to detention facilities by independent and qualified medical staff, and access to remand hearings for detainees within 48 hours to determine the legality of their detention.
- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations, punishing those found responsible, providing adequate and full compensation to torture victims, and reporting on the measures taken in the media. Also, create and fund an independent body endowed with sufficient authority and competence to conduct investigations into torture allegations in accordance with international standards.
- Bring the National Preventive Mechanism (NPM) in line with requirements under the Optional Protocol to the Convention against Torture by, among other issues, granting the mechanism access to all closed institutions including orphanages, homes for the elderly and disabled, army barracks and offices of police departments and authorizing the NPM to publish reports about monitoring visits when it deems necessary.
- Refrain from extraditing anyone in violation of the *non-refoulement* principle and put in place appropriate procedures and criteria to assess the risk of torture in destination countries.

The Kazakhstani authorities should also be requested to take concrete and effective measures in follow-up to the recommendations addressed to it in the framework of the second UN Universal Periodic Review of the country held in Geneva on 30 October 2014. In the implementation of such measures, the Kazakhstani authorities should closely consult and cooperate with civil society.