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Working Session 1 (Fundamental Freedoms I), Monday 24 September 2012:

Current challenges to freedom of expression in Kazakhstan

In the area of freedom of expression, three trends are currently of particular concern in Kazakhstan: 1) the persistent pattern of defamation lawsuits targeting newspapers and journalists, 2) the growing number of physical attacks on journalists that has taken place in recent months, and 3) the use of charges of “inciting social hatred” and other similar charges against political opposition members and civil society activists.

Defamation suits against newspapers and journalists are typically brought by officials who argue that they have been “offended” by investigative articles that concern the actions of authorities and request huge amounts in moral damages.

- On 20 July 2012, a local court in the city of Uralsk satisfied a defamation suit against journalist Lukpan Akhmedyarov and the founder of the weekly *Uralskaya Nedelya*, where the journalist works. The court ordered them to pay five million Tenge (about 25.000 EUR) in moral compensation to the complaint, Tlekkabyl Imashev, who is head of the department of internal affairs in the West Kazakhstan regional government. Imashev brought the defamation suit in response to an article about family connections within the structures of regional authorities, which was written by Akhmedyarov and appeared in *Uralskaya Nedelya* on 2 February 2012.

Known for articles critically examining the activities of authorities and other public actors, Akhmedyarov had already previously faced several defamation suits. In April this year he was attacked by unknown perpetrators (see more below). Moreover, Uralsk city authorities are believed to have issued an unofficial ban on local newspaper distributors and retailers to stock and sell *Uralskaya Nedelya*.

In addition to officials, other public figures also use defamation suits as a means to try to stifle criticism of their persons.

- In appeal hearing held on 12 June 2012, the East Kazakhstan regional court overturned a decision previously made by the Ust-Kamenogorsk city court with respect to a defamation suit brought by the movie director Kasymkhan Begmanov against the owner of the *Flash!* newspaper and two of its journalists. Begmanov turned to court regarding two articles written by the two

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journalists, which were published in July-August 2011. He considered these two articles to have provided negative, incorrect and defamatory information about one of his movies. The respondents argued that the articles focused on discussing a historical figure portrayed in the movie in question. Accepting these arguments, the first instance court rejected Begmanov's suit in a ruling of 18 May 2012. However, the appeal court made a different conclusion and ordered the respondents to publish a retraction and pay 100.000 Tenge (about 500 EUR) in compensation to Begmanov. They were also ordered to reimburse the director's lawyer costs to an amount of another 100.000 Tenge.

In the last six months, a number of physical attacks on journalists have been reported in different parts of Kazakhstan. While it cannot be concluded with certainty that all these attacks have been motivated by the professional activities of the victims, they have all targeted journalists known for articles examining "sensitive" issues such as corruption allegations. In a typical pattern, attacks against journalists are not adequately investigated and the perpetrators are never found and brought to justice, despite claims by law enforcement authorities that they are doing all they can to identify those responsible. To date none of the perpetrators of the recent attacks has been identified, although investigations officially are under way.

- Maxim Kartashov, sport journalist and publisher of the journal *Ice Hockey Kazakhstan*, was attacked late on 13 August 2012 outside the apartment building where he lives. According to him, three assailants put a stranglehold on his neck, pushed him down on the ground and started kicking him with their feet. The assailants fled, however, as other residents of the building arrived to the scene, alerted by the noise. Kartashov believes that the attack was related to his professional activities. He writes about the life of sports people behind the scenes, and his journal has often carried articles about corruption in sports in Kazakhstan. He was previously subjected to an attack in 2004 when working as a sports commentator for the *Vremya* newspaper. That time two unknown perpetrators attacked him in the lobby of his apartment building, inflicting serious bodily injuries on him. Those responsible for the attack have not been found.
- In the night of 8 August 2012, journalist Ularbek Baytaylak was brutally beaten in the vicinity of his home in an Astana suburb. After beating him, the perpetrators covered him with stones as if to symbolize his funeral. At day break he was brought to hospital with serious injuries. A number of Baytaylak's articles, which have appeared in the *Dat* and *Chetvertaja Vlast* newspapers and in the *Altyn Tamyr* journal, have been critical of authorities.
- Opposition newspaper *Golos Respubliki's* correspondent Andrey Tsukanov was attacked by unknown perpetrators in Almaty on 5 August 2012. As Tsukanov was on his way home at night, he was attacked from behind and hit on the head with a hard object, as a result of which he lost consciousness. The attackers took his passport, bank card, cell phones, journalist accreditation, as well as a train ticket to the city of Taraz, where he was meant to go to cover the trial against human rights activist Vadim Kuramshin. Tsukanov had already previously reported about the case against Kuramshin, who was facing charges of extortion of property (under Criminal Code article 181) in relation to Kordaysky district assistant prosecutor Mukhtar Uderbayev. Kuramshin's colleagues criticized the charges against the activist as politically motivated, and at the end of the trial, a jury found him not guilty¹.

- In the night of 20 April 2012, *Uralskaya Nedelya* journalist Lukpan Akhmedyarov was attacked and seriously injured outside the apartment building where he lives in the city of Uralsk. A number of assailants shot at him with an air gun and stabbed him several times, targeting the area close to his heart. As a result of the injuries he sustained, he required hospitalization for about a month. His colleagues and human rights activists² are convinced that the attack against him was related to his professional and civic engagement. He has repeatedly faced court cases for articles critically examining officials and other public figures and he has been arrested for participating in public protests. Among others, Akhmedyarov has taken a critical position in relation to the December 2011 events in Zhanaozen. His wife Aygul stated that unknown individuals called her the day before the attack and asked her “to talk reason” into her husband, otherwise threatening punishment. While the police arrested four suspects in connection with the attack, these were subsequently released as there was not enough evidence against them and Akhmedyarov did not recognize them as the perpetrators.

A third recent trend of concern is the use of charges of “inciting social hatred”, and other similarly vaguely worded Criminal Code articles against political opposition members and civil society activists.

- Currently a trial is under way in Aktau against opposition Alga party leader Vladimir Kozlov, opposition People’s Front member Serik Sapargali and trade union leader Akzhanat Aminov, who represented protesting workers during the 2011 oil worker strikes in Zhanaozen. They have all been charged with “inciting social hatred” (Criminal Code article 164) and “calling for the violent overthrow of the constitutional order” (Criminal Code article 170), and are accused of promoting the December 2011 riots in Zhanaozen. While Aminov was a leading figure in the peaceful oil worker strike that preceded the Zhanaozen events, well-known opposition members Kozlov and Sapargali publicly supported the striking workers in their struggle and visited the region during the strike. According to the indictment, the three men used the “radical” and “extremist” *Vzglyad*, *Golos Respubliki* and *Obchestvennaya Pozitsiya* newspapers and satellite K+ channel (all of which are opposition media) in order to pursue their “extremist” plans. During the process, procedural violations have been observed. In particular, Vladimir Kozlov was not granted sufficient time to familiarize himself with the lengthy indictment and to prepare his defense prior to the start of the trial. It is expected that the ruling in the case will be announced by the end of September.

In 2011 Natalia Sokolova, lawyer of protesting oil workers in Zhanaozen, was sentenced to six years in prison on, among others, charges of “inciting social hatred.” In March 2012, she was released after the Supreme Court ruled to re-qualify the charges against her and changed her sentence to a three-year suspended one. She was, however, also prohibited from engaging in “public” activities.

Recommendations to the authorities of Kazakhstan:

- Establish upper limits for the amounts of moral damages that can be awarded in any defamation lawsuits, and provide protection for statements of opinions and reasonable publication of information in the public interest.
- Ensure impartial and thorough investigations into all physical attacks against journalists with a view to holding accountable those responsible.

- Stop using the vaguely worded criminal offense on “inciting social hatred” and other similar charges against opposition members and civil society activists who have exercised freedom of expression and other fundamental rights in a peaceful and legitimate manner.

Working Session 2 (Fundamental Freedoms II), Tuesday 25 September 2012:

Continued restrictions of freedom of assembly in Kazakhstan

Kazakhstani authorities continue to restrict freedom of assembly with the same tactics as previously: applications to hold assemblies are rejected on arbitrary grounds or assemblies are only allowed in specifically designated places, which are typically located at the outskirts of cities. If assemblies are held elsewhere, or without applying for permission at all, participants are frequently detained and brought to court, where they are fined sizeable amounts or sentenced to administrative arrest for their involvement in unsanctioned assemblies. These tactics are used above all against members of political and civil society groups that are critical of authorities.

Authorities also use other means to try to obstruct the conduct of unsanctioned assemblies held by opposition-minded groups, including “preventive” detentions of activists prior to protests. In some cases, those targeted by such detentions are brought to court on charges of planning to conduct an unsanctioned assembly or disseminating information about such an event.

During trials related to assemblies, judges base their rulings on Kazakhstan’s Law on Assemblies, which requires that permission be obtained in advance for the conduct of assemblies, and the country’s Administrative Code, which provides for accountability for organizing and participating in unsanctioned assemblies. In no case is a court known to have taken into consideration the provisions of the International Covenant for Civil and Political Rights (ICCPR) with respect to freedom of assembly, although this treaty takes precedence over national law.

The following two examples illustrate actions taken by authorities in relation to protest actions held with the involvement of opposition-minded groups:

- On 31 May 2012, about 200 people gathered at a central Almaty avenue to commemorate the day of victims of political repression. Local authorities rejected the application to hold the assembly at this place and the organizers and participants faced intimidation and harassment. A few days prior to the event, the five organizations that submitted the application were warned by prosecutor office representatives that they may be held responsible for organizing an unsanctioned assembly. Members of the opposition Alga party were detained when they were distributing invitations to the event, and the invitations were confiscated. Two of the organizers, Alihan Ramazanov and Georgy Arhangelsky were detained as they were leaving their homes on the day of the assembly. Leader of the Amansaulyk NGO Bahyt Tumenovoy and civil society activist Adilzhan Kenzhegaliev, who both moderated at the event, were brought to court and fined around EUR 170 and EUR 430, respectively, in a hearing held on 4 June.
- On 28 April 2012, so-called Disagreement Day rallies took place in the cities of Almaty, Astana, Taldykorgan, Taraz, Shymkent, Atyrau, Uralsk, Karaganda, Pavlodar, Semey and Ust-Kamenogorsk. It was already the fourth protest action of this kind since the beginning of the year,

held to demand fair elections, political reforms and justice for those criminally charged in connection with the Zhanaozen events. In all cities, local authorities rejected the applications to hold the rallies.

In Almaty some 400 people gathered outside Hotel Kazakhstan. Some 15 minutes before the start of the rally about 20 police and special force officers forcefully detained civil society activist Ermek Narymbaev, who subsequently was brought to court and fined some 170 EUR. After the rally about ten people were detained and three fined. In the morning of the day of the rally, leader of the "Let's grant people accommodation" association Larisa Boyar and the head of the Ar Rykh Hak group Bahytzhan Toregozhina were detained in their homes. They were both subsequently sentenced to 15 days' administrative arrest. Toregozhina was accused of making online appeals for holding the rally, while Boyar was held accountable for inviting journalists to it. Also in other cities, a number of rally participants were detained and fined.

Moreover, in the period leading up to 28 April, opposition and civil society activists involved in coordinating and mobilizing support for the Disagreement Day rallies, were subjected to various forms of pressure. Among others, they were warned that they may face legal consequences if they participate in the non-sanctioned protests and detained when disseminating invitations.³

The following two examples depict cases where local residents have been subjected to pressure when staging protests to express dissatisfaction with the conduct of local authorities:

- In early August 2012, some 30-40 residents of the Besova housing complex in the city of Karaganda began a hunger strike. One house in this newly built complex has collapsed due to serious construction violations, while others are due to be demolished. The participants in the hunger strike demanded that local authorities, who failed to prevent the inadequate construction, grant them equivalent housing elsewhere. The hunger strike continued for less than a week before it was called off on 17 August. The participants were subjected to pressure by local authorities, who warned them that they will be charged with "inciting social hatred" if they don't put an end to their action. This development is of particular concern in view of the fact that vague charges of "inciting social hatred" have previously been used against individuals supporting and assisting participants in the oil worker strike that took place in Zhanaozen and other cities in western Kazakhstan in 2011 (see also the statement of KIBHR, IPHR and NHC on "current challenges to freedom of expression in Kazakhstan").
- On 21 May 2012, residents of the Almerik settlement close to Almaty marched up to the local administration with posters in their hands, demanding that the authorities fix broken roads, clean the local water supply system and address the problem of continuous interruptions in electricity supply. The protesters also brought their children along. The following day, children who had been present were summoned by police. As reported by these children and their parents, the children were made to write statements stating who had brought them to the unsanctioned protest action. This was done in the presence of the principal of their school. The police officers involved claimed that they only invited the children for "discussion."

Recommendations to the authorities of Kazakhstan:

- Abolish existing restrictions on freedom of assembly (in legislation and practice) that are in violation of international standards, in particular article 21 of the ICCPR. Among others, the

authorities should stop requiring that organizers of assemblies obtain permission in advance, and instead allow them to simply give notice about their plans to hold such actions.

- Ensure that peaceful protests can take place without undue interference or harassment of organizers and participants.

Working Sessions 10-11 (Specifically selected topic: Freedom of thought, conscience, religion or belief), Monday 1 October 2012:

Violations of freedom of religion in Kazakhstan

The new “Law on Religious Activity and Religious Associations” (hereafter Religion Law) that was adopted in Kazakhstan in October 2011 bans activities by religious communities that have not been registered with authorities. At the same time, article 375 of the Administrative Code provides for administrative accountability for leading and participating in the activities of unregistered religious associations. In other words, under Kazakhstani legislation, the lawful conduct of any religious activities together with other believers requires that a religious association is officially established and registered. Outside registered religious associations, freedom of religion can only be lawfully exercised by citizens individually. These provisions are in violation of Kazakhstan’s international obligations in the area of freedom of religion, including in particular article 18 of the International Covenant on Civil and Political Rights.

According to the new Religion Law, religious communities that already were registered when the law entered into force must re-register within a year, i.e. by the end of October 2012. If they do not, they risk liquidation. Registration or re-registration requires a minimum of 50 signatures by members. In order to register or re-register, religious communities must also pass an “expert review,” which is aimed at determining whether their statutes, programs and other materials are consistent with the requirements of the law. Currently no clear evaluation criteria or methodology have been established for this review. Also, no time limit has been set for how long an expert review may last.

Currently there are no known statistics as to the number of religious associations that have obtained re-registration versus those that have not. Numerous cases are known, however, when so-called non-traditional Protestant communities and small Muslim communities have not been able to acquire re-registration because they have failed to compile the required number of signatures, pass the required “expert review” or complete the required process for other reasons. There are also cases when officials dealing with registration have demanded that religious associations wishing to register comply with requirements that are not provided for by law. They have for example, requested lists of the founders of religious groups, threatening to stall the re-registration process otherwise.

The new Law on Religion has also been used to justify ongoing harassment of non-traditional religious communities and their members, such as raids on their meetings, intrusive inspections (e.g. inspections to check the facilities they are using), fines and pressure on them to stop their activities.

- At the end of May 2012, a Grace Presbyterian Church based in the city of Karaganda received a negative decision on the “expert review” to which it was subjected after submitting an application for re-registration to the regional department of the Agency for Religious Affairs (ARA).

Previously the “experts” who gave this opinion had evaluated the community positively. They did not provide their opinion in writing, but only told church representatives verbally about their conclusions. The church’s lawyer noted that the community cannot obtain registration unless the decision is changed. The case was pending complementary review by the central ARA.⁴ At the time of writing, the church had not yet received any information about the outcome of this review.

- Also at the end of May, local authorities in the city of Taldykorgan forced a Methodist church to “voluntarily” close down after its facilities were inspected and the wife of the church’s pastor was fined some 8000 Tenge (about 40 EUR) for allowing religious services to take place in her home.⁵ She was accused of using land for purposes other than those for which it is intended (article 253 of the Administrative Code), although the Law on Religion does allow religious meetings to take place in “dwellings” “if necessary” and on condition that “the rights and interests of nearby residents” are respected (article 7.2). At the time of its announcement to close down, the church was officially registered, as it had obtained registration in 2001. Its leaders feared, however, that they would not be able to compile the 50 signatures required for re-registration under the new Law on Religion and agreed to the closure as they wanted to avoid further problems with law enforcement authorities.⁶ After the pastor’s wife already had paid the fine she was given, officials admitted that it had been “unlawful.”⁷
- On 20 March 2012, local officials in the village of Kasymbek in the Almaty region summoned L. Duzgembayeva, a local resident and member of the evangelic New Life church, to a local school facility. Here village elderly and the school principal asked her personal questions about her religious affiliation and threatened her, all in the presence of the head of the rural district of which the village forms part. In particular, they asked her how she, as an ethnic Kazakh, could have adopted a new faith and why she had allowed the New Life church to register its legal address at her home address. They threatened to evict her from the village and turn the residents against her as punishment for this.

No effective measures are typically taken in response to appeals and complaints submitted to prosecutor offices and other relevant authorities about unlawful actions targeting religious communities, to hold those responsible for such actions accountable or to prevent new cases of this kind.

Recommendations to the authorities of Kazakhstan:

- Revise the 2011 Religion Law with a view to ensuring that it is consistent with provisions protecting freedom of religion under Kazakhstan’s Constitution, as well as under the ICCPR and other international human rights instruments.
- Put an end to harassment of non-traditional minority religious communities, take effective measures in response to complaints about unlawful actions by officials against individual religious communities and believers, and promote religious tolerance.

¹ After the jury deemed the activist not guilty of the initial charges, the judge re-qualified the charges against him to “abusing his responsibilities” (under article 327 of the Criminal Code). In a ruling of 28 August 2012, he was sentenced to one year restriction of freedom on these charges (instead of 14 years in prison, as initially requested by the prosecutor) and released. See KIBHR statement, 28 August 2012, http://www.bureau.kz/data.php?page=0&n_id=4841&l=ru

² See joint open NGO letter, 28 April 2012, http://www.iphronline.org/kazakhstan_20120428_e.html

³ See statement by KIBHR, IPHR and NHC, 27 April 2012, http://www.iphronline.org/kazakhstan_20120427_e.html

⁴ Forum 18, “The church will be closed down anyway,” 30 May 2012, at http://www.forum18.org/Archive.php?article_id=1708

⁵ Forum 18, “Ahmadi Muslims closed down everywhere, Methodist congregation next?,” 24 April 2012, at http://www.forum18.org/Archive.php?article_id=1692

⁶ See previous footnote.

⁷ Forum 18, “‘Unlawful’ fine – but will state do anything about it?,” 13 August 2012, http://www.forum18.org/Archive.php?article_id=1731