



CURTAILING RIGHTS IN THE NAME OF STABILITY

Current trends in Kazakhstan

May 2015



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This is an excerpt on Kazakhstan from a briefing paper on fundamental rights in Kazakhstan, Tajikistan and Turkmenistan prepared by Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), Nota Bene (Tajikistan), Turkmen Initiative for Human Rights (TIHR, based in exile in Austria) and International Partnership for Human Rights (IPHR, Belgium) within the framework of a joint project. It is based on the findings of monitoring conducted by KIBHR in April 2014 to April 2015 and provides an overview of major concerns regarding freedom of expression and the media; freedom of association and assembly; as well as access to justice, non-discrimination and the protection of vulnerable groups in Kazakhstan. The joint briefing paper has been compiled by IPHR.

Kazakhstan

Brief overview of the general situation

Kazakhstan's President Nursultan Nazarbayev was re-elected with a landslide victory in early presidential elections held on 26 April 2015, in which he had no genuine competitors. The other two candidates who formally challenged him openly praised his achievements. Nazarbayev has been in power throughout the country's independence and fully dominates political life. Aside from his Nur Otan party, only two other pro-presidential parties are currently represented in the parliament.

While the Kazakhstani government recently has been seeking to build its international image as a progressive country in terms of democracy and human rights, the human rights situation in the country remains highly problematic.

The December 2011 events in Zhanaozen, which have yet to be thoroughly and impartially investigated, were followed by a widening crackdown on opposition and dissent. This has resulted in that there is currently little space for expressing alternative views and openly discussing major issues of public concern in the country.

Recent developments in the wider region of the former Soviet Union, in particular in Ukraine, as well as the current economic downturn appear to have further reinforced fears of criticism and protests on the part of the authorities, triggering new repressive measures.

There are also concerns that Kazakhstan's membership in the Eurasian Economic Union (EEU) has resulted in that Russian legislation and practice are increasingly used as an example in areas other than economic regulation, e.g. with respect to initiatives affecting civil society. The EEU began operating in January 2015.

The administration of justice is characterized by serious shortcomings in Kazakhstan, and especially government critics and members of other vulnerable groups face difficulties in obtaining justice. Because of this, a growing number of complaints has been submitted to international human rights bodies.

Freedom of expression and the media

Attacks on media pluralism

Media pluralism took a serious blow in late 2012 when a number of outspoken media outlets were banned by court for alleged "extremist" propaganda in their coverage related to the 2011 Zhanaozen events. After this, pressure on remaining opposition and independent media has continued and **several newspapers have been suspended or closed down** by court on questionable grounds, including *Pravdivaya Gazeta*, the *Assandi Times* and *ADAM bol* in the past year.

In February 2015, the Almaty City Court upheld the December 2014 decision to close down *ADAM bol* over an article deemed to constitute war propaganda because it featured an interview with a Kiev-based Kazakhstani opposition figure who called for supporting the Ukrainian authorities in their struggle against separatist forces.¹ Already in November 2014, the publication of the magazine was halted by a lower-level court. The OSCE Media Freedom Representative criticized the measures against *ADAM bol* as "drastic and disproportionate" and said that they "endanger pluralism" and "contribute to an atmosphere of fear for members of the media."²

Harassment of journalists and outspoken individuals

The new Criminal Code that entered into force in January 2015 retains **criminal sanctions for defamation**, with special protection afforded to government officials, as well as for **vaguely worded offenses of “inciting” social, national or other “discord” and “spreading false information”**. These provisions pose a threat to freedom of expression, which also protects speech that may be viewed as provocative or offensive by some. In several recent cases of concern, journalists and other individuals have been charged on these grounds.

Civic activist Musagali Duambekov was sentenced to one year of restricted freedom on defamation charges in May 2014 over a series of investigative articles, and journalist Natalia Sadykova was ordered arrested in absentia on such charges in March 2014 after a former MP accused her of defaming him. Prior to the April presidential elections, the General Prosecutor’s Office issued warnings to two individuals for posting allegedly insulting Facebook comments about President Nazarbayev and another candidate.³ In March 2015, an ethnic Russian Almaty resident was given a four-year suspended prison sentence for “inciting national discord” because of social media comments that derogatorily referred to ethnic Kazakhs and suggested that North Kazakhstan may end up as part of Russia. On the same grounds, an ethnic Kazakh Astana resident was sentenced to two years of restricted freedom for Facebook comments on ethnic Russians. An investigation on “spreading false information” was initiated earlier this year against journalist Maria Kovaleva over an article about the Ukraine conflict, but was eventually closed.⁴

Media outlets and journalists are also targeted by **punitive civil defamation lawsuits**, which are brought by public figures who demand excessive sums in compensation for alleged damages to their reputation. For example, in November 2014, the owners of *ADAM bol* were ordered to pay 5 million Tenge (around 25 000 EUR) over an article about the Syrian conflict found to have defamed the representative of a mosque.

Cases of **threats, attacks, and attempts to obstruct the professional activities of journalists** continue to be reported, as documented by the Adil Soz Foundation for the Protection of Freedom of Speech.⁵ In most cases, such incidents are not thoroughly investigated and those responsible not punished, thus resulting in widespread impunity.

Internet censorship

Blocking of websites that feature information that does not please the authorities, such as news sites, opposition sites and social media sites **remains a pattern**. In some cases, whole websites have been temporarily blocked, and in other cases, access to certain content on individual sites has been limited. For example, in February 2015, articles about an apparently ethnically motivated clash in southern Kazakhstan published by Eurasianet.org, Radio Free Europe/Radio Liberty and Today.kz became unavailable to Kazakhstani user.⁶ Last year access was blocked to the Russia-based Fergananeews.com site after it covered an inter-ethnic incident in the same part of the country. This site remained inaccessible at the time of writing.

Amendments to the Communications Law adopted last year **grant the general prosecutor’s office broad powers to block access to internet resources** without a court ruling, e.g. if online information contains calls for “extremist” activities, “riots” or unauthorized protests, or contravenes the country’s Election Law. Providers are required to comply with such orders within hours. With reference to these provisions, the deputy head of the Central Election Commission warned ahead of the April presidential elections that social networking sites may be blocked if rules on campaigning silence are violated.

Draft legislation on “protecting children from information harmful to their health and development”, which has been passed by the parliament but was yet to be signed by the president in late April 2015, introduces a new requirement for “online outlets” to register with the authorities without providing a

clear definition of this term. Civil society organizations fear that this requirement will be used to **extend control over internet resources**.

Freedom of association and assembly

Restrictive legislation and practices on freedom of association and assembly

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, visited Kazakhstan in January 2015. He concluded that “a web of laws and practices” limits freedom of association in the country and that the government’s approach to regulating assemblies “deprives the right of its meaning”.⁷ A detailed report on his findings will be made public in the summer.

By law it is compulsory for public associations to register with the authorities, and the **new Criminal Code** that entered into force in January 2015 criminalizes the involvement in unregistered public associations. The new Criminal Code also contains other **provisions that threaten freedom of association**, including provisions that set out penalties for members of public associations for “unlawful interference” in the activities of state agencies and characterize “leaders” of public associations as a separate category of offenders. The **new Administrative Code** retains provisions that allow courts to suspend and terminate the activities of public associations for any violation of national law, no matter how minor.

The **new Law on Trade Unions**, which entered into force in July 2014, has been criticized for facilitating de-facto monopolization of the trade union space and undermining independent trade union activity by requiring unions to be part of industry- and nation-wide structures.

There are concerns that **new legislation restricting access to funding of NGOs may be adopted** in Kazakhstan, similarly to in other former Soviet Union countries. Draft legislation on state grant-making to NGOs under consideration by the government could result in that a government-controlled body is entrusted with overseeing grant-making to NGOs not only of state funds. According to the draft provisions, NGOs may receive grants for certain listed areas of activities and the use of grants will be closely monitored.

Civil society members have expressed fears that the vaguely worded draft legislation on grant-making could be used to impede the funding and work of NGOs that are inconvenient to the authorities.⁸ In response to the criticism voiced by civil society, as well as representatives of the international community, some amendments have reportedly been made to the draft legislation. At the time of writing, the exact nature of these remained unclear. The draft legislation is expected to be submitted to the parliament in June 2015.

At the Universal Periodic Review of Kazakhstan last October, the government delegation acknowledged the need to improve current legislation on freedom of assembly.⁹ The same month the UN Human Rights Committee instructed the authorities of the country to revise this legislation.¹⁰ However, so far, no measures are known to have been taken to this end.

While **current legislation requires the organizers of assemblies to obtain permission in advance**, permission is often denied on different pretexts or protests only allowed in venues that have been specifically designated for this purpose. Such venues are typically remotely located, contrary to the principle that assemblies should be facilitated within the “sight and sound” of their target audience. Public events initiated by government bodies or pro-government organizations are, however, allowed to take place in city centres. In February 2015, a court in Pavlodar upheld a decision to deny a request by civil society activists to hold an assembly in the centre of this city, specifically arguing that only official events are allowed there.

Because of the repressive approach of authorities, most peaceful protests held in Kazakhstan are unauthorized. While some unauthorized protests are allowed to go ahead, others are **dispersed by police and organizers and participants detained and brought to justice**, resulting in warnings, fines and arrests. The new Administrative Code provides for up to 15 days of arrest, and the new Criminal Code for up to 75 days of arrest for violations of the rules on holding assemblies. Trials in these cases are frequently marred by fair trial and due process violations. In the recent period, numerous participants in peaceful protests concerning socio-economic issues, such as the de-evaluation of the national currency last year, problems facing mortgage-holders, and evictions have been detained. Children have sometimes been apprehended along with their parents when participating in protests, and journalists have repeatedly been detained when covering unauthorized assemblies.

Authorities also continue to use the tactics of **“preventive” detentions** of civil society activists and other outspoken individuals ahead of planned protests, as happened even during the visit of UN Special Rapporteur Maina Kiai in January 2015. During his visit, *ADAM bol* Chief Editor Gulshan Yergaliyeva and several other individuals were detained when on their way to a peaceful protest in support of this magazine at the Republic Square in Almaty.

Persecution of civil society activists and opponents of the regime

A number of individuals known for their criticism of authorities are currently imprisoned on charges believed to be politically motivated after being convicted in unfair trials. These include opposition *Alga!* party leader Vladimir Kozlov, human rights defender Vadim Kuramshin, poet and dissident Aron Atabek and lawyer Yevgeniy Tankov. Kozlov is serving a 7.5 year sentence for his alleged role in the Zhanaozen events, Kuramshin a 12-year sentence on extortion charges believed to be retaliation for his human rights work, Atabek an 18-year sentence for allegedly organizing riots, and Tankov a three-year sentence for threatening a judge considered unfair and disproportionate.

Lawyer Zinaida Mukhortova was released from the psychiatric hospital where she had been forcibly held in November 2014, but was required to continue to show up for regular checks at hospital. Although anti-corruption activist Alexander Kharlamov was released from detention in September 2013, the criminal case opened against him on absurd charges of “inciting religious discord” has still not been closed.¹¹ Strike movement leaders Roza Tuletaeva and Maksat Dosmagambetov, who were imprisoned in a flawed trial after the Zhanaozen events (see more in the next section on “access to justice”), were granted early conditional release in November 2014 and February 2015, respectively. However, their allegations of being subjected to torture in pre-trial detention have yet to be investigated.

The **unregistered *Alga!* party**, the country’s most vocal opposition party, **was declared “extremist”** in the aftermath of the Zhanaozen events. Another opposition party, **the Communist Party was suspended by court for three months** in December 2014 for allegedly failing to meet the threshold for the minimum number of members required by law. The party viewed this as a new attempt to silence it. Its activities have previously been suspended several times.

The Kazakhstani authorities continue to seek the **extradition of opposition figures** who have fled to Europe. Human rights NGOs have expressed serious concern that these individuals are at the risk of unfair trials and torture and ill-treatment if extradited. In April 2015, France’s Cassation Court annulled a lower court decision to extradite well-known opponent Mukhtar Ablyazov to Russia or Ukraine, where he is also wanted, and ordered a new hearing.¹² The same month the Spanish authorities declined a request from the Kazakhstani government to extradite Muratbek Ketebaev, a former Ablyazov associate who was arrested in Madrid in December 2014 and held for several weeks.¹³

Access to justice, non-discrimination and the protection of vulnerable groups

Problems concerning access to justice

When considering the situation in Kazakhstan in November 2014, the UN Committee against Torture raised concerns about **problems in the administration of justice**. The Committee expressed particular concern about the lack of balance between the participants in judicial proceedings and the dominant role of the procurator. It called on the Kazakhstani authorities to “undertake structural reform (...) with a view to balancing in practice and ensuring equality of arms between the respective roles of the procurator and the defence counsel in judicial proceedings and ensuring the independence of the judiciary.” It also called for measures to ensure that defence lawyers are allowed to collect and present evidence, call witnesses and have unimpeded access to all evidence in the hands of the prosecution.

KIBHR monitors have repeatedly documented **violations of the right to equality of arms, the right to defence and other fair trial rights** during legal processes, in particular processes involving individuals who are critical of authorities or who have been subjected to arbitrary and unlawful treatment by authorities. These systematic problems have also been reflected in **petitions submitted to UN human rights bodies**, where dozens of complaints from Kazakhstani residents currently are pending. Many of these petitions have been submitted with the assistance of the KIBHR.

Decisions already issued by UN human rights bodies have been welcomed as **precedent-setting** in terms of promoting access to justice. For example, last October, the UN Human Rights Committee for the first time considered a complaint concerning the exercise of freedom of assembly in Kazakhstan and found numerous violations. It ordered the Kazakhstani authorities to provide an effective remedy to the victim and to revise existing legislation to prevent similar violations in future.¹⁴

Amendments to the Civil Procedure Code adopted in November 2014, which **require those who represent the interests of individuals in court to have a law degree**, have created obstacles for human rights defenders without such a degree to take on the role of defender. While a provision of the Code that concerns representatives of organizations with a mandate to protect the interest of members was left unchanged, some courts have interpreted the new provision as also applying to such defenders.¹⁵

International bodies have repeatedly called for an **independent, international inquiry into the December 2011 events in Zhanaozen**, as well as for effective investigations into the torture allegations made by individuals who were detained in the aftermath of these events. Such calls were made by the UN Committee against Torture when examining the situation in Kazakhstan in November 2014 and by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association when visiting the country in January 2015. During the Zhanaozen 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. Following an unfair trial¹⁶, a total of 13 individuals were imprisoned on charges of involvement in these events. In March 2015, the last two individuals imprisoned on such charges were granted early, conditional release.

Inadequate protection of vulnerable groups and LGBTI intolerance

The outcome report from the second **Universal Periodic Review (UPR) of Kazakhstan** held in October 2014 was adopted by the UN Human Rights Council in March 2015.¹⁷ During the UPR, UN member states raised a wide range of human rights concerns and made **close to 200 recommendations to Kazakhstan for how to improve its human rights record**. Among these were many recommendations to step up efforts against discrimination and to **enhance the protection of vulnerable groups** such as journalists, civil society activists, women, children, religious minorities, migrants, disabled people, detainees and

torture victims. The Kazakhstani government claimed that 48 of these recommendations “have already been implemented” and that 96 are “in the process of being implemented,” while it did not support the remaining 50 recommendations, many of which address key fundamental rights issues. KIBHR and other Kazakhstani NGOs were actively involved in the process leading up to the UPR and submitted several joint written contributions for it.¹⁸

As in other countries of the region, **LGBTI members are subject to widespread intolerance and discrimination** in Kazakhstan. In a development reflecting such negative attitudes, the Almaty mayor’s office took an advertising agency to court over a poster showing Russian writer Alexander Pushkin and Kazakh composer Kurmangazy Sagyrbayuly kissing last year, arguing that it constituted “unethical advertising“. The agency and its director were fined and were also separately convicted of defamation over the same poster and ordered to pay moral damages to an amount of about 150 000 EUR. The publication of the poster on social media was followed by a public outlash and activists from the youth movement *Bolashak* called for the adoption of anti-LGBTI legislation.

Moreover, **draft legislation** on protecting children from “harmful information” that has been passed by the parliament but was yet to be signed by the president in late April 2015 **risks banning public expression related to so-called non-traditional sexual relations** in Kazakhstan. The draft legislation has been argued to be aimed at banning the dissemination of information on such relations, along with information on violence, cruelty, pornography and the like, and wording included in the bill could be used to obstruct awareness-raising, advocacy and open debate on LGBTI issues. At the same time, it is likely to reinforce intolerance and discrimination against LGBTI communities.¹⁹

Recommendations

Freedom of expression and the media

The authorities of Kazakhstan should:

- Put an end to the trend of closing down independent and opposition media outlets, and ensure prompt, through and impartial investigations into any threats and attacks targeting journalists with a view to bringing the perpetrators to justice.
- Decriminalize defamation, revoke the Criminal Code provisions on “inciting“ social, national and other discord and on “intentionally spreading false information”, and ensure that no one is criminally charged or convicted in retaliation for their legitimate exercise of freedom of expression.
- Establish upper limits for the amounts of moral damage that can be awarded in any defamation lawsuits.
- Stop blocking websites simply because they contain information that is critical of authorities or inconvenient to them, and revise existing legislation to ensure that any measure to limit access to online resources must be sanctioned by court in accordance with due process standards and be strictly necessary and limited to specific content.
- Abolish the proposed registration requirement for “online outlets” and refrain from adopting any legislation that imposes undue restrictions on internet freedoms.

Freedom of association and assembly

The authorities of Kazakhstan should:

- Cooperate fully with the UN Special Rapporteur on freedom of peaceful assembly and association in follow-up to his visit to Kazakhstan and take concrete and effective measures to implement the recommendations resulting from his visit.
- Amend provisions of the new Criminal and Administrative Codes, as well as other legislation in force that impose restrictions on freedom of association and assembly that are incompatible with Kazakhstan's international human rights obligations.
- Elaborate a new Law on Assemblies in close cooperation with civil society to ensure a legal framework that serves to uphold this right and implement corresponding measures to change current practice. In particular, put in place a simple notification procedure for holding assemblies, refrain from restricting the holding of assemblies to remote locations and allow peaceful protests to take place without undue interference by authorities.
- Ensure that no draft legislation that unduly restricts access to funding of NGOs is adopted and consult with organizations from across the whole spectrum of civil society on any legislative initiatives affecting the operation of NGOs.
- Stop repressing political opposition political parties and allow them to operate freely.
- Put an end to politically motivated prosecution of human rights defenders, lawyers and others who criticize authorities and immediately and unconditionally release all those who are held on such grounds.

Access to justice, non-discrimination and the protection of vulnerable groups

The authorities of Kazakhstan should:

- Take effective measures to put into practice the recommendations made by UN treaty bodies, as well as UN member states in the context of the UPR with respect to ensuring a fair justice process and strengthening the protection of vulnerable groups.
- Implement, in good faith the decisions issued by UN human rights bodies in response to individual petitions submitted from Kazakhstan.
- As called for by international human rights bodies, allow for an international, independent inquiry into the Zhanaozen events and thoroughly and impartially investigate the allegations of torture made by those who were detained in connection with these events.
- Publicly condemn intolerance and discrimination of LGBTI members and step up efforts to counteract such practices.
- Refrain from adopting any legislation that reinforces negative attitudes toward LGBTI members and can be used to restrict open debate on issues concerning LGBTI rights and sexual and gender identity.

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- ¹ See statement by International Partnership for Human Rights, the Norwegian Helsinki Committee and Kazakhstan International Bureau for Human Rights and Rule of Law, “Kazakhstan court upholds newspaper’s closure over Ukraine coverage”, 27 February 2015, at <http://www.iphronline.org/kazakhstan-court-upholds-newspapers-closure-over-ukraine-coverage-20150227.html>
- ² “Shutdown of independent magazine in Kazakhstan further endangers media pluralism, says OSCE Representative”, 27 November 2014, at <http://www.osce.org/fom/127436>
- ³ According to information obtained by election observers from the OSCE Office for Democratic Institutions and Human Rights (ODIHR). See ODIHR Election Observation Mission, Interim Report, 16 April 2015, at <http://www.osce.org/odhr/elections/kazakhstan/151341?download=true>
- ⁴ Adil Soz foundation for the protection of free speech, “Сразу два уголовных дела возбуждено на журналистов газеты «Уральская неделя»”, 3 March 2015, at <http://www.adilsoz.kz/news/show/id/1763>; and update at <http://www.adilsoz.kz/monitoring/show/id/93>
- ⁵ Adil Soz foundation for the protection of free speech, Statistics of free expression violations in Kazakhstan in 2014 (in Russian), at <http://www.adilsoz.kz/politcor/show/id/143>
- ⁶ Eurasianet, “Kazakhstan’s Nervous Censors Block Reports on Ethnic Clash”, 7 February 2015, at <http://www.eurasianet.org/node/71976>
- ⁷ See “UN expert warns Kazakhstan against using ‘stability’ as excuse to curtail rights, voices concern at surveillance of sources”, 28 January 2015 and the related statement at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15518&LangID=E#sthash.P4X042hl.dpuf>
- ⁸ For more information about the concerns of civil society regarding the draft legislation, see report by Kazakhstan International Bureau on Human Rights and Rule of Law on the NGO briefing held on 27 March 2015 (in Russian), at http://bureau.kz/data.php?page=0&n_id=8075&l=ru
- ⁹ See Report of the Working Group on the Universal Periodic Review on Kazakhstan, December 2014, at http://www.upr-info.org/sites/default/files/document/kazakhstan/session_20_-_october_2014/a_hrc_28_10_e.pdf
- ¹⁰ Views adopted by the Human Rights Committee on Communication No. 2137/2012 at its 112th session on 7-31 October 2014.
- ¹¹ See more details in KIBHR, “Атеист Харламов давно на свободе, но дело в отношении него живет своей жизнью”, 2 February 2015, at http://bureau.kz/novosti/sobstvennaya_informaciya/article_7917
- ¹² “Ablyazov wins at Cassation Court in Paris”, 9 April 2015, at <https://www.facebook.com/notes/mukhtar-ablyazov/ablyazov-wins-at-cassation-court-in-paris/434517700016129>
- ¹³ Radio Free Europe/Radio Liberty, “Spain Will Not Extradite Kazakh Opposition Figure”, 24 April 2015, at <http://www.rferl.org/content/spain-will-not-extradite-kazakh-opposition-figure/26896476.html?>
- ¹⁴ Views adopted by the Human Rights Committee on Communication No. 2137/2012 at its 112th session on 7-31 October 2014.
- ¹⁵ See «Нас ограничивают в праве на защиту!», 25 February 2015, at http://bureau.kz/data.php?page=0&n_id=7998&l=ru
- ¹⁶ “International monitoring mission finds trial of Kazakhstan workers unfair”, 9 October 2012, at <http://www.civicsolidarity.org/article/573/international-monitoring-mission-finds-trial-kazakhstan-workers-unfair>
- ¹⁷ See Report of the Working Group on the Universal Periodic Review on Kazakhstan, December 2014, at http://www.upr-info.org/sites/default/files/document/kazakhstan/session_20_-_october_2014/a_hrc_28_10_e.pdf and addendum to the report, March 2015, at http://www.upr-info.org/sites/default/files/document/kazakhstan/session_20_-_october_2014/a_hrc_28_10_add.1_e.pdf
- ¹⁸ See “Kazakhstan up for Universal Periodic Review”, 29 October 2014 (with links to the reports submitted by KIBHR and other Kazakhstani NGOs), at <http://www.iphronline.org/kazakhstan-up-for-upr-20141029.html>
- ¹⁹ “Open letter to the International Olympic Committee: Speak out against bill threatening LGBTI expression in Kazakhstan”, 16 April 2015, at <http://www.iphronline.org/ioc-letter-on-kazakhstan-20150416.html>