



Briefing paper for EU-Kazakhstan Human Rights Dialogue, November 2016: Key concerns and recommendations on the protection of fundamental rights in Kazakhstan

Restrictive media and free speech climate

As highlighted in a resolution adopted by the European Parliament on 10 March 2016, the **current climate for media and free speech** in Kazakhstan is of serious concern.¹ Major problems include pressure on independent and opposition media, arbitrary blocking of websites, and criminal prosecution of journalists, bloggers, activists and other individuals exercising their right to freedom of expression. After reviewing the second period report submitted by Kazakhstan under the International Covenant on Civil and Political Rights (ICCPR) in June this year, the UN Human Rights Committee also underlined its concerns about shutting down of independent media; blocking of online resources; and extensive application of criminal law provisions against individuals exercising their right to freedom of expression.²

Defamation lawsuits against independent and outspoken media

There are currently only **few media outlets that are openly critical of the government** in Kazakhstan as a result of the closure of a number of independent and outspoken outlets in the last few years. Several such outlets have recently faced **large defamation suits** brought by public figures, typically with links to authorities. This has resulted in serious threats to the financial viability and even survival of these outlets:

- In summer 2015, the **Nakanune.kz** news portal was ordered by court to pay 20 million Tenge (about 75 000 EUR at that time) in compensation to *Kazkommertsbank*, the country's largest private bank, over an article about corruption allegations. A year later, after the portal's editor Guzyal Baydalinova had been criminally convicted for the same article (see more below in the section on individual cases), the bank agreed to decrease this amount to 100 000 Tenge (some 300 EUR).
- In November 2015, representatives of the *Jas Alash* newspaper and its co-defendants were ordered to pay 40 million Tenge (around 150 000 EUR at that time) in compensation to a medical professor and member of the bureau of the presidential Nur Otan party over an article about a legal case involving the claimant that was found defamatory. This decision was initially upheld unchanged on appeal. However, a year later, in November 2016, the Supreme Court the decreased the payment to 5 million Tenge (around 13 500 Tenge), which is still a sizeable amount.



- In July 2016, the *Tribuna Sajasi kalam* newspaper lost a defamation suit of 5 million Tenge (over 13 000 EUR) brought by the director of an advertising agency because of an article discussing a criminal case on corruption against him.
- In accordance with a court decision handed down in October 2016, the *Uralskaya Nedelya* newspaper will have to pay 3.5 million Tenge (around 10 000 EUR) to a police officer who sued the newspaper for defamation. The police officer objected to an article that recounted an apology he offered to the newspaper's chief editor Tamara Yeslyamova after she was fined when covering peaceful land reform protests on 21 May 2016. The police officer has denied offering such an apology, although an audio recording of his statements is available. (For more information on the 21 May protests, see the section on peaceful assembly).

While national legislation previously did not establish any limits on the amount that may be awarded to individuals seeking compensation in defamation cases, the new Civil Procedure Code that entered into force in January 2016 provides that the size of state duties payable by claimants in such cases depends on the amount requested (1% of this amount). Human rights groups welcomed this new provision and expressed hope that it would help prevent huge defamation lawsuits against media and journalists. However, as seen in the cases against *Tribuna Sajasi kalam* and *Uralskaya Nedelya*, amounts constituting a serious blow to newspapers with a limited turnover have been awarded also after the entry into force of this provision.

Criminal cases against individuals exercising their freedom of expression

In another alarming trend, in 2015-2016, authorities have initiated a growing number of criminal cases against **journalists, bloggers, activists and other outspoken individuals**. It is of particular concern that many of these cases have been initiated **under Criminal Code provisions that are so broadly and vaguely worded** that they may be implemented to restrict the legitimate exercise of freedom of expression and other fundamental freedoms, in violation of international human rights law. These provisions include Criminal Code article 174, which bans "inciting" social, national or other discord and article 274, which prohibits "spreading information that is known to be false."

In its concluding observations on Kazakhstan adopted this summer, the **UN Human Rights Committee** expressed concern about these broadly formulated provisions and the use of them to unduly restrict freedom of expression and other rights protected by the ICCPR.³ It **called on the Kazakhstani State party to revise the relevant provisions** with a view to clarifying and narrowing the broad concepts used in them and to ensure that they comply with the principles of legal certainty and predictability and that the application of this legislation **does not suppress protected conduct and speech**.⁴

Defamation also remains criminalized in Kazakhstan, with special protection granted to public officials, which is highly problematic in the light of freedom of expression.

In a recent case of concern, *Nakanune.kz* news portal editor **Guzyal Baydalinova** was imprisoned in May 2016 when found guilty of "spreading information known to be false" because of an article about corruptions allegations; later she was released on probation. Activists **Ermek Narymbaev, Serikzhan Mambetalin** and **Bolatbek Blyalov** were all banned from engaging in public activities for several years after being convicted of "inciting discord" through social media posts at the beginning of 2016. Civil society activists **Maks Bokayev** and **Talgat Ayan**, who were arrested in connection with countrywide land reform protests last spring (see more in the section on freedom of peaceful assembly) are currently on

trial on charges of “spreading information known to be false” and “inciting discord”. (All these and additional cases of concern are described in the section on individual cases below).

Aside from being subjected to penalties set out by Kazakhstan’s Criminal Code, several activists convicted of “inciting discord” have been included on a **“list of organizations and individuals associated with the financing of terrorism and extremism”** published by the Ministry of Finance.⁵ The Ministry of Finance has stated that this list was published in accordance with amendments to legislation on counteracting money laundering adopted last year and that it is aimed at implementing recommendation no. 6 of the Financial Action Task Force (FATF) on targeted financial sanctions related to terrorism and terrorist financing.⁶ It is of serious concern that those featuring on the list, who are subjected to restrictions on their financial operations on this ground, have been included on the basis of unclear criteria and without any court decision sanctioning such a measure.

Blocking of websites

Cases of **blocking of news, social media and other websites** are regularly reported. The Committee on Communications and Information of the Ministry of Investment and Development closely monitors online content and initiates measures against websites featuring content deemed unlawful. According to existing legislation, this committee may request providers to block access to internet resources based on either a court decision or a request from the General Prosecutor’s Office. It is highly problematic that **access to websites may be fully blocked because of allegations that certain material posted on them is illegal**. A glaring example is that of the popular blog platform LiveJournal, which was blocked for four years for allegedly hosting “extremist” content before access was restored in November 2015.

In other cases, **media, opposition and other websites have been blocked in the country without any official explanation** of the reasons for this. For example, the regional Fergana News site became inaccessible in Kazakhstan starting in August 2014 after it reported on an inter-ethnic incident in southern Kazakhstan. Two years later, in September 2016, access to the site was restored.⁷ In connection with the planned country-wide peaceful protests on land reform issues on 21 May 2016 (see more in the section on freedom of peaceful assembly), several news and social media sites, such as the Kazakhstani service of Radio Free Europe/Radio Liberty, Facebook, Periscope and Google services became unavailable without explanation. Other sites, such as the sites socialismkz.info and npravo.org associated with Kazakhstan’s Social Movement have recently been subjected to invasive DDoS-attacks bringing them offline.

Recommendations

The Kazakhstani authorities should be requested to:

- Ensure that all media outlets in the country can operate without pressure and undue interference.
- Ensure that defamation lawsuits brought against media outlets are considered in an impartial and unbiased way, in full accordance with international due process and fair trial standards, as well as that possible compensation for moral damages awarded in such lawsuits do not jeopardize the financial viability and result in enforced closures of media outlets.
- Bring Criminal Code 174 and 274 into compliance with international human rights standards and ensure that they are not used to restrict protected conduct and speech, in accordance with the recommendations of the UN Human Rights Committee. Decriminalize defamation.

- As called for by the UN Human Rights Committee, refrain from using criminal provisions as tools to suppress the expression of dissenting opinions beyond the narrow restrictions permitted under article 19 of the ICCPR. Ensure that no one is arrested, charged with criminal offences or convicted for legitimately exercising their right to freedom of expression; reverse any convictions handed down on such grounds; and release any individuals deprived of their liberty for such reasons.
- Stop arbitrarily blocking websites and ensure that any measure to limit access to online content deemed unlawful is strictly necessary, limited to that specific content and sanctioned by court in full accordance with due process standards.
- Ensure that measures taken to implement FATF recommendations do not arbitrarily restrict the rights of individuals and organizations, without any opportunity for them to legally challenge the measures in question. In this context, the Kazakhstani authorities should pay particular attention to the revised FATF recommendation no. 8, which sets out that states should “review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse.”

Freedom of association: Problematic legislation and inspections

New NGO legislation

New NGO legislation that entered into force in December 2015 was widely criticized by civil society prior to its adoption.⁸ This legislation contains a number of **provisions that are of concern** in the light of the internationally protected right to freedom of association.⁹ In particular, it **grants the Ministry of Culture and Sports broad powers to oversee NGO activities**, including by managing a **new government database on NGOs**. If NGOs fail to provide required information or provide “incorrect” information to this database, they may be fined or have their activities suspended for three months. A first deadline for NGOs to report information for inclusion in the new database expired at the end of March 2016, and this information is now being processed. NGO representatives have objected to the reporting requirement by pointing out that it adds to extensive reporting obligations that already previously existed for NGOs and that it provides for discriminatory treatment of NGOs in relation to other types of legal entities. Questions have also been raised with respect to the resources of the Ministry of Culture and Sports to deal with tens of thousands of reports from NGOs operating in in the country.

In its concluding observations on Kazakhstan adopted this summer, the UN Human Rights Committee highlighted the concerns voiced by civil society regarding the new NGO legislation and called on the Kazakhstani authorities to ensure that this legislation is not used as “a means of undue control and interference”.¹⁰

Kazakhstan’s current Criminal Code, which entered into force in January 2015, also contains a number of **provisions that threaten the freedom of association of NGOs**. Among others, it sets out penalties for members of public associations for “unlawful interference” in the activities of state agencies and characterizes “leaders” of public associations as a separate category of offenders.

New Tax Code provisions

There are concerns that **recent Tax Code amendments** may be implemented in violation of freedom of association, freedom of expression and other fundamental rights protected by international and national law.

According to amendments that entered into force as of 11 October 2016¹¹, **all individuals and organizations receiving foreign funding for the provision of legal assistance, public opinion studies or information gathering/analysis/dissemination are required to report their receipt of these funds** to tax authorities. This should be done within ten days after a transaction is made, as well as on a quarterly basis. A public database containing information on foreign funding received for the activities in question will be created and made available on the website of the State Revenue Committee of the Ministry of Finance. Violations of the new requirements may result in fines.

It is not yet clear how the new Tax Code provisions will be applied in practice, but it is problematic that the new reporting requirement applies only to foreign funding received for certain types of activities that the authorities deem “suspicious”. In particular in a climate where “foreign agents” rhetoric and the like is already widespread, the publication of details on foreign funding received for such activities may stigmatize and endanger organizations and activists, monitors, journalists, bloggers and others. The new provisions will also mean yet another reporting obligation for NGOs involved in the types of activities concerned.

NGO inspections

Recently **several human rights NGOs have been the targets of intrusive inspections by tax authorities**. This development gives rise to concern about intimidation and undue interference into the activities of NGOs.

The Almaty-based NGO **International Legal Initiative (ILI)** was subjected to an unscheduled inspection in August 2016. ILI learned that the inspection was carried out at the initiative of the State Revenue Committee of the Ministry of Finance, but was not informed about the grounds for it. The NGO believed that the inspection was related to its opposition to the new NGO legislation adopted at the end of 2015 (see above). ILI has declined to comply with the new reporting requirement introduced by this legislation and has filed a complaint about it with court. This complaint was rejected in summer 2016, a decision that was upheld on appeal in September 2016. Currently a cassation appeal filed by the ILI is pending.

The Astana-based NGO **Kadir-Kasiet**, which works to promote the security of human rights defenders, was similarly subjected to an inspection by officials from the State Revenue Committee in September 2016. These officials requested information about different aspects of the organization’s funding and activities, claiming that they were acting on the basis of an unspecified order issued by Ministry of Finance following a complaint against several NGOs received by this ministry.

Trade Union Law

The **new Trade Union Law** that entered into force in 2014 **requires mandatory affiliation of trade unions to regional, branch or federal trade union structures**, depending on the level on which they operate. Among others, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has criticized the requirements of the new law, saying that it “denies trade unions the right to freely form and join labour organizations of their choice”.¹²

For many trade unions, it **proved a difficult endeavour to re-register under the new law**. For example, the Confederation of Free Trade Unions of Kazakhstan (CFTUK) reported about the repeated failure of this federation and its member unions to obtain re-registration. Finally, in February 2016, the legal successor of the CFTUK, the Confederation of Independent Trade Unions of Kazakhstan (CFIUKR) was registered as a new federal-level trade union. Other independent trade unions such as Aktau and Zhanarty remain unregistered. **Independent trade union members** in the Mangistau region have also reportedly **faced intimidation and pressure** by employers to join state-controlled trade union structures.¹³

Recommendations

The Kazakhstani authorities should be requested to:

- Revise the new NGO legislation adopted at the end of 2015 to ensure that it does not allow for undue restrictions on the right to freedom of association of NGOs, in violation of Kazakhstan's international human rights obligations.
- Revoke the recent Tax Code amendments requiring individuals and organizations to report on foreign funding due to their discriminatory and stigmatizing character.
- Amend provisions of the new Criminal Code that impose restrictions on freedom of association that are incompatible with international human rights standards.
- Ensure that NGOs are not subjected to undue interference into their activities and that any tax or other inspections of NGOs have a legal basis and are carried out in compliance with Kazakhstan's international human rights obligations.
- Revise the Law on Trade Unions to ensure that it corresponds to international standards on freedom of association and trade union rights and ensure that all trade unions, including small and independent ones are able to obtain registration and operate without obstruction.

Violations of the right to freedom of peaceful assembly

The right to freedom of peaceful assembly continues to be violated in law and practice in Kazakhstan. While current legislation requires the organizers of assemblies to obtain permission in advance, **permission is often denied** on different pretexts or protests are only allowed in remotely located venues that have been specifically designated for this purpose. Peaceful **unauthorized protests are regularly dispersed** by police, and organizers and **participants are detained and** warned, fined and subjected to administrative arrests. Trials in these cases are frequently marred by fair trial and due process violations. Authorities also use the **tactics of "preventive" detentions** of civil society activists ahead of planned protests, and journalists have repeatedly been detained when covering unauthorized assemblies.

In April-May 2016, **unprecedented wide-scale peaceful protests on land reforms** took place in Kazakhstan. Protestors objected to recent amendments to the Land Code that increase the rights of foreigners to lease land in the country, fearing it would result in foreign investors gaining control of large land areas. At the same time, as they evolved, the protests did not only concern the planned land reforms but also broader issues of discontent with the current regime, and the participants included a range of citizens with different backgrounds.

In a partial concession to the criticism expressed about the planned land reforms, in early May 2016, the president introduced a moratorium on the implementation of the amendments to the Land Code, and a

government commission was established to consider this issue. However, **the government's response to the peaceful protests was predominantly repressive.**

This was in particular the case on 21 May 2016, when people gathered in cities across the country to voice discontent, including in Astana, Almaty, Uralsk, Kostanai and Pavlodar. On this day, **hundreds of protestors were detained**, a majority of them in Almaty and Astana but also in other cities. Most of those detained were released after being held for several hours, but according to statistics from the General Prosecutor's Office, a total of **51 individuals were brought to court** and given administrative penalties on charges of violating the procedure for holding assemblies. Requests to hold protests submitted to authorities in advance in different cities had been rejected and therefore the authorities considered the protests unsanctioned. **Human rights defenders and journalists monitoring developments were also detained**, with some being subjected to "preventive" arrests as they were on their way to protest venues. Prior to 21 May, **around two dozen civil society activists, human rights defenders and social media users had already been detained** and fined or locked up for up to 15 days since the land reform protests began in late April 2016. Most of these were targeted in the week leading up to the planned 21 May protests as the authorities apparently were attempting to thwart these protests. A number of activists and journalists were also warned by police not to participate in the protests on 21 May.

Moreover, several **well-known civil society activists have been charged with criminal offenses or interrogated as witnesses** in apparent retaliation for their participation in the land reform protest movement. Among these are **Maks Bokaev** and **Talgat Ayan** who are currently on trial on charges of "disseminating information known to be false", "inciting social discord" and "violating the procedure for holding protests" and **Makhambet Abzhan** who was sentenced to one year limited freedom (increased to two years on appeal) for allegedly resisting police. (More information on these cases can be found in the section on individual cases below.)

Following his visit to Kazakhstan in January 2015, **the UN Special Rapporteur on the freedom of peaceful assembly and of association** concluded that **the government's approach to regulating assemblies "deprives the right of its meaning"**.¹⁴ He called on the Kazakhstani authorities to adopt a new law on assemblies that complies with international human rights law.¹⁵ A similar recommendation was made by Kazakhstan's presidential Human Rights Commission in October 2015.¹⁶ After reviewing Kazakhstan's compliance with the ICCPR at its June 2016 session, the UN Human Rights Committee called on the Kazakhstani government to "revise all relevant regulations, policies and practices with a view to ensuring that any restrictions on freedom of assembly comply with the strict requirements of article 21 of the Covenant".¹⁷

In May this year, the Special Rapporteur on the freedom of peaceful assembly and of association together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on freedom of opinion and expression and the First Vice-Chair of the UN Working Group on Arbitrary Detention **expressed concern about mass arrests, detention and criminal prosecutions following demonstrations over proposed land reforms across the country.** They noted that arrests, detention and criminal prosecutions were being "used to deter and punish those protesting and expressing their voices against the land law" and called on Kazakhstan's government to "immediately end all forms of persecution and take effective measures to protect civil society."¹⁸

Recommendations

The Kazakhstani authorities should be requested to:

- In accordance with the recommendations of UN human rights bodies, elaborate and adopt new legislation regulating the holding of assemblies that is consistent with international human rights standards.
- Allow peaceful protests to take place without undue interference by authorities; and refrain from penalizing the organizers and participants in assemblies held without prior authorization.
- Drop all criminal charges against those prosecuted because of their participation in the land reform protests.
- Take concrete and effective measures to implement the recommendations made by the UN Special Rapporteur on freedom of peaceful assembly and of association in the outcome report on his 2015 mission to Kazakhstan.

Restrictions on freedom of religion

The 2011 **Law on Religious Activity and Religious Associations** has been widely criticized both nationally and internationally. As highlighted in a report issued by KIBHR at the end of 2015,¹⁹ this law **provides for serious restrictions on religious activities**, including worship, missionary activities and the distribution of religious literature. It sets out excessive membership requirements for religious communities to obtain registration, while banning activities of unregistered religious groups. These provisions are not compatible with international human rights standards. In its monitoring of the application of the religion law, KIBHR has also documented a pattern of violations of the rights of believers, as well as **discrimination, stigmatization and harassment of religious minority communities**.

This is only one example of harassment against a religious minority community:

- Law enforcement authorities carried out searches of the premises of the **New Life Pentecostal Church**, as well as the homes of its leaders in Almaty on 25 March 2016, the day the community was marking Good Friday. During the searches, computers, financial documents and church funds were confiscated. According to information from the police, the searches were sanctioned by court already in January 2016 and were carried out as part of a criminal case on fraud that was opened last summer on the basis of complaints filed by private individuals. The church had not previously been informed about any criminal case against it and has denied any wrongdoing. The New Life Pentecostal Church had also previously been subjected to harassment by authorities.²⁰ As of late October 2016, there was no news about the alleged criminal case initiated against the community.

The case of Seventh Day Adventist **Yklas Kabduakasov**, who was imprisoned in late 2015 for “inciting religious discord”, forms part of a worrying trend of using charges of “inciting discord” against individuals exercising their fundamental freedoms. (See more on his case in the section on individual cases below).

In its concluding observations on Kazakhstan adopted in summer 2016, the UN Human Rights Committee expressed concern about the broad formulation of Criminal Code provisions on “inciting” religious and other enmity, as well as “extremism” and called on the Kazakhstani State part to bring this legislation into full compliance with its obligations under the Covenant.²¹ The Committee also voiced concern about reports that counter-terrorism activities have targeted in particular members or presumed members of banned or unregistered Islamic groups, such as the Tabligh Jamaat.²² According

to Forum 18, since the end of 2014, some 30 members of such groups have been convicted on “extremism” related charges for exercising the right to freedom of religion or belief.²³

Recommendations

The Kazakhstani authorities should be requested to:

- Revise the Law on Religious Activity and Religious Associations to bring it into compliance with international human rights standards.
- Ensure that religious minority communities and their members are able to practice their right freedom of religion without intimidation and harassment.

Implementation of UN treaty body decisions in individual cases

The UN Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have issued **over a dozen decisions on individual complaints from Kazakhstan, finding violations** of the rights of the complainants. However, in most cases, the Kazakhstani authorities have **failed to take effective measures to comply with the decisions** of the treaty bodies concerning how to remedy violations and prevent similar violations in the future.

Many of the treaty body decisions issued on Kazakhstan to involve violations of the right to freedom from torture and ill-treatment (for more information on such cases, see the submission on torture issues prepared for the EU-Kazakhstan Human Rights Dialogue by the Kazakhstan Coalition against Torture, IPHR and the Helsinki Foundation for Human Rights). The following three cases concern fundamental rights and freedoms:

- In October 2014, the UN Human Rights Committee for the first time adopted views on a complaint concerning restrictions on holding peaceful assemblies in Kazakhstan.²⁴ The Committee found that the Kazakhstani authorities violated articles 9, 19 and 21 of the ICCPR (the right to liberty and security of person, the right to freedom of expression, and the right to freedom assembly) by arresting and fining civil society activist **Bakhytzhana Toregozhina** for holding an art-mob without advance permission in 2010. The Committee concluded that the State party has an obligation to provide Toregozhina with an effective remedy, including by providing her adequate compensation and reimbursing her legal costs. It also held that the State party has an obligation to revise national legislation to prevent similar violations in the future. Civil society representatives welcomed the Committee’s decision as a precedent-setting case. However, Toregozhina’s efforts to obtain compensation in accordance with the Committee’s decision have been unsuccessful. Her inquiries to relevant authorities have not yielded any constructive responses and lawsuits filed by her have been rejected by court.
- In another decision issued in March 2016²⁵, the Human Rights Committee found violations of articles 9, 14 and 19 of the ICCPR (the right to liberty and security of person, the right to a fair trial and defence and the right to freedom of expression) in the case of journalist **Ramazan Yesergepov**. After Yesergepov published an article about unlawful activities of security services in November 2008, he was arrested and in August 2009, he was sentenced to three years in prison on charges of collecting and publishing state secrets. During the trial, he was denied access to a lawyer of his

choice. After serving out his sentence, he was released in January 2012. On the basis of the Human Rights Committee's decision, Yesergepov filed two lawsuits with court: in one of these, he requested moral compensation; in the other one, he asked for a review of the verdict in his case. The first lawsuit was dismissed by an Almaty district court on procedural grounds, a decision that was upheld on appeal. When considering the second lawsuit, the Zhambyl Regional Court failed to look into the details of the Human Rights Committee's findings and simply concluded that the earlier ruling in Yesergepov's case was lawful.

- In a decision adopted in July 2015²⁶, the Committee on the Elimination of Discrimination against Women (CEDAW) found several violations of the rights of **Anna Belousova** under the corresponding convention. It called on the Kazakhstani State party to provide Belousova appropriate reparation, including adequate financial compensation for moral and material damages caused to her as the result of the violations of her rights. It also called on the State party to adopt comprehensive legislation to combat sexual harassment in the workplace. When working as a staff member in a cloakroom at a primary school, Belousova was subjected to sexual harassment and extortion attempts by the school principal. Complaints submitted by Belousova to relevant authorities did not result in any effective investigations or action to hold the perpetrator accountable. The Kazakhstani authorities have also failed to implement the CEDAW decision in her case. In September 2016, the Kostanay Regional Court upheld a decision by a lower level court to reject a lawsuit filed by Belousova requesting compensation.

Recommendations

The Kazakhstani authorities should be requested to:

- Take prompt and effective measures to ensure full implementation of the decisions adopted UN treaty bodies in response to individual complaints from Kazakhstan, including in the cases of Bakhytzhana Toregozhina, Ramazan Yesergepov and Anna Belousova.

Individual cases of concern

The cases described below are of particular concern to us. We urge the EU to raise these cases prominently with the Kazakhstani authorities and to insist that the rights of the individuals concerned are respected in accordance with Kazakhstan's obligations under international human rights law.

Journalists

- On 3 October 2016, a local Astana court convicted Chair of the Union of Journalists and National Press Club Head **Seytkazy Matayev** and his son independent KazTAG News Agency Director **Asset Matayev** on charges of tax evasion (Criminal Code article 245) (the former) and fraud (article 190) (both). The charges against them were related to the use of funds obtained through government tenders, as well as from the state Kazakhtelecom. Matayev the older was sentenced to six years in prison and his son to five years in prison and both of them were prohibited from holding leading positions in public, commercial organizations for the rest of their lives. The two had been under house arrest since February 2016 and March 2016, respectively.

This case has **prompted widespread concern within and beyond the country's journalist community**. According to a journalist-initiated appeal that has received over 300 signatures, the case “may be interpreted as an attempt to restrict freedom of speech and put an end to the activities of the KazTAG information agency and the National Press Club.”²⁷ Following the announcement of the verdict, the president of the Adil Soz Free Speech Foundation described it as “abuse of law and common sense”.²⁸ During the trial, the court repeatedly rejected motions filed by the defence and refused, among others, to admit as evidence audit results provided by the defence. The court also refused to reschedule hearings in view of the health concerns of Seytkazy Matayev, who suffers from high blood pressure and required emergency care on several occasions during the trial.

KazTAG is a private news agency, while the facilities of the National Press Club are frequently used for press conferences held by NGOs, opposition members and other public figures.

The appeal hearing in the case is expected to take place at the beginning of December 2016.

- In December 2015, law enforcement authorities searched the office of the Nakanune.kz news portal, as well as the homes of several of its journalists after a criminal case was opened against the portal over an article about corruptions allegations. The news portal had previously been held accountable for defamation on the basis of a civil lawsuit brought by *Kazkommertsbank* (see also the section on freedom of expression and the media above).²⁹ Nakanune.kz editor **Guzyal Baydalinova** was arrested a few days after the searches and in May 2016, she was found guilty of “spreading information known to be false” (Criminal Code article 274) and sentenced to 1.5 years in prison. **KIBHR and Adil Soz strongly protested this sentence**, stating that the conviction and imprisonment of a journalist for the publication of controversial opinions **constitute a serious violation of international free speech standards**.³⁰

On 12 July 2016, an appeal court replaced Baydalinova's prison sentence with a suspended one and she was released on probation. Shortly before the appeal decision Tahir Kaldybaev, a businessman who was deemed to have ordered the Nakanune.kz article in question and who was convicted to 4.5 years in prison at the May 2016 trial, committed suicide in detention. Following this, *Kazkommertsbank* returned funds Kaldybaev had paid as compensation following the ruling on the defamation lawsuit initiated by the bank to his family. The bank also agreed to a lower amount of compensation to be paid by Baydalinova.

Human rights, civil society and opposition activists

- Atyray-based civil society activists **Maks Bokayev** and **Talgat Ayan**, who have vocally criticized the proposed land reforms and who were actively involved in the land protest movement this spring, were detained on 17 May on administrative charges of violating the rules for holding peaceful assemblies. When their 15-day administrative detention came to an end, they were charged with criminal offenses and have since been held in pre-trial detention. Requests by the activists' lawyers to change the detention of their clients into house arrest for medical and other reasons (among others, Bokayev suffers from chronic hepatitis C and needs constant medical care) have been denied. Bokayev and Ayan were initially charged with “preparation of a crime” and “propaganda or public calls for seizure of power or retention of power or violent change of the constitutional order” (Criminal Code articles 24 and 179). Later the charges were changed to “dissemination of information known to be false” (article 274), “incitement of social discord” (article 174) and “violating the procedure for holding assemblies” (article 400), for which they could face up to ten years in prison.

The criminal case against Bokayev and Ayan has been **widely criticized as an assault on the right to freedom of peaceful assembly and freedom of expression** by national and international civil society organizations, which have called for dropping all charges against the two activists.³¹

The trial against the two activists began on 12 October 2016. KIBHR's monitoring of the trial shows that it has been being conducted with **clear bias in favour of the prosecution**. Most defence motions have been rejected and key witnesses of the prosecution have been allowed to provide their testimony through video connections, giving rise to concerns that they may have been subjected to pressure out of the sight of court participants. The court has failed to give due attention to Maks Bokayev's deteriorating health condition. Moreover, Gulnar Dauleshova, the **judge hearing the case against Bokayev and Ayan has acknowledged that the process against the two activists is "political"**. In a ruling issued on 10 October 2016, Dauleshova requested police to take measures to protect her safety, taking into account that the case in question "is of a political character and has caused a public outcry" and with a view to "prevent unlawful measures by relatives of the defendants and other individuals".³²

On 21 November 2016, prosecutors **requested eight-year prison sentences** for both activists, and the judge stated that that **the verdict will be announced on 28 November 2016**.

- Prior to the planned land reform protests on 21 May 2016 Astana-based human rights defender **Makhambet Abzhan**, who had made numerous social media posts about the protests, was apprehended and sentenced to 10 days' administrative detention for allegedly "resisting police". He was subsequently criminally charged and on 18 August 2016, he was convicted of failing to obey the orders of police and offending and using violence against representatives of law enforcement authorities. He was sentenced to one year's restricted freedom, with court-imposed restrictions on his freedom of movement.

According to the charges, Abzhan allegedly "made a scene" at a local tax office in May this year and resisted and "tore off the pocket" of the uniform of one police officer when police asked him to go with them to the police station. Abzhan has denied these charges, noting that **police was not called to the scene of the alleged crime**, did not draw up any protocol of the incident nor explain his rights and simply asked him to accompany them.³³ During the trial, **the court failed to take into account video material and medical expertise provided by the defence** to show the unfoundedness of the charges against Abzhan.

On 7 October 2016, Abzhan's appeal was rejected and his sentence increased to two years' restricted freedom. He believed that the sentence was increased because of his efforts to organize new peaceful protests, including in support of activists Max Bokayev and Talgat Ayan.

- In one of the most problematic free speech cases this year, on 22 January 2016, activists **Ermek Narymbaev** and **Serikzhan Mambetalin** were convicted of "inciting national discord" (Criminal Code article 174) and sentenced to two and three years in prison, respectively. They were also prohibited from engaging in public activities for five years. The charges against the two activists concerned Facebook posts where they shared a supposedly offensive text posted elsewhere. Both of them are known as vocal government opponents on social media, and the real reason for the charges against them appear to have been their on- and offline engagement on social and political issues. The **trial against them was marred by serious due process and fair trial violations** and the trial **went ahead despite serious concerns about the health of the defendants**.³⁴ On 30 March 2016, an appeal court changed the prison sentences of the two activists into non-prison sentences of restricted freedom

for 3 years (Narymbaev) and 1 year (Mambetalin), respectively, while upholding the ban for them to engage in public activities.

In connection with the land reform protests in spring 2016 (see more under “freedom of assembly”), **Narymbaev was designated a “witness” in a criminal case** on calling for the violent overthrow or change of the constitutional system that was opened in relation to these protests. There were serious concerns that his status would be changed into that of a suspect. In July 2016, Narymbaev fled to Ukraine and has applied for asylum in this country.

- Another activist, **Bolatbek Blyalov** was also convicted of “inciting discord” in late January 2016 and sentenced to three years of restricted freedom, during which time he will be subjected to limitations on his freedom of movement and participation in public activities. The charges against Blyalov concerned YouTube posts where he expressed his opinion on issues such as social problems and nationalism. There are **reasons to believe that he was prosecuted for his civic activities**.³⁵ He had, among others, provided legal assistance to victims of house demolitions and campaigned against the launching of Russian space rockets from Kazakhstan’s Baikonur Cosmodrome before the criminal case against him was initiated.
- Social media administrator **Igor Sychev** remains in prison after being sentenced to five years in prison for “propagating separatism” through the use of media (Criminal Code article 180) in November 2015. This **offense is also so vaguely worded that it may be used to unduly restrict freedom of expression**. Sychev was charged for sharing a survey asking visitors of the *Vkontakte* page he administers to express their opinion as to whether the East Kazakhstan Region should join Russia. According to him, he did not create this survey, but only posted it and removed it from the *Vkontakte* page as soon as concerns were raised about it.
- In June 2016, a criminal case on “slandering a prosecutor” (Criminal Code article 411) and “false denunciation” (article 419) was initiated against **Amangeldy Batyrbekov** – an anti-corruption activist and head of the Adilet public association. He was placed under house arrest. The charges against Batyrbekov are related to an article published in Adilet’s newspaper in April 2015 where he **questioned the lawfulness of the actions of the region’s deputy prosecutor** in two legal cases. In October 2015, Batyrbekov was already convicted of defamation because of this article and sentenced to one year and six months of deprivation of liberty. However, in January 2016, an appeal court cancelled the sentence on procedural grounds. The trial on the new charges began at the end of September 2016. At the time of writing, the proceedings were still under way.
- It was a relief that long-term political prisoner, opposition leader **Vladimir Kozlov** was finally **released on parole** in August 2016 after spending more than four years in prison on charges relating to his alleged role in the 2011 Zhanaozen events. However, we regret that **the charges against him have not been quashed**. Two other individuals who have spent several years in prison after being convicted for reasons considered to be politically motivated, **human rights defender Vadim Kuramshin and poet and dissident Aron Atabek remain behind bars**.

Kuramshin was sentenced to 12 years in prison on extortion charges believed to be retaliation for his human rights work, including participation in an OSCE human rights conference in 2012. He has **complained about pressure by prison authorities** and has launched a number of hunger strikes to protest his treatment. He has been **subjected to strict prison conditions for pro-longed periods of time** because of alleged violations of prison rules, most recently because of his “untidy appearance” (as he had not been able to shave following the confiscation of his shaving device).

Atabek is serving an 18-year sentence for allegedly organizing riots in 2006. He has **submitted numerous complaints to court about his treatment in prison**, including lengthy solitary confinement but most of them have been rejected.

In its March 2016 resolution on Kazakhstan,³⁶ the European Parliament recognized that Vadim Kuramshin and Aron Atabek, along with Vladimir Kozlov have been convicted on political grounds and demanded that they receive immediate access to necessary medical treatment and are allowed regular visits by family members, legal representatives and representatives of human rights and prisoners' rights organizations.

Religious activists

- In November 2015, a local Astana court found Seventh Day Adventist **Yklas Kabduakasov** guilty of "inciting religious discord" and sentenced him to seven years of restricted freedom, featuring court-imposed restrictions. The following month, his conviction was upheld on appeal and his sentence increased to two years' imprisonment in a labour camp. The charges against Kabduakasov were brought because of his peaceful efforts to discuss his faith with others and share religious literature with them, which are crucial elements of the right to freedom of religion.³⁷

¹ European Parliament resolution of 10 March 2016 on freedom of expression in Kazakhstan (2016/2607(RSP), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0083&language=EN&ring=P8-RC-2016-0337>

² Par. 49 of Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan adopted in July 2016, at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKAZ%2fCO%2f2&Lang=en

³ Par. 13 and 49 of the Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan.

⁴ Par. 14 and 50 of the Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan.

⁵ The list is available at: <http://kfm.gov.kz/ru/the-list-of-organizations-and-individuals-associa/>

⁶ The FATF recommendations are available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁷ As reported by Fergana on 9 September 2016, <http://www.fergananews.com/news/25302>

⁸ See joint appeal by several dozen Kazakhstani NGOs from September 2015, at: http://misk.org.kz/news/?ELEMENT_ID=801

⁹ See detailed analysis of the law by KIBHR Chair of the Board Yevgeniy Zhovtis, available at: http://bureau.kz/en/news/kibhr_information/statement_on_the_adoption_of_the_law_on_ngo_main

¹⁰ Par. 54 of the Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan.

¹¹ The new provisions (in Russian) are available at: http://online.zakon.kz/Document/?doc_id=36220400#pos=1;-62

¹² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Kazakhstan, June 2015, <http://freeassembly.net/rapporteurreports/kazakhstan/>

¹³ «Преследование профсоюзных активистов в «МангистауМунайГазе», 2 November 2015, at <http://socialismkz.info/?p=15049>

¹⁴ "Statement by the Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Kazakhstan," 27 January 2015, at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15518&LangID=E#sthash.P4X042hl.dpuf>

¹⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Kazakhstan, June 2015, at <http://freeassembly.net/reports/kazakhstan/>

¹⁶ «Комиссия по правам человека при Президенте Казахстана рекомендует Правительству принять новый закон о митингах», 20 October 2015, at <http://www.inform.kz/rus/article/2830353>

¹⁷ See par. 52 of the Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan adopted.

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- ¹⁸ The statement is available at:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19951&LangID=E#sthash.jDZcs3Xc.dpuf>
- ¹⁹ KIBHR, *Assessing Compliance of Legislation of the Republic of Kazakhstan on Freedom of Conscience and Religion with International Standards*, November 2015, at
http://bureau.kz/en/news/kibhr_information/assessing_compliance_of_legislation_on_freedom_of_conscience
- ²⁰ For more information, see KIBHR, "Уравнение со многими неизвестными," 2 April 2016,
http://bureau.kz/novosti/sobstvennaya_informaciya/uravnenie_so_mnogimi_neizvestnymi; and Forum 18, "Good Friday in Almaty," 31 March 2016, http://forum18.org/archive.php?article_id=2163
- ²¹ Par. 13 and 14 of Concluding observations of the Human Rights Committee on the second periodic report of Kazakhstan adopted in July 2016.
- ²² Par. 13.
- ²³ Forum 18, "KAZAKHSTAN: Government contradicts UN Human Rights Committee," 22 July 2016,
http://forum18.org/archive.php?article_id=2201
- ²⁴ Views adopted by the Human Rights Committee concerning Communication No. 2137/2012
- ²⁵ Views adopted by the Human Rights Committee concerning Communication No. 2129/2012.
- ²⁶ Views adopted by the CEDAW on Communication No. 45/2012.
- ²⁷ The joint appeal is available at: <http://www.adilsoz.kz/news/show/id/1944#sthash.RJQ6DTi3.dpuf>
- ²⁸ See statement issued by Adil Soz, 3 October 2016, <http://www.adilsoz.kz/news/show/id/2151>
- ²⁹ KIBHR, «Заявление в связи с арестами журналистов интернет-издания Nakanune.kz», 28 December 2015,
http://bureau.kz/novosti/sobstvennaya_informaciya/zayavlenie_v_svyazi_s_arestami_jurnalistov_internet-izdaniya_nakanune_kz
- ³⁰ See statement issued by KIBHR and Adil Soz on 27 May 2016, at
http://bureau.kz/novosti/sobstvennaya_informaciya/zayavlenie_o_prigovore_baidalinovoi
- ³¹ See joint statement issued by the World Organization against Torture and the International Federation for Human Rights in the framework of the Observatory for the Protection of Human Rights Defenders, IPHR, KIBHR and the Netherlands Helsinki Committee on 11 October 2015, at <http://iphronline.org/kazakhstan-freedom-assembly-trial-20161011.html>
- ³² A copy of the ruling has been obtained by KIBHR and can be provided on request.
- ³³ See more details in KIBHR statement from 16 August 2016 (in Russian), at
http://bureau.kz/novosti/sobstvennaya_informaciya/delo_po_makhambetu_abjanu_podkhodit_k_koncu
- ³⁴ See statement issued by KIBHR and IPHR, "Kazakhstan: Activists on trial over social media posts," 21 January 2016, at
<http://iphronline.org/kazakhstan-activists-on-trial-over-social-media-posts-20160121.html>
- ³⁵ See the previous endnote.
- ³⁶ European Parliament resolution of 10 March 2016 on freedom of expression in Kazakhstan (2016/2607(RSP)).
- ³⁷ For more information, see Forum 18: "Seven years' restricted freedom for discussing faith," 9 November 2015, at
http://forum18.org/archive.php?article_id=2119; "Two years' imprisonment for Astana Adventist," 28 December 2015, at
http://forum18.org/archive.php?article_id=2136