

Key concerns and recommendations on the protection of fundamental rights in Kazakhstan

This briefing paper was prepared by International Partnership for Human Rights (IPHR, Belgium) and Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR, Kazakhstan) for the EU-Kazakhstan Human Rights Dialogue in November 2021.

Summary

The human rights situation in Kazakhstan remains troubling and there have been no significant improvements since the change of presidency in 2019. It is of serious concern that opposition supporters, members of civil society, and other citizens critical of the authorities have increasingly been persecuted for exercising their right to freedom of expression and other fundamental rights. In particular, the authorities have continued persecuting alleged members of the banned opposition movements Democratic Choice of Kazakhstan and the Street Party, detaining, prosecuting and penalising them for their alleged association with these movements. Many of those convicted have been given non-custodial so-called restricted freedom sentences, while others have been imprisoned. Convicted activists are also often subjected to additional restrictions on their rights, such as being banned from engaging in public activities, political debates, or having social media profiles for several years.

The parliamentary elections held in January 2021 did not feature any real competition and were deemed unfree and unfair by international observers. Similarly, local council and mayoral elections held during the year did not meet international standards.

The right to freedom of peaceful assembly is still seriously restricted in Kazakhstan, despite the adoption of a new law on assemblies in 2020, which the authorities described as progressive. Since last year, law enforcement authorities have increasingly used the controversial method of kettling to restrain peaceful protesters, in addition to violating their right to protest in other ways.

The authorities continue to use politically-motivated imprisonment as a tool in their campaign against dissent. In a welcome development, two long-serving political prisoners were released this year. In February 2021, civil society activist Max Bokayev was released after finishing his five-year prison sentence. However, following his release, Bokayev remains subject to severe restrictions which severely impinge on his personal and professional life. In October 2021, poet-dissident Aron Atabek was released from prison, after spending 15 years behind bars as the remainder of his prison term was replaced by a non-custodial restricted freedom sentence. Atabek's health was reported to be critical at the time of his release, and he is currently in need of urgent medical treatment. While Bokayev, Atabek and several other individuals imprisoned on charges considered politically motivated have been released this year, other new names have instead been added to the list of political prisoners maintained by local human rights defenders.¹

¹ http://tirik.info/dir/wpbdp_category/list01/

Electoral misconduct and hampering of the right to peaceful assembly

Kazakhstan held elections to parliament and local councils on 10 January 2021, which took place in a context characterised by the lack of genuine political competition, as has been the case with all elections held during Kazakhstan's independence. The authorities violated the right to free and fair elections, and infringed fundamental rights and freedoms of citizens in violation of Kazakhstan's obligations under international law.² The ruling Nur Otan party dominated the elections, and several opposition parties and opposition politicians were unable to run. The authorities prevented independent election observers from conducting monitoring inside polling stations and subsequently sought to prevent peaceful protests against the unfair elections by detaining peaceful protestors and kettling protestors for several hours in sub-zero temperatures on election day.³ As a result of kettling, at least two people were hospitalised with frost bite. On 25 July 2021, Kazakhstan held its first direct elections of the mayor (further akim) in major cities, settlements, villages and rural districts. Civil society welcomed the introduction of direct elections of akims instead of the previous system under which akims were appointed by higher-level officials as a positive step towards democratization. However, during these elections, election observer organisations reported similar irregularities as those seen during earlier elections in the country. These included difficulties with registration of independent candidates; the use of so-called administrative resources in favour of candidates from the ruling Nur Otan party; denial of access to polling stations for observers and media representatives; and ballot stuffing. The main winners in the elections were members of Nur Otan.

Negative response to EP Resolution on human rights in February

Against the backdrop of the flawed elections in January, the European Parliament (EP) adopted a resolution on the human rights situation in Kazakhstan on 9 February 2021,⁴ expressing concern about restrictions on fundamental rights marked during the January 2021 parliamentary elections and growing pressure on civil society. It also regretted that the unregistered opposition Democratic Party was not allowed to participate in the elections and condemned the "abuse of anti-extremism legislation against supporters of the peaceful opposition movements the Democratic Choice of Kazakhstan (DCK) and the Koshe Partiyasy". The Parliament called on the Kazakhstani authorities to cease exerting pressure on civil society, to allow for political pluralism, to release all political prisoners and to respect human rights and fundamental freedoms in accordance with its international obligations. The Kazakhstani authorities did not welcome the wording of the resolution, with a spokesperson of the Ministry of Foreign Affairs claiming that the resolution was based on "falsified" information. *"We are convinced that the text of the resolution distorts the real state of affairs in our country and was initiated by unfriendly politicians, fuelled by falsified information from destructive circles. Kazakhstan is purposefully and progressively realising its obligations in the field of human rights."* The Ministry further declared that the resolution *"caused complete bewilderment and incomprehension with respect to the reliability of the information used."*⁵

2 See KIBHR's and IPHR's report on the elections here: <https://www.iphronline.org/wp-content/uploads/2021/01/Briefing-paper-elections-in-Kazakhstan-18-Jan.pdf>

3 Kettling is a police tactic for control of large crowds and involves cordons of police officers who contain protestors in a small area and do not let them leave.

4 See the Resolution here: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0056_EN.pdf

5 See (in Russian): <https://kaztag.kz/ru/news/mid-rk-o-kritike-so-storony-evroparlamenta-rezolyutsiya-iskazhaet-realnoe-polozhenie-del>

Freedom of Association

Persecution of opposition supporters labelled “extremists”

During the past year, the Kazakhstani authorities have strengthened their already vigorous crackdown on citizens who are accused of participating in or supporting two political opposition movements, which have been banned as “extremist” by court: the Democratic Choice of Kazakhstan (known under its Russian abbreviation “DVK”) and the Street Party (known as “*Koshe Partiyasy*” in Kazakh). DVK is a movement created by the exiled opposition figure and oligarch Mukhtar Ablyazov, who has been tried and convicted on multiple criminal charges in absentia. DVK was banned as “extremist” by court in March 2018.⁶ The Street Party was banned by court on the same grounds in May 2020 as an alleged successor to the DVK, although it has denied links to the DVK.⁷ The Street Party is not an actual political party, but rather a social reformist movement without an actual leader or political programme. Neither of the movements have endorsed or used violence, but have nonetheless been branded “extremist”. There is an ongoing wave of persecution and prosecutions against those accused of being associated with the DVK and Street Party. Most people are being tried under Article 405 of the Criminal Code – participating in a banned extremist organisation.⁸ So far in 2021, 34 people have been arrested on charges of Article 405, at least 15 have been convicted and found guilty, and 10 are currently in pre-trial detention and awaiting legal proceedings. Another 20 people are waiting for verdicts with orders not to travel, or are under house arrest. Below are a few illustrative examples of some particularly worrying cases of involving alleged members of the two banned movements.

- **Askar Nurmaganov:** In February 2021, the disabled Karaganda-based civic activist was sentenced to one and a half years of restriction of freedom and forced labour on charges of participation in DVK and the Street Party.⁹ He was also banned from participation in social and political activities for three years. At the time of his trial, Nurmaganov had been held in pre-trial detention for more than six months, and he told the court that he had been subjected to pressure in order to force him to confess. Nurmaganov has been recognised by KIBHR and the human rights community in Kazakhstan as a political prisoner.
- **Abzal Kanaliev:** In November 2020, the civil activist from Aktau was placed under house arrest during an investigation of charges of participation in an extremist organisation initiated against him.¹⁰ In February 2021, the court changed his house arrest to pre-trial detention. As a result of this measure, he has been recognised by KIBHR and other human rights organisations in Kazakhstan as a political prisoner.¹¹ Kanaliev’s pre-trial detention has since been replaced with a prohibition to travel, due to the fact that he is disabled. He is awaiting trial at the time of writing of this briefing.

6 See: <https://eurasianet.org/kazakhstan-court-dubs-opposition-movement-extremist>

7 See (in Russian): https://tengrinews.kz/kazakhstan_news/v-kazahstane-zapretili-deyatelnost-koshe-partiyasyi-402783/

8 The exact wording of Article 405 of the Criminal Code can be read here (in Russian): https://kodeksy-kz.com/ka/ugolovnyj_kodeks/405.htm

9 See (in Russian): <https://rus.azattyq.org/a/31115496.html> and <https://bureau.kz/novosti/priznat-i-otrechsya/>

10 See (in Russian): <https://rus.azattyq.org/a/30960396.html>

11 See (in Russian): <http://tirik.info/press-release-expansion-of-the-list-of-political-prisoners-in-kazakhstan/>

- **Roman Reikherth:** Roman Reikherth from Aktobe region was hospitalised after sustaining a head injury while being arrested by police in March 2021.¹² During his arrest, he was beaten by police with a truncheon in public and in front of his three-year-old child. Following the arrest, Reikherth complained of headaches and nausea as a result of his injuries. He was arrested due to a court case being opened against him for petty hooliganism and for insulting a government official. In July, a court in Aktobe sentenced him to two years of restriction of freedom for insulting and using violence against a government official. According to KIBHR, the only evidence presented in court was a video where Reikherth swears at the police. Reikherth had already received a probationary sentence in May 2020 for participating in DVK.¹³
- **Aigul Utepova:** In September 2020, blogger and journalist was detained by police in Nur-Sultan and placed under house arrest after being charged under article 405 of the Criminal Code for her alleged support of the DVK and Street Party. In November 2020, based on a court decision, she was forcibly admitted to a psychiatric institution for the stated purpose of undergoing a mental health assessment, although she has never had any mental health issues.¹⁴ She was held at the psychiatric institution for 18 days before being transferred back to house arrest, where she remained until her trial. In April 2021, a local court in Nur-Sultan sentenced her to one year of restriction of freedom and public labour for allegedly participating in the DVK and the Street Party.¹⁵ Utepova was also given a three-year ban on engaging in public and political activities. She was found guilty based on posts she made on social media commenting on the two banned movements and research material she had collected about them that police found on her computer and phone.¹⁶ Utepova has denied being involved in any political movement and considers that the case against her was brought in retaliation for her journalistic work and her public criticism of the authorities.
- In October 2021, **13 activists from Almaty** were sentenced under Article 405 of the Criminal Code, for allegedly setting up and participating in the Street Party. Activists Abai Begimbetov, Noyan Rakhimzhanov, Askhat Zheksebaev and Kairat Klyshev were sentenced to five years of imprisonment, whereas Dametkan Aspandiyarova and Diana Baimagambetova received a two-year conditional sentence of restriction of freedom. Ninagul Dzhumaniyazova, Bakdaulet Alibekov, Ermek Koziev, Gulzipa Dzhaukerova, Marat Kurbanov, Darkhan Valiev and Bolat Smagulov received sentences of one year of restriction of freedom.¹⁷ The prosecution failed to present any credible evidence that the defendants had committed unlawful actions, and the activists were incriminated for participating in and discussing peaceful protests, participating in the construction of a house for the family of Dulat Agadil, who died in police custody in 2020, collecting support for families of political prisoners, demanding the release of political prisoners, and criticism of the authorities.

12 See (in Russian): <https://rus.azattyq.org/a/31133553.html>

13 See (in Russian): <https://bureau.kz/novosti/negsibaemyj-rejhert/>

14 See: <https://www.amnesty.org/en/documents/eur57/3375/2020/en/>

15 See (in Russian): <https://rus.azattyq.org/a/31229285.html>

16 See: <https://cpj.org/2021/03/kazakh-journalist-aigul-utepova-tried-over-political-coverage/>

17 See (in Russian): <https://bureau.kz/novosti/neud-po-istorii/> and <https://www.currenttime.tv/a/delo-trinadtsati-kazahstan/31503721.html>

Trade union suspended

In a case that illustrates the vulnerable situation of independent trade unions in Kazakhstan, a Shymkent-based union was subjected to pressure in 2021. In February 2021, a local court suspended the work of the Trade Union of Workers of the Fuel and Energy Industry for six months, satisfying a claim from the Shymkent Akimat (mayor's office).¹⁸ The Akimat had filed a lawsuit against the trade union based on complaints from three companies: the Oil Construction Company, West Oil and Buzachi Trans Kurylys. The companies claimed that the union had failed to meet requirements set out by the trade union law, including with respect to its registration, its constituent documents and its lack of membership in a country-wide trade union association.¹⁹ The pressure against the trade union followed earlier persecution of its former head, Yerlan Baltabay, who was convicted of allegedly embezzling trade union funds in 2019, charges believed to have been initiated in retaliation for his union activism. Baltabay was sentenced to prison, but the sentence was subsequently converted to a fine.²⁰ Following the six-month suspension, the trade union resumed its activities.

Independent trade union activities remain seriously restricted in Kazakhstan, in particular under the repressive 2014 Law on Trade Unions, which sets out significant obstacles to the registration of independent unions, despite some amendments adopted in 2020.²¹ Kazakhstan has repeatedly been criticized for violating its obligations under International Labour Organization (ILO) conventions. Most recently, in June 2021, the ILO Committee on the Application of Standards criticized the government for violating the ILO Freedom of Association and Protection of the Right to Organise Convention because of "the continuing restrictions in practice on the right of workers to form organizations of their own choosing, in particular the unduly difficult re-registration and deregistration processes which undermine the exercise of freedom of association." The Committee also noted with concern "the numerous allegations of violations of the basic civil liberties of trade unionists, including violence, intimidation and harassment." It called on the government to bring all national legislation into line with ILO standards to guarantee full enjoyment of freedom of association to workers' and employers' organizations; and to stop judicial harassment practices of trade union leaders and members conducting lawful trade union activities.²²

NGOs under pressure

In a coordinated campaign carried out by the tax authorities, more than a dozen Kazakhstani NGOs were subjected to significant pressure in the period leading up to the January 2021 parliamentary elections. The NGOs targeted faced heavy fines and the suspension of their activities for up to three months because of alleged mistakes in forms they are required to file to notify tax authorities about funds received from foreign sources and their expenditure. Those targeted included KIBHR and other leading human rights organisations such as the International Legal Initiative; Erkindik Kanaty; the International Center for Journalism – MediaNet; Echo; Kadir Kasiet (Dignity), and the Legal Media Center. The actions of the tax authorities were widely criticised and condemned at both the national and international level.

18 See (in Russian): <https://rus.azattyq.org/a/31081630.html>

19 See (in Russian): <https://rus.azattyq.org/a/kazakhstan-rabota-nezavisimogo-profsoyuza-priostanovlenna-napolgoda/31088361.html>

20 See (in Russian): http://ttps://bureau.kz/novosti/sobstvennaya_informaciya/on_vyshel_chtoby_vernutsya/

21 <https://www.hrw.org/news/2020/12/17/kazakhstan-adopts-long-promised-amendments-trade-union-law>

For a comprehensive analysis on trade unions and industrial relations in Kazakhstan, please also see this research on the topic: <https://theses.gla.ac.uk/82271/1/2021sorbellophd.pdf>

22 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_804447.pdf

Among others, the Civic Solidarity Platform (CSP), of which both IPHR and KIBHR are members, appealed to the Kazakhstani authorities to stop obstructing the work of human rights NGOs.²³ Fortunately, as a result of the outcry, the charges against the NGOs were eventually dropped.²⁴ However, this case shows how vulnerable the work of human rights NGOs in Kazakhstan today, and the threat remains that the legal provisions under which the sanctions against the NGOs were initiated may again be applied in a similar, punitive manner.

Recommendations

The authorities of Kazakhstan should:

- Stop misusing charges of involvement in “extremist” organisations to target civil society and social media activists peacefully exercising their freedom of association and related rights.
- Repeal or revise article 405 of the Criminal Code to bring it in line with international standards, clearly define the key concepts used in it, and ensure that it does not lend itself to arbitrary and politically motivated application.
- Implement the ILO recommendations regarding the activities of trade unions.
- Ensure that independent human rights, media and election monitor NGOs are able to carry out their work without intimidation, harassment and undue interference; and amend current legislation to ensure that minor, technical mistakes related to the reporting of foreign grants cannot result in serious sanctions such as the suspension of the activities of NGOs.

Peaceful assembly

Restrictions continue, new worrying trend of the use of “kettling”

In May 2020, a new law on assemblies was adopted in Kazakhstan.²⁵ Despite the fact that civil society and international experts raised concerns that the law runs counter to international standards and restricts the right to freedom of peaceful assembly in violation of Kazakhstan’s international human rights obligations²⁶, the adoption of the law was rushed through during the Covid-19 lockdown and quarantine in spring 2020. According to the new law, people do not formally have to seek permission to hold assemblies as before, but have to notify the authorities instead. However, de-facto they are still required to receive permission to protest, as notifications must be approved by the authorities. At the same time, it is difficult for citizens to determine what kind of notification is needed in each case (for instance, the rules for holding single pickets are different from those for holding marches or demonstrations). Also, the system does not allow spontaneous protests, as notifications have to be sent 10 days before the planned demonstration. Both individual citizens and initiative groups are often denied official permission to hold peaceful assemblies, and even single pickets are prohibited under various pretexts.

23 See the statement here: <https://www.iphronline.org/kazakhstan-end-campaign-against-human-rights-ngos-joint-civil-society-appeal.html>

24 See: <https://www.rferl.org/a/kazakh-authorities-drop-charges-ngos-outcry/31087863.html>

25 The exact wording of the amendments can be read here (in Russian): https://online.zakon.kz/Document/?doc_id=36271780#pos=330;-49

26 See: <https://www.iphronline.org/wp-content/uploads/2020/05/Open-Letter-to-Tokayev-for-signing-with-logos-final-1.pdf>

Although a growing number of officially permitted protests have been held since the entry into force of the new law, the authorities continue to prevent opposition protests and other protests featuring criticism of the authorities from taking place.

In addition to denying permission to hold protests, the authorities also use other tactics to obstruct people's right to peacefully assemble, including so-called preventive detention (the detention of people who the authorities believe might take part in protests) . Not only participation in peaceful, unsanctioned protests but also calls for holding peaceful assemblies and the expression of one's intent to take part in such assemblies are treated as violations of the procedure for holding assemblies, an administrative offence that is punishable by fines or administrative detention.

The authorities have also increasingly used the controversial and much criticized tactic of "kettling" against participants in peaceful, unsanctioned protests. Kettling is a police tactic used to control large crowds and involves cordons of police officers who contain protesters in a small area. While it is intended for use in exceptional situations to prevent violence during assemblies, the authorities in Kazakhstan have used it during entirely peaceful protests. During 2021, there were several cases when the police kettled protesters for over ten hours. When protesters are kettled, they are usually not allowed to leave, get food or go to the toilet, and they are also often subjected to attacks from provocateurs. Only if losing consciousness or experiencing serious health problems have kettled protesters been allowed to leave – in some cases in an ambulance.

The authorities also periodically switch off the internet in central parts of Almaty during unsanctioned demonstrations, thereby preventing not only protest participants, monitors and journalists but also other residents from using the internet for communication and exchange of information. Periodic closure of mobile internet during demonstrations is common in Almaty, but occurs irregularly, and for shorter periods of time in other cities.

These are only two examples of violations of the rights of the participants in unsanctioned, peaceful protests held in 2021:

- Over the last year, peaceful assemblies have frequently been held outside the Chinese Consulate in Almaty to protest against China's repressive policies in the Xinjiang region, in particular the detention of ethnic Kazakhs in internment camps in this region. Most of the protesters have been ethnic Kazakhs who have migrated to Kazakhstan from China or relatives of ethnic Kazakhs who remain in China and are believed to be held in internment camps. The police have occasionally detained protesters outside the consulate and have also prevented journalists from reporting on the protests.²⁷
- The banned DVK movement called for an unsanctioned, peaceful demonstration in Almaty on 1 May 2021. KIBHR reported that hundreds of police officers cordoned off the two venues where the protests were planned to take place (Gorky Park and the Zhibek Zholy pedestrian street), and detained around 20 people. Among those detained were a group of women who had managed to get into the park, despite the police cordon, and were demanding the implementation of the latest EP Resolution on Kazakhstan (mentioned above), and the release of political prisoners. KIBHR also reported that police arbitrarily arrested passers-by who had no intention of protesting, including elderly people. As KIBHR was live-streaming people being arbitrarily detained, an individual who appeared to be a plainclothes police official attempted to grab the smart phone from the KIBHR representative.

27 See (in Russian): <https://bureau.kz/goryachee/pervomajskij-paralich/>

Recommendations

The authorities of Kazakhstan should:

- Revise the law on organising and conducting peaceful assemblies, in accordance with the advice of national and international experts, in order to bring it into compliance with international standards, including by providing for a simple and straightforward notification procedure for assemblies and by allowing spontaneous protests.
- Allow peaceful protests to take place without hindrance and ensure that citizens are not detained, fined or sentenced to administrative arrest for organising, calling for or participating in peaceful assemblies, even if these assemblies have not been pre-approved by authorities.
- Cease using the practice of kettling to contain participants of peaceful protests, even if held without official sanction, and ensure that all who are deprived of their liberty are afforded full rights of detainees set out by national and international law.

Freedom of expression

Slander was decriminalised in June 2020, but remains a punishable offense as it was transferred to the Administrative Code (Article 73). The application of this article has shown that charges of slander are still being used to limit freedom of expression. In one case from February 2021, civil society activists Sholpan Utekeeva and Uy bolsyn Turdieva were each sentenced to 20 days of administrative detention, and blogger Aigul Akberdy was fined for alleged slander of a district police chief by reposting a social media post featuring a photo of him, with the word “shameful” written on it. The post, which was re-posted by the three activists, had been made in protest of the police chief’s actions in relation to another civil society activist.²⁸ “Insult” and “insulting a representative of the authorities” remain criminal offenses (Article 131 and 378 of the Criminal Code).²⁹ It is also still a criminal offence to “publicly insult and infringe the honour and dignity of the first President of Kazakhstan”, Nursultan Nazarbayev (Article 373 of the Criminal Code).³⁰

Activists and journalists also continue to face punitive defamation lawsuits because of their criticism of the authorities. Elena Semenova, a well-known and respected human rights activist, has faced a series of defamation lawsuits since 2020 because of her work to defend the rights of prisoners.³¹ Semenova has been sued by the administration or staff of various prison facilities for publishing information about the violations of the rights of prisoners, including interviews with prisoners alleging torture or other ill-treatment. In the majority of cases, Semenova has lost the lawsuits, being forced to pay compensation and refute her statements. The legal pressure exercised on Semenova for her activism in relation to the deplorable conditions of Kazakhstan’s prisoners is highly worrying.

In the past year, independent media representatives, journalists and editors have continued to be subjected to intimidation and harassment because of their legitimate journalistic work. There have been

28 See, for instance (in Russian): <http://www.adilsoz.kz/news/show/id/3284> and <https://rus.azattyq.org/a/31124882.html>

29 The exact wording of the articles of the Criminal Code can be read here (in Russian): https://kodeksy-kz.com/ka/ugolovnyj_kodeks/131.htm (Article 131) and https://kodeksy-kz.com/ka/ugolovnyj_kodeks/378.htm (Article 378).

30 The exact wording of Article 373 can be read here (in Russian): https://kodeksy-kz.com/ka/ugolovnyj_kodeks/373.htm

31 See, for instance, several cases here (in Russian): <https://bureau.kz/goryachee/u-savelevoj-vsyo-horosho/> (2021), <https://rus.azattyq.org/a/30651916.html> (2020) and <https://rus.azattyq.org/a/30723868.html> (2020)

criminal cases, but most proceedings have been based on civil lawsuits. Below are a few examples of how media and journalists came under pressure:

- At the beginning of February 2021, a criminal case was initiated against Lukpan Akhmedyarov, the editor-in-chief of the well-known independent media Uralsk Week (known in Russian as “Uralskaya Nedelya”) under Article 423 of the Criminal Code (Disclosing information from pre-trial proceedings or closed court proceedings).³² The charges against Akhmedyarov concerned an article published on 27 November 2020 about the mother of a prosecutor in relation to alleged corrupt land purchases in the West Kazakhstan Oblast.³³ Uralsk Week had published anonymously leaked documents from sources in the police and the prosecutor’s office before the trial related to that case, took place. Although Akhmedyarov has not yet been summoned for questioning, the criminal case against him is still under way. Two other criminal cases previously initiated against him have not been suspended either and could therefore be resumed at any time.
- In July 2021, the Ministry of Information and Social Development advised the online news outlet Mediazona to remove an image from its website showing a graffiti mural of former president Nursultan Nazarbayev, modified to resemble the Joker from Batman. The Ministry reminded Mediazona that it is a criminal offence to publicly insult the honour and dignity of the former president, including “desecration” of his image, according to Article 373 of the Criminal Code. The maximum punishment for this offense is up to three years of imprisonment. A similar request was sent to the media outlet “The Village” in May.³⁴

Facebook allegedly grants Kazakhstan exclusive access to internal content reporting system, new legislation might result in the blocking of social media platforms in the country

On 1 November 2021, Kazakhstan’s Ministry of Information and Social Development published what it called “a joint statement” with Facebook, announcing that it had obtained “direct and exclusive” access to the social media platform’s internal “Content Reporting System”.³⁵ The ministry stated that access to this system will allow the Kazakhstani authorities to promptly report content violating Facebook’s global content policy, as well as Kazakhstani legislation. According to the statement, Kazakhstani authorities have already established a direct communication channel with Facebook’s international content policy team. The statement quoted George Chen, Facebook’s regional public policy director based in Hong Kong, as saying that the platform was “delighted” to provide the Kazakhstani government access to its content reporting system, and that it hoped that this would help the government to “deal with harmful content in a more efficient and effective manner.”

Following the publication of the statement, a spokesperson for the company that owns Facebook, Meta Platforms, denied that the Kazakhstani government had been granted any privileged treatment, saying that Facebook follows “a consistent global process” to assess requests for the removal of content. He said that the government had “released their own statement, independent from Facebook”.³⁶ However, Kazakhstan’s Minister of Information and Social Development Aida Balaeva insisted that the text of the

32 See (in Russian): <https://mediazona.ca/article/2021/02/06/ahmedyarov>

33 See (in Russian): <https://kaztag.kz/ru/news/izvestnogo-zhurnalista-ugolovno-presleduyut-za-statyu-o-mame-prokurora-i-afery-s-zemley-v-zko>

34 See (in Russian): <https://rus.azattyq.org/a/31379325.html>

35 See (in Russian): <https://www.gov.kz/memleket/entities/qogam/press/news/details/277873?lang=ru>

36 <https://www.rferl.org/a/kazakhstan-facebook-denies-access/31541111.html>

statement had been “fully agreed on” by the leadership of Facebook’s regional office in Hong Kong, with which negotiations had been held.³⁷

The announcement that the Kazakhstani government had been granted access to an internal Facebook system gave rise to concerns amongst media and civil society, who fear that the authorities will use this as a tool to censor unwanted content and persecute citizens exercising their right to freely express themselves. In recent years, the Kazakhstani authorities have brought many bloggers, activists and other people to justice for posting or sharing content on Facebook or other social media, which features criticism of the country’s leadership and/or demands for social or political change.³⁸ Experts on cybersecurity noted that the submission of government requests for content removals through an internal Facebook system does not necessarily mean that the content in question will be removed.³⁹ However, the lack of transparency surrounding Facebook’s procedures for content removal, as recently highlighted by its own Oversight Board,⁴⁰ reinforces concerns about the potential negative implications of the platform’s increased cooperation with the Kazakhstani government in this area.

The announcement made on 1 November was particularly problematic as it came shortly after the introduction of draft legislation, which restricts the operation of social media networks in the name of preventing “cyberbullying” of children. The draft law, which was approved by the Lower House of Parliament on first reading in September 2021, would force foreign social media platforms to register in Kazakhstan or else risk being blocked in the country.⁴¹ Civil society activists consider the legislation an attempt to limit freedom of expression in Kazakhstan,⁴² and a civil society petition launched to call for its abolition has gathered more than 10,000 signatures.⁴³

Recommendations

The authorities of Kazakhstan should:

- Fully decriminalise defamation by abolishing all criminal and administrative code provisions on such offenses.
- Call on all public officials and state bodies to refrain from using civil defamation lawsuits as a tool to put pressure on activists and journalists critical of those in power.
- Ensure that journalists or media representatives are not criminally prosecuted in retaliation for their legitimate journalistic activities.
- Respect freedom of expression on the internet and ensure that any restrictions on this right meet the strict requirements for permissible limitations set out by international law.

37 See Facebook comment: https://www.facebook.com/permalink.php?story_fbid=5059958490694939&id=100000425144626

38 See examples of cases here: <https://thediplomat.com/2021/11/facebook-grants-kazakhstan-direct-access-to-content-reporting-system/>

39 <https://www.currenttime.tv/a/vlasti-kazahstana-zayavil-chto-poluchili-pryamoy-dostup-k-facebook-dlya-borby-s-vrednym-kontentom-tak-li-eto/31541496.html>

40 <https://edition.cnn.com/2021/10/24/media/facebook-oversight-board-reliable-sources/index.html>

41 The quoted draft law can be seen here (in Russian): https://tengrinews.kz/kazakhstan_news/sotsseti-messendjeryi-mogut-obyazat-zaregistrirovatsya-448557/

42 See: <https://eurasianet.org/facebook-caught-up-in-kazakhstan-internet-crackdown>

43 The petition is available at: https://secure.avaaz.org/community_petitions/ru/administratsiia_prezidenta_parlament_kazahstana_leumettik_zhelini_bugattauga_karsy_protiv_popravok_v_zakony_o_sotssetiakh/

Released political prisoners

Aron Atabek released in a life-threatening state of health

Representatives of the National Preventive Mechanism for the Prevention of Torture, including a lawyer working with KIBHR, visited Kazakhstan's longest serving political prisoner, dissident-poet Aron Atabek in prison, in mid-August 2021. They found that Atabek's health had seriously deteriorated – he had lost a lot of weight and complained about having pain in his arms and not being able to lift them, as well as having difficulties walking.⁴⁴ Atabek himself attributes his loss of health to years of torture and ill-treatment. The information about Atabek's deteriorating health caused a public outcry, with some Kazakhstani MPs supporting a proposal to grant amnesty to him in connection with Kazakhstan's 30 years of independence celebrations, and human rights defenders compiling signatures in support of a request to the president to grant him a pardon.⁴⁵ On 1 October 2021, the Second Pavlodar Regional Court ruled to change the remainder of Atabek's prison term to a non-custodial sentence of restriction of freedom, due to his critical state of health.⁴⁶ Atabek was then immediately sent to his home city Almaty, from Pavlodar, where he had been incarcerated. The family noted in a message to the public, that when Atabek was released he was not given back his personal belongings and manuscripts that he had written in prison.⁴⁷ Atabek has been staying with his sister, Raziya Nutusheva, since his release. On 18 October, Atabek's daughter Aidana Aidarkhan published a plea on social media, revealing that she has been denied contact, phone calls and visits to her father, and noting that Raziya Nutusheva may be under pressure from the authorities. According to Aidana, Raziya Nutusheva is refusing to let Atabek move to the home of his wife Zhainagul and two children Askar and Aidana, despite Atabek allegedly wanting to do this himself.⁴⁸

After Atabek's arrival to Almaty, Atabek's daughter announced that he had been diagnosed with pneumonia – a life threatening condition given his current state of health.⁴⁹ Atabek later was hospitalised, and fell into a coma for several days. After waking up from the coma, he has been unable to eat, is intravenously fed and can only breathe with a ventilator.⁵⁰ His daughter Aidana has also been refused to visit her father in hospital, despite bringing her birth certificate, documenting that she is his daughter.⁵¹ According to reports in media dated early November, Atabek was still hospitalised in a stable, but critical condition falling in and out of consciousness. It is still not known if he will survive.⁵²

Many people believe that Atabek was released in order to be able to die in peace at home with his family, thus avoiding an international outcry around a high-profile political prisoner perishing behind bars. At the time of writing, Atabek is still in serious condition and hospitalised.

44 See (in Russian): <https://bureau.kz/novosti/ostalis-tri-tyazhelyh-goda/>

45 See (in Russian): <https://orda.kz/rjad-mazhilismenov-podderzhal-iniciativu-ob-amnistirovanii-aron-atabeka/>

46 See (in Russian): <https://rus.azattyq.org/a/31487430.html>

47 See (in Russian): <https://www.facebook.com/moon.rider.94009841/posts/1182067955655097>

48 See (in Russian): <https://www.facebook.com/moon.rider.94009841/posts/1193251224536770>

49 See the photo here and read the description of Atabek's health condition (in Russian): <https://www.facebook.com/photo?fbid=1185539578641268&set=a.573758146486084>

50 See (in Russian): <https://rus.azattyq.org/a/31531974.html>

51 See (in Russian): <https://www.facebook.com/moon.rider.94009841/posts/1196015400927019>

52 See (in Russian): <https://orda.kz/aron-atabek-do-sih-por-v-kome-blizkie-zjavili-cto-podadut-isk-v-espch/>

Aron Atabek was arrested and imprisoned following the Shanyrak uprising in an Almaty suburb in 2006, when he assisted impoverished citizens facing forced evictions during negotiations with the authorities. The events lead to the death of a police officer. Following a flawed and politically motivated trial, Atabek was convicted of killing the police officer, despite inconsistent evidence and evidence allegedly extracted under torture.⁵³ Atabek was sentenced to 18 years' imprisonment in a "strict regime" prison.⁵⁴ During his time in prison, Atabek was repeatedly subjected to torture and ill-treatment, including by being held in solitary confinement for prolonged periods of time.⁵⁵ Atabek served 15 years of his sentence before having the remainder of it commuted into a non-custodial sentence and being released.

Max Bokayev remains subject to significant restrictions following release

Well-known civil society activist and political prisoner Max Bokayev was released in February 2021 after completing his five-year prison sentence. Despite his release, Bokayev remains subject to severe restrictions. In accordance with the verdict from 2016, Bokayev is banned from engaging in public activities for three years upon being released, and additionally he is subject to "administrative supervision" for up to three years.⁵⁶ During this time, Bokayev is required to report regularly to the police and is not allowed to leave his home city (Atyrau) without prior written permission. Bokayev is also subject to a curfew and prohibited from "discussing socially important issues" and "expressing his views" on such issues in public places. These restrictions are in violation of Bokayev's right to freedom of expression and assembly.⁵⁷

In 2016, Bokayev he was sentenced to five years' imprisonment after a flawed and politically-motivated trial. He was found guilty on charges of "incitement to discord", "knowingly disseminating false information" and violating the procedure for holding assemblies (under articles 174, 274 and 400 of the Criminal Code).⁵⁸ The charges against him were initiated because of his involvement in nation-wide so-called land reform protests.⁵⁹

53 See (in Kazakh): https://www.youtube.com/watch?v=nekos_9eOv0&ab_channel=%D0%90%D1%80%D0%BE%D0%BD%D0%90%D1%82%D0%B0%D0%B1%D0%B5%D0%BA

54 See the verdict here (in Kazakh), page 160: <https://aronatabek.com/prigovor>

55 See (in Russian): <https://aronatabek.com/biografia>

56 See IPHR's and CSP's statement on the verdict in 2016: <https://www.iphronline.org/kazakhstan-ruling-cs-activists-20161201.html>

57 See (in Russian): <https://rus.azattyq.org/a/kazakhstan-sud-nalozhil-noviye-ogranicheniya-na-maksa-bokaeva/31110144.html>

58 See the exact wording of the Articles of the Criminal Code here (in Russian): https://kodeksy-kz.com/ka/ugolovnyj_kodeks/174.htm (Article 174) and https://kodeksy-kz.com/ka/ugolovnyj_kodeks/274.htm (Article 274).

59 The land reform protests in 2016 were catalysed following the planned privatisation programme of agricultural land in Kazakhstan. These agricultural reforms would entail that from July 2016, ten million hectares of Kazakh farmland would be put up for lease and sale. Rumours of sale and lease of Kazakh land to foreigners, especially to Chinese businessmen and companies, started the protests. The protests only stopped after a nationwide crackdown on protests, and interference in the agricultural reform directly from President Nazarbayev.

Recommendations

The authorities of Kazakhstan should:

- Immediately repeal the current conditional sentence against Aron Atabek and ensure that he receives all necessary medical assistance, including by travelling abroad if necessary and feasible.
- Immediately repeal the current restrictions imposed on Max Bokayev, which violate his fundamental freedoms.
- Stop using the tool of politically motivated prosecution; clear all those convicted on such grounds of all charges; and promptly release all those who are currently behind bars on politically motivated charges.