



**Joint Submission to the Human Rights Council
for the 34th Session of the
Universal Periodic Review
by the Netherlands Helsinki Committee and Kadyr Kasiet**

KAZAKHSTAN

***The situation of human rights defenders,
and civic and political activists in the Republic of Kazakhstan***

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1. The space for the activities of human rights defenders, journalists, civil society activists, lawyers, trade union activists, religious activists, and political party activists in Kazakhstan has deteriorated over the past eight years.
2. The state impedes the activities of human rights defenders and activists in Kazakhstan. It does not encourage or protect human rights defenders in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.¹
3. Monitoring by the Public Association "Kadyr Kasiet"² shows a noticeable rising trend in the number of incidents affecting various categories of activists in Kazakhstan. While 101 incidents were registered over five months in 2011, 555 cases were recorded in 2018.
4. Activists are subjected to psychological pressure and obstructions of their activities in the form of threats, blackmail, negative discrimination, arrest, violence, threats in relation to children, relatives, friends and colleagues, as well as criminal and administrative cases.
5. The state is not effectively investigating cases in which human rights defenders face physical attacks. For example, between 2011-2017, seventy activists and human rights defenders were assaulted, of which two were fatal. Merely four cases accessed legal remedies.
6. An analysis of court proceedings in 2015-2017 shows that seventeen human rights defenders and civil society activists were tried under criminal charges. While none of them should have been prosecuted to begin with, only five were acquitted. The trumped-up convictions were executed under the following articles of the Criminal Code of the Republic of Kazakhstan: art. 174 "Incitement of social, national, tribal, racial, class or religious discord," art. 130 "Slander,"

¹ General Assembly Resolution 53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144 (8 March 1999).

² Astana-based Public Association "Kadyr Kasiet", translated from Kazakh as "Dignity", was founded on 1 September 2010. Kadyr Kasiet contributes to the protection of human rights defenders and activists, conducts monitoring of the right to freedom of assembly and freedom of expression, and works to prevent torture.

art. 274 “Dissemination of deliberately false information that creates danger of disturbing public order or causing significant harm the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law,” art. 400 “Violation of the order of organizing and holding meetings, rallies, pickets, street processions and demonstrations,” art. 190 “Fraud,” art. 380 “Use of violence against a representative of the authorities” (Abzhan M.) and art. 309 “Organization or maintenance of dens for prostitution and pandering.”

7. It is not uncommon for trials against human rights defenders to be conducted without the participation of defendants, which restricts the right to a fair trial. In some cases, activists are forced to enter a plea bargain, admitting to crimes in exchange for milder punishment - restriction of freedom.³ Courts have refused to accept evidence from non-state experts.⁴ Large sums are collected from activists for the compensation of moral harm inflicted on officials (USD 1.5-2000).
8. The courts “developed” punishments for activists and human rights defenders, which are not provided in the Criminal Code. Human rights defenders are deprived of their right to engage in public activities. For example, a court ordered Esentaev Zh., among other, “not to visit places where protest actions, rallies, pickets, processions take place,” to limit participation in “round tables,” meetings, trainings, seminars related to political, environmental, social issues organized and held with the participation of international non-governmental organizations, as well as socio-political parties and movements. Not to release publications, comments or posts in the media or social networks on the Internet, both under own name and under a nickname. These include publications aimed at discrediting the activities of the authorities, as well as any reference to political, social, economic, environmental issues. Not to hold concerts, meetings and flash mobs under the pretext of solving political, social, economic, environmental issues.”
9. In administrative courts, activists and human rights defenders are tried on grounds of the following provisions of the Code of Administrative Offenses: art. 488 “Violation of the legislation of the Republic of Kazakhstan on the organization and conduct of peaceful assemblies, rallies, marches, pickets and demonstrations,” art. 434 “Petty hooliganism,” and art. 699 “Failure to execute a court judgment, a court decision or other judicial act and a writ of execution.” Four activists have been held accountable for calling for unauthorized rallies via social networks.⁵ As a rule, two types of punishment are imposed in these cases: a fine of USD 100-200 or detention up to 15 days.
10. With no access to protection at national level, international protection mechanisms were invoked in a number of cases, including recourse to the UN special procedures and ILO mechanisms. Several cases were submitted to the UN Human Rights Committee under individual complaints procedures. The Committee ruled in favor of human rights defenders Toregozhina (2014), Sviridov (2017) and Zhagiparov (2018).⁶ The state has not implemented these decisions, citing lack of legislation for their implementation.
11. Foreign funding of NGOs is under the control of several government departments and ministries. In 2015, the Government introduced a special form of tax reporting for NGOs that are recipients of foreign funds, and created a single database for NGOs so they can report to the Ministry of Religious Affairs and Civil Society—a Ministry created in September 2015 and renamed in 2018 as the Ministry of Social Development.

³ Blyalov B., Narymbaev E., Mambetalin S., Esentaev Zh., Kibrayev R.

⁴ In the cases of M. Bokayev, T. Ayanova, E. Narymbaeva, S. Mambetalina, B. Blyalova.

From the motivating part of the sentence of Blyalov B.: “The court does not take into account the opinion of the specialist-doctor of philology, professor Kairzhanov A.K. dated December 25, 2015, given at the request of the defense, since the above conclusion contradicts the investigated conclusion No. 3168 dated October 29, 2015.”

⁵ Aldabergenov S., Akhmedyarov L., Utepov I.

⁶ Views adopted resp. 21 October 2014 (CCPR/C/112/D/2137/2012), 13 July 2017 (CCPR/C/120/D/2158/2012) and 25 October 2018 (CCPR/C/124/D/2441/2014).

12. Ad hoc tax inspections are used to impede the functioning of NGOs. In December 2016, inspections resulted in administrative charges and fines imposed on two NGOs in Almaty: the International Legal Initiative Foundation (MPI)⁷ and Liberty Foundation. Kadyr Kasiet itself was under inspection for 9 months in 2017.
13. A new category of offenders was created in the Criminal Code in 2015 - "the leader of a public association." This allows the prosecution of any members and activists of public associations who are arbitrarily deemed "leaders" of their organizations. It has been used to accuse numerous activists and human rights defenders. For example, in 2016, Max Bokayev and Talgat Ayan were sentenced to prison terms of five year for their role as organizers of the so-called "land protests" in Atyrau, Kazakhstan.
14. On January 4, 2017, a district court in Shymkent ruled on the liquidation of the Confederation of Independent Trade Unions of Kazakhstan (FTUK). Following the liquidation and a subsequent strike, Amin Yeleusinov and Nurbek Kushakbayev were sentenced to two, and two and a half years respectively. In 2017, Larisa Kharkova, the leader of FTUK, was convicted, and in the autumn of 2018, charges were imposed on leader Erlan Baltabay.
15. The movement "Democratic Choice of Kazakhstan" was recognized as "extremist" by a court on March 13, 2018. While parties and trade unions are liquidated by the courts at the request of the Ministry of Justice, a movement can be eliminated at the request of the General Prosecutor's Office of Kazakhstan.

Recommendations:

In order to improve the access of activists to effective remedies at the national level, it is important to take a number of pro-active steps:

16. Legislatively secure the status of a human rights defender through the creation of a state mechanism for the protection of human rights defenders. Such mechanism could be created under the Commissioner for Human Rights, with the condition of its independence, bringing it in accordance with the Paris Principles.⁸
17. Develop national action plans with respect to the protection of human rights.
18. Thoroughly investigate every case of threats or attacks on human rights defenders and activists. Ensure the right to an effective remedy in accordance with art. 2 of the International Covenant on Civil and Political Rights (ICCPR).
19. Legislate the mechanism for implementing decisions of international human rights treaty bodies.
20. Eliminate the provision in the Criminal Code that allows to prosecute a "leader of a public association."
21. Bring anti-extremism legislation and its application in full compliance with the obligations under the ICCPR, in particular by revising the relevant legal provisions in order to clarify and narrow down the vague concepts.
22. Clarify the broad definition of key terms in national legislation, including the crime associated with the incitement of "social, national, tribal, class or religious hatred." Bring art. 174 of the Criminal Code in line with art. 20 ICCPR.
23. Eliminate the application of the provisions in relation to persons exercising their right to freedom of expression, including: provisions in connection with the incitement of "social, national, tribal, class or religious hatred," slander, public insult, public insult of an official of

⁷ In 2017, the Supreme Court of the Republic of Kazakhstan annulled the decisions on the fine imposed on non-governmental foundation "MPI".

⁸ General Assembly Resolution 48/134, *Principles Relating to the Status of National Institutions (The Paris Principles)*, A/RES/48/134 (20 December 1993).

the state through the media or information and communication networks, the dissemination of false information, and interference in the professional activities of journalists.

24. Ensure that all persons fully enjoy their right to freedom of assembly in practice, and review the relevant regulations, policies and practices to ensure that any restrictions on the freedom of assembly meet the strict requirements laid down in art. 21 ICCPR.
25. Strictly observe the principles of admissibility of evidence, legality, necessity, and proportionality when making any decisions that limit the rights of human rights defenders and activists. Avoid the violation of the principle of equality of arms. Recognize the need to raise the standard of evidence in cases against human rights defenders. Exclude the possibility of the falsification of evidence, and provide access to evidence to the defence.
26. Eliminate the possibility of imposing deprivation of engagement in public activity as a punishment. This measure deprives the accused of a whole list of rights that are inalienable, and are often essential for the realisation of the right to defence.
27. Exclude the provision in the Code of Administrative Offences entailing responsibility for organizing and participating in unauthorized meetings.
28. Bring the practice of administrative detention in line with art. 9 and art. 14 ICCPR and ensure that procedural guarantees are enforced, including the right to an effective appeal.