



Warsaw, 14.07.2014

Kazakhstan: Head of anti-corruption organisation convicted in a defamation case

The president of a Kazakh foundation “National Anti-corruption Committee”, Musagali Duambekov, has been sentenced to one year of imprisonment for “defamation” after the publication of a series of journalistic investigations. Despite demands from the international community, Kazakh authorities have refused to decriminalise defamation. Currently, punishment for this crime is even more severe, while repressions against journalists and civil rights activists for “defamation” have intensified.

Musagali Duambekov is a Kazakh politician and social activist. Since 2005, he has been the president of the republican environmental party “My Kazakhstan”. In 2011 he joined the presidential race. Later, he said that he had not attempted to take first place and had been supporting Nursultan Nazarbaev’s policies¹. Consequently he withdrew from the race². Since 2012, Duambekov has been the president of a social foundation “National Anti-corruption Committee”.

Early in 2014, Musagali Duambekov published a series of investigative journalism articles, where he accused the Mukashev family of businessmen of illegal business dealings and of forcible assertion of rights, violence and torture against an Astana inhabitant, Alibek Isakov³. On **May 13, 2014** the Almaty District Court № 2 of the city of Astana, presided over by judge Asem Ramazanova, sentenced Musagali Duambek to one year of imprisonment on defamation charges (article 129 of the Criminal Code of Kazakhstan). For a year, Duambek will not be able to leave Astana without permission from the authorities, which will be a great impediment to his work. The court also ordered him to retract his accusations against the Mukashev family. On July 11 2014 the court of appeal sustained Duambekov’s sentence. The civil activist will be appealing to the court of cassation.

Due to the stress caused by these circumstances, Duambekov has started to experience health problems. He has been diagnosed with neurodermatitis and a stomach ulcer. Duambekov asked the appellate judge to reschedule the hearing in order to accommodate his much needed stomach surgery. The judge, however, rejected his request.

Musagali Duambekov persecuted for his civil activism

On August 16, 2013, during a briefing at the National Anti-corruption Committee Musagali Duambekov, together with fellow-activists talked about the violation of labour rights of employees of “Astana Dar-Stroy” brickworks. **According to Duambekov’s words, the facility operated in the village of Akmol, near Astana, between the years 2008 and 2011 and its operations were illegal, because of the following:**

- According to information from the district architecture and construction office and local authorities, the facility was not commissioned into operation.
- According to information from tax inspections, the facility was not paying its VAT, nor meeting its pension or environmental liabilities and fees. According to official records of the brickworks kept by the management, the facility was not running any production.

¹ http://rus.azattyq.org/content/musagali_duambekov_election_language/2302117.html

² <http://www.nomad.su/?a=3-201103030028>

³ <http://insiderman.kz/?p=1973> ; <http://insiderman.kz/?p=2057> ; <http://insiderman.kz/?p=2158>

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- Meanwhile, bills and contracts that Duambekov has in his possession confirm the fact that the company indeed sold bricks, for which it was paid in cash.
 - According to an employee, Alibek Iskakov, the facility illegally hired people from the People's Republic of China and Uzbekistan.

Despite the above-mentioned violations, the company worked on a number of construction projects, including social services procurement of government buildings. Members of the National Anti-corruption Committee announced that the manager of this illegally operated facility, **Aygul Mukasheva**⁴, refused to pay her employees for three years.

The civil rights activist, Musagali Duambekov was attempting to defend the rights of one of the brickworks' employees, Alibek Iskakov, and his father, Ersen Iskakov. Below we cite the main results of Duambekov's investigation, which later served as a basis for his criminal trial and liability for "defamation":

- In 2011, labourer Alibek Iskakov decided to quit his job at the factory because he had not been receiving his pay for a long period of time. After that he was arrested by the police based on allegations that he had stolen an electric motor⁵.
- Threatening Alibek Iskakov with a prison sentence, Aygul Mukasheva forced his father, Ersen Iskakov, to write a debt warrant for 3,6 million tenge (EUR 14400) and give his car as a collateral. Ersen Iskakov maintains that when he was signing the warrant, "Aygul Mukasheva's brothers were holding Alibek somewhere in the factory, beating him and forcing him to hear his brother's screams"⁶.
- **Musagali Duambekov** points out that a civil court found the Mukashev family guilty in the coercion of Ersen Iskakov and cancelled the debt warrant as well as the collateral⁷. Apart from that, as Duambekov says, the Mukashev family has already faced a number of criminal proceedings on battery and unlawful forcible detention charges, but the General Prosecutor's Office kept dismissing the charges due to lack of evidence⁸.

Journalists and activists threatened with jail time for doing their job

Article 129 of the Criminal Code of Kazakhstan defines "defamation" as "intentional dissemination of false information that serves to discredit the integrity and dignity of another person or tarnish their reputation". According to the International Foundation for Protection of Freedom of Speech "Adil Soz", ***in the case of Musagali Duambekov we are not dealing with intentional or predetermined lies, since when Duambekov published his information, he provided sources as well. Specifically, Duambekov founded his investigation on the following sources:***

- information on the illicit nature of the brickworks' operations received from the district architecture and construction office, local authorities and tax inspection authorities;
- information concerning non-payment of salaries received from Alibek Iskakov and other workers;
- information concerning the beating of Alibek Iskakov, received from his father, Ersen Iskakov. When he met with Duambekov, Alibek himself corroborated the fact that he had been beaten.

⁴ Musagali Duambekov received a document from the ministry of justice that corroborates the fact that the founder and manager of the enterprise is Aygul Mukasheva. And Alibek Iskakov (without his knowledge) was named the manager of "Astana Dar-Stroy" factory. <http://insiderman.kz/?p=1973>

⁵ Ersen Iskakov, Alibek's father, claims that this information was written by the factory guard acting on orders from the Mukashev family - http://www.blogs.e.gov.kz/ru/blogs/kassymov_k/questions/142179

⁶ <http://www.kursiv.kz/news/details/vlast/Kirpichnaya-korrupciya/>

⁷ Defendants in this case were Aygul's father, Bakhyt Mukashev, and her brother, Salamat Mukashev.

⁸ In case of Alibek Iskakov, the criminal proceedings against him were dropped due to lack of evidence.

Musagali Duambekov refuses to admit he is guilty of defamation. He told us that he was ready to retract some of his words about enslavement, abduction and battery as “strong literary expressions”. Duambekov offered this as gesture of reconciliation, however, the Mukashev family rejected it. The civil activist thinks that the court trial has proven the veracity of the facts he published⁹.

*Also in his conversation with the Open Dialog Foundation **Musagali Duambekov asserted his suspicion that the criminal proceedings against him might have been orchestrated because of his work as a civil activist and fighter against corruption.*** According to his words, the case might have been ordered by the prosecutor’s office as Talgat Mukashev, the brother of the brickworks manager, Aysel Mukasheva, is a prosecutor with the special environmental unit of the Karaganda district¹⁰. Apart from that, Duambekov has also announced that the Mukashev family tried to “intimidate” the Iskakov family a number of times, using the names of their friends - influential officials.

International and Kazakh human rights organisations (Human Rights Watch¹¹, Article 19¹², Adil Soz, Kazakhstan International Bureau for Human Rights of and others¹³) have expressed their criticism of the defamation article in Kazakhstan’s criminal code and the introduction of an even stricter punishment many times. On July 3, 2014, President Nazarbayev signed the new Criminal Code. This new code, along with up to 3 years of imprisonment, also introduced higher fines for defamation (up to EUR 17900). **According to human rights organisations, there are 20 to 30 court cases each year concerning defamation charges.** Just in the period between 2001 and 2012, the International Foundation for Protection of Freedom of Speech “Adil Soz” recorded 65 criminal proceedings on defamation charges, 16 out of which ended with conviction, out of those, 3 resulted in sentences of imprisonment¹⁴.

Additionally, the Kazakh prosecutor’s office supported the introduction of a “dissemination of hearsay” article into the new Criminal Code, liability under which may lead to a sentence of up to 12 years’ imprisonment. The new article will be applied *“when false rumours are spread, resulting in a violation of social order and security”*. The authorities are also suggesting that persons who *“cause property damage as a result of dissemination of false information even if there is no evidence of theft”*¹⁵ should be brought to criminal liability **These norms are dangerous to all journalists and civil activists who conduct investigations that are critical of the authorities, especially relating to corruption.**

In January 2014, a coalition of Kazakhstan’s NGOs, “Article 20”¹⁶, proposed that the defamation article should be removed from the Criminal Code. The idea of criminal liability for defamation contravenes OSCE and UN standards, as well as Article 19 of the International Covenant on Civil and Political Rights. Kazakh civil rights organisations say that defamation suits should be tried within the framework of the Civil Code.

The Open Dialog Foundation urges the authorities of Kazakhstan to assure impartiality in the case of Duambekov’s cassation appeal, and also to establish the legitimacy of his initial conviction. The Open Dialog Foundation is appealing to the Kazakh authorities to provide for an impartial hearing of Musagali Duambekov’s appeal against the court’s guilty verdict in his defamation case, and to establish the legitimacy of his conviction. We think it is necessary to thoroughly verify Duambekov’s claims concerning the business operations led by the Mukashev family, which could be linked to

⁹ <http://rus.azattyq.org/content/musagali-duambekov/25383290.html>

¹⁰ <http://krg.prokuror.kz/rus/sub/spp/kontakt-naya-informaciya-8>

¹¹ <http://www.hrw.org/news/2013/09/16/kazakhstan-letter-prosecutor-general-regarding-proposed-amendments-criminal-code>

¹² <http://www.article19.org/data/files/medialibrary/37124/Brief-Draft-Criminal-Code.pdf>

¹³ http://www.bureau.kz/data.php?page=&n_id=7151&l=ru

¹⁴ <http://en.odfoundation.eu/a/3420,report-independent-and-opposition-media-in-kazakhstan-are-on-the-brink-of-annihilation>

¹⁵ <http://en.odfoundation.eu/a/3420,report-independent-and-opposition-media-in-kazakhstan-are-on-the-brink-of-annihilation>

¹⁶ The coalition was formed by Kazakh NGOs: “Adil Arka”, “Adil Soz”, “Batys-info”, “Internews Kazakhstan”, Kazakhstan International Bureau for Human Rights, “MediaNet”, “Minber”, National Association of Television and Radio Broadcasters of Kazakhstan, North-Kazakhstan Legal Media Centre, Kazakhstan Journalists Union, “Tilshi”, “Human Rights Charter”. - <http://www.adilsoz.kz/wp-content/uploads/2014/02/Predlozhenia-20-BUP-v-proekt-UK-RK.pdf>

corruption schemes. It is in the best interest of Kazakhstan to promote civil anti-corruption initiatives, notions of the society's control over authorities and respect for the law.

According to the Universal Periodical Review on human rights, in 2010 Kazakhstan adopted a number of recommendations for reviewing criminal liability for defamation. Specifically, Kazakhstan received a recommendation from Finland: "23. to explore the possibility of decriminalising defamation and damage to the integrity and dignity of government officials, and abolish criminal liability for defamation"¹⁷. The Kazakh government's 2011-2014 plan to carry out the recommendations given by UN members included an item concerning an interdepartmental committee to review the issue of shifting defamation from the realm of criminal liability in to the domain of civil liability¹⁸.

We are appealing to competent authorities of the Republic of Kazakhstan to support and insist on meeting the demands to cease pressure and persecution against journalists and civil activists; to guarantee them the right to their profession, the right to freedom of expression and dissemination of information in accordance with the International Covenant on Civil and Political Rights, OSCE Universal Declaration of Human Rights and human dimension commitments.

We are also urging governments of democratic states to pay attention to Kazakhstan's non-compliance with recommendations included in the Universal Periodic Review and to demand from Kazakhstan's authorities the actual implementation of international commitments, especially the commitment to review the criminalisation of defamation.

You can support our appeals and send your inquiries to:

- President of Kazakhstan Nursultan Nazarbayev - President's Administration, the "Akorda" building, Left Bank of the Isham River, 010000, Astana, Kazakhstan, fax +7 7172 72 05 16;
- Human Rights Ombudsman of Kazakhstan, Askar Shakirov – 010000, Astana, Left Bank of the Isham River, Ministry House, entrance 15; e-mail: ombudsman-kz@mail.ru, fax: +7 7172 740548;
- Minister of Internal Affairs of the Republic of Kazakhstan, Kalmukhanbet Kassymov - 010000, Astana, 1 Tauelsizdik Ave., tel: +7 7172 72 24 93, +7 7172 71-51-89, e-mail: oraz-n@mvd.kz;
- General Prosecutor of the Republic of Kazakhstan, Askhat Daulbayev - 010000, Astana, Ministry House, entrance 2, 8 Orynborg St., tel: +7 7172 71-26-20, +7 7172 71-28-68;
- Minister of Foreign Affairs of the Republic of Kazakhstan, Erlan Idrisov - 010000, Astana, Left Bank of the Isham River, 31 Kunayeva St., tel: +7 (7172) 72-05-18, +7 (7172) 72-05-16, e-mail: midrk@mfa.kz;

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¹⁷ <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KZSession7.aspx>

¹⁸ <http://www.adilet.gov.kz/ru/node/30634>