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KAZAKHSTAN: SEARCHES OF INDEPENDENT JOURNALISTS' PREMISES AND CRIMINAL PROSECUTIONS FOR 'SPREADING FALSE INFORMATION'

On 18 December 2015, police raided the editorial office of the online portal 'Nakanune.kz' as well as apartments of the journalists: Gyuzyal Baidalinova, Yulia Kozlova and Rafael Balgin. The journalists may face charges of 'spreading false information'. They may face a fine of 38,000 euros or be sentenced to between 3 and 7 years' imprisonment. Also, during the search of the apartment of the journalist Kozlova, carried out in the absence of Kozlova and her counsel, the police reportedly 'found' drugs.

The initiation of the criminal prosecution of the journalists may be a reaction of the authorities to the publishing by the 'Respublika' portal of disclosed correspondence of senior officials of Kazakhstan. The 'KazakhLeaks' materials confirm the scale of the use of tools of corruption for the prosecution of the opposition and civil society, and may thwart the plans of the Kazakh authorities regarding the extradition of opposition leader Mukhtar Ablyazov and his associates.

On 3 December, 2015, the Department of Internal Affairs of Almaty launched an investigation into the criminal case initiated under Art. 274, section 3 of the Criminal Code ('spreading false information'). According to Investigator Alexey Chapurin, in the period between 29 April 2014 and 5 December 2014, on the websites of the 'Respublika' and 'Nakanune.kz', *"a group of persons, acting in collusion... spread false information, creating a risk of public disorder and causing major damage to JSC Kazkommertsbank in the amount of 144,235,090 tenge"* (approx. 393,800 euros). The investigators stated: *"the mastermind behind the publications has been identified"*, yet they opted not to disclose the person's identity.¹

Previously, on 19 June, 2015, in a civil case, a Kazakh court ordered the editor of 'Nakanune.kz' Gyuzal Baidalinova to pay 'Kazkommertsbank' the amount of 20 million tenge (approx. 61,000 euros) in 'compensation for damage caused to its business reputation'. The court ordered the removal of the article 'New Pas in Kazkom's Marlezonk Ballet', which reported on possible violations connected to the financing of the Bank's projects, from the website. Still, in the article, **journalists merely expressed assumptions and suggested that law enforcement agencies took steps to verify the information provided.**² The court refused to sanction a motion for linguistic expertise to be carried out. The decision led to repeated protests by international human rights organisations and the OSCE.³

As it transpired, the imposition of the crushing penalty via a civil lawsuit did not stop the authorities as they subsequently initiated a criminal case. In the criminal proceedings, the amount of 'damage caused to the business reputation' increased 6-fold. It was stated in the criminal case that the journalists of the 'Respublika' and 'Nakanune.kz', in particular, Gyuzyal Baidalinova, Yulia Kozlova and Rafael Balgin *"may have been complicit to the publishing of these articles"*.

¹ <http://tengrinews.kz/internet/politsiya-almaty-ustanovila-zakazchika-zavedomo-lojnyih-285924/>

² <http://www.adilsoz.kz/news/show/id/1809>

³ <https://www.hrw.org/news/2015/09/01/dispatches-hard-times-kazakhstans-media> ; <http://www.osce.org/fom/185401>

During the search of the 'Nakanune.kz' editorial office, the police did not allow anyone inside but Oksana Makushina as human rights defenders and journalists were refused entry. The results of the search have yet to be announced. There is no detailed information about the search of Rafael Balgin's apartment. As for the search of Gyuzyal Baidalinova's apartment, it has been confirmed that police seized computers and phones belonging to Baidalinova, her lawyer and her relatives. Police officers, however, failed to draw up a report including a description of the seized items.⁴ Following her interrogation, Baidalinova was allowed to leave the police station.

The search of Yulia Kozlova's apartment commenced at a time when Kozlova herself and her lawyer were not present. **In their absence, the police 'discovered' and 'seized' an unknown substance: 'weed', allegedly found under the kitchen sink.**⁵ Without hesitation, prior to any scientific analysis having been carried out, the police officers reported that this was a controlled substance – Counsel Ayman Umarova told the Foundation. Yulia Kozlova believes that the drugs were planted by the police officers.⁶ Currently, Yulia Kozlova is being interrogated at the police station and is awaiting the results of the analysis of the 'discovered' substance.

'Nakanune.kz' employs former journalists of the 'Golos Respubliki' ['The Voice of the Republic'] newspaper, which was banned by a Kazakh court, having been deemed 'extremist' (the ruling was reached in December 2012 on the basis of a verdict against the political prisoner Vladimir Kozlov). Yulia Kozlova, along with her counsel, has visited Vladimir Kozlov in his prison colony on a number of occasions whilst covering the political prisoner's case.

Journalists of the 'Nakanune.kz' maintain contact with the editor of the 'Respublika' portal, Irina Petrushova. **'Respublika' issued a series of analyses based on the correspondence of senior officials of Kazakhstan published online.** The disclosed materials, known as 'KazakhLeaks', confirmed that had Kazakhstan coordinated Ukrainian and Russian investigative bodies in the case of the opposition politician Mukhtar Ablyazov, and paid huge fees to lobbyists. On 16 December, 2015, 'Respublika' published the correspondence along with the information that, following the purchase of 'BTA Bank', Kazkommertsbank remunerated foreign lawyers for creating a negative image of Ablyazov.⁷ According to Petrushova, **this very publication could have become a trigger for the initiation of the criminal case and for the searches.**

A London Court refused to extradite Ablyazov's associate, Igor Kononko, to Ukraine, citing the 'KazakhLeaks' materials. On 18 December, 2015, a Lithuanian court released on bail Ablyazov's relative, Syrym Shalabayev. Extradition requests will be considered after a decision regarding his asylum application has been issued.

Today's incident is another attempt by Kazakhstan to exploit every opportunity in its bid to silence critical journalists. **Kazakhstan systematically rejects the recommendations of the UN and EU regarding the abolition of criminal charges for 'defamation' and 'spreading false information'. Still, the number of journalists prosecuted under these articles continues to rise.** New bans and suspensions on the circulations of inconvenient media outlets have been recorded in Kazakhstan. Presently, several journalists, human rights defenders and activists are facing criminal charge in relation to their social network posts.⁸

On the eve of the visit of Vice-President of the European Commission Federica Mogherini to Kazakhstan, the Open Dialog Foundation hereby urges the EU to take a principled stance: the signing of an enhanced

⁴ <http://www.respublika-kaz.info/news/politics/45129/>

⁵ <https://www.facebook.com/photo.php?fbid=1052982531419759&set=a.345937208790965.101516.100001240674075&type=3&theater>

⁶ According to journalist Irina Petrova, previously, Yulia Kozlova's sister, Elena fell foul of the law due to her problems with drugs. Therefore, now, the police are able to exert pressure on Elena in order to obtain false testimony against the journalist.

⁷ <http://www.respublika-kaz.info/news/politics/45076/>

⁸ <http://en.odfoundation.eu/a/7073.kazakhstan-rejects-statements-of-the-un-eu-and-osce-on-violations-of-human-rights>

Partnership and Cooperation Agreement with Kazakhstan should be conditional on the implementation by Kazakhstan of EU recommendations regarding the protection of freedom of speech. **Kazakhstan should immediately close the criminal cases against journalists, cease carrying raids on offices of media outlets, stop impeding the work of journalists and amend legislation in order to exclude the possibility of the closure of independent media outlets and of the criminal prosecution of journalists.**

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