



Warsaw, 21 November, 2014

**Kazakhstan misinformed UN member states  
during the consideration of the Universal Periodic Review**

**Within the framework of the Universal Periodic Review, the United Nations states pointed to Kazakhstan's failure to fulfill previous recommendations, as well as the deterioration of the situation with regards to freedom of speech, assembly and religion. However, representatives of Kazakhstan deny these assertions and continue to argue that the country's legislation and the authorities' policy fully comply with the obligations assumed by Kazakhstan and international human rights treaties. The lack of response to the recommendations of the UN states and the open provision of disinformation to international institutions can be regarded as a show of disrespect by Kazakhstan for the international mechanisms for the protection of human rights.**

On 30 October, 2014, within the framework of the 20th session of the Universal Periodic Review<sup>1</sup> (UPR), a session on human rights in Kazakhstan was held. The previous UPR on Kazakhstan was held in February 2010. Representatives of many countries, including *the Czech Republic, Finland, the Netherlands and Norway*, pointed to the fact that **Kazakhstan had not fulfilled many important recommendations it had adopted at the previous UPR.**<sup>2</sup> Presented below are the problems with human rights in Kazakhstan, as cited by delegates from different countries.

**1. Violations of the freedom of peaceful assembly and association**

Violations were reported by *the Czech Republic, Costa Rica, Estonia, Finland, Germany, Japan, Norway, Slovenia, Sweden, Switzerland, Great Britain, USA, Belgium and others*. The representative of the General Prosecutor's Office, Kanat Seytgaparov noted that the public authorities 'much more leniently' assess actions of participants of assembly compared with the provisions of the law. He stated that the law on peaceful assembly, adopted in 1995, is outdated in certain respects, but Kazakhstan had '*repeatedly stressed*' the need to improve it.

It should be noted that Kazakh legislation prohibits informal associations and regards organising and participating in an illegal gathering to be a criminal offence. Strict regulation and legislative restrictions make it impossible to hold spontaneous actions. Activists and organisers of protests are frequently subjected to detention, arrest and even fines for taking part in small or one-person pickets. For example, in March 2014, in Astana, Kazakh police violently dispersed a demonstration against the forced evictions of residents from their apartments and pushed a few dozen women and children who participated in the rally into a police bus.<sup>3</sup>

**2. Violations of religious freedom**

Excessive restrictions on freedom of religion, especially in the case of 'non-traditional' religious associations, were pointed out by *Estonia, Germany, Ireland, Italy, the Netherlands, Great Britain, USA,*

<sup>1</sup> UPR (Universal Periodic Review) - a mechanism for reviewing the implementation of human rights within the UN Council on Human Rights. Every four years, each State submits a national report on the measures taken to improve human rights; subsequently, other states make comments, give advice and ask questions. Three states, selected by lot, prepare a final set of recommendations to the State under review.

: <http://www.ohchr.org/RU/HRBodies/UPR/Pages/BasicFacts.aspx>

<sup>2</sup> <http://webtv.un.org/meetings-events/human-rights-council/watch/kazakhstan-20th-session-of-universal-periodic-review/3866878627001> ;

<http://www.upr-info.org/en/review/Kazakhstan>

<sup>3</sup> <https://www.youtube.com/watch?v=Jpe7GGIErhE>

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Canada, Mexico, and others. Kazakhstan's representative Marat Azilkanov enunciated that the state 'does not interfere in the activities of religious associations', including the issue of their registration, and that it 'does not divide the community into traditional and non-traditional' elements. However, in December 2012, the President of Kazakhstan, in his address to the nation, stated that "it is necessary to strictly suppress the activities of non-traditional sects and suspicious pseudo-religious movements".<sup>4</sup>

The law on religious activity established mandatory registration of religious groups and missionaries, a strict order of registration, the status of religious organisations; it introduced a mandatory inspection of all religious literature and increased fines for violations of religious law. In practice, it is the 'non-traditional' religious communities which have not been re-registered, as it is harder for those groups to meet the stringent requirements of the legislation. Followers of minority religions are regularly subjected to arrest and fines.<sup>5</sup>

### 3. The use of torture and ill-treatment

The need to address **the issue of torture** in Kazakhstan was put forward by *France, Germany, Italy, Liechtenstein, Montenegro, Great Britain, Uruguay and others*. The representative of Kazakhstan's Prosecutor's Office Kanat Seytgaparov stated in this regard that Kazakhstan has introduced a national preventive mechanism, and stressed as follows: "Certainly, information obtained with the use of torture is not recognised as evidence and has no legal significance".

However, in reality, the courts in Kazakhstan often ignore defendants' statements regarding torture, as did the courts of all levels in relation to the convicted oil workers in Zhanaozen. Furthermore, the procedure of the National Preventive Mechanism is not sufficiently effective and supports strong state centralisation. Participants of the preventive mechanism are overly dependent on the decisions and actions of the Ombudsman. The representatives of *Germany and Great Britain* recommended that Kazakhstan ensures the independence of the Ombudsman.

The number of open criminal cases regarding torture is ten times less than the number of allegations of torture. Prison sentences for convicts who were found guilty of torture are relatively lenient.<sup>6</sup> In recent years, in Kazakhstan, the number of cases of self-mutilation amongst prisoners: protests against brutal prison conditions and abuse, has significantly increased. On 21 October, 2014, a Kazakh court refused to comply with the decision of the UN Committee against Torture in respect of Oleg Yevloyev, a victim of torture.<sup>7</sup>

At the same time, the head of the Kazakh Ombudsman's office Vyacheslav Kalyuzhnyi, stated: "We believe that Kazakhstan has fully implemented the recommendations of the UPR and established an effective and independent mechanism in the fight against torture."

### 4. Restrictions on freedom of expression, independence of the media, the safety of journalists and human rights defenders.

This problem was pointed out by delegates of *the Czech Republic, Costa Rica, USA, Great Britain, Italy, France and others*. The representative of *Sweden* recommended that Kazakhstan ceases its **closures and bans on opposition media and Internet sources**, and *Austria* called for **the immediate release of lawyer**

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<sup>4</sup> [http://www.akorda.kz/ru/page/page\\_poslanie-prezidenta-respubliki-kazakhstan-lidera-natsii-nursultana-nazarbaeva-narodu-kazakhstana](http://www.akorda.kz/ru/page/page_poslanie-prezidenta-respubliki-kazakhstan-lidera-natsii-nursultana-nazarbaeva-narodu-kazakhstana)

<sup>5</sup> [http://www.forum18.org/archive.php?article\\_id=1939](http://www.forum18.org/archive.php?article_id=1939)

<sup>6</sup> In 2013, 31 persons were convicted, 3 of them were sentenced to up to 1 year in prison, 22 people - from 1 year to 3 years in prison, 5 people - from 3 to 5 years in prison, and 1 person was imposed a fine. - [http://www.bureau.kz/data.php?n\\_id=6911&l=ru](http://www.bureau.kz/data.php?n_id=6911&l=ru)

<sup>7</sup> [http://www.bureau.kz/data.php?n\\_id=7570&l=ru](http://www.bureau.kz/data.php?n_id=7570&l=ru)

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**Zinaida Muhortova, who was subjected to compulsory psychiatric treatment.**<sup>8</sup> Representatives of the Kazakh delegation noted that the information space is being monitored and *"if the media spreads information which violates Kazakh legislation, the competent authority addresses the court for appropriate action"*.

In recent years, the Kazakh authorities have further tightened the control of information space and public opinion. The mechanism of banning or suspending inconvenient media is carried out through trials which are merely a formality and are conducted in accordance with the same scheme; they include gross violations of the principles of a fair trial.

In 2012, Kazakhstan's courts banned the activities of the 34 most influential independent media outlets on the basis of the politically motivated sentence handed down to the oppositionist Vladimir Kozlov. The media outlets were accused of "inciting social discord". Some time later, the authorities began to suspend the activities of smaller (in terms of the size of circulation) independent media outlets for minor technical violations.<sup>9</sup> In addition, On 23 April, 2014, the President signed off amendments to the law 'On Communications', which allows the prosecutor to suspend the operation of social networks and online resources without trial, if they are used for 'criminal purposes' such as violation of the law on elections, calls for mass illegal protests, etc.<sup>10</sup>

## 5. Increasing of the pressure on human rights in the new criminal law

The new criminal legislation has been criticised by representatives of *Portugal, the Czech Republic, Brazil and others*. In particular:

- *Great Britain* pointed out the need for **redistribution of the positions of defender and prosecutor** in the Criminal Procedure Code. Kazakhstan's lawyers say that prosecutors have broad powers while the rights of lawyers are limited.
- The Czech Republic recommended that **Articles 400 and 403 of the new Penal Code**, which can be used to limit the freedoms of speech and assembly, should be revised. In particular, Article 400 in the new version also includes responsibility for *"assisting in the organisation or holding"* of illegal activities, which permits arrest even for exchanging information or preparation in respect of such a meeting. Therefore, the words uttered by the representative of the Kazakhstan's Prosecutor's Office, Kanat Seytgaparov, who stated that Article 400 *"narrows the responsibility compared to the previous criminal code"*, are untrue. The official also stated that Kazakhstan *'grants an opportunity'* to all international independent observers to visit activists and human rights defenders in prisons. Still, this year, Isabel Santos and representatives of the PEN-club were forbidden from visiting political prisoners Roza Tuletayeva and Aron Atabek, respectively.
- *Switzerland* criticised **Article 404 of the new Criminal Code** of the Republic of Kazakhstan "Creation, management and participation in the activities of illegal public and other associations" for ambiguous wordings which can serve for arbitrary restrictions on the activities of human rights defenders. Criminal laws contain a discriminatory definition of the responsibility of certain groups: members of the "social and religious associations." Therefore, the assurance given by the delegation of Kazakhstan that the authorities base their opinions on the "equality before the law" principle, regardless of occupation or profession, is unreliable.

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<sup>8</sup> <http://en.odfoundation.eu/a/4323,punitive-psychiatry-in-kazakhstan-human-rights-activist-zinaida-mukhortova-forcibly-placed-in-lunatic-asylum-for-the-fourth-time>

<sup>9</sup> <http://en.odfoundation.eu/a/3420,report-independent-and-opposition-media-in-kazakhstan-are-on-the-brink-of-annihilation>

<sup>10</sup> [http://online.zakon.kz/Document/?doc\\_id=31539059#sub\\_id=411](http://online.zakon.kz/Document/?doc_id=31539059#sub_id=411)

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- The delegates of different countries, including the Czech Republic, the USA, Great Britain and Spain, appealed to Kazakhstan with calls **to decriminalise libel**. Authorities increased fines for libel 6-fold; at the same time, a sentence of imprisonment can be applied. Representatives of Kazakhstan stated that they did not consider the criminalisation of libel to be a violation of international obligations, as allegations of libel are based on particular statements made by a citizen and are not tied to any professional activity.

- **The need to abolish the death penalty in Kazakhstan** was highlighted by *France, Germany, Italy, Montenegro, Portugal, Slovenia and Sweden*. Despite the current moratorium, the new Penal Code has increased the number of crimes for which the death penalty can be applied. The Deputy Minister of Justice for Kazakhstan, Elvira Azimova stated that Kazakhstan *"fulfills all obligations under the non-execution of the death penalty."*

*Slovenia, Belgium, Norway and Great Britain* recommended a review of the contents of the articles of the Criminal Code which restrict freedom of assembly, freedom of speech and freedom of religion and to verify their compliance with international standards. The representative of Kazakhstan, Alzhan Nurbekov replied that all the innovations in criminal proceedings are "in line with international standards and obligations of Kazakhstan". Unfortunately, **numerous appeals** addressed by European Parliament, the OSCE, Human Rights Watch, Amnesty International, Reporters Without Borders to the Kazakh authorities urging them to revise the reform of criminal law in accordance with the requirements of human rights, **were unheeded**.

**The Secretary of the Commission on Human Rights at the President of Kazakhstan, Tastemir Abishev, expressed gratitude for the "positive assessment of the first national action plan on human rights in Kazakhstan", and Deputy Minister of Justice, Elvira Azimova stated that Kazakhstan is implementing recommendations to improve the protection of human rights in a "coherent and balanced manner". Kazakhstan allows itself to subjectively interpret and ignore the recommendations of the international community. Kazakhstan's assessments regarding the fulfillment of their guarantees are not consistent with assessments of other states of the United Nations. Such a situation may be indicative of serious problems in communication between Kazakhstan and the EU, the OSCE and the UN on the issues of human rights.**

It is noteworthy that such countries as *North Korea, Mauritania, Morocco, Russia, Azerbaijan, Belarus* and some other countries with authoritarian regimes noted positive changes in Kazakhstan and approved the Kazakh governmental programmes. This year, new recommendations for Kazakhstan will be prepared by the Republic of South Africa, Kuwait and Germany.<sup>11</sup> At the same time, at the UPR meeting, *Kuwait* predominantly assessed the actions of Kazakhstan in the field of human rights to be positive. We hereby urge the UN Working Group to properly assess, in its recommendations, Kazakhstan's failure to fulfill the previous UPR. The international community must demonstrate to the Kazakh authorities a clear position on the impermissibility of ignoring further commitments in the sphere of human rights.

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<sup>11</sup> [http://www.ohchr.org/Documents/HRBodies/UPR/TROIKAS\\_UPR\\_20.doc](http://www.ohchr.org/Documents/HRBodies/UPR/TROIKAS_UPR_20.doc)