



DESTINATION  
**JUSTICE**



OPEN DIALOG

## NGO REPORT

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### IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS in KAZAKHSTAN

117<sup>th</sup> Session of the Human Rights Committee  
(22 and 23 June 2016)

## EXECUTIVE SUMMARY

1. This report, submitted on the occasion of the 117<sup>th</sup> Session of the Human Rights Committee (CCPR), was prepared by Destination Justice and the Open Dialog Foundation. Destination Justice provided professional legal research and drafting and technical support; the Open Dialog Foundation gathered and analysed the information included in this report. Primarily, the information comes from first hand and in-country experience.

2. The report covers the status of the Government's efforts in implementing the provisions of the International Covenant on Civil and Political Rights (ICCPR), with particular reference to Article 19(2) (freedom of expression and information). This report: i) recalls the exchanges that occurred between the CCPR and the Government of Kazakhstan since 2009, in chronological order; ii) provides information and comments on the replies to the list of issues submitted in 2016 and iii) suggests recommendations in advance of the 117<sup>th</sup> session of the CCPR in regard to freedom of expression.

**3. Destination Justice and the Open Dialog Foundation sustain that the Government of Kazakhstan unjustifiably restricts the right to freedom of expression in the country and therefore goes beyond the exceptions permitted within the meaning of Article 19(3) of the ICCPR.**

4. **Destination Justice (DJ)** is a community committed to ending injustice. Structured as a non-profit, Destination Justice's work focuses on strengthening human rights and the rule of law through activities such as the provision of legal services to vulnerable populations and partner organisations. Established in France in 2011, Destination Justice opened an office in Cambodia soon thereafter and formally registered as a local NGO in 2013. In 2015, Destination Justice launched its European headquarters in Annemasse (France), near Geneva. Destination Justice operates from the ground up, with the goal of achieving sustainable and holistic change. Destination Justice's work is structured into three interrelated flagship programs: the community engagement program JusticeMatters, the legal information dissemination program LawForAll, and the legal support and advocacy program JusticeForAll. In addition, Destination Justice's RainbowJustice project provides capacity-building support to Cambodia's LGBT community.

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5. **The Open Dialog Foundation (ODF)** was established in Poland in 2009, on the initiative of Lyudmyla Kozlovska, its current President. At present, the Foundation has permanent representations in Kyiv (Ukraine) and Brussels (Belgium). The headquarters of the Foundation is located in the city of Warsaw (Poland); its statutory objectives include protection of human rights, democracy and the rule of law in the post-Soviet area. Particular attention is given to the region's largest countries: Russia, Kazakhstan and Ukraine. The Foundation pursues its goals through the organisation of observation missions, including monitoring of the human rights situation in the post-Soviet area. In particular, the Foundation has wide expertise on democratic transformations as well as the rights of political refugees and political prisoners. The Foundation distributes its reports among EU institutions, the OSCE, the PACE, the UN, various human rights organisations, foreign ministries and parliaments of the EU countries and the media. The Foundation carries out its activities with parliamentarians and officials of Ukraine and the EU.

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## ARTICLE 19 - FREEDOM OF OPINION AND FREEDOM OF EXPRESSION

6. Article 19 of the ICCPR provides:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

## KAZAKHSTAN'S REPORTING TO UN MECHANISMS ON ARTICLE 19(2) OF THE ICCPR

### 1. *Initial evaluation before the Human Rights Committee (CCPR), 2009 - 2013*

7. On 27 July 2009, the Government of Kazakhstan submitted its initial report to the CCPR for review.<sup>1</sup> After consideration of the state's report, the CCPR expressed concerns at the Government's failure to respect the right to freedom of expression protected under Article 19(2) of the ICCPR. The CCPR adopted the following concluding observations in this regard:

The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise the right to freedom of expression in accordance with the Covenant. In this regard, the State party **should review its legislation on defamation and insults to ensure that it fully complies with the provisions of the Covenant**. Furthermore, the State party **should desist from using its law on defamation solely for purposes of harassing or intimidating individuals, journalists and human rights defenders**. In this regard, any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant.<sup>2</sup>

8. On 27 July 2012, the Government replied to the CCPR's recommendation in regard to Article 19(2) of the ICCPR.<sup>3</sup> In particular, it stated that the offences of defamation and insult - included in the Criminal Code in 2011 - "are intended to protect the honour and dignity of all" from illegal actions. The Government also noted that the penalty of up to six months' imprisonment for public defamation was abrogated in 2011. Lastly, the Government reported that reforms were adopted to strengthen freedom of expression in the country. On 30 April 2013, the CCPR

<sup>1</sup> Consideration of reports submitted by States parties under article 40 of the Covenant, Initial Report (Kazakhstan), CCPR/C/KAZ/1, 27 July 2009 (published 5 October 2009). For specific reference to Article 19(2) of the ICCPR, see paras. 129-133.

<sup>2</sup> Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee (Kazakhstan), CCPR/C/KAZ/CO/1, 19 August 2011, para. 25 (emphasises added).

<sup>3</sup> Consideration of reports submitted by States parties under article 40 of the Covenant, Additional information received from Kazakhstan on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/KAZ/CO/1) (Kazakhstan), CCPR/C/KAZ/CO/1/Add.1, 27 July 2012 (published 24 September 2012), paras. 283-293.

reiterated its 2011 recommendations because it considered that the actions taken by the Government of Kazakhstan did not implement the previous recommendations.<sup>4</sup>

## 2. *Second periodic report before the CCPR, 2014 - ongoing*

9. On 11 December 2014, the Government of Kazakhstan submitted its second periodic report to the CCPR for review.<sup>5</sup> The Government pointed out that in 2012 the vast majority (84 percent) of media outlets in the country were non-state run. A new act, aimed at upholding freedom of expression, was also adopted. However, the Government indicated that to ensure “information security” in the country, the suspension or termination of websites of defamatory nature may be required.

10. On 4 December 2015, the CCPR listed a number of issues in relation to the Government’s implementation of the right to freedom of expression.<sup>6</sup> In particular, the CCPR requested that the Government of Kazakhstan report on the steps taken to amend legal provisions used to curtail the right to freedom of expression and respond to allegations of harassment, intimidation, threats, and arbitrary detention of individuals exercising their right under Article 19(2) of the ICCPR.

11. The Government replied to the CCPR’s list of issues, summarised as follows:<sup>7</sup>

Criminal liability for defamation is necessary to strike a balance between private and public interests so as to protect the rights and interests of individuals. As to the offence of insult, criminalisation of such act is mitigated by a requirement that victims must produce evidence in a court and that termination of criminal proceedings is permitted with agreement of the parties.

Criminal liability was also introduced in May 2014 for dissemination of knowingly “false information” leading to endangering the public disorder or substantially harming the rights and legitimate interests of citizens or organisations or legally protected interests of society or the state.

In addition, security concerns justify the suspension of operation of networks and means of communication without a court order. The same actions may be required to disrupt illegitimate mass (public) events.

Lastly, the 2012 decision to shutdown “several newspapers” - 34 influential non-state media outlets - was justified on the grounds that the publications include offences such as: the incitement of public discord, social hatred or violent overthrow of the authorities, the spreading of propaganda, agitation and promotion of war, and the undermining of the state security.

**12. DJ and the ODF note that the Government of Kazakhstan did not provide any reply on the steps taken to amend the overly broad and vague definitions of offences contained in the national legal provisions used to curtail the right to freedom of expression.**

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<sup>4</sup> Report of the Special Rapporteur for follow-up on concluding observations of the Human Rights Committee (107th session, 11–28 March 2013), CCPR/C/107/2, 30 April 2013, paras.

<sup>5</sup> Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties due in 2014 (Kazakhstan), CCPR/C/KAZ/2, 11 December 2014 (published 12 February 2015). For specific reference to Article 19(2) of the ICCPR, see paras. 253-256.

<sup>6</sup> List of issues in relation to the second periodic report of Kazakhstan, CCPR/C/KAZ/Q/2, 4 December 2015, paras. 23-24.

<sup>7</sup> The summary is based on an unofficial - in-house - translation of the Russian report submitted by Kazakhstan. See, List of issues in relation to the second periodic report of Kazakhstan, Replies of Kazakhstan to the list of issues, CCPR/C/KAZ/Q/2/Add.1, 24 March 2016 (published 4 April 2016), para. 24.

### 3. *Evaluations by the Human Rights Council (HRC), 2010 and 2014*

13. The many concerns expressed and recommendations made at the two sessions of the UN Universal Periodic Review (UPR) confirm that the Government of Kazakhstan does not respect the right to freedom of expression pursuant to Article 19(2) of the ICCPR.

14. At the first UPR session held in 2010,<sup>8</sup> various delegations expressed concerns about freedom of expression in Kazakhstan and a total of 16 recommendations were made in this regard. All but one recommendation were accepted. The Government of Kazakhstan rejected the Spanish delegation's recommendation to amend the Law on Information and Communication Networks so as to prevent the application of criminal legislation concerning defamation from being extended to Internet content.<sup>9</sup>

15. Four years later, at the second UPR session,<sup>10</sup> a total of 18 recommendations were made to the Government of Kazakhstan on their implementation of the right to freedom of expression in the country. The Government rejected nine recommendations, all directly relating to national laws adopted to restrict individuals' exercise of their right to freedom of expression.<sup>11</sup>

### **OBSERVATIONS ON KAZAKHSTAN'S IMPLEMENTATION OF ARTICLE 19(2) OF THE ICCPR**

16. In its General Comment 34, the CCPR held that states parties are required to guarantee the right to freedom of expression under Article 19(2) of the ICCPR. Freedom of expression is defined as follows:

[Freedom of expression includes] the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.<sup>12</sup>

17. Article 19(3) of the ICCPR provides for a list of permitted exceptions, when the right to freedom of expression can be restricted in certain circumstances. Such exceptions must be "provided by law" and be "necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals." In this regard, the CCPR noted in its General Comment 34:

[W]hen a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed<sup>13</sup> ... [They] must conform to the strict tests of necessity and proportionality<sup>14</sup> ... If, with regard to a particular State party, the

<sup>8</sup> Report of the Working Group on the Universal Periodic Review (Kazakhstan), A/HRC/14/10, 23 March 2010.

<sup>9</sup> Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Report of the Working Group on the Universal Periodic Review (Kazakhstan), A/HRC/14/10/Add.1, 1 June 2010.

<sup>10</sup> Report of the Working Group on the Universal Periodic Review (Kazakhstan), A/HRC/28/10, 10 December 2014.

<sup>11</sup> Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Report of the Working Group on the Universal Periodic Review (Kazakhstan), A/HRC/28/10/Add.1, 13 March 2015.

<sup>12</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 11.

<sup>13</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 21.

<sup>14</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 22.

Committee has to consider whether a particular restriction is imposed by law, the State party should provide details of the law and of actions that fall within the scope of the law.<sup>15</sup>

**18. DJ and the ODF are of the view that the implementation of Article 19(2) of the ICCPR in Kazakhstan does not fulfill the objectives noted above and that the Government of Kazakhstan goes beyond the exceptions permitted within the meaning of Article 19(3) of the ICCPR, unjustifiably restricting the right to freedom of expression in the country.**

19. Indeed, in addition to pressing criminal and administrative charges, the Government of Kazakhstan exerts influence on the media through a variety of means including; repressive laws, harassment of professionals working in the field of information, licensing regulations, and Internet restrictions. It must also be noted that, while the Government claims that a majority of media outlets are privately owned, members of the President's family and other powerful groups in fact control or influence them.<sup>16</sup>

20. The observations below are aimed at providing precise and up to date information on Kazakhstan's implementation of Article 19(2) of the ICCPR both in law and in practice.<sup>17</sup> For the sake of clarity, this sections follows the general structure of the list of issues prepared by the CCPR to be discussed at its 117<sup>th</sup> session.<sup>18</sup>

### ***1. Kazakhstan's legislation in the field of press and information restricts the right to freedom of expression as expressed in Article 19(2) of the ICCPR***

21. Since the CCPR first reviewed the implementation of Article 19(2) of the ICCPR in Kazakhstan, the Government of Kazakhstan has adopted or revised a number of legal provisions relating to the right to freedom of expression; most of them effectively worsen a situation that was already critical for professionals in the field of information.

#### ***1.1. The Criminal Code***

22. The new Criminal Code of Kazakhstan was adopted in 2014 and entered into force in 2015.<sup>19</sup> Many provisions continue to restrict the freedom of expression in the country and remain problematic due to the vagueness of their wording and the way they are used - or rather misused - by the Kazakh authorities and judicial system:

**Article 130** criminalises **defamation**, including with the use of mass media or information and communication networks. Pursuant to this provision, defamation is constituted when the reputation, honor, or dignity of the victim is discredited or damaged. Defamation is punished by heavy fines and imprisonment, as well as by correctional work in the event defamation concerns allegations of corruption or other "especially grave crimes."

**Article 131** criminalises the offence of **insult**, including with the use of mass media or information and communication networks. Insult is constituted by the act of **humiliating one's honor and dignity**. Insult is punished by heavy fines, correctional work, and community services.

<sup>15</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 27.

<sup>16</sup> Freedom House, *Freedom in the World* (Kazakhstan), 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/kazakhstan> (last visited 22 April 2016).

<sup>17</sup> As such, all cases mentioned in this report are the product of ODF's close monitoring of the application of the freedom of expression in the Republic of Kazakhstan.

<sup>18</sup> List of issues in relation to the second periodic report of Kazakhstan, CCPR/C/KAZ/Q/2, 4 December 2015, paras. 23-24.

<sup>19</sup> Republic of Kazakhstan, The Criminal Code of the Republic of Kazakhstan, (as amended 24 November 2015). An unofficial translation of the text of the Code is available at: <http://adilet.zan.kz/eng/docs/K1400000226> (last visited 10 May 2016).

Pursuant to **Article 147**, the illegal **accumulation of information on a person's private life**, composing their private or family secrecy, without their consent is punished by a fine, community services, or correctional work for a period up to seven years.

**Article 174** provides for a penalty up to 20-year imprisonment for **incitement to social, national, tribal, racial, class or religious hatred** through the use of mass media or information and communication networks, in particular when committed by the leader of a public association.

Under **Article 180**, a sentence of up to 10-years imprisonment may be pronounced for acts of propaganda or public calls for the **violation of the unitarity and integrity** of the Republic of Kazakhstan, of the **inviolability and inalienability of its territory**, or for the **disintegration of the state**, committed through the use of mass media or information and communication networks.

**Article 274** criminalises the **dissemination of knowingly "false information"** violating the public order or harming the interests of individuals, organisations, society, or the state. When such an action is the result of a publication through a mass media or information and communication networks, Article 274 provides for a sentence up to five-years imprisonment and heavy fines. If the information inflicted "heavy damages," a prison sentence of up to seven years may be pronounced.

Pursuant to **Articles 373, 375, 376, and 378**, the offence of **insult, committed against any representative of the authority** (including; the First President of Kazakhstan, the President of Kazakhstan, deputies, or any other representative of the public authority) is more heavily punished and penalties include imprisonment up to five years.

**Article 403** criminalises the **"illegal interference of members of public associations in the activities of the state bodies"** substantially harming the rights and legal interests of citizens, organisations, society, or the state. Such an offence, committed by the leader of a public association, is punished by heavy fines, community services, and up to 90-days imprisonment, and a prohibition to engage in "determined" activities for up to one year.

**23. DJ and the ODF sustain that these are politicised and vague criminal charges that can be widely and subjectively interpreted by the Government in order to oppress opposition activists, journalists, and politicians. This gives room to abuses and disproportionate restrictions of the right to freedom of expression to all in Kazakhstan.**

24. Between January and November 2015 alone, 88 criminal cases were initiated in Kazakhstan on charges of "inciting social, national, tribal, racial, class or religious hatred" (Article 174 of the Criminal Code)<sup>20</sup>. A further 67 criminal cases on charges of "spreading false information" (Article 274 of the Criminal Code) were initiated. At least one case was reported to be based on charges of calling for propaganda (Article 180 of the Criminal Code). Below is a selection of the most recent and exemplary cases:

On 13 May 2014, **Musagali Duambekov** - the president of the Kazakh foundation "National Anti-corruption Committee" - was sentenced to one year of restriction of liberty for "defamation" after the publication of a series of journalistic investigations.

On 29 October 2015, **Amangeldy Batyrbekov** - journalist and activist from the South Kazakhstan Province and member of the Union of Journalists - was convicted for defamation and sentenced to imprisonment. He has since been released due to procedural violations in his case.

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<sup>20</sup> The Open Dialog Foundation, *Kazakhstan: The oppression of journalists and bloggers*, 22 January 2016, available at <http://en.odfoundation.eu/a/7228.kazakhstan-the-oppression-of-journalists-and-bloggers1> (last visited 24 May 2016).

Also in October 2015, **Elena Semenova** - a human rights activist who regularly covers cases of torture taking place in the prisons of the Pavlodar Province - was subjected to questioning and intimidation by the authorities. She was eventually suspected of 'spreading false information' via social networks following her reports on Facebook that the Prosecutor's Office systematically ignores the complaints of torture filed by prisoners.

On 18 November 2015, **Igor Sychev** - a resident of the city of Ridder - was sentenced to five years in prison for "publicly calling for a violation of the integrity of Kazakhstan" after he posted a survey on the prospects for the region's integration with Russia via the social network *vKontakte*.

On 3 December 2015, **Gyuzyal Baydalinova** - journalist of the online portal Nakanune.kz and former journalist of the opposition portal Respublika - was charged under Art. 274, section 3 of the CC ("spreading false information"), following an article revealing possible violations linked to the financing of the Kazkommertsbank JSC. According to investigators, "a group of persons, by prior collusion (...) spread false information [on the websites of Respublika and Nakanune.kz], thus creating a risk of public disorder and causing major damage to the Kazkommertsbank JSC in the amount of 144,235,090 tenge" (approximately 393,800 euros). The indictment specified that Baydalinova "may have been complicit in publishing of these articles." Gyuzyal Baydalinova has been in pre-trial detention since December 2015 and on 23 May 2016 she was sentenced to 1 year and 6 months in prison.

On 21 January 2016, **Bolatbek Blyalov** a human rights and environmental activist was sentenced to 3 years restriction of liberty, having been convicted of "inciting social and national hatred" through the media and social networks after he strongly criticised Russia's foreign policy in Ukraine.

On 22 January, 2016, **Ermeke Narymbaev and Serikzhan Mambetalin**, two Almaty activists, were sentenced to two and three years of imprisonment, respectively, on the basis that they incited "ethnic hatred" by "prior collusion" when they posted an excerpt of a belles-lettres book critical of the Kazakh nation on Facebook. Both activists were released from prison following the release of their "statement of repentance". They are, however, prohibited from engaging in public activities for several years.

Others recently convicted for "inciting ethnic hatred" via Facebook include: **Tatiana Shevtsova-Valova** - an Almaty resident - sentenced to four years in prison on 31 March 2015 (her sentence was suspended conditionally); **Saken Baykenov** - an environmental activist from Astana - sentenced to two years of restriction of liberty on 13 April 2015; **Mukhtar Suleymenov** - a resident of the West Kazakhstan Province - and **Alkhanashvili** - a resident of Petropavlovsk - both sentenced to three years in prison in July 2015; and **Ermeke Taychibekov** - a blogger from Zhambyl Province - sentenced to four years in prison on 11 December 2015.

Recently, the Government of Kazakhstan also ignored demands from the European Union and the United Nations to release the opposition politician **Vladimir Kozlov**, who is serving a seven-year and six-month sentence for "inciting social discord", "calls for the overthrow of the constitutional order" and "the establishment of a criminal organisation." Indeed, the authorities refused the release the prisoner on parole and continue to keep him under strict conditions of detention.<sup>21</sup>

In connection to the Kozlov case, the Kazakh authorities are currently seeking the extradition of **Mukhtar Ablyazov**, an opposition politician who was granted asylum in the European Union. In 2009, following a

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<sup>21</sup> The Open Dialog Foundation, *Kazakhstan rejects statements of the UN, EU and OSCE on violations of human rights*, 30 november 2015, available at <http://en.odfoundation.eu/a/7073.kazakhstan-rejects-statements-of-the-un-eu-and-osce-on-violations-of-human-rights> (last visited 24 May 2015).



conflict with President Nazarbayev, Ablyazov was accused of ‘embezzlement of Kazakh BTA Bank funds’. Besides, Mukhtar Ablyazov is accused of having instructed Vladimir Kozlov to encourage the Zhanaozen oil workers on strike to “violently oppose the authorities”. He was charged with the offences of “inciting social hatred”, “preparing an act of terrorism” and “preparing a crime against the peace and security of mankind.”<sup>22</sup>

## 1.2. The Civil Code

25. Similarly, the Civil Code of Kazakhstan, as amended in 2012,<sup>23</sup> contains an overbroad definition of “defamation” and allows for punishment even in cases when the defamatory statements are true. In particular:

**Article 141** gives a right to compensation for moral damages to victims of violations of personal non-property rights.

**Article 143** provides for two cumulative remedies in case the information **damages the honor, dignity, or business reputation** of the victim; that is the refutation of the information and a request for compensation.

**Article 951** provides that moral damage shall be compensated in all cases, “regardless of the fault of the causer”, for the harm caused by the spread of information **discrediting the honor, dignity, and business reputation** of the victim.

26. On the basis of the provisions above, a great number of cases were brought before civil courts. From January to March 2016 alone, *Adil Soz* reported that 23 civil suits were brought against newspapers.<sup>24</sup> Notable examples include:

On 30 January 2014, army reserve colonel Kuspabay Zhampeisov sued the **newspaper *Tribuna*** for 3 million tenge (approximately 11,800 euros) for alleged misinterpretation of his quote. The newspaper wrote a retraction but the case went ahead and, on 18 March 2014, a court sentenced the *Tribuna* newspaper to a fine of 2 million tenge (approximately 7,900 euros).

On 19 June 2015, following an article revealing possible violations linked to the financing of the Kazkommertsbank JSC published on *Nakanune.kz*, a Kazakh civil court ordered the journalist and owner of the website **Gyuzyal Baydalinova** to pay 20,000,000 tenge (approximately 61,000 euros) in “compensation for the damage caused to the bank’s business reputation.” The court also ordered the removal of the article from the *Nakanune.kz*. This was done despite the author of the article only expressing assumptions and noting that law enforcement agencies were taking steps aimed at verifying the information provided.

On 8 September 2015, the Bostandykskiy District Court of Almaty ordered the **chief editor of magazine *ADAM***, Ayana Sharipbayeva, to pay the amount of 50 million tenge (approximately 126,300 euros) “in compensation for the moral damages caused” to the Deputy Chairman of the National Security Committee Kabdulkarim Abdikazimov. This was despite the magazine publishing a retraction and apology due to information from the journalists’ sources being unreliable.

On 13 November 2015, an Almaty civil court ordered the **journalists of *Zhas Alash*** - a Kazakh-language

<sup>22</sup> The Open Dialog Foundation, *Kazakhstan: The oppression of journalists and bloggers*, 22 January 2016, available at <http://en.odfoundation.eu/a/7228.kazakhstan-the-oppression-of-journalists-and-bloggers1> (last visited 24 May 2016).

<sup>23</sup> Republic of Kazakhstan, The Civil Code of the Republic of Kazakhstan, (as amended 27 April 2012). An unofficial translation of the text of the Code is available at: <http://adilet.zan.kz/eng/docs/K940001000> (last visited 10 May 2016).

<sup>24</sup> Adil Soz, *Statistic of violations of rights to freedom of expression in Kazakhstan January- March, 2016*, 5 May 2016, <http://www.adilsoz.kz/politcor/show/id/180> (last visited 13 May 2016).

opposition newspaper - to pay 40 million tenge (approximately 101,000 euros) in “moral compensation” to the head of the Tibetan medicine centre Zhasan Zekeyuly who sued for defamation. The media watchdog *Adil Soz* pointed out that the article was however based on official documents and the unreliability of the data used has not been proven in the court proceedings.<sup>25</sup>

### 1.3. The Code of Administrative Offences

27. A revised version of the Code of Administrative Offences was adopted in 2014.<sup>26</sup> The Code contains key articles restricting the right to freedom of expression by imposing strict rules and severe penalties for violating them. In particular:

**Article 451** provides a range of administrative sanctions for **failing to abide with re-registration rules** in case of change of, *inter alia*, owner, language of publication, or publication name. Sanctions include the suspension of the broadcast for up to three months and heavy fines. Failure to abide by registration rules for the second time in the year following the administrative sanction entails the termination of the mass media license.

**Article 453** provides for the imposition of administrative liability for storing or disseminating information in the territory of Kazakhstan that contains details and materials oriented to, *inter alia*, **incitement of the social, race, national, religious, class, and tribal hatred**.

**Article 456** considers illegal the **refusal to provide output information**,<sup>27</sup> or the provision of incomplete or deliberately false output information, or the failure to place output information on the Internet, **or the placement of incomplete or knowingly false output information**.

28. In practice, alleged violations of the strict administrative rules governing the publication of newspapers often lead to the suspension - if not the termination - of the newspaper concerned and thus constitute a *de facto* censorship. These sanctions have regularly been applied - sometimes for trivial reasons - both before and after the Code of Administrative Offences was amended in 2014:<sup>28</sup>

On 23 September 2013, the Almaty court suspended the release of the **newspaper *Tribuna*** for three months because the newspaper’s owner, Asem Almukhametkyzy, had failed to inform the Akimat city administration of the dates of his 11-day long holidays.

On 24 September 2013, the Court of Almaty, for the third time in the year, suspended the release of the **newspaper *Pravda Kazakhstana*** for failing to specify the publisher’s imprint. Earlier in 2013, the release of the newspaper had been temporarily suspended by court order for three months due to a violation relating to the periodicity of the publication.

On 24 February 2014, the Bostandikskiy District Court in Almaty decided to halt the release of the **newspaper *Pravdivaya Gazeta*** because the media had repeatedly violated administrative rules, yet had failed to rectify them.

<sup>25</sup> Adil Soz, *The court decided to recover from the newspaper "Jas Alash" 40 million tenge*, 13 November 2015, available at <http://www.adilsoz.kz/news/show/id/1899> (last visited 24 May 2016).

<sup>26</sup> Republic of Kazakhstan, *The Code on Administrative Offences of the Republic of Kazakhstan*, (as amended 5 July 2014). An unofficial translation of the text of the Code is available at: <http://adilet.zan.kz/eng/docs/K140000235> (last visited 10 May 2016).

<sup>27</sup> Translation from Russian; the terms refer to the publisher's imprint.

<sup>28</sup> The Open Dialog Foundation, *Report: Independent and opposition media in Kazakhstan are on the brink of annihilation*, 24 April 2014, available at <http://en.odfoundation.eu/a/7228.kazakhstan-the-oppression-of-journalists-and-bloggers1> (last visited 24 May 2016).

On 27 August 2015, following the publication of an article in Russian only (instead of both Russian and Kazakh as was written on the newspaper's application for re-registration), all publications from the **newspaper ADAM** were suspended for three months for violating Article 451 of the Code of Administrative Offences. On 22 October 2015, the **newspaper ADAM Bol** - created to replace its predecessor, *ADAM* - was permanently banned, officially for the same reason, and ordered to delete its Facebook account.

#### 1.4. Law on Communications

29. In 2014, the 2004 Law on Communications was amended to provide the Prosecutor General or Deputy Prosecutor General with the power to block access to the Internet and cellular phone connection in the country in a matter of hours and **without obtaining a warrant from the court.**<sup>29</sup> Such measures may be taken when the means of communication are used with the intent “to harm the interests of an individual, society or the state, or to disseminate information violating the Election Law of Kazakhstan, or containing calls to extremist or terrorist activities, riots, or participation in mass (public) activities carried out in violation of the established order.” This includes: internet websites, social networks, internet connections and mobile devices connections.

**30. DJ and the ODF note that the websites listed below were blocked following the completion of proceedings. However, the 2014 amendment constitutes a dangerous tool which contravenes Article 19(2) of the ICCPR and amounts to censorship.**

From September 2015 to February 2016, access to the platforms *Ratel.kz* and *Zonakz.net* was blocked without official explanation. Alternate domains used in an attempt to restore service were also blocked.

Similarly, some of the news articles published on *Radio Azattyk*, *Forbes.kz*, *Eurasianet.org*, *Today.kz*, *Lenta.ru*, *Vlast.kz*, *Clashdaily.com*, *Kloop.kg*, *Daily Mail*, *Kommersant.ru*, *Uralskaya Nedelya*, to name only a few, were not available on the territory of Kazakhstan.

31. In November 2015, a further amendment to the 2004 Law on Communications was made and entered into force on 1 January 2016. The 2015 amendment introduces a “**national security certificate**” to be installed on all internet-connected devices.<sup>30</sup> Once users install the certificate, its issuer - the state-owned Internet service provider, Kazakhtelecom JSC - will have access to all their HTTPS-encrypted Internet traffic. Kazakhtelecom JSC stated that the national security certificate aims at securing the “protection of Kazakhstan users” who have access to encrypted content from “foreign Internet resources.”<sup>31</sup>

32. While the practical consequences of such a provision are yet to be seen, DJ and ODF note that the national security certificate constitutes a follow-up to the ban of the Internet resource *anonymizers*, aimed at allowing individuals to access blocked websites. In effect, the national security certificate enables the Government of Kazakhstan to monitor all web traffic. This means that Internet users will not know if the contents of the websites they access to have been tampered with by the Government of Kazakhstan.

33. Additionally, the national security certificate could be used to intercept or preemptively - and with no judicial review - block information and websites deemed to be contrary to the scope of the legislation in force.

<sup>29</sup> Republic of Kazakhstan, The Law on Communications (as amended 3 July 2014), Art. 41-1. An unofficial translation of the text of the Law is available at: <http://adilet.zan.kz/eng/docs/Z040000567> (last visited 10 May 2016).

<sup>30</sup> Republic of Kazakhstan, The Law on Communications (as amended 3 July 2014), Art. 2, subparagraph 36-1.

<sup>31</sup> Kazakhtelecom JSC, *Kazakhtelecom JSC notifies on introduction of National security certificate from 1 January 2016*, 30 November 2015, <https://web.archive.org/web/20151202203337/http://telecom.kz/en/news/view/18729> (last visited 9 May 2016).

## 1.5. Law on Mass Media

34. In November 2015, together with many other pieces of legislation, as reported in the following sub-section, the 1999 Law on Mass Media was amended and the new provisions entered into force on 1 January 2016.<sup>32</sup> The law provides, *inter alia*, that i) the infrastructure of “online press” should be situated exclusively on the territory of Kazakhstan; and ii) the Ministry of Investments and Development is empowered to suspend “illegal information” on the Internet.

## 1.6. Other relevant legislation

35. Various other decrees and laws restricting the freedom of expression in Kazakhstan have been adopted in the country. For example:

On 28 January 2014, a **Governmental Decree** approving rules for **additional measures and temporary restrictions during states of emergency** was adopted and came into effect on 12 April 2014.<sup>33</sup> Pursuant to the Decree, during a state of emergency, the content of materials in print media, radio, and television programmes, should be approved by the local Commandant’s Office, otherwise the media’s activities will be suspended or banned.

On 3 November 2014, the 1999 **Law on Countering Terrorism** was amended.<sup>34</sup> Similar to their power to suspend access to Internet resources under the Law on Communications, authorities may also block or shut down media outlets distributing materials recognised by courts as being of “terrorist” or “extremist” nature.

On 24 November 2015, the **Law “On Amendments and Supplements into Some Legislative Acts of the Republic of Kazakhstan of Informatization”** was adopted.<sup>35</sup> The law entered into force on 1 January 2016 - although some provisions will come into effect only from 1 January 2017. Aside from the amendments to the Law on Mass Media already listed above, foreign TV and radio channels face a more complicated procedure for obtaining broadcast authorisations in Kazakhstan and their productions are now monitored by Kazakh authorities.

On 29 December 2015, the President signed an **Order “On Measures For Further Advance of Code of Ethics of Civil Servants of the Republic of Kazakhstan”**.<sup>36</sup> Following the Order, now the Code provides that if a public servant is publicly (and/or in the media) “groundlessly accused of corruption” he/she is allowed to refute these charges within the following month. Practically, it means that the public servant has another additional possibility to start a proceeding for defamation, insult and/or dissemination of knowingly “false information” against the author of the publication/information.

On 26 January 2016, the Minister for Investment signed an Order approving **rules on monitoring the**

<sup>32</sup> Republic of Kazakhstan, Law “On Amendments and Supplements into Some Legislative Acts of the Republic of Kazakhstan on Informatization” (24 November 2015), available at [http://online.zakon.kz/Document/?doc\\_id=32910969#pos=1:-263](http://online.zakon.kz/Document/?doc_id=32910969#pos=1:-263) (last visited 24 May 2016).

<sup>33</sup> Republic of Kazakhstan, Decree “Approving Rules for the Application of Additional Measures and Temporary Restrictions during a State of Emergency” (28 January 2014), available at <http://adilet.zan.kz/rus/docs/P1400000035> (last visited 24 May 2016).

<sup>34</sup> Republic of Kazakhstan, Law on Countering Terrorism (as amended 3 November 2014), available at [http://online.zakon.kz/Document/?doc\\_id=1013957](http://online.zakon.kz/Document/?doc_id=1013957) (last visited 24 May 2016).

<sup>35</sup> Republic of Kazakhstan, Law “On Amendments and Supplements into Some Legislative Acts of the Republic of Kazakhstan on Informatization”, 24 November 2015, available at [http://online.zakon.kz/Document/?doc\\_id=32910969#pos=1:-263](http://online.zakon.kz/Document/?doc_id=32910969#pos=1:-263) (last visited 24 May 2016).

<sup>36</sup> Republic of Kazakhstan, President Order “On Measures For Further Advance of Code of Ethics of Civil Servants of the Republic of Kazakhstan” (29 December 2015), available at [http://online.zakon.kz/Document/?doc\\_id=38035182](http://online.zakon.kz/Document/?doc_id=38035182) (last visited 24 May 2016).

**media** aimed at analysing media articles' and TV spots' compliance with Kazakh legislation<sup>37</sup>.

## 2. *Kazakhstan's restrictions to the right of freedom of expression exceed the scope of the permissible exceptions of Article 19(3) of the ICCPR*

36. In its replies to the CCPR's list of issues, the Government of Kazakhstan submitted that the country's numerous restrictions on the right to freedom of expression - such as the shut down of newspapers and the suspension of means of communications - were justified by security concerns. According to the Government, actions were justified because the newspapers had incited public discord, social hatred or violent overthrow of the authorities, spread propaganda, agitation and the promotion war, and undermined the state security.

**37. However, a review of the cases enumerated in this report, as well as other various cases, demonstrates that the Government's actions are rarely - if not never - justified.**

### 2.1. *The blocking of social media, blogs, and other Internet-based resources*

38. Most of the social media, blogs, and other Internet-based resources were blocked or shut down by the Government of Kazakhstan for reasons contradicting the meaning of Article 19(3) of the ICCPR.

39. A striking example is the blocking - whether temporary or permanent - of numerous online newspapers following articles criticising the Government of Kazakhstan or its policies. In this regard, DJ and the ODF recall that the CCPR explicitly noted that restrictions pursuant to Article 19(3) do not allow the prohibition of "a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government."<sup>38</sup>

**40. While the mechanism of suspending or closing media outlets may seem, in appearance, justified by legal provisions mainly carried out through litigation, a close look at the facts preceding such actions makes it clear that they are in fact unjustified.** Below is a list of websites - all independently owned - that were either blocked or shut down on fabricated allegations:

In December 2011, the **newspaper *Respublika*** reported on the details of the Zhanaozen tragedy - which involved the shooting of oil workers on strike by the authorities - the violations committed during the proceedings against the strikers, and revealing episodes of torture perpetrated against them. In December 2012, the Government of Kazakhstan banned the media outlet - along with 34 others, such as the ***Vzglyad* newspaper**, the **online video portal *Stan.tv***, the **TV channel K + -** - on the basis that they were allegedly propagating extremism, inciting unrest, and urging the overthrow of the government.

On 2 April 2014, the distribution of the **newspaper *Assandi Times*** was suspended and all existing issues of the newspaper were removed. On 21 April, *Assandi Times* was shut down for allegedly being linked to the previously banned newspaper *Respublika*.

<sup>37</sup> Republic of Kazakhstan, Minister for Investment's Order "On Rules on Monitoring the Media" (26 January 2016), [http://online.zakon.kz/Document/?doc\\_id=39131896#pos=19;-277](http://online.zakon.kz/Document/?doc_id=39131896#pos=19;-277) (last visited 24 May 2016).

Also accessible at

<http://www.adilsoz.kz/upload/%D0%9C%D0%98%D0%A0%20%D0%A0%D0%9A%20-%20%D0%BE%D1%82%D0%B2.%201.jpg>,

<http://www.adilsoz.kz/upload/%D0%9C%D0%98%D0%A0%20%D0%A0%D0%9A%20-%20%D0%BE%D1%82%D0%B2.%202.jpg>,

<http://www.adilsoz.kz/upload/%D0%9C%D0%98%D0%A0%20%D0%A0%D0%9A%20-%20%D0%BE%D1%82%D0%B2.%203.jpg> (last visited 24 May 2016).

<sup>38</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 43.

In August 2014, the **journal** *ADAM Bol* published an interview with an activist who mentioned supporting the Ukrainian government against Russian-backed separatist forces. Following legal proceedings on the basis that the article contained “attributes of war propaganda and agitation”, *ADAM Bol* was stripped of its media license. In October 2015, *ADAM Bol* was shut down on the grounds that it incited participation in a foreign war.

In April 2015, the **newspaper** *Uralskaya Nedelya* published an article criticising the Government of Kazakhstan’s plan to join the Russia-led Eurasian Economic Union. Other websites and blogs, such as *Radio Azattyk*, *Forbes.kz*, *Eurasianet.org*, *Today.kz*, *Lenta.ru*, *Vlast.kz*, *Clashdaily.com*, *Kloop.kg*, *Daily Mail*, *Kommersant.ru*, published similar articles on the same topic. Access to all websites was temporarily blocked shortly after.

41. The restrictions applied to the freedom of expression - while provided for by law - are neither necessary, nor proportionate. According to Freedom House, an international NGO monitoring the right to freedom of expression, the list of banned websites has continually expanded since 2012 to include hundreds of sites.<sup>39</sup> Given the great number of cases involving the blocking or shut down of independent newspapers following articles critical of the Government of Kazakhstan, it cannot be argued that the blocking of social media, blogs, and other Internet-based resources is in accordance with Articles 19(2) and 19(3) of the ICCPR.

## 2.2. Harassment and intimidation and other interference with professional journalistic activity

42. In its General Comment 34, the CCPR noted that a “free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.”<sup>40</sup> The CCPR further added that those exercising their right to freedom of expression should be protected against attacks aimed at silencing them, including against arbitrary arrest, torture, threats to life and killing.<sup>41</sup>

43. In practice, and despite the Constitutional prohibition of censorship,<sup>42</sup> **the legislation in Kazakhstan is such that professionals in the field of press and information are neither free nor uncensored. When they are not censored by the law, they apply self-censorship due to the chilling effect the legislation - and its practical application - inevitably generates.** They also face intimidation and threats on the part of public authorities, as described below.

Following the ban on *Respublika* and 23 of its affiliate online information sources in December 2012, the common editorial team was also prohibited from exercising any journalistic activity in any other newspaper. On 10 July 2013, Oksana Makushina and Sergey Zelepukhin, former staff *Respublika*, also stated that they had received threats from individuals who presented themselves as security force workers and were ordered to cease conducting their professional activities.<sup>43</sup>

Also in 2012, human rights defender **Vadin Kuramshin**, who exposed numerous instances of ill-treatment in Kazakhstan’s prisons, is currently serving a 12-year sentence in a penal colony after he was convicted of “extortion.”

<sup>39</sup> Freedom House, *Freedom in the World* (Kazakhstan), 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/kazakhstan> (last visited 22 April 2016).

<sup>40</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 13.

<sup>41</sup> General comment No. 34 (freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 23.

<sup>42</sup> Republic of Kazakhstan, Constitution of the Republic of Kazakhstan of 1995, Art. 20(1). An unofficial translation of the text of the Constitution is available at: <http://adilet.zan.kz/eng/docs/K950001000> (last visited 10 May 2016).

<sup>43</sup> The Open Dialog Foundation, *Report: Independent and opposition media in Kazakhstan are on the brink of annihilation*, available at <http://en.odfoundation.eu/a/3420.report-independent-and-opposition-media-in-kazakhstan-are-on-the-brink-of-annihilation> (last visited 24 May 2016).

Human rights activist and lawyer, **Zinaida Mukhortova**, was repeatedly subjected to forced psychiatric treatment. She was kept in various psychiatric hospitals for over 12 months. She was released in December 2014, following repeated appeals from the United Nations and human rights organisations.

In December 2014, journalists **Aidos and Natalia Sadykov** were forced to flee the country fearing imprisonment in relation to charges of defamation and were granted political asylum in Ukraine. Their escape follows allegations of threats against the couple for conducting journalistic activities, including reports in relation to the social problems of oil workers in Aktobe Province and corruption scandals.

On 30 October 2015, **Yaroslav Golyshkin** - a journalist for the newspaper *Versya* - was sentenced to eight years in prison for “extortion of money” from the Akim of Pavlodar Province. The NGO *Reporters Without Borders* stated that his case was a political one and that the charges were fabricated.

On 27 April 2016, **Elena Koemets** - correspondent for the newspaper *Caravan* - **and other fellow journalists** were prohibited from entering the regional office of the executive power in Almaty with their mobile phones equipped with dictophones. The ban came after an order was signed by public authorities, prohibiting the use of smartphones and tablets in buildings of the state entities on 17 March 2016. In effect, the journalists were prevented from exercising their journalistic activities.<sup>44</sup>

44. Other instances were alleged violations of the strict administrative regulations on the registration of mass media as well as civil lawsuits for defamation amount to extravagant amounts in compensation to the victim, as described above, also contribute to interfering with journalistic activities.

### **2.3. Facebook restrictions linked to the recent Land Code protests**

45. Between April and May 2016 a number of peaceful protests took place in different regions of Kazakhstan (in particular, Atyrau, Aktobe, and Semey); several thousand of people reacted to the proposed changes to the Land Code, which aimed at prolonging the land lease for foreigners from 10 to 25 years.

46 Following the protests, the government suspended the decision to change the Land Code, but activists called for a nationwide peaceful rally to protest against the opacity of the decisions of the authorities on 21 May 2016. To prevent the demonstrations, the authorities used harsh repressive measures. From 16 to 20 May 2016 more than 30 people and various well known civil society activists<sup>45</sup> were arrested. Though the latter did not attend the protests but just expressed their opinions and support to the protesters on Facebook, everyone was charged of having violated the legislation of the Republic of Kazakhstan on the organization and conduct of peaceful assemblies (Article 488 of Administrative code).

47. In this context, and given the widespread scale of the violations to the right to freedom of expression, it cannot be argued that the measures taken by the Government are in accordance with Articles 19(2) and 19(3) of the ICCPR. None of the instances above were justified - let alone necessary or proportionate - to restrict the right to freedom of expression.

## **RECOMMENDATIONS**

48. In light of the above, **Destination Justice and The Open Dialog Foundation suggest the CCPR to recommend the Government of Kazakhstan to:**

<sup>44</sup> <http://www.adilsoz.kz/news/show/id/2016>

<sup>45</sup> Bakhytzhana Toregozhyna; Maks Bokayev; Lukpan Akhmediarov; Bauyrzhan Alipkaliev; Aibolat Bukenov.

1. Immediately cease the practice of intimidating, harassing, arresting, and prosecuting journalists, bloggers and civil society activists for exercising their right to freedom of expression and information.
2. Immediately end the practice of closing, suspending, blocking and obstructing the work of all media outlets.
3. Ensure that effective judicial remedies are in place so as to allow courts to i) review those sentences and penalties that have been imposed on the basis of legislation that is contrary to Article 19 of the ICCPR, ii) provide adequate compensation in the event of miscarriage of justice.
4. Amend the legislation relevant to the field of press and information in accordance with international standards on freedom of expression; including by
  - a. Decriminalising the offences of “defamation” (Articles 130 of the Criminal Code and 143 of the Civil Code) and “dissemination of false information” (Article 274 of the Criminal Code);
  - b. Removing the - overtly political - references to “incitement to social, national, tribal, racial, class or religious hatred” (Articles 174 of the Criminal Code and 453 of the Code of Administrative Offences);
  - c. Repealing the right to compensation to victims of defamation when the information revealed is true (Article 951 of the Civil Code);
  - d. Softening the rules governing the registration of mass media and media or information networks (Article 451 of the Code of Administrative Offences);
  - e. Removing the - overtly political - reference to “violations of the Elections Law of Kazakhstan” (Law on Communication);
  - f. Repealing the amendments allowing the blocking of Internet content in the absence of a court order and introducing the mandatory national security certificate (Articles 41-1 and Article 2, subparagraph 36-1 of the Law on Communication).