
KAZAKHSTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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Political context

Despite legislative reforms initiated in February 2009 regarding political parties, the media, elections and local governments¹, in 2009 Kazakhstan continued not to honour commitments made in 2007, when the future presidency of Kazakhstan at the OSCE was decided for 2010². In terms of political pluralism, while the new electoral law guarantees the representation of at least two political parties in the House of Representatives since it gives seats to the party that arrives in second place, whatever the number of votes received, even if it has not reached the threshold, the rule of 7% of votes needed to sit remains unchanged. Finally, to comply with OSCE standards, the Government should reconsider the constitutional amendment adopted in 2007, allowing the President to run for an unlimited number of terms.

Regarding the Media Act, one of the amendments adopted now exempts radio stations and television channels from the requirement of registering beforehand with the Ministry of Culture. However, this reform is not sufficient to guarantee freedom of the press, as independent journalists remain harassed, attacked and prosecuted. Defamation is indeed still criminalised, media bodies can be closed or suspended by decision of the executive and the independence of the body overseeing the registration of newspapers is not guaranteed.

Moreover, while one can welcome Kazakhstan's ratification of the Convention Against Torture and its Optional Protocol in 2008, the United Nations Special Rapporteur on Torture, Mr. Manfred Nowak, reported on May 13, 2009 during the conclusion of his visit to the country from May 5 to 13, 2009 that torture was still practiced in Kazakh prisons. He also deplored the absence of effective complaint mechanisms for victims

1/ On February 6, 2009, Parliament adopted amendments to the Media Act and the Law on Political Parties. On February 9, Parliament adopted amendments to the Elections Act and the Local Government Act.

2/ During the OSCE Ministerial Council, held in Madrid on November 29, 2007, the Minister of Foreign Affairs Mr. Marat Tazshin said that Kazakhstan would introduce amendments to the Media Act that would reflect the recommendations made by the OSCE and continue to implement ODIHR recommendations relating to the issue of elections and the law on political parties.

of torture³. The European Union and the United States also criticised the lack of initiatives in Kazakhstan for democratisation and human rights⁴.

Therefore, Kazakhstan does not seem ready to assume the presidency of the OSCE and to defend human rights in all the countries of the organisation, and it is feared that Kazakhstan's OSCE presidency will not improve the situation of human rights and its defenders in the country in 2010.

Attacks on freedom of expression and harassment of journalists denouncing human rights abuses

On June 24, 2009, Parliament adopted a law to regulate freedom of expression on the Internet⁵ that considerably reduces the freedom of expression on the web, and that worries both NGOs and the OSCE⁶. Under the new law, all Internet resources are considered "media" in full and are subject to the same criminal, administrative and civil laws as any other media. Pursuant to Article 13 of the Act, the authorities are also entitled to block websites if they report without authorisation on elections, strikes, demonstrations or ethnic issues⁷. This law therefore reinforces censorship and encourages self-censorship, in particular because bloggers can be held criminally responsible for what they write⁸. While it is too early to measure the effects of this law, the effect it may have on the restriction of freedom of expression for human rights defenders is highly worrisome.

Moreover, protests against this law were repeatedly hampered by local authorities on several occasions. For example, on April 25, 2009, six members of the group "For a Free Internet!" tried to take action against the reform called "imprisoned bloggers" at the Intercontinental Hotel in Almaty. Early on in the rally, one of the protesters, Mr. **Aban Abrasilov**, was arrested by the police, surrounded by 16 police officers and then transferred to the Regional Department of Internal Affairs (ROVD). Other protesters decided to continue the demonstration outside of the premises of the Internet provider *Kazakhtelecom*, but they were arrested and detained

3/ See Statement by the United Nations Special Rapporteur on Torture, Mr. Manfred Nowak, May 13, 2009.

4/ See Declarations of the Presidency of the European Union Council and the United States Mission to the OSCE, February 12, 2009.

5/ Law on Introducing Changes and Additions to Legislative Acts on the Issue of Information Networks and Communication.

6/ See Statement of OSCE Representative on Freedom and the Media, Mr. Miklos Haraszti, June 25, 2009.

7/ In Article 13, paragraphs 3 and 4, the new text extends the reasons leading to the suspension of media. Media can be temporarily suspended in case of disruption to the smooth conduct of a peaceful protest or campaign, or in cases of incitement to participation in a strike. The media may be permanently banned for disseminating speeches inciting ethnic hatred and religious. See OSCE Commentary of the Bill.

392 8/ See International Bureau for Human Rights and Rule of Law (IBHRR).

in the premises of ROVD before joining the rally. Bloggers were released the same day, thanks to the intervention by the Presidential Adviser to the Media, who feared that the arrests would cause an international scandal⁹.

The restriction of freedom of the press also resulted in numerous physical attacks against journalists, as well as legal action for defamation. While this affected all opposition journalists, it particularly concerned journalists denouncing human rights abuses and corruption cases, such as the newspaper *Almaty Info* and its Editor, Mr. **Ramazan Esergepov**. On August 8, 2009, the Tribunal No. 2 of Taraz, Khambilsk district, condemned Mr. Esergepov to three years in prison and a two-year ban on his work for “illegal collection of information” and “disclosure of State secrets” under Articles 172.1 and 339.2 of the Criminal Code. Arrested on January 6, 2009 while he was in hospital for a check-up, Mr. Esergepov was prosecuted following the publication on November 20, 2008 of his article entitled “Who is governing our country, the President or the National Committee of Security (KNB)¹⁰?” in *Almaty Info*. The article contained allegations of corruption¹¹. On October 22, 2009, the Regional Court of Khambilsk confirmed the conviction of Mr. Esergepov on appeal¹².

Obstacles to freedom of assembly and criminalisation of protests

The Law on the Organisation and Holding of Peaceful Meetings, Gatherings and Demonstrations contradicts the Kazakh Constitution, which guarantees the right to freedom of assembly, by allowing local authorities to prohibit assemblies “in light of local conditions” (Article 10) or relegate them to peripheral locations¹³. In practice, most of the time the authorities prohibit citizens to unite under various pretexts¹⁴, either directly or by preventing the conduct of peaceful gatherings, including by threatening potential organisers or participants. Petitions and complaints regarding the non-compliance of the right to assembly filed by representa-

9 / See IBHRR, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

10 / The National Security Committee corresponds to intelligence services.

11 / The article reproduced a letter from the Head of the local KNB department of Khambilsk to the President of the KNB, Mr. Amageld Chabdarbaev. The letter referred to the criminal investigation against the company “Taraz” for non-payment of taxes and the fact that the company’s founder, Mr. Sultan Makhmadov, was in contact with members of the administration of President Nursultan Nazarbayev for his influence on preparations.

12 / See IBHRR.

13 / For example, a wasteland in the outskirts of Astana or a park on the outskirts of Almaty.

14 / Applications for assembly are rejected under various pretexts: simultaneous holding of a public event, prohibition to hold a rally near a government building, insufficient time between the date of application and the day of the event (less than ten days). Bans are mostly unmotivated or are issued too late, thus preventing the rally organisers to request a different place and to renew the request.

tives of the opposition and civil society are also almost always rejected by judges¹⁵. Otherwise, on very rare occasions, the judge decides to grant the applicants' request and authorise the rally in a place specially designated for hosting such events, most often on the outskirts of cities. For example, on October 6, 2009, the Kostanaïski municipality prohibited a meeting entitled "The right to a fair trial: the right of everyone" organised by the International Bureau for Human Rights and the Rule of the Law (IBHRRL). The gathering was to be held in silence near Tribunal No. 2 and the Town Hall without impeding traffic, but the city rejected the application on the grounds that the gathering "might interfere with the normal operation of transport", and deemed it possible to organise the assembly at Tselinikov, a place provided for this purpose. IBHRRL's second proposal was also refused on October 7, even though the organisation proposed a new meeting place¹⁶. Similarly, on April 21, 2009, members of the association "Ar-Rukh Kha", which fights against corruption in schools and takes an active part in student movements, were planning to gather with other youth organisations and human rights defenders in Almaty to meet journalists and share their concerns about a bill requiring all students and schoolchildren to comply with inspections for drug testing. An hour before the rally, the Deputy Prosecutor of the Almaty Region, the Deputy Head of the Regional Department of Internal Affairs and the Bostandinski Police Colonel Turispekov Abai appeared and proceeded to the arrest of members of the organisation as well as its President, Ms. **Bakhitjan Toregojina**. According to the police, the arrest was justified by the Internet broadcast of an advertisement calling for a planned rally that same day. The young activists were detained for two hours at the ROVD headquarters¹⁷.

If, despite denials and prohibitions, rallies were held, then the authorities dispersed demonstrators and arrested participants and organisers who were then exposed to convictions. The crackdown on protests mainly concerned "political" gatherings – that is to say, for example, those calling for the President's resignation or the replacement of a mayor, respect for freedom of peaceful assembly or the holding of fair elections, or protesting against the closure of a newspaper – led by civil society organisations and political opposition parties. Convictions varied from a simple warning to a fine or a deprivation of liberty for 15 days. For instance, after the Almaty

15 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

16 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly from September to December 2009*, January 2010.

17 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

municipality refused twice to hold a rally marking the International Day of Journalists scheduled for June 25, 2009, over one hundred people gathered on June 24 near the premises of the national news service to conduct a silent protest action by covering their mouths with white tape and black blindfolds. The Almaty Prosecutor took legal action against participants. On July 17 and 21, 2009, the Almaty Administrative Interregional Court sentenced Mr. **Bolata Abilova**, a leader of the opposition party “Azar”, as well as Ms. **Rizada Jakipbek**, a member of the organisation defending housing rights “El Korgan”, to a fine of 65,000 tenge (about 400 euros) for “organising an illegal gathering”. Similarly, in September 2009, rallies organised each Wednesday in support of Mr. Evgeny Zhovtis¹⁸ were consistently concluded with convictions of participants. Journalists, researchers, advocates and opponents were fined and sometimes arrested. Among them, Mr. **Andrei Sviridov**, a journalist and member of IBHRR, was arrested on September 16, 2009, detained for three hours at the police station, and sentenced to a fine of 12,730 tenge (about 80 euros) by the Administrative Court of Almaty on September 17, 2009 for “violating the law on the organisation and holding of peaceful gatherings, rallies, meetings and demonstrations” (Article 373.1 of the Code of Violations of Administrative Law).

Persecution of defenders of social rights in a context of economic crisis

While the President and local officials have publicly called on the Kazakh people to refrain from conducting protests during the economic crisis¹⁹, the number of protests related to layoffs in companies and problems related to housing rights has risen sharply over the past two years²⁰. Defenders of housing rights were particularly affected by the severe restrictions on freedom of assembly. Not only did they experience difficulties to organise peaceful rallies, but they were also victims of judicial harassment and were arrested and prosecuted for their actions in defence of housing rights. Thus, the President of the movement to defend housing rights and support for labour movements “Talmas”, Mr. **Ainur Kurmanov**, was har-

18 / See below.

19 / A “memorandum” prepared by the presidential administration and supported by local authorities on “understanding, collaboration and conservation of social and political stability in the region” was initiated in February 2009. The signatories pledged not to conduct protest action during a given period. Despite pressure from local authorities, opposition groups refused to sign the memorandum. See IBHRR.

20 / The protests are varied. They sometimes relate to people whose homes have been requisitioned by the State for the development of the Kazakh economy and the “needs of the State” for little or no financial compensation. Tens of thousands of people have lost their homes and 80% of these dwellings have been granted to private companies, close to some officials. Action may also relate individuals who have been deceived by fraudulent construction companies investing money in ghost projects, or persons unable to honour loans incurred during an economic boom, and whose homes were seized. See IBHRR.

assed because of his commitment. Sentenced ten times for having organised and participated in protest actions in 2009²¹, he was attacked and seriously wounded by unidentified persons with iron bars on September 22 in the village of Batir Outegen (not far from Alma-Ata). The attack took place shortly after his organisation supported the labour movement in a manufacturing plant of heavy machinery in Almaty that was recently purchased by the brother and sister-in-law of President Nursultan Nazarbayev. The police opened an investigation, but despite repeated requests by Mr. Kurmanov and Talmas members to question the managers of this company, no steps had been taken in this direction, and no suspect had been identified as of late 2009. Mr. **Ermek Koychinov**, Talmas lawyer, also received telephone threats during the fall of 2009²². The Kazakh State continued to impede not only the actions of Talmas, but also those of other organisations defending housing rights, such as the movement “Kazakhstan 2012, Let the People Have Housing” and the movement “For Decent Housing!”²³. Similarly, the Homeless Soldiers Union (SV BOMJ) was repeatedly denied the right to peaceful gatherings on false grounds. The leader of the movement, Mr. **Daulet Jumabekov**, was tried *in absentia* on November 20, 2009 by the Special Interregional Economic Court of Almaty for “organising an illegal gathering”. He received an administrative warning²⁴. On May 8, 2009, the police arrested Mr. **Imach Mamatraimov**, Ms. Rizada Jakipbek and Mr. **Amirbek Tagusov** for organising a press conference to inform journalists about the situation of a hundred people evicted from a home in Almaty. They were detained at the Regional Department of Internal Affairs for “organising a press conference”. Ms. Rizada Jakipbek was also charged with “unauthorised public use of the anthem of Kazakhstan”²⁵. Released the same day, Ms. Rizada Jakipbek and Mr. Amirbek Tagusov were arrested again on May 12 for trial, without having been summoned by the Special Administrative Court of Almaty, under Article 373.1 of the Code of Administrative Offences for “organising and participating in meetings, rallies and other prohibited public events”. Because of procedural shortcomings, the judge decided to drop proceedings.

21/ Sentences ranged from five to 15 days in prison. See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

22/ See IBHRRL.

23/ For example, on October 18, 2009, the Kazakh security forces tried to prevent the unfolding of a broad national movement of protest for the right to land and housing rights started by the organisation “Kazakhstan 2012” and supported by the organisations “For Decent Housing”, “Let the People Have Housing” and other NGOs. See IBHRRL.

24/ See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

25/ *Idem*.

Judicial harassment of human rights defenders

The severity of the sentence imposed in October 2009 on human rights defender Mr. **Evgeny Zhovtis**, Director of IBHRRL and member of several expert committees to Kazakh authorities and member of the Council of Experts of OSCE ODIHR, as well as the conditions of his trial and detention demonstrate the unwillingness of the authorities to protect those who defend human rights. On October 20, 2009, the Regional Court of Almaty in the city Taldy-Qorghan confirmed on appeal the charges against Mr. Evgeny Zhovtis and sentenced him to four years' imprisonment in a penitentiary colony near the city of Ust Kamenogorsk²⁶ under Article 926 of the Criminal Code – “violation of the Road Code leading to a fatal accident” – for accidentally killing a pedestrian in his car on July 27, 2009. Mr. Zhovtis was sentenced on September 3, 2009 in first instance by the Regional Court of Balkhash. The investigation and two trials were held in violation of the rules of criminal procedure and Mr. Evgeny Zhovtis was denied the right to an effective defence. Indeed, on July 27, 2009, Mr. Zhovtis was first called as a witness in the police investigation, and then his status was changed and he was declared a suspect on July 28, 2009. His lawyer was informed about this only on August 14, 2009, two weeks later, in violation of the law. In addition, the mother of the victim accepted Mr. Zhovtis' apologies. She also signed a statement that requested a stay of prosecution. Under Kazakh law, the charges against Mr. Zhovtis should, therefore, have to be lifted. During the trial, the judge refused to consider arguments by the defence and conclusions by experts that Mr. Zhovtis was sober, had not violated the Road Code at the time of the accident and could not have avoided collision with the pedestrian. It also seems that the verdict had been prepared in advance, since it did not take more than 25 minutes for the judge to write 25 pages of conclusions. In addition, Mr. Zhovtis do not enjoy the conditions of detention normally granted to inmates who committed a crime of negligence (such as a system of semi-freedom, the possibility of long-term visits and appropriate work for wages). Instead, the prison colony where he is located is subject to a very strict regime. As of late 2009, Mr. Zhovtis did not benefit from the medical assistance he needed²⁷. On December 12, 2009, the Almaty Regional Court rejected the request of Mr. Zhovtis' lawyer to conduct a judicial review of the proceedings that led to the conviction of his client²⁸.

26 / In north-east Kazakhstan, 1,000 km from Almaty.

27 / In late 2009, because of his conditions of detention, Mr. Zhovtis, and a large number of other prisoners, were suffering from the flu.

28 / Judicial review is an extraordinary remedy designed to modify the decision if there is evidence that the procedure is illegal, or that the sentence is not proportionate to the severity of the crime.

Urgent Intervention issued by The Observatory in 2009

Name	Violations / Follow-up	Reference	Date of Issuance
Mr. Evgeny Zhovtis	Judicial harassment	Open Letter to the authorities	October 19, 2009