

KAZAKHSTAN 2019

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The rights to freedom of peaceful assembly and association remained restricted. Trade unions and NGOs faced difficulty registering with the authorities. The right to freedom of expression was further restricted under anti-extremism legislation. New cases of torture and other ill-treatment against suspects and prisoners were reported. People with disabilities faced constraints on their rights due to restrictive legislation and lack of access to services.

Background

On 19 March, Nursultan Nazarbayev resigned as President and Kassym-Jomart Tokayev, speaker of the upper house of parliament, took over until elections in June at which he was confirmed in position. The OSCE/ODIHR Election Observation Mission found serious irregularities in the counting of the votes and noted the absence of genuine choice. This was the first ever voluntary resignation by a Central Asian President, however, Nursultan Nazarbayev retained the official title “First President of Kazakhstan” and continued to wield considerable political power, including by retaining his lifetime chairmanship of the Security Council and chairmanship of the governing Nur Otan party. On 20 March, the acting President announced that the capital Astana would be re-named Nur-Sultan in honour of the First President. These unexpected changes triggered an increase in social and political activism which met with repressive measures, and new social protest movements were formed. In an apparent attempt to

ensure closer relations with Kazakhstan's influential neighbours, Kassym-Jomart Tokayev publicly expressed support for Russia's annexation of Crimea and stated that the reports of human rights violations against Muslim ethnic minorities in China were exaggerated.

Freedom of Assembly

The right to freedom of peaceful assembly remained heavily restricted. Permission from local authorities was needed to hold any kind of street protest (including by a single protester) and this was often refused, or only given for an event held in a non-central location. Violation of the procedures for holding public gatherings, was punishable under Article 488 of the Code of Administrative Offences with a fine or detention of up to 15 days, and Article 400 of the Criminal Code which imposed a fine or detention for up to 50 days. On 23 October, parliament passed a law introducing fines or detention of up to 10 days for the parents of minors taking part in unsanctioned meetings.

On 21 April, Asya Tulesova and Beibarys Tolymbekov – along with three friends who filmed their action – were detained shortly after they unfurled a banner during the Almaty marathon which read: “You can’t run away from the truth.” They were held by police for six hours without food or water before being allowed to see their lawyers. Asya Tulesova and Beibarys Tolymbekov were sentenced the same evening in separate hearings to 15 days’ detention for the administrative offence of “carrying out a public action without agreement of permission from the local authorities to express their personal interests”. They were prisoners of conscience. The three friends were fined the equivalent of US\$ 135 each for taking part in an “unauthorized meeting”.

In June, September, October and December there were further demonstrations. On 9 June, thousands of people gathered in major cities calling for a boycott of the elections. At least 1,000 peaceful protestors were detained in Nur-Sultan and at least 500 in Almaty. According to the NGO, Kazakhstan International Bureau for Human Rights and the Rule of Law, people were detained for 10 or more hours in police stations without food or water or the opportunity to inform their relatives about their whereabouts. In most cases, people were not given access to their lawyers. Judges sitting throughout the night in Nur-Sultan and Almaty ruled on whether people had taken part in an “unsanctioned” meeting and handed down fines or custodial sentences of up to 10 days.

On 30 June, for the first time in five years and following 35 arbitrarily rejected applications, activist Alnur Ilyashev was finally able to organise a public protest meeting in Almaty.

Freedom of Association

An NGO or association wishing to function in Kazakhstan must register with the authorities. Leading or participating in an unregistered organization remained an administrative offence.

In June, the Committee on the Application of Standards of the International Labour Organization (ILO) expressed concern about continuing “serious obstacles to the establishment of trade unions without previous authorization in law and in practice and the continued interference with the freedom of association of employers’ organizations.” On 17 July, Erlan Baltabay, leader of the Independent Oil and Energy Workers Union was sentenced to seven years in prison for allegedly misappropriating funds belonging to the arbitrarily closed petro-chemical workers’ union, Dostoiny Trud (Decent Work). On 9 August, he was released from prison on a presidential pardon and his sentence was replaced by a fine. He refused to pay the fine for which, on 16 October, he was sentenced to a five-month prison term.

Feminita, a lesbian, bisexual and queer women’s initiative had been continuously denied registration by the Ministry of Justice. In a decision published on 31 May the Medeuskii District Court in Almaty backed the Ministry in its repeated denial of registration to Feminita.

Organisation of and participation in an organization banned by a court as extremist remained a criminal offence under Article 405 of the Criminal Code. This provision continued to be used against peaceful political dissent. During the year, 21 people were given suspended prison sentences, subject to conditions, and a further 150 were questioned as possible suspects, because of their presumed or actual support for the arbitrarily banned opposition movement, Democratic Choice of Kazakhstan.

Prisoners of Conscience

The authorities continued to use politically motivated prosecutions to punish those with dissenting views. Maks Bokayev continued to serve his five-year prison term, despite his worsening health condition. He had been convicted for his involvement in the organization of peaceful demonstrations and posts on social media, including under Article 174 of the Criminal Code which punishes alleged incitement of social, clan, national, racial or religious discord. This Article continued to be frequently used to silence views critical of, or inconvenient to, the authorities.

On 10 March, Serikzhan Bilash, the leader of the NGO, Atajurt, which exposed human rights violations against ethnic Kazakhs in China, was placed under house arrest. He was charged under Article 174 for his outspoken criticism of human rights violations against Muslim ethnic minorities in China. He was released on 17 August after he agreed to stop campaigning on human rights violations in China, fined the equivalent of US\$300 and placed under travel restrictions for three months.

Torture and other ill-treatment

Impunity for torture and other ill-treatment persisted. There was no independent mechanism to investigate torture in Kazakhstan and no plans to establish one. Torture allegations were usually investigated by the police or, when police officers were allegedly implicated, by the State Anti-Corruption Bureau (former financial police). The Special Prosecutor’s Service of the Prosecutor

General's Office, another possible investigative mechanism, was not authorized to investigate torture under the Criminal Procedure Code unless specifically decreed by the Prosecutor General on a discretionary, case-specific basis. In May, the National Preventative Mechanism reported that in the course of 2018 it had forwarded 176 complaints made that year about torture and other ill-treatment in penitentiary institutions to the General Prosecutor's Office. The Prosecutor General carried out 101 preliminary checks. As a result, 31 criminal cases were registered, 29 of which were discontinued and two were ongoing at the end of the year. There were no convictions.

Valery Tsoy complained of having been tortured in a prison colony in Kapchagay, Almaty region, on 23 and 26 August and 3 September. He alleged that he was beaten with police truncheons and a wooden stick, and verbally insulted to prevent him from complaining about previous ill-treatment. On 1 October, he reported the torture to the regional prosecutor, and an investigation was started by Almaty Region Anti-Corruption Bureau. Valery Tsoy was moved to a pre-trial detention centre in Almaty. On 24 November, the case was closed due to purported lack of evidence. The Anti-Corruption Bureau claimed that on 4 September Valery found a police truncheon and asked his cell mate to beat him with it. Valery Tsoy's appeal against the case closure was ongoing at year's end.

Rights of Persons with Disability

Restrictive legislation and lack of access negatively impacted the rights of disabled persons. In its concluding observations published in March the UN Committee on Economic, Social and Cultural Rights expressed concern that persons with disabilities continued to face discrimination, exclusion and inequality in many areas of life. It recommended that Kazakhstan should strengthen its efforts "to ensure that persons with disabilities enjoy unhindered access to all social services, including education and employment, by providing reasonable accommodation in school and in the workplace and improving the accessibility of facilities and services provided and open to the public."

According to Article 26 of the Civil Code, a "citizen who cannot understand the meaning of his actions or cannot control them because of mental illness or weak-mindedness" may be declared "incapable" by a court, and a guardian is appointed to take all decisions on their behalf. Once declared "incapable" individuals are deprived of the right to make any decisions about their lives, to control their finances, to marry, to study or to work. Such people do not have the right to appeal to a court of law which means that they have no legal recourse against violations of their rights and possible exploitation. There were no systems for review and it remained very rare for the status to be reversed, with not a single such reversal reported during the year. According to government statistics 35,941 people were registered as "incapable" or "partially incapable".

On 28 May, the Government adopted the State Plan to ensure rights and better quality of life for people with disabilities until 2025. The Plan envisaged learning from international best practice but unfortunately, it deferred any further decisions on deprivation of people with mental disabilities of their legal capacity until 2021. It offered no immediate measures of support for

individuals already deprived of their legal capacity, such as support-based decision-making as an alternative to the current practice of transferring decision-making to a guardian.