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Written Intervention by Kazakhstan International Bureau for Human Rights and Rule of Law, International Partnership for Human Rights and the Netherlands Helsinki Committee

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Current challenges to freedom of expression in Kazakhstan

In the area of freedom of expression, three trends are currently of particular concern in Kazakhstan: 1) the persistent pattern of defamation lawsuits targeting newspapers and journalists, 2) the growing number of physical attacks on journalists that has taken place in recent months, and 3) the use of charges of “inciting social hatred” and other similar charges against political opposition members and civil society activists.

Defamation suits against newspapers and journalists are typically brought by officials who argue that they have been “offended” by investigative articles that concern the actions of authorities and request huge amounts in moral damages.

- On 20 July 2012, a local court in the city of Uralsk satisfied a defamation suit against journalist Lukpan Akhmedyarov and the founder of the weekly *Uralskaya Nedelya*, where the journalist works. The court ordered them to pay five million Tenge (about 25.000 EUR) in moral compensation to the complaint, Tlekkabyl Imashev, who is head of the department of internal affairs in the West Kazakhstan regional government. Imashev brought the defamation suit in response to an article about family connections within the structures of regional authorities, which was written by Akhmedyarov and appeared in *Uralskaya Nedelya* on 2 February 2012.

Known for articles critically examining the activities of authorities and other public actors, Akhmedyarov had already previously faced several defamation suits. In April this year he was attacked by unknown perpetrators (see more below). Moreover, Uralsk city authorities are believed to have issued an unofficial ban on local newspaper distributors and retailers to stock and sell *Uralskaya Nedelya*.

In addition to officials, other public figures also use defamation suits as a means to try to stifle criticism of their persons.

- In appeal hearing held on 12 June 2012, the East Kazakhstan regional court overturned a decision previously made by the Ust-Kamenogorsk city court with respect to a defamation suit brought by the movie director Kasymkhan Begmanov against the owner of the *Flash!* newspaper and two of its journalists. Begmanov turned to court regarding two articles



written by the two journalists, which were published in July-August 2011. He considered these two articles to have provided negative, incorrect and defamatory information about one of his movies. The respondents argued that the articles focused on discussing a historical figure portrayed in the movie in question. Accepting these arguments, the first instance court rejected Begmanov's suit in a ruling of 18 May 2012. However, the appeal court made a different conclusion and ordered the respondents to publish a retraction and pay 100.000 Tenge (about 500 EUR) in compensation to Begmanov. They were also ordered to reimburse the director's lawyer costs to an amount of another 100.000 Tenge.

In the last six months, a number of physical attacks on journalists have been reported in different parts of Kazakhstan. While it cannot be concluded with certainty that all these attacks have been motivated by the professional activities of the victims, they have all targeted journalists known for articles examining "sensitive" issues such as corruption allegations. In a typical pattern, attacks against journalists are not adequately investigated and the perpetrators are never found and brought to justice, despite claims by law enforcement authorities that they are doing all they can to identify those responsible. To date none of the perpetrators of the recent attacks has been identified, although investigations officially are under way.

- Maxim Kartashov, sport journalist and publisher of the journal *Ice Hockey Kazakhstan*, was attacked late on 13 August 2012 outside the apartment building where he lives. According to him, three assailants put a stranglehold on his neck, pushed him down on the ground and started kicking him with their feet. The assailants fled, however, as other residents of the building arrived to the scene, alerted by the noise. Kartashov believes that the attack was related to his professional activities. He writes about the life of sports people behind the scenes, and his journal has often carried articles about corruption in sports in Kazakhstan. He was previously subjected to an attack in 2004 when working as a sports commentator for the *Vremya* newspaper. That time two unknown perpetrators attacked him in the lobby of his apartment building, inflicting serious bodily injuries on him. Those responsible for the attack have not been found.
- In the night of 8 August 2012, journalist Ularbek Baytaylak was brutally beaten in the vicinity of his home in an Astana suburb. After beating him, the perpetrators covered him with stones as if to symbolize his funeral. At day break he was brought to hospital with serious injuries. A number of Baytaylak's articles, which have appeared in the *Dat* and *Chetvertaja Vlast* newspapers and in the *Altyn Tamyr* journal, have been critical of authorities.
- Opposition newspaper *Golos Respubliki's* correspondent Andrey Tsukanov was attacked by unknown perpetrators in Almaty on 5 August 2012. As Tsukanov was on his way home at night, he was attacked from behind and hit on the head with a hard object, as a result of which he lost consciousness. The attackers took his passport, bank card, cell phones, journalist accreditation, as well as a train ticket to the city of Taraz, where he was meant to go to cover the trial against human rights activist Vadim Kuramshin. Tsukanov had already previously reported about the case against Kuramshin, who was facing charges of extortion of property (under Criminal Code article 181) in relation to Kordaysky district assistant prosecutor Mukhtar Uderbayev. Kuramshin's colleagues criticized the charges against the activist as politically motivated, and at the end of the trial, a jury found him not guilty¹.

- In the night of 20 April 2012, *Uralskaya Nedelya* journalist Lukpan Akhmedyarov was attacked and seriously injured outside the apartment building where he lives in the city of Uralsk. A number of assailants shot at him with an air gun and stabbed him several times, targeting the area close to his heart. As a result of the injuries he sustained, he required hospitalization for about a month. His colleagues and human rights activists² are convinced that the attack against him was related to his professional and civic engagement. He has repeatedly faced court cases for articles critically examining officials and other public figures and he has been arrested for participating in public protests. Among others, Akhmedyarov has taken a critical position in relation to the December 2011 events in Zhanaozen. His wife Aygul stated that unknown individuals called her the day before the attack and asked her “to talk reason” into her husband, otherwise threatening punishment. While the police arrested four suspects in connection with the attack, these were subsequently released as there was not enough evidence against them and Akhmedyarov did not recognize them as the perpetrators.

A third recent trend of concern is the use of charges of “inciting social hatred”, and other similarly vaguely worded Criminal Code articles against political opposition members and civil society activists.

- Currently a trial is under way in Aktau against opposition Alga party leader Vladimir Kozlov, opposition People’s Front member Serik Sapargali and trade union leader Akzhanat Aminov, who represented protesting workers during the 2011 oil worker strikes in Zhanaozen. They have all been charged with “inciting social hatred” (Criminal Code article 164) and “calling for the violent overthrow of the constitutional order” (Criminal Code article 170), and are accused of promoting the December 2011 riots in Zhanaozen. While Aminov was a leading figure in the peaceful oil worker strike that preceded the Zhanaozen events, well-known opposition members Kozlov and Sapargali publicly supported the striking workers in their struggle and visited the region during the strike. According to the indictment, the three men used the “radical” and “extremist” *Vzglyad*, *Golos Respubliki* and *Obchestvennaya Pozitsiya* newspapers and satellite K+ channel (all of which are opposition media) in order to pursue their “extremist” plans. During the process, procedural violations have been observed. In particular, Vladimir Kozlov was not granted sufficient time to familiarize himself with the lengthy indictment and to prepare his defense prior to the start of the trial. It is expected that the ruling in the case will be announced by the end of September.

In 2011 Natalia Sokolova, lawyer of protesting oil workers in Zhanaozen, was sentenced to six years in prison on, among others, charges of “inciting social hatred.” In March 2012, she was released after the Supreme Court ruled to re-qualify the charges against her and changed her sentence to a three-year suspended one. She was, however, also prohibited from engaging in “public” activities.

Recommendations to the authorities of Kazakhstan:

- Establish upper limits for the amounts of moral damages that can be awarded in any defamation lawsuits, and provide protection for statements of opinions and reasonable publication of information in the public interest.
- Ensure impartial and thorough investigations into all physical attacks against journalists with a view to holding accountable those responsible.

- Stop using the vaguely worded criminal offense on “inciting social hatred” and other similar charges against opposition members and civil society activists who have exercised freedom of expression and other fundamental rights in a peaceful and legitimate manner.

¹ After the jury deemed the activist not guilty of the initial charges, the judge re-qualified the charges against him to “abusing his responsibilities” (under article 327 of the Criminal Code). In a ruling of 28 August 2012, he was sentenced to one year restriction of freedom on these charges (instead of 14 years in prison, as initially requested by the prosecutor) and released. See KIBHR statement, 28 August 2012, http://www.bureau.kz/data.php?page=0&n_id=4841&l=ru

² See joint open NGO letter, 28 April 2012, http://www.iphronline.org/kazakhstan_20120428_e.html