

2017 OSCE HUMAN DIMENSION IMPLEMENTATION MEETING, WARSAW

11 - 22 September 2017

WRITTEN STATEMENT IN WORKING SESSION I: Fundamental freedoms I, including: freedom of expression, free media and information

11 September 2017

Amnesty International would like to draw the attention of the authorities of **Kazakhstan** and OSCE participating States to a number of concerns about violations of freedom of expression in Kazakhstan.

In February 2017, Amnesty International published a briefing, *Think before you post: Closing down social media space in Kazakhstan* (Index number: EUR 57/5644/2017)¹, which highlights that the rights to freedom of expression and peaceful assembly came under renewed attack in Kazakhstan in 2015 and 2016, as authorities worked to “close down” social media as a space where people can exercise their right to express critical opinions, seek and receive information, and organize peaceful protest against unpopular legal changes, or to voice their opposition. The situation has not changed since the publication of the briefing.

Social media sites such as Facebook and VKontakte,² along with messaging services such as WhatsApp, and video-sharing sites such as YouTube and Periscope,³ have become important spaces where people in Kazakhstan have felt that they can freely express their ideas and opinions. Importantly, in the absence of access to most other mass communications channels, particularly broadcast and print media, these sites have become spaces where human rights defenders have been able to post information and raise awareness about human rights abuses and violations. In 2016, human rights defenders and other activists also used social media sites and instant messaging services as tools to organize peaceful protests against unpopular changes to the Land Code.⁴

In response, the authorities are now working to “close down” social media as a space where people in Kazakhstan can exercise their right to express critical opinions, and where they can seek and receive a wider range of information from different sources. This has involved using long-standing as well as newly adopted legislative powers to shut down or block access to individual online resources, temporarily or permanently. In addition, authorities in Kazakhstan used administrative and criminal sanctions against people for peacefully exercising their right to freedom of expression online on a larger scale than in previous years. These included: the use of administrative sanctions against people who used social media to share information on planned peaceful assemblies and demonstrations which were not sanctioned by the authorities; the misuse of the criminal justice system to prosecute those who use social media to express criticism of state policies and to organize demonstrations, including the criminal prosecution and imprisonment of human rights defenders and prisoners of conscience **Maks Bokaev** and **Talgat Ayan**⁵;

¹ Amnesty International, *Think before you post: Closing down social media space in Kazakhstan*, February 2017, Index number: EUR 57/5644/2017, available at <https://www.amnesty.org/en/documents/eur57/5644/2017/en/>.

² VKontakte (vk.com) is a Russian-language social media network, with 380 million users as of October 2016, according to the network’s official site: https://vk.com/page-47200925_44240810 (accessed 2 November 2016).

³ Periscope (www.periscope.tv) is an online platform for sharing videos in real time.

⁴ Proposed changes to the Land Code would have allowed unused, state-owned agricultural land to be privatized and sold off to Kazakhstani citizens, or leased to foreign citizens for up to 25 years. The changes were deeply unpopular, as they provoked fears that they would result in the eventual sale of land to foreign investors. Many people who were not otherwise politically active or critical of government policies took part in demonstrations, which took place without permission from local authorities, as required under Kazakhstani law. The “Land protests” were widely discussed online, and many people used social media posts to state their intention to participate in protests and voice their criticisms of the proposed changes. In response to the outcry over the “land issue”, President Nursultan Nazarbaev issued a moratorium on the proposed changes to the Land Code on 6 May 2016 and also ordered the establishment of a Commission to discuss the criticisms raised against the proposed changes and develop alternative suggestions.

⁵ Human rights defenders Maks Bokaev and Talgat Ayan were detained on 17 May 2016 after posting information about peaceful protests on social media. On 28 November, following an unfair trial they were sentenced to five years in prison.

and the permanent closing down of independent media outlets in response to their use of social media to publish content.

While criminal and administrative sanctions have so far only been used against a small number of people, their use is having a wider “*chilling effect*” on freedom of expression in Kazakhstan. Activists who spoke to Amnesty International said that they believed more and more people are feeling that they have to “self-censor” what they write on social media, for fear of coming to the attention of the authorities. This includes human rights defenders, activists, and others who want to raise awareness and prompt discussion of human rights issues in Kazakhstan.

The briefing *Think before you post: Closing down social media space in Kazakhstan* analyses the existing legal framework in relation to freedom of expression and peaceful assembly in Kazakhstan and its compliance with international standards.

Criminal prosecutions to repress free speech: Article 174 of the Criminal Code of the Republic of Kazakhstan

The Kazakhstani authorities have relied on criminal prosecutions to repress free speech. Article 174 of the Criminal Code prohibits the incitement of “discord” on social, national, racial, clan or religious grounds or on grounds of birth, with sentences of up to ten years’ imprisonment. While Article 174 appears to protect individuals against discriminatory behaviour or speech, including advocacy of hatred, the term “discord” is not defined in a precise way, resulting in a broad and vaguely worded law. Rather than being used to protect marginalized groups and individuals from discrimination, Article 174 has most commonly been used to silence dissenting voices who have disseminated materials or encouraged discussions critical of the authorities. This was the case with the prosecution and conviction of **Maks Bokaev** and **Talgat Ayan**, who were prosecuted under Article 174, as well as under other charges.

Any legal limits restricting freedom of expression on the grounds of protecting others from discrimination and hostility must be precise and clear enough for a person to be able to regulate their own behaviour so as not to break the law.⁶ Article 174 of the Criminal Code of Kazakhstan does not meet these criteria because it is so broadly worded, and is applied in such an indiscriminate manner.

The misuse of Article 174 of the Criminal Code has a wider “chilling effect” on freedom of expression in Kazakhstan and this article should be considerably amended.

Closing down social media as a space for independent journalism: Article 274 of the Criminal Code

Article 274 of the Criminal Code makes “dissemination of information known to be false” a criminal offence. This includes material disseminated over the internet. Indeed, the use of communication networks is an aggravating factor, leading to higher sentencing. A person convicted under Article 274 can face up to ten years imprisonment.

Article 274 has particular implications for journalists, several of whom have faced prosecution under this article. Alongside the criminalisation of defamation in Kazakhstan and in the context of widespread violations of the right to a fair trial, the threat of prosecution under Article 274 makes journalists wary of reporting on sensitive issues, in particular if they are unable to verify every single fact of a case. In addition, the line between fact and opinion can be blurred: a ban on false news can easily become a ban on opinions not favoured by the authorities.

each for “incitement of discord” and other “crimes”. In January 2017, the Atyrau Regional Court in western Kazakhstan upheld the decision. They are prisoners of conscience, prosecuted solely for peacefully exercising their rights to freedom of expression and peaceful assembly.

⁶ Human Rights Committee, “General comment No.34”, p.6. See also: UN General Assembly, “Report of the Special Rapporteur”, A/66/290.

For example, journalist **Guzyal Baidalinova** was arrested under Article 274 of the Criminal Code for “dissemination of information known to be false”, after her independent online news outlet Nakanune.kz published articles on the activities of the bank Kazkommertsbank, linking it to corruption in the construction industry, and following a libel case brought by Kazkommertsbank against the media outlet earlier in the year.⁷ In May 2016, **Guzyal Baidalinova** was convicted under Article 274 and sentenced to 1.5 years imprisonment (converted to a suspended sentence on appeal in July).⁸

Authorities have also made use of Article 274 of the Criminal Code in other cases to stifle criticism and dissenting voices on social media, again violating the rights to freedom of expression and to seek, receive, and impart information. **Elena Semyonova**, a member of Kazakhstan’s National Preventative Mechanism (NPM⁹) and of the Public Monitoring Commission (PMC¹⁰) for her region faced criminal investigation in late 2015 under Article 274, after she posted information on social media about cases of ill-treatment that she had encountered during her visits to a prison. While Elena Semyonova was not prosecuted in the end, the criminal investigation sent a worrying message to other members of the NPM and of local PMCs that members of these bodies could face prosecution for using social media to inform the public about cases of torture and other ill-treatment that they encounter.

Article 274 has not just been used against journalists; it has also been used against human rights defenders and other activists, including Maks Bokaev and Talgat Ayan.

Violation of the right to freedom of peaceful assembly: Article 400 of the Criminal Code

Article 400 of the Criminal Code forbids providing “assistance” to “illegal” assemblies, including by “means of communication”, which the Special Rapporteur on the rights to freedom of peaceful assembly and association has interpreted as designed to prevent activists from using social media and other communication tools to organize.¹¹ Indeed, in the case of Maks Bokaev and Talgat Ayan, the use of social media to “organize” protests was treated as an aggravating factor under Article 400.

Practicing bans on civic activism against convicted public activists

The above-mentioned activists **Talgat Ayan** and **Maks Bokaev**, as well as a number of other civil activists including **Yermek Narymbaev**, **Serikzhan Mambetalin**, **Saken Baikenov**, **Bolatbek Blyalov**, who were separately sentenced to up to two and a half years of “restriction of liberty” for expressing their opinions on the Internet, **Nurbek Kushakbaev**, a trade union activist, sentenced to two and a half years’ imprisonment for his public support of oil workers’ hunger strike, and **Larissa Kharkova**, head of the Confederation of Independent Trade Unions of Kazakhstan, sentenced to four years of “restriction of liberty” on trumped-up charges of abuse of office, as a part of their sentences, they have been also banned by court from engagement in civic activism explicitly for a number of years following their probation terms. These restrictions on liberty and the freedom of expression, freedom of peaceful assembly, and freedom of association of public activists are a clear attempt by the authorities of Kazakhstan to curb civic activism and silence public activists in the country.

Amnesty International calls to the Kazakhstani authorities to:

- repeal Articles 274 of the Criminal Code, which makes “dissemination of information known to be false” a

⁷ Freedom House, *Freedom in the World 2016: Kazakhstan*.

⁸ Radio Azzatyq, “Kazakh Court Suspends Journalist’s Jail Sentence”, 12 July 2016, <http://www.rferl.org/a/kazakhstan-court-suspends-journalist-jail-sentence/27854018.html> (accessed 21 November 2016).

⁹ The NPM is a body that monitors prison conditions, operating under the umbrella of the National Ombudsman. The NPM monitors conditions in prisons and other places of detention, and in some state-run institutions such as children’s homes, in accordance with the Optional Protocol to the UN Convention Against Torture.

¹⁰ The PMC is a civil society monitoring mechanism for places of detention.

¹¹ Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan, A/HRC/29/25/Add.2, Human Rights Council, New York, p.12.

criminal offence;

- repeal Article 400 of the Criminal Code, which forbids providing "assistance" to "illegal" assemblies, including by "means of communication";
- substantially amend Article 174 of the Criminal Code, which prohibits the incitement of "discord" on social, national, racial, clan or religious grounds or on grounds of birth, with sentences of up to ten years' imprisonment to ensure that such provision aimed at combatting advocacy of hatred and discrimination is precisely drafted in compliance with Article 19(3) of the ICCPR, to ensure that it does not unlawfully restrict freedom of expression.

Amnesty International calls on participating states of the Organization for Security and Co-operation in Europe, which emphasises that "respect for human rights and fundamental freedoms are key to the OSCE's comprehensive security concept", to invoke the Moscow Mechanism in order to establish an ad hoc mission of independent experts to examine violations of the rights to freedom of expression and peaceful assembly in Kazakhstan.