



**Report**  
**on monitoring mission**  
**in Kazakhstan**  
**performed by**  
**the Polish Bar Council**

Warsaw, 14<sup>th</sup> May, 2013

## Introduction

From 21<sup>st</sup> to 29<sup>th</sup> of April, a delegation from the Polish Bar Council (original name: *Naczelna Rada Adwokacka - NRA*) stayed in Kazakhstan with the intention of conducting a monitoring mission. In December 2012, the Open Dialog Foundation, who has a primary goal included in its statutes of promoting European standards in the scope of human rights, addressed the Committee on Public Relations and Pro Bono Activities at NRA with a request that a mission, monitoring the observance of citizenship rights and liberties in Kazakhstan be set up.

The mission was composed of: attorney at law Monika Strus-Wołos, PhD, member of NRA's Presidium and president of the Committee on Public Relations and Pro Bono Activities at NRA - head of the mission, attorney at law Magdalena Fertak, vice-president of the aforementioned Commission, attorney at law Justyna Mazur, vice-president of the District Bar Association in Bydgoszcz, attorney at law Wojciech Mądrzycki, member of NRA's Articling Students Training Commission (these four persons participated in NRA's monitoring mission during parliamentary elections in Georgia), as well as attorney at law Jacek Świeca who cooperates with the Open Dialog Foundation on a permanent basis. We have held a total of thirty meetings in three cities.

Due to serious signs of an increasing number of violations of citizenship rights and liberties in Kazakhstan, the Polish Bar Council decided to set up monitoring mission in cooperation with the Open Dialog Foundation. We perceive this as a duty which Poland has to pay to the organisations and societies of Western Europe that helped our citizens fight for democracy in the times of People's Republic of Poland. NRA's delegation went to Kazakhstan at the invitation of the Kazakhstani International Bureau for Human Rights and Rule of Law. The Open Dialog Foundation has covered a substantial fraction of the costs of NRA's mission.

Only one day before our departure, the European Parliament adopted a resolution calling on Kazakhstan authorities to respect OSCE's rules and to free political prisoners and ensure the protection of freedom of speech. The European Parliament has called on the European Union member states to become involved in defence of those oppressed in this country. The Open Dialog Foundation has played a significant part in drawing up the resolution.

Kazakhstan is particularly significant among other post-Soviet countries: it is the ninth largest country in the world and its economy has been developing rapidly, becoming the third largest economy of the Commonwealth of Independent States, giving way only to Russia and Ukraine. It is the largest global exporter of uranium, one of the most important exporters of oil, natural gas and cotton. Kazakhstan is also an important business partner of Poland (turnover at the level of app. 2 bn dollars) and the first Polish law office has also been opened in Astana.

Therefore, the observance of European standards and corruption elimination by Kazakh authorities is of special significance to the entire region and directly affects the possibility of conducting business activities based on transparent and predictable rules.

It should be noted that we faced significant difficulties obtaining visas. Despite the fact that the deadline had passed, we repeatedly received information from the Embassy of Kazakhstan stating that a decision had not yet been made. We finally managed to obtain visas one day before our planned departure and this was owed to the personal involvement of top-rank officials and institutions in Poland.

**Objectives and tasks of our monitoring mission can be divided into three segments:**

- establishing working contacts with the Bar and attorneys in Kazakhstan in order to exchange experience in the scope of criminal law reform and provide support to our Kazakh colleagues who are slowly building their professional self-governing council from the ground up;
- monitoring the level of observance of citizenship rights and liberties with special consideration for freedom of speech and media;
- monitoring the situation of political prisoners.

**I. Establishing working contacts with the Bar and attorneys in Kazakhstan:**

**1. Meeting with the Almaty Attorneys' Association**

On 22 April, 2013, we met with the Almaty Attorneys' Association in Almaty. Ms Gulnar Baygazina, Esq., member of the executive committee of the Almaty Attorneys' Board, welcomed us into the registered office of the Association. She explained to us the procedure by which one can acquire a licence to practice law in Kazakhstan and the structure of the Attorneys' Association.

In 2010, a new Act on the Bar entered into force, thus establishing a new framework for practicing law in the Republic of Kazakhstan. Most importantly, in Kazakhstan every lawyer is entitled to provide legal aid. Legal aid is reserved solely for the provision of a defence in criminal proceedings. In order to become an attorney, one has to pass an exam to be accepted for lawyer training (*stazhirovka*) which lasts from six months to one year. The final exam is composed of two parts: a test (100 questions/90 minutes) and an oral examination. Having passed the exam before the commission established by the Attorneys' Association (3 attorneys, and additionally academics, representatives of the Ministry of Justice and parliament), the graduate autonomously applies for a licence to practice this profession. The license is issued by the Committee for Legal Aid and Registration Service with the Ministry of Justice of the Republic of Kazakhstan. This procedure is performed based on administrative proceedings governed by a series of provisions from several law sources.

By 2012, bar associations were operating in some cities in Kazakhstan, and each one of them adopted its own ethical and operating principles. Membership of bar association is mandatory. Currently, app. 750 attorneys are registered in Almaty Attorneys' Association. There are 3

forms of practicing this profession, i.e. legal consultancy for the association, individual practice in one's own office and practice in law firms. The fundamental authorities within the Association are General Assemblies that select the Association's executive committee, ethics commission and audit commission.

Art. 6 of the Act on the Bar of the Republic of Kazakhstan provides gratuitous legal aid for specific groups of people (e.g. in the proceedings for the award of damages due to loss of provider, war veterans, etc.) In these proceedings, an attorney receives remuneration in the amount of 1/21 of minimum wage from the state.

Professional secrecy is restricted by the "laws of Kazakhstan" and is applicable when the client grants written power of attorney.

In June 2012, the National Attorneys' Association was established, with its registered office in one of the government's buildings in Astana. According to Ms Gulnar Baygazina, the intention was, among others, to unify across the entire Republic, the principles for self-governance operations, ethical principles as well as to make attorneys independent from the Ministry of Justice.

On the website of Almaty Attorneys' Association we can find requests for the establishment of the National Association to be followed by a clear division between the competencies of the offices of regional and national authorities, assigning to the latter only representative functions; and at the same time, qualifications of local associations in the scope of self-governance and control of lawyers' activity (access to the profession, disciplinary responsibility, financial regulations) should be strengthened. It is also demanded that it be possible to set up attorneys' associations purely on the initiative of attorneys, by means of direct and secret voting, without the participation of government agencies or representatives thereof in the process. Also, mechanisms excluding the state's impact on executive bodies of attorneys' associations should be put into place.

Unfortunately, we did not manage to meet with representatives of the National Attorneys Association. It seems that a new operating concept is gradually forming in the Kazakh bar, however, it is still too early, as the system of democratisation is evolving very slowly and the fear of exposing oneself to the wrath of the authorities is apparent.

## **2. Meetings with individual attorneys**

Based on the conversations with individual attorneys, we may conclude that the main problem in practicing the profession is, among others, the national system of granting licences, which is used by the authorities as a means of exerting pressure on attorneys and widespread corruption in the judiciary (more information about this topic - see below: meeting with Y. Zhovtis). There are cases of revoking a licence by way of administrative proceedings. Most attorneys act as agents in the transference of bribes to judges and prosecutors. To prevent corruption in the courts system, electronic case registration has been implemented. In the course of this registration, a computer draws the judge at random. However, the judges know

in advance on what day and at what time their name will be drawn in the system and it happens that they advise the parties as to when they should file petitions. In addition, substantial pay increases have been introduced for judges in order to disincline them to accept bribes. However, according to the attorneys with whom we talked, this step did not bring about satisfactory effects. It has been indicated that, according to the attorneys, 98% of the judges are corrupt. We received information from many independent sources that obtaining a state attorney's licence requires a bribe. Most often, the sum of USD 5000 was mentioned, which is extremely high for an average citizen.

We spoke to such attorneys as Serik Sarsenov and Nurlan Ustemirov, manager of a law firm in Almaty. Serik Sarsenov is a defence counsel in a high-profile case regarding the murder and burning of the bodies of some dozen soldiers serving in the borderland defence unit. The defendant is the only soldier who survived the massacre. The lawyer claims that the soldiers died because they witnessed an event that happened in a nearby government forester's lodge which was inconvenient for someone related to the authorities. Mr Sarsenov told us that it was impossible to receive photocopies of the reports in the course of preparatory proceedings. He could only see the documents from a distance. He also told us that while he was contacting his client in prison, professional secrecy was not ensured. He was certain that his conversations with the prisoner were being recorded and he resorted to the communication with the client by exchanging notes with messages which he burned afterwards. His client, Vladislav Chelakh, withdrew his guilty plea. He claimed that he was threatened with rape in prison, interrogated at night and was not allowed to contact his family or arrange legal aid.

Our interlocutor highlighted certain duality and inconsistency of some of the provisions of criminal law with Kazakhstan's Constitution, also with the practical application of law. As an example, he referred to art. 77 of the Constitution which provides that evidence obtained in an illegal manner has no probative value, and art. 116 of the Code of Criminal Procedure stipulating that such evidence has no probative value, however in reality, the authorities may use it depending on the significance of the crime.

As a result of his participation in the case, our interlocutor has faced a civil trial with a threat of revocation of his professional licence, the case being brought against him on the initiative of the Minister of Justice. This resulted from the fact that he was courageous enough to publicly express his criticism regarding course of the trial. He was accused of being unworthy of the attorney's profession. During our stay in Kazakhstan this case was not definitively finalised.

## **II. Monitoring the level of observance of citizenship rights and liberties with special consideration for freedom of speech and media**

### **1. Meeting with Yevgeniy Zhovtis, chairman of the council of the Kazakhstani International Bureau for Human Rights and Rule of Law (KIBHR), a prominent human rights defender**

Upon our arrival in Kazakhstan on 21 April, 2013, our monitoring mission held its first meeting with Yevgeniy Zhovtis, a world renowned human rights defender, lawyer, civil activist, Ph.D. at law and Ph.D. in mining sciences. During the period of perestroika he withdrew from academic activities and as of the '80s he became involved in human rights protection. He co-founded the party 'Democratic Choice of Kazakhstan' which was later transformed into the social-democratic party 'ALGA!'. His work was aimed at promoting the establishment of independent trade unions. He endeavoured to create an alternative to pro-Soviet parties. Until 2012, he was the chairman of the council of the Kazakhstani International Bureau for Human Rights and Rule of Law (KIBHR); the very organisation at whose invitation we came to Kazakhstan. Mr Zhovtis is a member of an expert group for peaceful gatherings in the Office for Democratic Institutions and Human Rights of OSCE, member of Steering Committee of the World Movement for Democracy. In recent years he has mostly been acting in the sphere of constitutional and criminal law as an expert.

Our interlocutor works as an attorney, however, he cannot obtain an attorney's licence due to his involvement in human rights protection. He has acted as an observer in numerous criminal trials; he also actively monitored the course of court trials in the case regarding 37 oil workers, as well as the trials of Vladimir Kozlov and Vadim Kuramshin and the shutdown of independent mass media.

In 2009, he was legally sentenced to 4-years' imprisonment for causing a fatal accident. He claims that the case was contrived by the authorities and that, in fact, he did not cause any accident; a fact which was even confirmed by the victim's family; thus, the whole case was staged. During the trial, no opinions from independent specialists in the scope of road traffic were admitted, no skid marks were secured, and the car which he was driving bore no visible damage; even a sketch of accident locus was not drawn up. At the same time, the sentence he received was – judging by Kazakh court practice - exceptionally severe. As an example, he referred to a different situation in which the court chose to only revoke the licence of a drunk driver who had struck a girl on a crossing while green to pedestrian phase was active; subsequently, the girl died. Security services were monitoring the course of Zhovtis' trial and dictated all the moves to the court.

The sentence was served in a penal colony which was established specifically for him in a location significantly remote from his place of residence. In this colony he provided legal aid to people in need. Also, additional punishments for fabricated regulation violations were inflicted on him. On 2 February, 2012, he was released under amnesty.

According to our interlocutor, criminal legislation in Kazakhstan is controlled by politicians and the judiciary is corrupt. In fact, there is not a single judge who would pronounce an independent sentence. Every regional judge has a supervisor from a district court who carries out the control of substantive matters of the sentences issued. The situation is similar at district court level.

Appeals against verdicts are not welcome and the chances of their success are illusory, as it is determined by political reasons that judicature should be stable. The Supreme Court predetermines the number of appeals that may be granted at the level of 2% as a maximum.

As an example, our interlocutor referred to one of the cases from the years 2004/2005: a judge from a regional court was caught by the anti-bribery office in the act of accepting a bribe. During the search, officers discovered \$10 000 and two pre-produced opposite verdicts in one case - conviction and acquittal. The judge renounced his function, but after a year he became deputy to the Attorney General who claimed that he needed someone who could provide justification for two diametrically different outcomes.

During our conversation, Y. Zhovtis highlighted the very extensive and unlimited powers of prosecutor's office which may arbitrarily, without a court's consent, carry out searches, detentions and interrogations regardless of the fact that these actions are not strictly related to the trial (prosecutor executes an "opros" /questioning/, whereas in the trial procedure it should properly be "dopros" /interrogation/). It lies within the competence of the economic-judicial division whose general goal is to supervise law observance by citizens. The prosecutor's office does not belong to the judiciary; it reports to the President.

According to our interlocutor, as long as the powers of the prosecutor's office are so extensive, judges' and lawyers' independence is out of the question.

For some time now, law reform and criminal procedure has been discussed in Kazakhstan. Until 1998, obsolete Soviet provisions of the Penal Code, Code of Criminal Procedure, Executive Penal Code, only partially amended, had been applicable. In 1998, new codes were established and recently, a political decision was made to write all the codes anew. The changes are initiated by the Ministry of Internal Affairs (there is not a single attorney on the ministry's team!); also, there are no public consultations. The finished bill, after it is approved by the President, is forwarded to the parliament and only at this stage are non-governmental organisations invited. Still, as a rule, the bill is not subject to any further modifications.

In Kazakhstan there is a moratorium on exercising the death penalty, however, at present, the possibility of pronouncing such a penalty is restricted to war crimes and acts of terrorism.

## **2. Meeting with representatives of opposition organisations and the Polish Sejm**

On 24 April, 2013, in the capital of Kazakhstan, Astana, members of NRA's mission met with ambassador of the Republic of Poland, Jacek Kluczkowski and Michał Chabros - second secretary and head of the Embassy's Department for Political and Economic Affairs. The ambassador invited us to a meeting with representatives of opposition in Kazakhstan, which was scheduled for the following day.

On 25 April, 2013, in the conference hall in Rixos Hotel in Astana, at 8:30 a.m., a meeting was held in which the following persons participated: the delegation of Polish Sejm: Marshal Jerzy Wenderlich, deputies – Tomasz Lenz (PO), Tomasz Latos (PiS), Jacek Kluczkowski, ambassador of the Republic of Poland in Kazakhstan, lawyer Monika Strus-Wołos, Ph. D. and lawyer Wojciech Mądrzycki, members of NRA's mission with

representatives of parliamentary opposition, Serikbay Alibayev, head of the Astana office of the social-democratic party ‘OSDP’ and representatives of non-governmental organisations - Liazzat Kamze – from the Foundation for Development of Parliamentary System in Kazakhstan, Anar Ibrayeva - from the Kazakhstani International Bureau for Human Rights and Rule of Law (KIBHR), Diana Okremova and Gulmira Birzhanova from Media Rights Centre Foundation.

In their short presentations, the invited guests addressed the issues which they deal with as part of their statutory activities. The common denominator linking all the presentations was the systemic problem of the crisis of authority in all post-Soviet countries and the fears faced by the authorities in this regard. The speakers tackled the following problems: the so called religious extremism, functioning of independent trade unions, authority’s resistance regarding modernisation of legislation in the scope of human rights, which has been examined by parliament in a dilatory manner, in contrast to the swift adoption of amendments to constitutional regulations. In conclusion, it was established that the state maintains appearances of social dialogue by setting up ‘pseudo-NGOs’ who will be party to such public consultations. The organisation named ‘Civil Alliance’ may serve as an example of such a ‘fake’ organisation. Also, the issues of independent and unbiased judicature and broadly defined judiciary were discussed. It was pointed out that over 200 cases of human rights violations were noted last year.

Marshal Jerzy Wenderlich expressed his gratitude to Ambassador Jacek Kluczkowski for arranging this valuable meeting and to the distinguished guests for attending.

Then, he pointed out that all the activities aimed at increasing standards of human rights observance and protection deserve recognition, and Polish deputies and representatives of non-parliamentary organisations, such as the attorneys' self-governing council, sympathise with the aforementioned initiatives, supporting them openly. To emphasise this, at the end of the meeting Marshal Jerzy Wenderlich handed in the honorary badge of merit for human rights protection, awarded by Ombudsman, prof. Irena Lipowicz to KIBHR, to Ms Anara Ibrayeva - head of Astana office of this organisation, on whose invitation NRA’s mission came to Kazakhstan.

It is also our indispensable duty to express our deep gratitude to Marshal Jerzy Wenderlich and Ambassador Jacek Kluczkowski, thanks to whom we were able to participate in this meeting.

### **3. Meeting in the editorial office of the banned newspaper *Respublika***

On 23 April, 2013, we met with representatives of *Respublika* – a newspaper closed by the authorities. Oksana Makushina, former editor-in-chief, was the host of the meeting. She was accompanied by a female lawyer who ran the *Respublika*’s cases.

*Respublika* is a weekly, edited by journalists persecuted for their critical views concerning the authorities and for promoting the idea of freedom of speech.

During the meeting, we learned that Oksana Makushina, who is a journalist, has always been considered to be a troublemaker by the authorities. This year is the 13<sup>th</sup> anniversary of the foundation of the newspaper. For 11 years, actions aimed at hindering its operation have been undertaken. In order to avoid consequences of administrative decisions, the editor's office was forced to change the newspaper's name ten times. What is more, some very unpleasant situations took place, e.g. in 2002, a beheaded dog was found hanging in front of the entrance to the editor's office. Another time, a funeral wreath was sent with a dedication for the chief editor. Since 2008, the editorial office has been unable to find a printing office willing to cooperate with them, so the journalists print 99 copies of the newspaper themselves on their own printers. After the tragedy in Zhanaozen in 2012, the newspaper and the journalists were put under pressure which was aimed at preventing them from writing about the subject and publicising the developments. It was suggested that they were the ones to be blamed for the massacre of strikers. Satellite television K PLUS was treated in a similar way. It was only a couple of days after the tragedy that video footage from Zhanaozen recorded with a mobile phone appeared in the Internet. Oksana Makushina talked about the repressions against journalists, which took place after the Zhanaozen tragedy, about the arrest of opposition activists and chief editor of the *Vzglyad* newspaper, Igor Vinyavskiy (who has applied for political asylum in Poland). In total, 8 independent newspapers and 23 websites were closed, although the Constitution of the Republic of Kazakhstan explicitly highlights the importance of freedom of speech.

*Respublika* and other newspapers were closed after the proceedings, the parties to which were the newspapers themselves, and not their owners, statutory representatives or chief editors, which constituted an infringement committed by the authorities, as a newspaper as such, should not be a party to proceedings. Therefore, the journalists came to court with large photographs of front pages and packages with all editions of the newspapers and stated that the sued newspaper appeared in court. After the proceedings, in which the ruling was handed down by a single judge after a one-hour deliberation, all requests for interpretation of the judgement were dismissed.

Journalists accused of violating the law find it difficult to work. If they take up a job in a newspaper, the publication is immediately closed. As a consequence, nobody wishes to employ them. Among the repressed journalists was, *inter alia*, Tatiana Trubachova.

Our interlocutors drew attention to the fact that there were significant problems related to communication with the court during the proceedings. One of the biggest issues relates to summons to court hearings, which are not only being delivered with a considerable delay, but also very often after the date of the hearing. It makes it impossible to defend oneself.

Moreover, also Oksana Makushina's husband has faced many problems in connection to his wife's activity. During meetings with representatives of authorities he was ordered to influence his wife. He was threatened with job loss and that afterwards his wife would be in

trouble. Mrs. Makushina was not dismissed from work, as officially she is unemployed and so her dismissal is not formally possible. Other journalists face similar problems.

#### **4. Meeting at the Ombudsman's Office (the Office of Human Rights Defender)**

On 25 April, 2013 in Astana, the members of the Polish Bar Council - NRA's mission held a meeting with the Kazakh Ombudsman at the Ombudsman's Office, located in the Ministry of Justice of Kazakhstan. The Kazakh party was represented by Mr. Vyacheslav Kaluzhnyi, director of the National Centre for Human Rights (Ombudsman's Office), together with a group of his peers. During the meeting, Mr. Vyacheslav Kaluzhnyi described the origins of establishing the Ombudsman's Office, the method of appointment and the problems he and his predecessors have faced. He informed us that the first Ombudsman was Mr. Bolat Baykadamov, and this post is currently held by Mr. Askar Shakirov. Our interlocutor added that, while establishing and executing their duties, they benefited from European and Polish experience on this matter, referring to the publication of Ombudsman Ms. Ewa Łętowska, which was well-thumbed by the first Ombudsman. We were informed in detail about the types of complaints being filed in the Ombudsman's Office, the methods and results of handling thereof. We answered numerous questions of our hosts, concerning the role of the Ombudsman in exercising the legal profession, our self-government, its legal situation and statutory independence.

The Ombudsman is appointed by the President of Kazakhstan, in consultation with the Parliament. Around 20% of complaints are accepted. Specifically, approximately 30% of the complaints concern the activities of the judiciary, 25% - of the prosecution, 15% - of the Ministry of Labour; the remaining elements concern the activities of other organisations and agencies.

The Ombudsman monitors the activities of all government institutions with regard to observing the rights of citizens, *inter alia* by co-operating in this matter with UNICEF, for the needs of which he has drawn up so far three comprehensive reports on violence against children. Since 2003, the Ombudsman has been investigating all cases of psychological and physical abuse against detainees by law enforcement representatives.

The Ombudsman takes the initiatives concerning updating the rules of law, preparing projects and reviews used in parliamentary works.

The Ombudsman has no influence on the activity of the judiciary; however, he has signed a memorandum of cooperation with the Supreme Court. He cannot participate in court proceedings; he can, however, address the General Prosecutor with requests for lodging a protest in a particular case, should citizenship rights or the general rule of law be violated. However, it is the General Prosecutor who decides whether to support the Ombudsman's stance and whether to eventually lodge a protest.

At the end of the meeting, we addressed the very sensitive case of Ms. Rosa Tuletayeva, who is now serving a sentence of imprisonment for taking part in strikes and complaining about

the lack of access to medical care as she is now in extremely poor health (see below – description of a meeting with her daughter, Rosa Tuletayeva). Mr. Vyacheslav Kaluzhnyi informed us that non-governmental human rights organisations which cooperate with his office had not reported this problem, but he promised to take care of the case.

In our opinion, the meeting was very constructive and fruitful. The host spent nearly two hours with us, we were treated with great courtesy and received genuine and true attention. For these reasons, we cordially thanked our host for the devoted time. At the end, as a memento of our meeting, we presented a small gift to our host: an album about Poland and CDs with Chopin's music.

## **5. The meeting at the office of the EU Delegation to Kazakhstan**

On 24 April, 2013, in Astana, we visited the Headquarters of the Delegation of the European Union to the Republic of Kazakhstan, where we spoke with Mr. Kamen Velichkov, Minister Plenipotentiary, Head of the Political, Press, and Information Section, and Ms. Ela Horoszko, a political officer. At the end of our meeting, we had the honour of participating in a brief conversation with **Her Excellency Ambassador Aurelia Bouchez, Head of the European Union Delegation to Kazakhstan** as well as the opportunity to take commemorative photographs with.

EU representatives in Kazakhstan took part (as consultants) in talks regarding the European Parliament resolution on the rights of man and the citizen in Kazakhstan. Based on the information we have been provided with during the meeting, as regards the protection of human rights, Kazakhstan has so far fulfilled only 22% of the commitments it assumed in the country development strategy policy by 2013. Her Excellency has been striving to undertake regular efforts to contact and meet with various opposition organisations, in order to promote the process of democratisation. Mr. Kamen Velichov comprehensively presented the scope of cooperation with the OSCE, the UN, and other organisations, as well as direct cooperation with representatives from such countries as Norway, Switzerland, or Turkey. He reiterated that he has been regularly reviewing all information submitted to him by Fundacja Otwarty Dialog (The Open Dialog Foundation) as well as that of other organisations.

The EU Delegation is also interested in reviewing individual cases, such as the case of V. Kuramshin and V. Kozlov, whose trial was attended by the observers. Ms. Ela Horoszko confirmed the information about poor prison conditions. However, they were unfamiliar with the case of tortured prisoner, Roza Tuletayeva (see below). We provided Ms. Horoszko with a phone number of her daughter - Aliya Tuletayeva, requesting that she get involved in the case.

## **III. The situation of political prisoners in Kazakhstan**

The situation of political prisoners in Kazakhstan is so serious that on 18 April 2013, the European Parliament issued a resolution, concerning this very matter: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0190+0+DOC+XML+V0//PL&language=PL>, as well as two previous resolutions of 15 March, 2012 and 22 November, 2012.

### **1. Meeting with Penal Reform International in Astana**

In Astana, during the meeting with Regional Director of Penal Reform International in Central Asia, Saule Mektepbayeva, she commented on the conditions of serving time in prisons and provided us with legal basis thereof. She showed us a map illustrating the location of penal colonies, and informed us that, as a rule, a prisoner should be sent to an appropriate security level penal colony which is closest to their place of their residence. However, based on our information we can assume that it is not always the case (see the case of Mr. Y. Zhovtis, for whom, for his time of imprisonment, a special, distant penal colony was established – at the same time the authorities were claiming that there were no available places in prisons nearer his home. Once he had been released from prison, the colony was closed down).

Every prisoner has the right to be granted medical care, and there are even special prison hospitals; however, there are some problems with finding doctors who want to work in penal colonies due to their location – usually located far away from the cities. Another big challenge is the smuggling of drugs into prisons and the related drug-abuse problem among prisoners, as well as the spreading of the AIDS virus. Children of female prisoners who were born in penal colonies stay with them until they are 3 years old (the mothers stay with the child for 4 hours per day, every day); upon reaching the age of 3, the child is taken from the prison to a family member or is placed in an orphanage. According to our interlocutor, there are canteens in prisons, where one can purchase foodstuffs and phone cards; one can use the telephones on daily basis. However, according to the information received from other sources, we know that in practice this right is often not observed, also due to the fact that not all prisons have telephones. According to the regulations, the visits of families can be short (very frequent) and long, lasting three days – these are allowed once every three months. However, due to lack of available beds for family members in prison hotels, this right is not always duly observed.

The biggest challenge in the reform of the Penal Code is the introduction of penalties other than imprisonment (such as, for example, fines). Very rarely is a conditional suspended sentence adjudged. Upon having committed third crime, regardless of the severity thereof, the perpetrator is mandatorily sent to a high security penal colony.

### **2. Meeting with the daughter of the prisoner Roza Tuletayeva**

In Almaty we met with Aliya Tuletayeva, daughter of Roza Tuletayeva, who was subjected to torture during investigation.

The mother of our interlocutor is now in prison in connection with the events in Zhanaozen. She was the most educated person amongst the strikers, she was involved in communication with the media and foreign press, providing detailed information to them. According to her daughter, during this period, she was put under pressure many times, intimidated by the law enforcement bodies and authorities, threatened with arrest, even her daughter was detained. At that time, the authority agitated against the strikers. In the meantime, the prosecution illegitimately demanded that she be arrested for 41 days, of which seven days Ms. Tuletayeva spent in custody, without any justification. On 16 December, 2011, a tragic shooting occurred in Zhanaozen, resulting in the death of many strikers (according to official sources, seventeen, according to unofficial sources, nearly a hundred). After these events, Ms. Tuletayeva, , fearing for her safety, as well as wishing to explain the whole situation in the interest of strikers' families, went to the police station to file an appropriate notice, but the effect was the opposite. Ms. Tuletayeva was taken away by security forces and detained, and she remained in custody for many months, without any legal basis. Finally, as a result of legal proceedings, she was sentenced to five years in a penal colony for, among other things, disorderly conduct (Article 241 of the Criminal Code of Kazakhstan) and public incitement to hatred (Article 164 of the Criminal Code of Kazakhstan). She was the only woman convicted for the events in Zhanaozen. Besides her, 36 men were also sentenced, often sole providers for their families.

During the proceedings, Roza Tuletayeva was forced to give false testimony, she and her daughter were threatened with gang rape, she had a bag put on her head until she lost consciousness, she was also hung by her hair. Tuletayeva's attorneys filed motions to the court for relevant expertise, but each time the court dismissed them, labelling them as efforts aimed at procrastinating the procedure.

Roza Tuletayeva met with the representatives of the Polish and German diplomacy, but hasn't succeeded so far in meeting her family members. She currently requires medical assistance, and medicines and has begun a hunger strike. Her daughter has exchanged letters with Kazakhstan's Commission for the Protection of Human Rights and with the President; however, her efforts have so far been fruitless.

The current health condition of the detained woman is very poor, she is seriously ill (diabetes, cirrhosis of the liver, spine damage and internal injuries as a result of the torture exerted on her during the interrogation). Tuletayeva is forced to stand on her feet during long calls, despite the terrible pain she feels. She is still under pressure, and so is our interlocutor and her 15-year-old sister whom the government intends to put in an orphanage despite the fact that her adult sister Aliya takes care of her. Tuletayeva's daughter showed us a clump of thick hair pulled out from her mother's head while she was hung by her hair from the ceiling.

Aliya Tuletayeva asked us to provide assistance to her mother, fearing that her mother will not live to see the end of her sentence. At one point, she said, evidently moved, that we are

her "protective angels". She emphasised that it is incomprehensible to her that a brother rises up against his brother. At the end of the meeting, we gave gifts to Aliya's younger siblings.

We tackled the problem of the prisoner's health situation at a meeting of the EU Delegation and in the office of the Ombudsman and we were promised a review of the case. We immediately conveyed the information about the promise to the KIBHR representatives. A few days after our meeting, several major Kazakh organisations wrote a joint letter to the Office of the President of Kazakhstan and the Ministry of Internal Affairs with a request that Roza Tuletayeva's access to medical care and medicines be ensured.

[http://www.bureau.kz/data.php?page=0&n\\_id=5810&l=ru](http://www.bureau.kz/data.php?page=0&n_id=5810&l=ru)

After returning from Kazakhstan, we were informed that the head of the detention centre where Tuletayeva is imprisoned had called the doctor to attend to her, but it was only a semblance of medical care; the doctor prescribed her a warming ointment, instead of carrying out a thorough examination.

### **3. Meeting with Vadim Kuramshin's mother**

During our visit to Petropavlovsk, we met with the mother of Vadim Kuramshin, a lawyer, sentenced to 12.5 years' imprisonment.

Mr. Kuramshin is a lawyer and activist who was engaged in the protection of prisoners' rights. He was monitored the conditions in penal colonies, including the colony EC No. 164/4 in the village of Gornyi, where he is currently serving time. It is in this very colony that the cases of prisoners' mass self-mutilations were recorded – the inmates were protesting against the inhuman treatment by the wardens; these incidents were communicated to the public by V. Kuramshin. Now, the convict's family fears that he will be subject to particularly severe oppression by the prison administration due to his previous activity.

According to the information given to us by his mother, her son was falsely charged with corruption and blackmailing the prosecutor. During the conversation with us, Kuramshin's mother burst into tears and said she would never see her son alive again. The visit of her son was scheduled for April, but due to the very poor condition of the roads – caused by heavy rainfall – it was virtually impossible to reach by any means of transport the penal colony located 200 km away from Petropavlovsk (for the very same reason, we were forced to cancel our visit to Gornyi). The mother lives off a very low pension, her son used to help her beforehand. At the end of the meeting, we handed Ms. Kuramshina a small gift from our delegation.

### **4. Visit to the penal colony where Vladimir Kozlov is serving time**

Vladimir Kozlov, the leader of an unregistered opposition party ALGA! (registration process of the party has been going on for several years), was charged with organising a criminal

group aimed at inciting social hatred and overthrowing the constitutional order, as well as organising a strike in Zhanaozen, for which he was sentenced to 7.5 years in the penal colony. The colony is located in close proximity to Petropavlovsk, despite the fact that his registered place of residence is in the city of Almaty, situated at the other end of the country.

In compliance with current Kazakh law, around two months prior to the launch of the mission, we filed a request to the Kazakh Foreign Ministry for permission to visit the prisoner V. Kozlov, and we additionally requested an opportunity to meet Mr. V. Kuramshin and Ms. R. Tuletayeva. According to the procedure, the state authority in Kazakhstan is obliged under the law to examine the request within 30 days. Although we sent the request via different channels (email, fax, mail, the Embassy of Kazakhstan in Warsaw), the Ministry of Foreign Affairs of Kazakhstan for a prolonged period of time maintained that they had not received said request in any form.

Upon our arrival to Petropavlovsk, we went to the Branch Office of the Ministry, where the head of the office agreed to an interview with head of the mission, att. Monika Strus-Wołos, Ph.D. The Head reassured us of his eagerness to help, but stated that the case falls outside his authority, since such authorisation may be granted only by the Ministry in Astana, and not the Office in Petropavlovsk. He stated that he had called Astana only the day before, but he was informed that none of our requests had been recorded.

However, as we already knew the reference number of this particular case, and the person supervising the case in Astana, we called the person immediately upon leaving the head's office. The lady in charge of the case informed us that the matter was being considered and she must not be urged on; she also reassured us that we would receive the answer "in due time". To date, we have not received any decision whatsoever.

In that case, we headed to the penal colony, which was within 45 minutes from Petropavlovsk by car. There, the head of the mission engaged in a short conversation with the prison chief warden, whom she asked for permission to view a sample cell, canteen, sanitary facilities, etc. The chief warden communicated that such permission could only be granted by the head of the Branch Office of the Ministry with its seat in Petropavlovsk. However, when we returned to the Office, the deputy head informed us that the head had left a moment previously, and the permission could be granted only by the Ministry of Foreign Affairs in Astana.

A few days later, V. Kozlov's wife told us that her husband had found out that we had visited the penal colony, and he was very grateful to us, and that the news was received as very important emotional support.

When we were out of town, near the penal colony, a TV crew appeared out of nowhere, and, with a very aggressive tone, questioned us about the purpose of our visit. We answered all questions calmly, pointing out that, first of all, we intended to establish a working relationship with the Bar Council of Kazakhstan, since both Poland and Kazakhstan are working on the reform of penal procedure and penal system. We also pointed out that the main purpose of our visit to Petropavlovsk was a meeting with the large Polish community in that city. When

asked why we did not meet with the mayor of the city, we replied that we were interested in the reform of the penal law, and the city authorities are not the ones to decide on law bills. When we asked a female journalist to give us the name of the TV station she represented, she did so; however, as we established later, the TV station she mentioned did not exist. We reported this event to the Embassy of the Republic of Poland.

### **1. Meeting with V. Kozlov's wife – Aliya Turusbekova**

The day before we returned to Poland, we met with Ms. Aliya Turusbekova, the wife of V. Kozlov, serving a sentence of 7.5 years in the penal colony in Petropavlovsk. The meeting was organised by one of the lawyers, who wished to remain anonymous, and to whom we would like to express our most sincere gratitude for his assistance in organising a number of important meetings.

Ms. Turusbekova informed us that her husband had begun to suffer serious health problems, and he had not been provided with adequate medical care. We were also informed about the course of events leading up to and including the strike in Zhanaozen, including the incidents of forcing those arrested to revoke the power of attorney to their lawyers and to grant the power of attorney to the lawyers designated by the state authorities.

The meeting was also attended by Mr. Mikhail Sizov, an activist of the ALGA! party and deputy to Mr. V. Kozlov, who informed us of problems with the registration of the party. For many years, the authorities have been hampering the registration process. For example, it was decided that verification of the authenticity of signatures of all citizens was necessary for registration, and these signatures run into thousands.

### **IV. Other meetings**

The members of the mission were extremely warmly welcomed by the Polish community in Petropavlovsk; the representatives of the community spoke about everyday life in Kazakhstan. Friendly and hospitable President of the "Kopernik" Cultural Centre, Mr. Anatol Kraszewski and his colleagues referred to the needs related to educational activity. What is needed most is a computer-compatible projector that could be used whilst teaching the Polish language, as well as small gifts for children, such as pens, key rings, and bookmarks with traditional Polish motifs that could be used as awards in competitions. The representatives of the Polish community emphasised that they had engaged in extremely productive cooperation with the Embassy of the Republic of Poland in Astana.

Among other meetings, it is worthwhile mentioning a visit to the Consul General of the Republic of Poland in Almaty, Mr. Wiesław Osuchowski, who provided us with numerous valuable suggestions regarding the political and economic situation of Kazakhstan.

Despite the efforts we made prior to our departure, members of the mission failed to meet with His Excellency Yerik Utembayev, Ambassador Extraordinary and Plenipotentiary of the Republic of Kazakhstan in Poland.

### **Conclusions**

With regard to the situation of the Bar's Council in Kazakhstan, there is an evident lack of strong and independent self-governance. The newly formed Unions are clearly influenced by and fully dependent on the State. There are no legal instruments to exercise proper supervision over lawyers and an independent disciplinary judiciary, which results in numerous violations of the ethical code and common corruption cases amongst lawyers. The system of granting state licences to practice the profession of lawyer is highly corrupt, and it is also used by the state authorities to put pressure on individual lawyers.

It is highly recommended that an invitation be granted to a delegation from the Almaty Attorneys' Association to pay an official visit to Poland (or another EU Member State); the invitation should be issued by the Bar Council in order to familiarise our Kazakh partners with the system and the functioning of the Bar's profession based on the professional self-governance that is independent from the state. The establishment of a strong and sovereign Bar could significantly improve the situation in the judiciary branch and as such, foster the fight against corruption, and effective exercising of the accused's right of defence.

The Kazakh rule of law is very modern in many respects, also in terms of penal and penitentiary procedures. However, in practice, many of the provisions are not being duly respected.

Assuming the accuracy of the information provided to us by our interlocutors, we can communicate serious breaches of compliance with modern standards regarding the rights of man and of the citizen, including freedom of speech, freedom of media and political views, and even the prohibition of torture.

The courts are heavily influenced by government authorities. Judiciary and public administration are heavily corrupted.

It is highly recommended that a review the Republic of Kazakhstan's jurisprudence of the criminal code provisions regarding the crime of incitement to hatred, causing social unrest, and attempts to overthrow the constitutional system be carried out, since they are apparently being used against the opposition activists.

It is of critical importance to continuously monitor compliance with the rights and freedoms by international institutions and non-governmental organisations, and in the case of proven violations of fundamental rights - interventions must be undertaken by the international community.

Members of the Mission of the Polish Bar Council:

/-/ Att. Monika Strus-Wołos, Ph.D., Head of the Mission

/-/ Att. Magdalena Fertak,

/-/ Att. Justyna Mazur,

/-/ Att. Wojciech Mądrycki,

/-/ Att. Jacek Świeca

*(relevant signatures on the original copy)*