



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
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EUROPEES PARLEMENT PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

Pavel SVOBODA

Poslanec Evropského parlamentu / Member of the European Parliament

Brussels, 30 March, 2016

**Federica Mogherini,
High Representative of the Union
for Foreign Affairs and Security Policy**

**200 Rue de la Loi
1049 Brussels, Belgium**

Dear Ms High Representative,

As a Member of the European Parliament and Chairman of the European Parliament's Committee on Legal Affairs, I would like to bring your attention to a highly worrying recent case of increased restriction of freedom of speech in Kazakhstan. The case concerns the persecution of an independent Kazakh online portal "Nakanune.kz" and its journalists Ms Guzal Baidalinova, Ms Yulia Kozlova and Mr Rafael Balgin, by the Kazakh authorities. These journalists have faced dubious accusations, have been arrested or face the risk of being placed under arrest due to their professional activity. Given the timing of the proceedings and arrests, just days before and after the signing of the Enhanced Partnership and Cooperation Agreement between the European Union and Kazakhstan, these cases are of particularly great political importance.

Several international governmental and non-governmental human rights organizations (OSCE Representative on Freedom of the Media, Amnesty International, Freedom House, Human Rights Foundation and the Open Dialog Foundation)¹ mentioned in their recent statements that the Kazakh authorities initiated a criminal case against the independent journalists of the Kazakh online portal "Nakanune.kz" on 3 December, 2015. The case was initiated under charges of 'spreading false information' about a Kazakh bank, "Kazkommertsbank". On 18

¹ OSCE Representative on Freedom of the Media (26 December, 2015):

<http://www.osce.org/fom/212731> & (26 January, 2016): <http://www.osce.org/fom/218471> / Amnesty International (21 December, 2015):

<https://www.amnesty.org/en/documents/eur57/3123/2015/en/> / Freedom House (22 December, 2015): <https://freedomhouse.org/article/kazakhstan-authorities-harass-websites-owner-and-journalist/> / Human Rights Foundation (6 January, 2016):

<https://humanrightsfoundation.org/news/hrf-to-kazakhstan-drop-criminal-defamation-charges-against-news-editor-00502/> / Open Dialog Foundation (18 December, 2015):

<http://en.odfoundation.eu/a/7148.kazakhstan-searches-of-independent-journalists-premises-and-criminal-prosecutions-for-spreading-false-information> & (31 December, 2015):

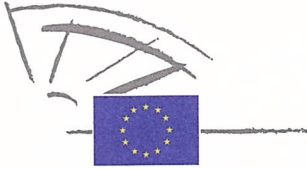
<http://en.odfoundation.eu/a/7163.kazakhstan-journalists-suspected-of-spreading-false-information-arrested>

December, the Kazakh police held a raid on the editorial office of the media outlet and the private apartments of the journalists. Furthermore, on 21 and 23 December, Ms Baidalinova and Mr Balgin were taken into custody and placed under arrest for 2 months. In addition to this, Ms Baidalinova was deprived of the possibility to be released under bail. In relation to Ms Kozlova, an additional case has been launched. On 18 December, during a search of her apartment, the Kazakh police allegedly found drugs. The search, however, was held in the absence of Ms Kozlova and/or her lawyer, which leads me to believe that the illegal substances could have easily been planted in Ms Kozlova's apartment. A practice widely used in the post-Soviet countries to provide appearances of legality in cases of such unsanctioned searches and detentions. On 11 January, 2016, Mr Balgin was suddenly released, but only after giving a forced 'confessionary statement'. Ms Baydalinova however refused to 'confess to all the offences' in exchange for her freedom, as there is a high probability that her forced testimony might be used against other journalists, like Mrs Irina Petrushova, ex-editor-in-chief of the "Golos Respubliki" newspaper.

Most of the journalists currently employed by the "Nakanune.kz" are former journalists of the "Golos Respubliki", a newspaper labeled as 'extremist' by the Kazakh authorities. The newspaper was banned in late 2012 for political reasons in a mock trial, which was highly criticized by the international community. Furthermore, the journalists' recent work has included the analysis and publication of an online correspondence of high-level politicians and public officials of Kazakhstan, disclosed anonymously in the so-called "KazakhLeaks" scandal. The disclosed information included clear evidence of the officials and politicians' massive corruption and involvement in a widespread clampdown on media, civil society and political opposition both in the country and abroad. The use of this leaked information has cost several journalists their freedom, as mentioned above.

In the recent weeks, the same international governmental and non-governmental human rights organizations reported also on other violations of the freedom of speech in Kazakhstan, and criminal prosecutions against ordinary bloggers and social media users. A simple post on social media such as Facebook, criticizing the Kazakh authorities, can lead to arrests or even imprisonment. On 22 January, activists Mr Ermek Narymbaev and Mr Serikzhan Mambetalin were sentenced to three and two years in prison respectively, both having been convicted of 'inciting ethnic hatred' on Facebook by 'prior collusion'. On 30 January, 2016 Mr Mambetalin gave a forced 'confessionary statement' and was released shortly after. Moreover, other bloggers and activists, Mr Igor Sychev, Mr Ermek Taychibekov, Mr Bolatbek Blyalov and Mr Muratbek Ketebayev also have also been facing legal actions from the side of the Kazakh authorities.²

² OSCE Representative on Freedom of the Media (26 January, 2016): <http://www.osce.org/fom/218471> / Human Rights Watch (22 January, 2016): <https://www.hrw.org/news/2016/01/22/kazakhstan-prison-time-facebook-posts> / Amnesty International (21 December, 2015): <https://www.amnesty.org/en/documents/eur57/3123/2015/en/> / Freedom House (22 January, 2016): <https://freedomhouse.org/article/kazakhstan-imprisons-critics-online-commentary> / Human Rights Foundation (1 February, 2016): <https://hrf.org/news/kazakhstan-release-activists-drop-incitement-charges-against-them-00511>



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On 10 March 2016 the European parliament adopted a resolution on freedom of expression in Kazakhstan (2016/2607 (RSP)), which also mentions some of the cases I am referring to in this letter. During the debate in the plenary I reminded my colleagues that Ms Yulia Kozlova has not yet been cleared of all allegations and she is still accused of "spreading false information".

I write to you in the light of the Enhanced Partnership and Cooperation Agreement that you and Minister for Foreign Affairs of the Republic of Kazakhstan, Mr Erlan Idrissof signed in December 2015 in Astana. As mentioned above, the arrests of journalists and activists took place only days after the signing of this agreement. This agreement is now awaiting ratification in the European Parliament and the national parliaments of the member states of the European Union. As Chairman of the European Parliament Committee on Legal Affairs, I strongly ask the members of the parliaments and the European External Action Service to take into account the non-frustration principle of law. The non-frustration rule acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract. A partnership and cooperation agreement can never go without the respect for human rights and the Enhanced Agreement between the European Union and Kazakhstan should therefore not enter into force before Kazakhstan fulfills its human rights obligations, particularly those regarding freedom of speech and media freedom. My hope is that this information on some of the shameful examples of persecution of independent journalists and even ordinary bloggers and users of social media with a critical view on the Kazakh authorities, simply presents how repressive the actions by the Kazakh authorities are. The fact that the Kazakh law contains provisions regarding "defamation" and "spreading false information", only intensifies these restrictions on freedom of expression.

Ms High Representative, I would like to ask you, to devote your utmost attention to these cases, in the hope that the European Union, the European External Action Service and the European Commission will not allow for persecution of any media outlet in Kazakhstan and elsewhere, given particularly the great risk for safety and life of independent journalists.

Sincerely yours,

Pavel Svoboda MEP

CC:

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