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# KAZAKHSTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2011

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In 2010-2011, the situation of human rights and their defenders did not improve despite Kazakhstan's chairmanship of the Organisation for Security and Cooperation in Europe (OSCE). In particular, the legal environment for human rights defenders remained restrictive. Legal provisions likely to hamper the right to freedom of expression were indeed introduced in 2010 and the Law regulating freedom of peaceful assembly still allowed authorities to arbitrarily prevent demonstrations. Furthermore, two prominent human rights defenders were still serving prison terms after having been denied parole applications, though both complied with conditions required in similar cases.

## Political context

In 2010-2011, President Nursultan Nazarbayev's Nur Otan party maintained almost complete control over the political sphere. In January 2010, during the first month of the chairmanship of the Organisation for Security and Co-operation in Europe (OSCE) by the Republic of Kazakhstan, the Parliament asked the President, who has been in office for more than twenty years, to call a referendum that would extend his term of office to 2020, skipping the 2012 and 2017 elections required by the Constitution. When Kazakh civil society, foreign countries<sup>1</sup> and the OSCE<sup>2</sup> scorned the plan, Mr. Nazarbayev decided to call instead for an early presidential poll to be held, nearly two years ahead of schedule. During the elections that took place on April 3, 2011, the acting President received 95,55% of favourable votes. The elections fell short of the OSCE's standards for democratic elections, as there was no genuine opposition candidate against Mr. Nazarbayev. Many citizens were allegedly compelled to vote to counter an initiative launched by the opposition and civil society organisations calling for the boycott of the elections<sup>3</sup>.

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1/ See United States Mission to the OSCE Ambassador Statement on Plans for a Referendum in Place of Presidential Elections in Kazakhstan, January 20, 2011, and EU High Representative Catherine Ashton Statement A039/11, February 1, 2011.

2/ See OSCE Press Release, January 14, 2011.

3/ See OSCE / ODHR International Election Observation Mission Report, *Statement of Preliminary Findings and Conclusions on Early Presidential Election in the Republic of Kazakhstan*, April 3, 2011 and Kazakhstan International Bureau for Human Rights and the Rule of Law (IBHRR) Report, *Report on 2011 Early Presidential Elections in Kazakhstan*, April 5, 2011.

The chairmanship of the OSCE unfortunately benefited neither the human rights situation nor human rights defenders in the country, contrary to the promises made by Foreign Minister Tazhin in November 2007 at the Madrid meeting of the OSCE. The Kazakh authorities not only failed to deliver the promised press freedom reform in line with international standards, but they also introduced a series of legal reforms that further restricted freedoms of Internet and the media, and that shielded Government officials from public scrutiny. Indeed, though the Constitution and the law provide for freedoms of speech and the press, the Government used a variety of means, including laws, harassment, licensing regulations, Internet restrictions<sup>4</sup>, and criminal and administrative charges to control the media and limit freedom of expression. Pro-government articles continued to dominate the media, as a majority of media outlets are either owned by the Government, the President's family or loyal associates, or receive subsidies from the Government. Judicial actions against journalists and media outlets reporting on sensitive issues, including libel and defamation suits filed by Government officials or individuals put up by them subjected media staff and outlets to bankrupting fines and prison terms and contributed to the suspension of media outlets and self-censorship on sensitive issues<sup>5</sup>. The Government also limited individual's ability to criticise the country's leadership with the adoption of a privacy law in December 2009, which expanded privacy rights for Government officials<sup>6</sup>.

In addition, in May 2010, the Kazakh Parliament adopted amendments to the constitutional laws "On the leader of the Nation" introducing a new Article 317.1 to the Criminal Code protecting the President and his family from insult, defamation, changing facts of biography, profanation of their portraits and providing them with immunity against all offences during Mr. Nazarbayev's presidency and after as a "leader of the Nation". Furthermore, the amendments also provided for Mr. Nazarbayev the right

4/ Since March 2010, the Service to React to Computer Incidents created in December 2009 to implement the law on Internet and control the content of the Internet media, has shut down a great number of websites and blogs. See IBHRR.

5/ In 2010, seven local journalists were prosecuted for libel. A total of 54 civil lawsuits, including 24 from State officials and 21 from private citizens, were brought against media outlets and claimed moral damages amounting to 7,5 million tenge (about 35,887 euros). During the year, five journalists were also serving prison sentences. See IBHRR and International Foundation for Protection of Freedom of Speech "Adil Soz".

6/ The new law, vaguely worded, bans publication of information about an "individual's life" while imposing penalties such as the closure of the media or organisation that published the information and the imprisonment of offenders to up to five years. During the first half of 2010, 44 defamation claims were filed, half of them by Government officials. See International Foundation for Protection of Freedom of Speech "Adil Soz".

to decide as last resort on issues of exterior and internal policies even after he has left his function<sup>7</sup>. The new legislation risks to be used against any voice dissenting with the President or his policies and also foresees that during the life of Mr. Nazarbayev the change of power is legally impossible, thus excluding any sort of pluralism in political life.

In 2010-2011, reports of torture or other ill-treatment remained widespread and impunity for such human rights violations persisted, despite the Government's promises to adopt legislative and institutional reforms for the prevention of torture in the National Human Rights Action Plan, approved in the President's Resolution No. 32-36.125 on May 5, 2009. In 2010, only four persons were sentenced for using torture. The remaining cases of torture are still unsolved and unpunished<sup>8</sup>.

### **Judicial and administrative harassment against imprisoned human rights defenders**

In 2010-2011, two prominent human rights defenders were still serving prison terms after being denied parole applications, though both complied with conditions required in similar cases. As of April 2011, Mr. **Evgeniy Zhovtis**, Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law (IBHRRL)<sup>9</sup>, was still serving his four-year imprisonment term in a colony, following a trial marred by numerous violations of the right to a fair trial<sup>10</sup>. In October 2009, Mr. Zhovtis was found guilty of causing death in a traffic accident despite extenuating circumstances and public statements by the victim's family that the charges should not be pursued. On April 26, 2010, the Supreme Court of Kazakhstan refused to review the verdict. Mr. Zhovtis decided not to appeal to the Supreme Court for the review of the sentence. After having served one-third of his four-year sentence, Mr. Zhovtis requested early release. On January 18, 2011, the parole application was denied by the Commission of the Correctional Institution OV 156/13, on the grounds that he "had not mended his ways and needed to continue serving his term", though Mr. Zhovtis complied with conditions applied in similar cases - he provided legal support to other prisoners, participated in cultural events, and paid

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7/ This law is in line with the Law on the First President adopted in 2001 that allows Mr. Nazarbayev to deliver speeches on the national radio and television even when he is out of the office.

8/ See The Coalition of NGOs Against Torture, *Report 2010*, April 7, 2011.

9/ Mr. Zhovtis is also a member of several expert committees before Kazakh authorities and a member of the Council of Experts of OSCE.

10/ In 2010, Mr. Zhovtis' case was also submitted to the UN Human Rights Committee.

compensation to the victim's family<sup>11</sup>. Similarly, as of April 2011, investigative journalist and labour rights defender, Mr. **Ramazan Esergepov**, also Chief Editor and Founder of the *Alma-Ata Info* newspaper, continued to serve a three-year imprisonment term in retaliation for his activities related to awareness raising on public corruption in Kazakhstan<sup>12</sup>. As of April 2011, he remained detained in Taraz City Standard Regime Penal Colony No. 158/2, over 500 kilometres away from the Almaty area where his family is located. Mr. Esergepov petitioned several times for early release and for transfer to a less strict penal colony. All requests were denied by the Kazakh authorities, including the last one on September 24, 2010, which was denied without explanation by the Administrative Commission of Standard Regime Penal Colony No. 158/2. During his detention, Mr. Esergepov has lacked appropriate medical attention for a cardio-vascular problem. He was also refused family visits on numerous occasions.

### **Ongoing obstacles to freedom of peaceful assembly**

While the 1995 Law on the Organisation and Holding of Peaceful Meetings, Gatherings and Demonstrations continued to allow local authorities to ban assemblies “in light of local conditions” or relegate them to peripheral locations, several human rights defenders were sanctioned in 2010 for staging, participating or monitoring public protest actions. For example, on January 27, 2010, Ms. **Roslana Taukina**, Head of the human rights NGO “Journalists in Trouble”, was charged under Part 3 of Article 373 of the Administrative Code, for repeated “violation of legislation on organisation and conduct of peaceful assemblies, rallies, processions, pickets and demonstrations” and ordered to pay 70,650 tenge (about 350 euros) by the Special Inter-District Administrative Court of Almaty for participating in a flash mob in Almaty on January 6, 2010 organised in support of journalists imprisoned in retaliation for exercising their profes-

11/ In order to be released ahead of schedule, Mr. Zhovtis needs to receive the support of the colony administration. The colony parole board mentioned two penalties that had been received in correctional colony OV 156/13. Mr. Zhovtis received the first one in November 2009 when he refused to sign a work contract, and the second one in July 2010 for watching television outside prescribed hours. Mr. Zhovtis filed an appeal against these penalties. Both penalties were annulled by decision of the court by the time of the parole application submission. The colony parole board also mentioned the refusal of Mr. Zhovtis to participate to a Law and Order division in the colony. In law, participation to this division is voluntary.

12/ In particular, he wrote an article in November 2008 in *Alma-Ata Info*, asserting that a regional official of the National Committee of Security (KNB), intelligence services, had sought to influence a local prosecutor and judge in a criminal tax evasion case, involving a local distillery. Following a trial marred with violations of the right to a fair trial, Mr. Esergepov was sentenced in August 2009 to three years of prison in a standard regime penal colony and an additional two-year suspension from journalism.

sional activities<sup>13</sup>. In 2010, Ms. Taukina also learned that on July 15, 2009, she was tried in absentia for participating in a demonstration to protest against the limitation of the freedom of the press that took place in Almaty on June 24, 2009. On February 19, 2010, the City Court of Alma-Aty rejected her appeal<sup>14</sup>.

### **Urgent Intervention issued by The Observatory from January 2010 to April 2011**

<b>Name</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Evgeniy Zhovtis	Continued arbitrary detention	Press Release	July 6, 2010

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13/ See IBHRRL Report, *Freedom of Peaceful Assembly in Kazakhstan: Authorisation Denied*, December 2010.

462 14/ See Adil Soz Press Release, January 27, 2010.