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# INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS

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## ANNUAL REPORT 1999

### Kazakhstan 1

#### IHF Focus:

Elections; freedom of expression and the media; freedom of association; peaceful assembly; the judicial system; torture, ill-treatment and misconduct by law enforcement officials; conditions in prisons and detention facilities; death penalty; treatment of the mentally ill; right to privacy; religious tolerance; freedom of movement; women's rights; rights of the child; social and economic rights.

Kazakhstan's transition from a parliamentary republic into an authoritarian presidential republic was virtually completed in 1998. The country was largely governed by presidential decrees, which had the force of law, leading to virtually unlimited presidential power. Towards Western states, the Kazakh government attempted to assure its commitment to democratic values, at home it cracked down on the opposition and independent media.

In October the parliament adopted 19 amendments to the constitution, submitted by the president and adopted within one week. They brought about significant changes in the political and legal system and secured the president the opportunity to stay in power for the next 15 years. 2

In 1998 the independence and power of the legislative and judicial branches were reduced. State administration and law enforcement agencies underwent reforms, and new bodies were set up with questionable powers. In May a Tax Police Committee was established on the basis of a presidential decree. The committee, which operated within the Ministry of Finance, was vested with powers to carry out operational activities, searches, arrests and seizures. The judicial system did not show considerable improvements to the former Soviet system, remaining ineffective in the protection of human rights and basic freedoms. Law enforcement agencies committed abuses, including illegal arrest and ill-treatment.

Freedom of expression became more and more restricted. The government controlled virtually all media outlets through judicial, political, and economic measures. Journalists' access to information was seriously impeded. Religious minority groups faced criminal proceedings and harassment.

Free association, including the establishment of free trade unions, was subjected to

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The IHF has consultative status with the United Nations and the Council of Europe.

MEMBER AND COOPERATING\* COMMITTEES IN:

Albania – Austria – Azerbaijan – Belarus – Bosnia-Herzegovina – Bulgaria – Canada – Croatia – Czech Republic – Denmark – Finland – France – Georgia<sup>3</sup>  
Germany – Greece – Hungary – Italy – Kazakhstan – Kosovo – Kyrgyzstan – Latvia – Lithuania – Macedonia – Moldova – Montenegro – The Netherlands  
Norway – Poland – Romania – Russia – Serbia – Slovakia – Slovenia – Sweden – Switzerland – Ukraine\* – United Kingdom – United States – Uzbekistan<sup>3</sup>

COOPERATING ORGANIZATIONS:

The European Roma Rights Center – Human Rights Without Frontiers – Mental Disability Advocacy Center

serious restrictions and demonstrations were regarded as a threat to the state.

Wage and pension arrears, increasing unemployment and the failure of the state to pay legally required subsidies brought the population to the verge of the subsistence minimum. The compulsory health insurance system collapsed, and the pension reform faced serious difficulties. Due to increasing poverty and the collapse of health care, many individuals – particularly children and women – suffered from various diseases without proper treatment.

In May, after the IHF Executive Committee had visited Kazakhstan, the IHF sent an open letter to OSCE Chairman-in-Office Bronisaw Geremek to draw the OSCE's attention to a number of serious violations of OSCE human rights standards in Kazakhstan.

## Elections

### Presidential Elections

On 8 October the parliament amended the constitution to reschedule the next presidential elections from 2000 to January 1999. This act was unconstitutional because it revoked the results of the April 1995 national referendum that extended President Nazarbayev's term until December 2000 without elections. He was elected president in December 1991. The 10 January 1999 elections turned out to be a farce, which did not fulfill the standards of fair and free elections. In a strongly worded statement, the OSCE had warned that holding the elections in January 1999 according to the standards they were actually held under would severely damage the reputation of the country.

The elections were called under such short notice that they did not offer proper chances for other candidates than the incumbent president to register and to carry out election campaigns. In addition, there was no law (but just a presidential decree) that governed presidential elections. In May the parliament excluded anyone who had been subject to an administrative punishment (fines, administrative arrests) within one year preceding the elections from registering as a candidate.

- In 1998 numerous public figures and potential presidential candidates had received administrative penalties under various pretexts. The leaders of the Azamat movement Peter Svoik and Murat Auezov, a well-known ecologist and the head of

the Tabigat party Mels Yeleusizov, as well as the leader of Pokoleniye (pensioners' movement) Irina Savostina, were punished for participating in unsanctioned rallies. Akezhan Kazhegildin, former prime minister, was the most prominent potential rival who could not register as a presidential candidate for this very reason.

While it appeared that the whole state machinery was mobilized to support the campaign of the incumbent president, the other three rivals had limited access to the mass media and financial resources. Election committees were controlled by executive authorities which, again, were controlled by the president. The voting procedure and the counting of votes lacked transparency and therefore caused concern about possible abuse and fraud.

The collection of the required 170,000 signatures of support, which allowed the incumbent president to run, involved coercion, fraud, and threats. Public officials and heads of publicly funded institutions such as schools, hospitals and other workplaces forced employees and students to sign petitions in support of President Nazarbaev. Some officials obtained signatures from pensioners and apartment-dwellers by means of fraud.<sup>3</sup>

### Freedom of Expression and the Media

The constitution guaranteed freedom of expression and the media and the right to receive and disseminate information, but its provisions were not respected.

- In February Madel Ismailov, chairman of the opposition Workers' Movement, was arrested and held incommunicado for several days. In April he was sentenced to one year in prison for insulting the president. In November 1997 he had criticized the president during a rally.

- Peter Svoik, co-chair of the Azamat movement stood trial on the charges of having "insulted the dignity of citizens of the Republic of Kazakhstan through arguments which contradict historical facts". He had published a polemical article about the history of the Kazakh state.

The monopolization of the mass media was virtually completed. All major media outlets, including the opposition television, radio and press corporation Caravan became the property of individuals close to the president. The government suppressed all information that was not in line with its policies. The National Agency

for the Press and Mass Media was controlled by the president. The few independent media outlets that had managed to survive faced economic and administrative pressure and criminal prosecution. Critical media were subjected to repeated financial and other controls, and fined heavily for having "insulted the honor and dignity of officials." Many newspapers and periodicals were shut down.

Journalists were denied access to information and were harassed when carrying out their duties. All official data was for "service use only".

Some issues were under unofficial censorship. For example, it was forbidden to mention the names of some political opponents and to write about the costs caused by the move of the capital from Almaty to Astana. All criticism of the upcoming elections was banned.

In February Prosecutor General Yuriy Hitrin brought charges against media outlets that had "abused the right to free speech." The periodicals Argumenty i Fakty, Kazahstanskaya Pravda, Biz and Ogni Priaralya were the first victims.

The amendments to the Law On the National Security, adopted on 26 June, allowed the government to close newspapers, television and radio stations for the purpose of "ensuring national security".

In November managers of the independent newspapers Provintsiya (Aktyubinsk), Tsent (Astana), Region-Yug (Taraz), Soroka (Karaganda), Prospect (Pavlodar), Ustinka (Ust-Kamenogorsk), Yarmarka, XXI Vek and Dat (Almaty) complained to President Nazarbayev about the confiscation of their issues and asked for his intervention.

Following the decision to hold the presidential elections, the government cracked down on the privately owned media.

Newspapers with ties to former Prime Minister Akezhan Kazhegeldin were targeted. On 26 September, the offices of the paper XXI Vek were extensively damaged by a firebomb. Printing presses broke contracts and unilaterally refused to continue printing several of the papers. The state tax police began investigations against several papers, seizing their property and freezing bank accounts. Customs officers seized print runs of several of the papers that had been printed outside Kazakhstan. A court-ordered libel settlement halted the publication of one of the papers, while a frivolous suit against another for supposed infractions of the 1991 Law on the Press

temporarily halted its publication. State security personnel in civilian clothes reportedly harassed distributors of one Almaty newspaper, 451 Gradusa po Farengeitu.<sup>4</sup>

### Freedom of Association

The 1995 constitution acknowledged the right to association and peaceful assembly but contained restrictions which violated international standards.

A number of laws - and particularly presidential decrees – restricted the formation and operation of NGOs. Authorities refused to register undesired NGOs, and then brought charges against their members for illegal activities. Several groups, which had been formed for the purpose of participating in election and campaign monitoring, were not registered.

- On 15 October the leaders of Za Chestnye Vybory ("For Honest Elections") were fined and given administrative jail sentences for their role in organizing the movement. In contrast, the Ministry of Justice registered within days an association called the Public Committee for Monitoring of Presidential Elections in the Republic of Kazakhstan, which had a mandate similar to that of Za Chestnye Vybory, but was organized by persons from within the government and from groups which openly supported Nazarbayev.<sup>5</sup>

### Trade Union Rights

The rights of workers to organize and to conclude collective bargaining agreements were violated. The state-controlled trade unions no longer enjoyed the trust of the workers, but authorities denied registration to independent trade unions and put them under pressure. In February, the government refused to sign the collective bargaining agreement between trade unions, the government and the employers. Legislation regarding the rights of workers (including safety at work) was outdated.

In early 1998 the Prosecutor General's Office initiated court proceedings against independent trade unions, requesting that their activities be suspended for 3-6 months in the name of "state interests."

In the city of Kentau (southern Kazakhstan), administrative proceedings were initiated three times against independent trade union leaders S. Dzhavanov and G.

Nikitin.

## Peaceful Assembly

In February General Prosecutor Yuriy Hitrin warned government critics that meetings, demonstrations and other public manifestations that went "beyond the limits of public order and peace" would be suppressed. As it turned out, this wording equaled to a ban on any critical public action and to legal proceedings against the participants of "unsanctioned" assemblies.

The June amendments to the Law On the National Security classified as threats to national security, among other things, various forms of public assemblies such as demonstrations, illegal picket lines and strikes (article 5.7), and incitement to social, racial, national, or religious hatred and separatism (article 5.6).

- Medeuskiy District Court in Almaty fined and ordered administrative arrests to Peter Svoik, Mels Yeleusizov, Dos Kushim, Akezhan Kazhegildin, and Irina Savostina for their participation in the founding meeting of Za Chestnye Vybory ("For Honest Elections"), a "crime" as the association had not been registered.

Chief of the National Security Committee, A. Musayev, stated that it was necessary to develop measures to stop the activities of political parties and mass media which "undermine national security." He also implied that foreign security services were involved in any form of assistance that NGOs received from abroad. The security services openly monitored NGO activities and participated in their meetings, videotaping them. The Ministry of Justice regarded such activities as legal.

## The Judicial System

### Legal Reform

The adoption and coming into force of the new criminal code, criminal procedure code and the criminal correctional code was the main component of a judicial legal reform in 1998. The new codes laid the foundations for a humane judicature and execution of sentences.

However, the main part of the "legal reform" consisted of presidential decrees:

important laws, including most of those that were needed to implement the constitution, remained to be adopted. The presidential decrees governed virtually all aspects of society, including the judicial system. These decrees had the force of law (some even constitutional force) despite the fact that they were issued without the consent of the parliament, a requirement for the validity for presidential decrees as stipulated by article 53.4 of the constitution.

The Law On Normative Acts of Law, adopted on 24 March, questioned the validity of the civil code, in effect since in April 1995, and may potentially have unpredictable consequences on the whole legal system. The civil code was amended through presidential decrees.

The 1984 Code on Administrative Infractions remained in force although it contradicted the constitution. On 5 June the Constitutional Council declared its article 280 unconstitutional because it expressly denied the right to appeal and review of a court judgment or an administrative penalty. In addition, the code provided for the confiscation of property without a court warrant and fines by various authorities.

A law of 30 June considered certifications of a public notary, decisions of tax inspectors, banks and some other financial institutions (e.g. sanctions for failure to pay bills) as judicial decisions.

### Fair Trial

The constitution and other legislation formally recognized international standards of the right to a fair trial. In practice, legal provisions were not always followed, particularly in cases involving government critics.

The courts did not invoke the constitution in judicial proceedings. Judges generally considered the constitution a political declaration and subordinated it to other laws and decrees. Courts typically accepted the prosecution's arguments without serious assessment, and the defendants' "confessions" were regarded as the main evidence even if they were known to have been extracted under duress. Complaints about the use of illegal interrogation methods were not considered. Often, particularly in civil and administrative proceedings, the judge took the role of the prosecutor if the prosecutor was absent. If the court found that the evidence against the accused was insufficient, the accused was not acquitted, but the case was sent returned for additional investigation.

There were no efficient mechanisms to enforce a court decision passed in others than criminal cases; the authorities simply refused to execute decisions which they did not find suitable.

Most judges were incompetent, overburdened and totally dependent on the authorities. The Ministry of Justice was in charge of supplying courts with personnel, materials and technical facilities, and local administrations decided on matters such as the housing of judges. Many judges were dismissed for bribery.

#### Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

In July Kazakhstan ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This act, however, did not bring about any improvements in practice: torture and ill-treatment continued. Any complaints submitted to the authorities resulted in the reply that, following thorough investigations, no abuses could be verified.

Law enforcement officials carried out arbitrary arrests and held individuals without warrant. Between January and the end of July 1998 the Almaty Prosecutor's Office refused to warrant detention in 416 of the 2,719 cases of arrest, citing lack of legal basis. In at least 269 cases investigators exceeded the maximum legal detention period.

- In the fall of 1998 the Almaty police arrested more than 20,000 individuals for a short period. They cited the right to "protect public order and peace."

- In Shymkent I. Korchagin died after two officers of the State Investigation Committee had beaten him up. The committee was later abolished.

- In Jezkazgan a client of the sobering-up station was beaten to death by police officers.

#### Abuse in the Military

In 1998 the Military Prosecutor's Office became more active in issues relating to human rights violations in the armed forces. Still, hazing by superior officers remained widespread, as well as acts of torture. Servicemen also suffered from lack of food and adequate medical treatment.



In July military prosecutors noted that the crime rate within the army had decreased by 23.3 percent in comparison to the previous year. However, the cases of hazing had increased, and as many as 44 servicemen were killed during that period. In addition, some recruits committed suicide because of hazing. Recruits also died of tuberculosis, skin and venereal diseases, hepatitis and dystrophy, largely due to extremely poor physical and hygienic conditions. For example, many units did not have bathrooms or heating. In the Otrar garrison the soldiers were accommodated in tents throughout the winter.

### Conditions in Prisons and Detention Facilities

Overcrowding, poor hygiene as well as shortage of food and inadequate medical care, particularly in temporary isolation and investigation facilities, amounted to inhuman and degrading treatment. In addition, conditions in correctional labor colonies were extremely poor. Tuberculosis was widespread, the inmates were idle, food was of poor quality, and medical care insufficient.

- In the correctional labor colony OV-156/18 in the town of Zhangiz-Tobe, 72 inmates mutilated themselves in protest against the brutal treatment by colony officials.

Despite repeated reports about inhuman conditions in prisons and labor camps, journalists or NGOs were not granted access to them to observe the situation.

Journalist Khelcha Ismailova was denied access to Correctional Labor Colony Mo. 11 in Semipalatinsk. She wanted to interview the inmate E. Chaban, who had claimed that he had been tortured and ill-treated in that facility. The special prosecutor replied that the accusations could not be verified.

### Death Penalty

The criminal code provided for the death penalty as a punishment for 18 peacetime crimes, including murder, genocide, treason, and an attempt to take the life of a public figure, judge or pre-trial investigator. Seven more war time crimes carried a death penalty, e.g. desertion, evading military service, and the failure to carry combat orders. Women, individuals who had committed the crime under 18 years of age and the elderly aged over 65 on the date of the sentence were excluded from the death

penalty.

The president, at the proposal of a clemency committee, could commute a death penalty into a life sentence (25 years). The only superior court to handle appeals of a death penalty was the Supreme Court. Therefore, people charged with capital crimes had fewer opportunities to appeal against their sentence than those charged with less serious crimes.

In violation of the ECOSOC Resolution 1989/64, Kazakhstan did not disclose statistics on executions. However, according to unofficial information received by the Almaty Helsinki Committee, between 1994 and the end of 1998, 75 individuals were sentenced to death in eastern Kazakhstan only.

### Treatment of the Mentally III

More than 300,000 people were registered as psychiatric patients (excluding minors).

A 1997 law regulated psychiatric care and the rights of psychiatric patients, but the situation did not improve in 1998. Psychiatric care was completely insufficient.

Various governmental agencies violated the right to privacy by requiring medical certificates about individuals' mental health. Psychiatric institutions continued to be closed for public control.

The state of forensic psychiatry was also serious. Authorities failed to differentiate between ordinary criminals and those requiring psychiatric treatment. As a result, mental patients who had committed minor crimes ended up serving terms in forensic psychiatric institutions in deplorable conditions even if they could have been better treated as out-patients. The facilities for forensic psychiatry urgently needed renovation, and adequate training for forensic psychiatrists was long overdue.

Another problem was that any labor colony official could apply that a prisoner whose conduct was "inadequate" be placed in forced psychiatric treatment without an expert opinion.

### Right to Privacy

Kazakhstan is planning to carry out the second census during its independence. A pilot of the census was carried out in the Saryagash District in the southern Kazakhstan region and in several rural districts in northern Kazakhstan. The population was ordered to fill in census documents that contained intimate questions such as how many children a woman had born, how many of them had died and so on. They were also asked to report about their housing (e.g. the size of the apartment, and relation to the owner of the flat or house). This pilot project was conducted in the presence of officers and employees of the police and enlisted men from the internal security troops.

The Almaty Helsinki Committee complained that its correspondence was subject to regular scrutiny.

### Religious Tolerance

Kazakhstan has had a history of religious tolerance. In addition to the majority religions - Islam and Orthodox Christianity – members and supporters of other Christian religions, Buddhism, the Hare Krishna Movement and others had traditionally been able to operate relatively freely. Article 22 of the Kazakh constitution guaranteed freedom of conscience provided that the "exercise of such a freedom does not preclude [people] from performing [their] duties and obligations to the state". The law on the freedom of religion was adopted in 1992 and revised in 1997.

Both the constitution and the law on the freedom of religion contained restrictions on the practice of religions, which were not "traditional" in Kazakhstan. In recent years, such restrictions were implemented more strictly, also resorting to violations of the law. Also, in 1998 local authorities often interfered in the activities of religious organizations under various pretexts. In particular, communities with foreign leaders were targeted. They were denied registration, subjected to various forms of checks, and their members harassed. Local authorities and media have even called for bans on their activities.

- The Public Prosecutor's Office of the Almaty District in Almaty carried out checks in the Charismatic Evangelic Church of Christ for over six weeks. Citing violations of tax laws, the lack of obligatory accreditation for the Kyrgyz pastor, and the failure of the church to re-register after several of its founding members had left the community, the prosecutor demanded that its activities be suspended. However, by law, only agencies under the Ministry of Justice were authorized to control the

activities of religious organizations. The Prosecutor's Office could ask a court to ban the activities of a religious organization only at the request of such agencies, provided that their activities had exceeded the scope set forth in their statutes. In addition, the public prosecutor had reportedly "advised" several founding members to write letters of resignation, which were then used as "evidence" against the church.

- Two female lecturers at the University of the city of Taraz (Southern Kazakhstan), both former Muslims but now active members of a Christian minority church, were moved to other positions at a lower pay because their conviction did not "comply with the state ideology." For this reason, they were deemed as unsuitable to instruct young people. They were also warned that their work contracts would not be prolonged.

The Kazakh government was preparing amendments to the current law to provide for further restrictions on the activities of religious minority groups because there was allegedly need to strengthen the role of the state in controlling the activities of non-traditional religions.

### Freedom of Movement

Freedom of movement was not respected in Kazakhstan. Internal visa regulations (propiska) remained in force and citizens could not freely choose their place of residence and work. They needed an exit visa to travel abroad, a requirement that involved extensive bureaucracy.

### Women's Rights

In July Kazakhstan accessed the UN Convention on the Elimination of All Forms of Discrimination Against Women. However, in practice women were underrepresented in employment, particularly in business and state administration, and over-represented among the unemployed. In the southern regions, 70-80 percent of all without work were women, and most of those dismissed from their work were women, too.

In 1998, 2,000 cases of sexual violence against women were registered. The actual number was estimated to be much higher.

### The Rights of the Child

Kazakhstan is party of the UN Convention on the Rights of the Child, but its provisions on education, health care and social welfare of children were not implemented.

The material conditions in all levels of education and the day care institutions were catastrophic. Some 300 secondary schools were closed down and the number of pre-schools reduced by 70 percent. Others needed urgent renovation: many had no electricity, gas, water or heating. There was a lack of teachers and teaching materials (including books), delays in salary payments, and overcrowding in classrooms. It was virtually impossible to receive secondary education in rural areas. Many children did not go to school due to various domestic problems.

Virtually all children had health problems, and almost half of all small children had problems with their mental development. Increasing numbers of newborn were left by their mothers in maternity clinics, and more and more children ended up in orphanages because they did not have anyone to take care of them. More and more ran away from home.

The juvenile delinquency rate was on the increase as was juvenile alcoholism and drug addiction. In Almaty, the number of criminal proceedings against juveniles increased by 67 percent during one year. Abuse of children by parents, teachers, or other adults was virtually ignored.

#### Social and Economic Rights<sup>6</sup>

As of the end of 1998 about one third of the Kazakh work force was unemployed, most of them women and young people between 16 and 29 year of age. Hundreds of enterprises had closed and others operated only part-time. A December law complicated unemployment registration and the receipt of allowances, and reduced benefits to approximately US\$24 a month.

Many of those still employed had not been paid salaries for months or even years. Other received their payment in kind.

- As of this writing, the workers of the Sarkanskaya hydroelectric power plant had not received their salaries for 19 months.

- In the Sarykolskiy district of Kostanay, school teachers and medical professionals received their salaries in food and vodka. Employees of transportation companies

were often paid in second hand vehicles.

The health care system was ruined and unable to offer proper treatment. There was lack of medication and trained staff, and the poor physical conditions and lack of hygiene resulted in the fast spread of tuberculosis, hepatitis, HIV and other diseases, with a high death rate. Numerous children suffered from cancer, with a 30-40 percent death rate. Some 73 percent of children under 14 suffered from viral hepatitis or other intestinal infections, in the southern regions this figure reached 90 percent. In Semipalatinsk and in the area around the lake Aral, which were former nuclear production and testing areas, the death rate was even higher than elsewhere in Kazakhstan.

The state system of compulsory medical insurance collapsed, with the responsible state agency facing charges of misuse of funds. In November the parliament declared the presidential decree on compulsory medical insurance void, and the remaining funds were transferred to the state budget.

#### FOOTNOTES:

1. Unless otherwise noted, based on Human Rights in Kazakhstan, Annual Report 1998, Almaty Helsinki Committee.
2. The adopted 19 constitutional amendments (Law No. 284-1), among other things, extended the term of the president from five to seven years (article 41.1); revoked the age-limit for presidential candidates (article 41.2); abolished the minimum voter turnout for presidential election to be valid (articles 41.5 and 51.5); and allowed an acting president to dissolve the parliament, dismiss members of government, and call a referendum article (48.1-2). They empowered the president to appoint the chairman of the Supreme Judicial Council but not to act in this function himself anymore (article 82.4). The president also was vested with the right to appoint all akims (chiefs of local executive authorities, article 87.4). The amendments also provided for the election of akims, but the procedures for such elections were to be determined by the president.
3. "Kazakhstan's Presidential Campaign Found Grossly Unfair," press release, Human Rights Watch/Europe and Central Asia Division, 5 January 1999.
4. A letter from Human Rights Watch to Knut Vollebaek, chairman of the OSCE, Human Rights Watch/ Europe and Central Asia Division, 5 January 1999.
5. Ibid.
6. For details, see Human Rights in Kazakhstan, Annual Report 1998, Almaty Helsinki Committee.

