



Kazakhstan: Ruling against civil society activists sets dangerous precedent

1 December 2016

We, members of the Civic Solidarity Platform (CSP), condemn the prison sentences handed down against Kazakhstani civil society activists Max Bokayev and Talgat Ayan in retaliation for their participation in peaceful land reform protests. The two activists were convicted following a politically motivated and unfair trial and the ruling in their case sets a dangerous precedent for civil society engagement in the country.

On 28 November 2016, Atyray City Court No. 2 found Max Bokayev and Talgat Ayan guilty of “inciting social discord” and “disseminating information known to be false”, through collusion using social media, as well as of “violating the procedure for holding assemblies” (Criminal Code articles 174, 274 and 400). Both of them were sentenced to five years in prison, banned from engaging in public activities for three years upon release and fined 530 250 Tenge (about 1500 EUR) .

International human rights bodies have repeatedly criticized the first two Criminal Code provisions used against the activists since they are so broadly worded that they may be implemented to unduly restrict freedom of expression and other fundamental rights. The third provision criminalizes peaceful protests held without advance permission by authorities, which Kazakhstani law requires in violation of international standards. At the same time, requests to hold protests are frequently rejected or protests are only allowed outside the “sight and sound” of target audiences. In a legal analysis submitted in the case against Max Bokayev, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasized that international law does not allow authorities to impose “authorization” requirements on those seeking to hold peaceful assemblies and warned against the application of vague legislation in ways that criminalize peaceful dissent.¹

Max Bokayev and Talgat Ayan were detained in mid-May 2016 in the context of widespread peaceful protests against amendments to Kazakhstan’s Land Code, which would increase the rights of foreigners to lease land in the country. They actively engaged on social media against these reforms and participated in and mobilized participants for a rally on this issue in Atyray on 24 April 2016, which local authorities refused to sanction. They also announced their intention to take part in a new rally in this city on 21 May 2016, which local authorities again denied permission to hold. On that day, peaceful protests on the land reforms and broader issues of discontent were planned in cities across the country. The two activists were initially sentenced to 15 days’ arrest for allegedly violating the procedure for holding assemblies before a criminal case was opened against them and they were placed in pre-trial detention. The trial began on 12 October 2016.

As documented by NGO observers, including Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) as an observer on behalf of the CSP, the trial against Max Bokayev and Talgat Ayan was marred by violations of international fair trial standards, in particular the principle of equality of arms. Defence motions were routinely rejected, important defence witnesses were not allowed to testify and independent expert conclusions were not taken into account. The court also failed to give adequate attention to Max Bokayev’s deteriorating health condition and did not allow him to be transferred to house arrest on health grounds. The judge, Gulnara Dauleshova acknowledged that the case is politically motivated. Prior to the start of the trial, she requested police to take measures to protect her safety, “taking into account” that the

case “is of a political character and has caused a public outcry.”² In view of all of this, the conviction of the defendant appeared to be a foregone conclusion.³

Overall hundreds of people were detained in connection with the land reform protests held in Kazakhstan in April-May 2016, and some two dozen civil society activists, human rights defenders and social media users were fined or locked up for up to 15 days. However, Max Bokayev and Talgat Ayan are the only ones to have been imprisoned on criminal charges for their role in these protests, which resulted in that the Kazakhstani authorities imposed a moratorium on the criticized Land Code provisions.⁴

We believe that Max Bokayev and Talgat Ayan were sentenced to prison for exercising their rights to freedom of expression and peaceful assembly, as protected by Kazakhstan’s Constitution and international treaties to which Kazakhstan is a party. The Kazakhstani authorities should immediately and unconditionally release the two activists, stop prosecuting individuals for their criticism of government policies and allow peaceful protests to take place without hindrance. In this regard, we also note that the European Union, in a statement issued on 30 November 2016, called on the Kazakhstani authorities to release Max Bokayev and Talgat Ayan, to cease the criminalisation of dissenting opinions and to ensure that the freedoms of speech and of assembly are protected.⁵

Signed by the following members of the CSP, a network of over human rights NGOs from Europe, the former Soviet Union and North America:

International Partnership for Human Rights (Belgium)
Kazakhstan International Bureau for Human Rights and Rule of Law (Kazakhstan)
Public Association "Dignity" (Kazakhstan)
Center for the Development of Democracy and Human Rights (Russia)
Human Rights Movement "Bir Duino-Kyrgyzstan" (Kyrgyzstan)
Helsinki Foundation for Human Rights (Poland)
Crude Accountability (United States)
Public Verdict (Russia)
German-Russian Exchange (Germany)
Netherlands Helsinki Committee (Netherlands)
Promo LEX Moldova (Moldova)
Human Rights Center of Azerbaijan (Azerbaijan)
Moscow Helsinki Group (Russia)
Committee for the Prevention of Torture (Russia)
Kharkiv Regional Foundation “Public Alternative” (Ukraine)
Helsinki Citizens' Assembly–Vanadzor (Armenia)
Institute for Reporters’ Freedom and Security (Azerbaijan)
Norwegian Helsinki Committee (Norway)
Helsinki Committee of Armenia (Armenia)
Barys Zvozkau Belarusian Human Rights House (Lithuania)
Humanrights.ch (Switzerland)
Article 19 (UK)
Protection of Rights without Borders (Armenia)
Office of Civil Freedoms (Tajikistan)
Nota Bene (Tajikistan)
Ukrainian Helsinki Human Rights Union (Ukraine)
Helsinki Association Armenia (Armenia)

Anki Wetterhall, Secretary of the Swedish OSCE Network and Olof Kleberg, Vice Chairman of this network (Sweden)
Center for Civil Liberties (Ukraine)

¹ See press release from 29 October 2016 and legal analysis prepared by the Special Rapporteur at the request of the Public Association “Dignity”, which was helping with Bokayev’s defense, at <http://freeassembly.net/news/kazakhstan-max-bokayev-case/>

² Ruling issued by Gulnara Dauleshova on 10 October 2016, a copy of which has been obtained by KIBHR.

³ For more detailed comments on this issue, see interview with KIBHR Director Yevgeniy Zhovtis published in *Tribuna* on 16 November 2016, https://bureau.kz/novosti/sobstvennaya_informaciya/yeto_process_s_zaranee_zadannym_iskhodom/

⁴ In May 2016, a moratorium was imposed on these provisions until the end of 2016, and on 23 November 2016, the lower house of the parliament passed a law postponing the implementation of them until 2022.

⁵ The statement is available at: https://eeas.europa.eu/headquarters/headquarters-homepage/16135/statement-by-the-spokesperson-on-the-sentencing-of-max-bokayev-and-talgat-ayan-in-kazakhstan_en