



Kazakhstan

After adopting several welcome, albeit modest reforms in early 2009, the government of Kazakhstan dealt a series of blows to human rights that undermine Kazakhstan's role as the chair of the Organization for Security and Co-operation in Europe (OSCE) in 2010. It failed to implement more meaningful reforms it had promised. Authorities sentenced the country's leading human rights defender to four years' imprisonment following an unfair trial, adopted restrictive amendments to media and internet laws, did not allow peaceful demonstrations and protests, and used national security interests to justify incommunicado detention and denial of access to legal counsel. Throughout much of 2009 international criticism of the country's human rights record grew.

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Trial of Evgeniy Zhovtis

On September 3, 2009, Evgeniy Zhovtis, founding director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, was found guilty of manslaughter following a motor vehicle accident in which a young man was killed. The investigation and trial leading to his conviction were marred by serious procedural flaws that denied him the right to present a defense and gave rise to concern that this tragedy may have been politically exploited.

On July 27, the day after the accident, the authorities opened a criminal case, a normal procedure after a car accident with a casualty. The investigation initially designated Zhovtis as a witness, changing that status to suspect the next day but informing Zhovtis and his lawyer about this only two weeks later, a serious violation of Kazakh law. At trial the judge either rejected or postponed all defense petitions without ruling on them. These actions served to deny Zhovtis the opportunity to challenge the evidence against him, violating his right to defend himself. Zhovtis was sentenced to four years in a settlement colony.

On October 20 the Almaty Province Court upheld the verdict. Zhovtis was not allowed to attend the hearing, and again his defense team was not allowed to present evidence or to challenge prosecution expert evidence.

On September 19 an official with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed concern about reports "of numerous violations of Zhovtis' right to a fair trial." Other international actors, including the European Union, the French government, and the United States government, issued similar statements.

Freedom of Expression and Information

On February 6, 2009, President Nursultan Nazarbaev signed into law a set of amendments affecting the media. These simplify the registration process for the electronic media by dropping the requirement that they register (which had duplicated some of the requirements for the licensing process) and eliminating the requirement that all media outlets reregister in the event of a change in editor-in-chief or legal address. The amendments also made it possible for media outlets to appeal to court against

denials of governmental information, and allowed media workers to use audio recorders and cameras to collect information without permission of an interviewee.

The amendments do not address broader problems with media freedoms, such as the domination by government loyalists of broadcast media outlets, threats and harassment against independent journalists for criticizing the president or government policies and practices, prohibitive penalties for civil defamation with no cap on defamation awards, and the existence of criminal penalties for libel. Moreover, on July 10 Nazarbaev signed another package of amendments to laws dealing with the media and the internet, under which all forms of internet content-including websites worldwide, blogs, and chatrooms-could potentially be considered "internet resources" and therefore subject to existing restrictive laws on expression. The law also expands the grounds for banning media content relating to elections, strikes, and public assemblies, using broad wording that could give rise to arbitrary interpretation. Taken together, these conditions maintain a chilling environment in which media outlets and journalists are faced with the constant threat of lawsuits and crippling defamation penalties.

Among examples where that threat was realized, Ramazan Yesergepov, editor of the newspaper *Alma-Ata Info*, received a three-year prison sentence on August 8, 2009, for disclosing state secrets, after the newspaper published an article making corruption allegations against local authorities based on classified documents. Yesergepov's trial was closed, and he did not have access to legal counsel of his own choosing. In June the independent Almaty weekly *Taszhargan* had to cease publishing after an appellate court upheld a prior decision awarding Romin Madinov, a member of parliament, 3 million tenge (about US\$20,000) in "moral damages" for an article alleging that Madinov's business interests benefited from his legislative work. In September an Almaty court ordered the weekly *Respublika* to pay 60 million tenge (about US\$400,000) in "moral damages" to the BTA Bank, which had sued the newspaper after a March article discussing the bank's possible bankruptcy allegedly cost the bank the equivalent of US\$45 million in deposits. The appeal is still pending, but the newspaper is not able to pay the fine, and will cease publishing if the decision is upheld.

Freedom of Assembly

The government made no effort to liberalize legislation on freedom of assembly. A public meeting of a political nature that is not organized directly or indirectly by the government, or that is not in support of government policies, is likely to be denied a permit, and broken up by police if it goes ahead. Kazakhstan's law on public assemblies requires demonstrations as small as a one-person picket to be registered with the authorities at least 10 days in advance. It allows local authorities to "additionally regulate" public assemblies "with regard to local conditions," which amounts to a virtual carte blanche to limit freedom of assembly.

The law prevented at least several public gatherings in 2009. For example, on February 13 several citizens' groups and political parties made coordinated applications to the mayors' offices in 12 cities to hold protests on February 25, but not a single group received permission. In another example, on April 21, 12 activists with the youth human rights organization Ar.Rukh.Khak were detained by police for three hours when they tried to meet with journalists at the main square in Almaty to discuss concerns regarding a proposal for introducing mandatory drug testing of students.

On September 11 Viktor Kovtunovsky, an independent journalist, was fined the equivalent of US\$210 for standing alone on Almaty's central square with a banner that said "Today Zhovtis, tomorrow you." Six days later, Andrei Sviridov, another

journalist, was fined for staging a similar picket.

Access to Legal Counsel

In several high-profile cases in 2009 Kazakhstan's Committee for National Security (KNB) deprived defendants of their right to legal counsel of their own choosing on grounds that lawyers must have special clearance to be engaged in cases involving state secrets. For example, Daniyar Kanafin is defense lawyer for Mukhtar Dzhakishev, president of KazAtomProm (a state-owned nuclear company), who stands accused of expropriation and embezzlement. After Kanafin publicly complained that the KNB violated national and international law by preventing him from meeting his client, on July 7 the KNB sent a request to the Almaty Bar Association and the Almaty Department of Justice to disbar Kanafin on the grounds that he "created a negative perception" of the authorities. The Almaty Bar Association rejected the request, but Kanafin remains unable to access his client.

At this writing Dmitry Parfenov and Malkhaz Tsotsoria, vice presidents of KazAtomProm, have been in KNB "safe houses" since June, allegedly in the framework of a witness protection program; both men are state witnesses against Dzhakishev. The men have no access to legal counsel of their own choosing and instead have only state defense lawyers provided by the KNB who have special security clearance. Both the KNB and the state defense lawyers pressured the men's wives not to complain to international organizations and diplomats about their husbands' treatment "if they do not want to worsen the situation."

Freedom of Religion

In one positive development, on February 11, 2009, Kazakhstan's Constitutional Council ruled that a proposed religion law violated the constitution. One of the key elements of the ruling was its finding that certain provisions in the proposed law "do not ensure equality between religious communities" and that many of its provisions were vague and thus might create problems for implementation.

Key International Actors

The OSCE remained engaged with Kazakhstan throughout 2009 on issues relating to the upcoming chairmanship. In early 2009 Miklos Haraszti, the OSCE's representative on freedom of the media, welcomed amendments to the media law but said the law "still fails to meet several international standards." He urged the government to carry out reforms aimed at "de-monopolizing the media market" and "decriminalizing libel and insult." Later in 2009 Haraszti urged President Nazarbaev to veto the new internet law.

Germany assisted the Kazakh government in preparing for the chairmanship, but made no discernible effort to challenge the Kazakh government on human rights setbacks and promote change. This was disappointing, given that Germany had been Kazakhstan's strongest supporter in its bid for the 2010 OSCE chairmanship. In February 2009 the European Union and the United States issued public statements welcoming the February 2009 reforms and underlining the need for further progress in the lead-up to Kazakhstan's OSCE chairmanship. In September both the EU and US expressed their concern regarding the adoption of the internet law, the sentencing of journalist Ramazan Yesergepov, and the fair trial violations in Evgeniy Zhovtis's case. In particular the EU stated it "regrets" that it had to "to express its concern with regard to freedom of the media in Kazakhstan on a number of occasions."

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