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Kazakhstan: Presumed guilty before trial: prosecution of peaceful protesters Maks Bokaev and Talgat Ayan

Arrested initially for making posts on Facebook and other social media platforms in April and May about unpopular legal changes and the ongoing protests against those changes, Maks Bokaev and Talgat Ayan could face up to 10 years in prison, if convicted. Their trial to date has not met the requirements of a fair trial contained in international human rights treaties ratified by Kazakhstan, including the right to be presumed innocent until proved guilty. Maks Bokaev and Talgat Ayan have been held in pre-trial detention since May, and Maks Bokaev's family report that he is in poor health. Furthermore, human rights defenders and activists who have supported Maks Bokaev and Talgat Ayan have faced harassment, intimidation and arbitrary detention, and some have been prevented from monitoring the trial.

Amnesty International believes that Maks Bokaev and Talgat Ayan are prisoners of conscience, prosecuted solely for exercising their rights to freedom of expression and peaceful assembly. They should be immediately and unconditionally released, and the criminal charges against them should be dropped.

Charged for posts on Facebook

Maks Bokaev and Talgat Ayan had put in requests with the local authorities in Atyrau, western Kazakhstan, as national law requires, to hold a peaceful demonstration on 21 May. On that day, rallies were planned across Kazakhstan against unpopular proposed changes to the Land Code. The authorities denied these requests, however Maks Bokaev and Talgat Ayan publicly stated on Facebook and other social media sites that they still intended to participate in a demonstration in Atyrau on 21 May, and encouraged others to participate. Both were detained on 17 May. Following their arrest, they were both sentenced to 15 days administrative detention under Article 488 of the Administrative Offences Code for "violation of the legislation of the Republic of Kazakhstan on organizing and holding peaceful assemblies", for attempting to "organize" a protest on 21 May.

A day before their administrative detention was due to expire, on 31 May, Maks Bokaev and Talgat Ayan were charged with "propaganda and public calls to seize or retain power, as well as seizure or retention of power or violent change of the constitutional order of the Republic of Kazakhstan" under Article 179 of the Criminal Code, in relation to their participation in an earlier rally that took place on 24 April. These charges were subsequently dropped in July; Maks Bokaev and Talgat Ayan are now charged with committing the criminal offences of "inciting social, national, clan, racial, class, or religious discord" (Article 174), "spreading of false information" (Article 274) and organizing unsanctioned meetings and demonstrations (Article 400) in connection with their participation in the April rally. If convicted, they could face up to 10 years in prison.

Unfair trial

Maks Bokaev's and Talgat Ayan's trial began on 12 October, at the Atyrau City Court. Court hearings have taken place almost every day since then, all of them marred by violations of fair trial guarantees, including those provided for in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Kazakhstan ratified the ICCPR in 2006.

Independent trial observers have reported that the principle of equality of arms has not been observed during their court hearings, giving the impression that Maks Bokaev and Talgat Ayan are presumed in the course of the court proceedings to be guilty of the offences they are charged with. This violates article 14 (2) of the ICCPR, which states that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law". In addition, according to Maks Bokaev's and Talgat Ayan's supporters, motions by the defence have been rejected with no reason given. During the first hearing, the judge denied the defence's motion to disqualify the judge and prosecutors on the grounds of lack of impartiality and other procedural violations. The defence's request to the court to consider alternative expert opinions was also rejected. In addition, the judge dismissed a motion that witnesses be questioned in person rather than via video link.

The first hearing was held in a very small courtroom and not all observers were allowed in. One of Maks Bokaev's sisters was not allowed to attend the afternoon session as she was told that she was on the list of witnesses in the case, although she had been able to attend the morning session and had not given any witness statement to the police beforehand. The court building was cordoned off by police, traffic police and men in civilian clothes.

Maks Bokaev and his lawyers have also not been granted adequate time and facilities to prepare his defence, after they were denied access to some of the information contained in the prosecution's case against him. During a hearing on 18 October, the judge denied Maks Bokaev's request (made 15 days earlier) to be given access to the relevant case files. In response, the judge stated that these files contained only statements of lawyers and "some individuals", and that Maks Bokaev and his lawyer could get acquainted with this information after the trial. Talgat Ayan's lawyer had asked the court to allow him time to familiarize himself with video and audio recordings that form part of the case materials, including video recording from the protest in Atyrau on 24 April. The judge denied this request. This violated Article 14 (3b) of the ICCPR, which states: "everyone shall be entitled to ... have adequate time and facilities for the preparation of his defence..." In addition, not all case materials have been translated from Kazakh into Russian, as requested by the defence.

Health concerns

Since their detention on 17 May, Maks Bokaev's and Talgat Ayan's relatives have expressed concerns about the conditions of their detention and their deteriorating health.

Maks Bokaev has been living with chronic hepatitis C for the past five years. Two years ago he received treatment and the disease went into remission, but since his detention, his

health has considerably deteriorated. According to his relatives, Maks Bokaev is being denied adequate medical care, including antiviral therapy. In light of his poor health, Maks Bokaev's lawyer asked if he could be released from pre-trial detention and held under house arrest instead. The National Security Committee of the Republic of Kazakhstan (KNB – the investigating authority in the case) refused this request on 18 September, on the basis that the necessary medical treatment could be provided in pre-trial detention and that, according to them, Maks Bokaev's condition was satisfactory. Maks Bokaev's sister, who is also one of his legal representatives, requested to visit her brother in order to find out about his state of health; the judge refused this request. Despite assertion by the prosecutors that Maks Bokaev's health was satisfactory, an ambulance had to be called to attend to him in the courtroom on 18 October. The next day, Maks Bokaev's condition worsened and only Talgat Ayan was brought to the courtroom. The judge adjourned the hearing on 19 October, but the proceedings resumed the following day. After falling ill on 18 October, Maks Bokaev was diagnosed with cholecystitis and pancreatitis. His lawyer requested that the trial be postponed, but the judge refused on the grounds that this diagnosis was not a sufficient reason. Prosecutors accused Maks Bokaev of faking illness.

On 19 October, it was reported that Talgat Ayan cut his upper arm as a protest against the unfair trial.

Kazakhstan has international obligations to provide medical care to prisoners and to ensure adequate conditions of detention. Article 10 (1) of the ICCPR states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". The right of all persons, including those deprived of their liberty, to the highest attainable standard of health is guaranteed in a wide range of international instruments, including the International Covenant on Economic, Social and Cultural Rights, to which Kazakhstan is a state party.

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) clarify that the provision of health care for prisoners is a State responsibility and that prisoners should enjoy the same standards of health care that are available in the community and without discrimination. Furthermore, the Mandela Rules also provide that prisoners who require specialist treatment must be transferred to specialized institutions or outside hospitals when such treatment is not available in prison.

Failure to provide adequate health care to prisoners may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including under Article 7 of the International Covenant on Civil and Political Rights, and the Convention Against Torture, both treaties that have been ratified by Kazakhstan.

Harassment of Maks Bokaev's and Talgat Ayan's supporters

People who have publicly expressed support for Maks Bokaev and Talgat Ayan have faced harassment, intimidation, physical attacks and arbitrary detention. The pattern of these incidents indicates that this group of activists have been targeted specifically because of their support to Maks Bokaev and Talgat Ayan, in violation of their rights to freedom of expression and peaceful assembly, both of which are protected under the ICCPR (Articles 19 and 21). On 26 October, Maks Bokaev's and Talgat Ayan's supporters held a press

conference at which they raised concerns about the pressure and threats that they have been subjected to.

On 11 October, Lukpan Akhmedyarov, an opposition journalist from Uralsk, northwestern Kazakhstan, was prevented from going to Atyrau to attend the first court hearing, when court executors confiscated his identity card. The local Prosecutor's Office had opened an administrative case against him for his failure to pay earlier compensation to the former head of the local Department of the Ministry of Internal Affairs, after Lukpan Akhmedyarov had written an article critical of this official several years back. Lukpan Akhmedyarov had been unable to pay his monthly share of the fine in the last two months due to financial constraints. He believes the authorities used this as an excuse to confiscate his identity card with the sole purpose of preventing him from attending the trial. Unknown court executors also attempted to prevent civil society activist Alima Abdirova from Aktobe, northwestern Kazakhstan, from travelling to Atyrau on similar grounds. Alima Abdirova, a former member of the National Preventative Mechanism (NPM),¹ is under obligation to pay compensation to the head of the city children's home after she criticized conditions at the centre in her report for the NPM.

Trial observer Rinat Iskagaliev (aka Rinat Rafhat) was beaten up by unknown assailants in the entryway to his building on 24 October. The assailants told him to "be quiet". Rinat Rafhat publicly expressed support for Maks Bokaev and Talgat Ayan and called for their release. Rinat Rafhat reported the incident to the police, but so far, there has been no effective investigation.

Five activists were arrested in Almaty on 23 October for an attempt to hold a solidarity action in support of Maks Bokayev and Talgat Ayan. Three of them - Kural Medeuov, Askhat Bersalimov and Suyundik Aldabergenov - were sentenced to 10 days of administrative detention each. The two others were issued with formal reprimands warning them of the illegality of such actions.

On 17 September, human rights defender Asel Nurgazieva filed an application to hold a rally in support of Maks Bokaev and Talgat Ayan in Atyrau. About 80 people were expected to participate. However, Atyrau city authorities refused permission to hold the rally, as, in their vaguely-warded reply, the application "[did] not meet the requirements of the law." Over the past few months, civil society activists from other cities also applied for permission to hold rallies in support of Maks Bokaev and Talgat Ayan, and their requests were also refused. On 23 October, activists managed to hold a flashmob in Atyrau, and no one was arrested. However, on 25 October, two human rights defenders, Shattyk Tashkenova and Elena Semyonova, were each fined approximately 228 EUR, for holding "unauthorized" one-person pickets near the Atyrau court building in support of Maks Bokaev and Talgat Ayan. In Kazakhstan, even one-person protests in public places are prohibited without prior endorsement by city authorities.

¹ The NPM monitors conditions in prisons and other places of detention, and in some state run institutions such as children's homes, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The authorities must ensure that the acts of intimidation and harassment against supporters of Maks Bokaev and Talgat Ayan are stopped, and that their rights to freedom of expression and peaceful assembly are respected and fully upheld. Moreover, allegations of physical violence against Rinat Rafhat, and any similar incidents, should be promptly, effectively, impartially and thoroughly investigated, and those responsible held accountable in fair trials.

BACKGROUND

Land Code demonstrations

Maks Bokaev and Talgat Ayan were among dozens of people arrested in the days leading up to 21 May, when peaceful demonstrations had been planned across Kazakhstan.

Earlier peaceful demonstrations had taken place throughout late April and into May, against proposed changes to the Land Code that would have allowed unused, state-owned agricultural land to be privatized and sold off to Kazakhstani citizens, or leased for up to 25 years to foreign citizens. A presidential moratorium was placed on the changes in May, meaning that they have been dropped for the time being; however, protests continued.

Further protests were planned for 21 May. Where organizers sought advance permission for the rallies from local authorities, as required under national law, permission was arbitrarily refused in all cases. Nonetheless, in towns and cities across Kazakhstan, people attempted to come to town centres on the day to carry out the peaceful protest. These were all relatively small gatherings, of between several dozen (in most places) to several hundred people in Almaty, the country's largest city. In most places the gatherings were dispersed by police. No violence by any of the protesters or from police was reported.

In the days leading up to 21 May, at least 34 activists were arrested and sentenced to administrative detention (for up to 15 days), in an attempt by the authorities to suppress information about the planned protests and place those identified as "organizers" behind bars. Most of the individuals arrested between 17 and 20 May had, like Maks Bokaev and Talgat Ayan, done nothing more than use posts on social media to state their intention to participate in the planned protests, or to provide information about the demonstrations. The majority of those detained were subsequently released, but some were fined or sentenced to administrative detention of between 10 and 15 days.

Freedom of peaceful assembly

Freedom of peaceful assembly is heavily restricted in Kazakhstan. Permission from local authorities is needed to hold any kind of street protest and this is often refused, or permission is given to hold the event in a non-central location. Penalties of up to 75 days' detention are in place for violations of the rules on holding assemblies, including for organizing or participating in an unauthorised demonstration (Articles 155 and 400 of the Criminal Code and Article 488 of the Administrative Offences Code).

The right to freedom of peaceful assembly is provided in legally binding international human rights treaties that Kazakhstan has ratified, including the ICCPR (Article 21). This right, as detailed by international law and standards, should not be subject to the

permission of government authorities. The authorities may require prior notification of assemblies in order to facilitate the right of peaceful assembly and to take measures to protect public safety or the rights of others, but this should never translate into advanced authorization of such demonstrations. International human rights mechanisms have stated that, since public assemblies are held to convey a message to a particular individual, group or organization, peaceful demonstrations must, as a general rule, be facilitated within “sight and sound” of their object and target audience.

Further information:

Amnesty International, “Kazakhstan: a dark day for freedom of expression and peaceful assembly”, 27 May 2016, EUR 57/4141/2016,
(<https://www.amnesty.org/en/documents/eur57/4141/2016/en/>)