

# AMNESTY INTERNATIONAL

## Public Statement

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### **Kazakhstan: Persecution of NGO for “failure to pay taxes” as authorities again clamp down on dissent**

The recent case brought against a human rights NGO for alleged failure to pay taxes is yet another attempt by the authorities in Kazakhstan to clamp down on the rights to freedom of expression and association. The case also sends a chilling message to other human rights and legal assistance NGOs that they could face reprisals simply for assisting people to exercise their rights to freedom of expression and peaceful assembly.

Authorities in Kazakhstan should desist from using tax and other administrative legislation to silence NGOs and other civil society groups, and should respect the rights to freedom of association, expression and peaceful assembly.

#### **Dubious tax inspections**

On 6 April 2017, the Special Inter-District Economic Court of Almaty found the International Legal Initiative (“ILI”) human rights NGO guilty of failing to pay taxes. This followed a tax inspection carried out by the city tax authorities six months earlier. The ILI is convinced that the tax inspection and the subsequent legal case are designed to intimidate and harass them for the work they do. Specifically, ILI see this case as punishment for the fact that they provided legal assistance to peaceful protestors who were detained on 21 May 2016 in Almaty, Kazakhstan’s largest city.

In August 2016, the tax authorities began inspections at ILI and two other NGOs: The Liberty Foundation, also based in Almaty, and the Dignity (Kadyr Kassiet) Foundation, based in Astana. These inspections followed a written complaint from an individual whom the authorities described as a “concerned citizen”, made on 3 August 2016 to the Almaty city prosecutor’s office. This “concerned citizen” accused the NGOs of being linked to public protests that had taken place in Kazakhstan earlier in 2016. These public protests were peaceful, but had not been authorized by the authorities as the unduly restrictive Kazakhstani law requires. In the complaint, the “concerned citizen” referred to a newspaper article published on 11 July 2016 on a pro-government news site. In this article, the unnamed author accused the ILI and two other human rights NGOs in Kazakhstan of using foreign grant money to “influence political processes” under the flag of “bringing democracy to developing nations”. The article also accused one of the ILI’s foreign donors – the USA-based National Endowment for Democracy (NED) – of “funding terrorism and extremism” by providing grants to ILI and other NGOs like it.

At the end of December 2016, the ILI and the Liberty Foundation were ordered to pay ruinous fines for allegedly failing to pay taxes: ILI received a fine of the equivalent of EUR 3700, and the Liberty Foundation, EUR 8300. In February 2017, the ILI appealed the Almaty tax directorate’s decision in court, which resulted in the ruling on 6 April 2017. The bank account of the Liberty Foundation has been blocked. It, too, has filed a law suit and is awaiting a hearing. The Dignity (Kadyr Kassiet) Foundation is still waiting for the outcome of its tax inspection.

## **Misuse of the Tax Code**

Kazakhstan's tax legislation exempts all non-profit organizations from paying tax on the income that they receive from donors, provided that the organization meets two criteria: (1) its work should not be designed to create profit, and (2) it should not redistribute any of the organization's income between its members. In its decision on 6 April, the court agreed that ILI was a non-profit NGO, but despite this, the court interpreted the law to mean that only those NGOs that rely on grants provided by the state shall be exempt from taxation.

The tax legislation was amended in 2009 to include additional provision to permit tax exemption specifically for NGO-run projects funded by the state. However, these amendments did not revoke the tax exemption rule for other non-profit NGOs that do not receive funding from the state. In spite of this, this is not the first time that courts in Kazakhstan have applied this ambiguous legislative provision in the tax code to non-state-funded NGOs. In at least one previous case, another human rights NGO was fined for alleged failure to pay taxes on the same grounds as ILI.

During the court hearing on ILI's case the tax authority's representative made a statement that was irrelevant for the case under consideration, but was intended to undermine the ILI's credibility and smear its work, as well as the work of some other independent NGOs. The official drew attention to the fact that ILI is funded for its projects by NED and Freedom House and stated that NED and Freedom House "were known" for funding "colour revolutions" aimed at regime change. This is an official narrative in Kazakhstan that is widely-used today, which purports that funding for human rights work is used by foreign funders to undermine political stability in the country. It is the same argument used by the "concerned citizen" in the complaint letter against the NGOs.

## **BACKGROUND INFORMATION**

### **Restrictions on freedom of peaceful assembly**

In April and May 2016, peaceful protests took place all over Kazakhstan. These protests were against changes to the Land Code initiated by the government, by which foreign citizens would have gained the right to rent land, including pasture lands, in Kazakhstan for prolonged periods.

The law in Kazakhstan imposes undue restrictions on the right to freedom of peaceful assembly, meaning that street protests cannot take place without express permission from the authorities. During April and May 2016, local city authorities consistently denied requests for permits, but protests went ahead regardless.

Further rallies were planned across the country on 21 May 2016, although again, permission was not granted by the authorities for these to take place. In the days leading up to 21 May, at least 34 activists were arrested and held in administrative detention (for up to 15 days), as the authorities attempted to suppress information about the planned protests and place behind bars those identified as "organizers". In many cases, these "organizers" had done nothing more than indicate via social media their intention to join the protests. Among those arrested were Maks Bokayev and Talgat Ayan, human rights defenders and prisoners of conscience. While other protest "organizers" were released, Maks Bokayev and Talgat Ayan faced criminal charges and are serving five year terms in a prison colony for having called for, and participated in, meetings in their native Atyrau in the west of Kazakhstan.

In Almaty, on 21 May large numbers of people attempted to protest, however police blocked roads leading to the city centre and detained large numbers of would-be demonstrators. All in all, in Almaty on that day, according to different estimates, between 500 and 2,000 people were apprehended and taken to police stations. There they were asked to write explanations as to why they were out on the streets, and had their fingerprints taken, before being released.

The right to freedom of peaceful assembly is provided in legally binding international human rights treaties that Kazakhstan has ratified, including Article 21 of the International Covenant on Civil and Political Rights. This right, as detailed by international law and standards, should not be subjected 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.

In Almaty, the ILI NGO organized a monitoring centre to document potential violations of human rights during the protests due to take place on 21 May. On 21 May, the ILI's leader, Amangeldy Shormanbayev, was arrested on the pretext of having caused a minor traffic incident; he denied all involvement in the accident, but spent the entire day in a police station. His colleague and sister, Aina Shormanbayeva, along with a group of other human rights defenders and lawyers, spent the day monitoring police stations in Almaty to see and document how police was bringing in and treating protesters who had been arrested.

### **Restrictions on the right to freedom of association**

Leading or participating in an unregistered organization is an offence under both the Criminal and Administrative Offences Codes of Kazakhstan. "Leaders" of associations are treated as a separate category of offenders, providing for harsher penalties. The definition of "leader" is broad, potentially including any active member of an NGO or other civic association. These clauses were used for the first time in 2016, including in the criminal cases against Maks Bokaev and Talgat Ayan.

Legislative changes introduced at the end of 2015 mandated the creation of a central state database of NGOs. Failure to regularly supply accurate information for the database could lead to fines or a temporary ban on activities. In February, the ILI challenged the provision in a civil court, but lost the case; the NGO believes that this legal challenge is another reason why it was targeted by the tax authorities. Civil society activists are concerned that this new law has the potential to constrain their activities, and limit their access to funding from outside of Kazakhstan.

Independent trade unions also operate in a very difficult environment in Kazakhstan. In April 2017, a trade unionist from Atyrau, Nurbek Kushakbaev, was sentenced to two and a half years in prison for calling for what the authorities labelled an unlawful labour strike.

### **Further information:**

"Kazakhstan: Workers' rights: trade unionist Nurbek Kushakbaev jailed on trumped up charges", 11 April 2017, Index number: EUR 57/6053/2017, <https://www.amnesty.org/en/documents/eur57/6053/2017/en/>

*Think Before You Post: Closing down social media space in Kazakhstan*, 9 February 2017, Index number: EUR 57/5644/2017, <https://www.amnesty.org/en/documents/eur57/5644/2017/en/>

"Kazakhstan: Presumed guilty before trial: prosecution of peaceful protesters Maks Bokaev and Talgat Ayan", 9 November 2016, Index number: EUR 57/5116/2016, <https://www.amnesty.org/en/documents/eur57/5116/2016/en/>

"Kazakhstan: A dark day for freedom of expression and peaceful assembly", 27 May 2016, Index number: EUR 57/4141/2016, <https://www.amnesty.org/en/documents/eur57/4141/2016/en/>

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