

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the reported repeated arrests and detentions of lawyer and human rights defender Mr. Ermek Narymbaev for his participation in a peaceful rally in Almaty on 28 June 2015 and for announcing on social media his intention to publicly handover a petition denouncing corruption to the authorities in the Independence Square in Almaty on 20 August 2015.**

Mr. Ermek Narymbaev is a lawyer who represents alleged victims of bank fraud. He is also the Chairman of Arman labour movement, a member of civil society groups Discordant and OO Birge and an independent human rights defender who has been actively involved in exposing alleged mortgage frauds carried out by banks in Kazakhstan and in criticising the failure of the Government to protect human rights. In 2011, he was reportedly honoured by Kazakh civil society and received a national "Freedom" award.

According to the information received:

On 28 June 2015, Mr. Narymbaev participated in and spoke to the media during a peaceful gathering of about 15 people convened in the Republic Square in Almaty in order to express concern about public services costs. Sources reported that during this assembly participants placed flowers at the Independence Monument and that the event went on for 20 minutes approximately, without incident.

On 3 July 2015, police officers of the Auezov district arrested Mr. Narymbaev at his home for violating the article 488 of the new Code on Administrative Offences that reportedly regulates the procedure for the “organization and conduct of peaceful assemblies, rallies, marches, pickets and demonstrations” in connection with the events of 28 June 2015. They subsequently transferred Mr. Narymbaev to the police station of the Bostandyk district.

On 4 July 2015, the judge of the Specialised Inter-District Administrative Court of Almaty City found Mr. Narymbaev guilty of participating in an unauthorized assembly and sentenced him to 15 days in detention. Mr. Narymbaev served his sentence in the special facility for individuals sentenced to administrative arrest.

On 20 August at 3.30 p.m., Mr. Narymbaev announced on his Facebook page that he intended to handover a petition denouncing corruption crimes to the authorities in the Independence Square that same day at 7 p.m. Shortly after that, sources indicate that a small group of supporters congregated at his office. At 6.30 p.m., the police arrested him under the same legal provision as in July 2015. Mr. Narymbaev was taken to the Specialised Inter-District Court of Almaty City that same evening at 11 p.m. His lawyer filed a motion to dismiss the judge and the case was adjourned until the next morning at 9.30 a.m. In the course of the evening, Mr. Narymbaev suffered a hypertensive crisis and, as a result, had to be taken to the city hospital in Almaty.

On 21 August 2015, the judge ruled that Mr. Narymbaev be brought from the hospital to the court and sentenced him to 20 days of detention, including five days for contempt of court and 15 days for “organizing an unauthorized public event” in accordance with article 488 of the new Code on Administrative Offenses.

Serious concern is expressed about the physical and psychological integrity of Mr. Narymbaev, who reportedly remains in detention. Further concern is expressed at the prosecution of Mr. Narymbaev for his exercise of the rights to freedom of opinion and expression, association and peaceful assembly. We remain concerned about authorities resorting to the criminalization of peaceful protests and urge them to promote and protect peaceful assemblies in the country. We further call upon the authorities to put in place an enabling environment for human rights defenders to exercise their activities, online as well as offline, without fear of persecution.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing at this stage an opinion on the facts of the case and on whether the deprivation of liberty of Mr. Narymbaev is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

Furthermore, the above allegations appear to be in contravention of the right to freedom of expression and the rights to freedom of association and peaceful assembly, as set forth in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan ratified on 24 January 2006.

The legitimate exercise of the right to freedom of expression is of central importance in the effective functioning of a democracy and in circumstances of public debate concerning public figures and institutions the value placed by the ICCPR upon uninhibited expression is particularly high. Forms of expression which are deemed to be critical of public figures are not sufficient to justify the imposition of penalties (CCPR/C/CG/34, para. 38).

Further to this, the Human Rights Council, in paragraphs 3 and 5 of its Resolution 12/16, has also expressed its concern at the violation of human rights, including arbitrary detention, intimidation, harassment and censorship against those who seek to promote their rights, including human rights defenders, and has called upon States to take all necessary measures to put an end to violations of these rights and bring those responsible to justice.

In this connection, the Special Rapporteur on the rights to freedom of peaceful assembly and of association reiterates that it is the obligation of States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline (A/HRC/RES/24/5, op. 2). Moreover, he reaffirms that the rights to freedom of peaceful assembly and of association are crucial cornerstones for the possible emergence and sustainability of effective democratic systems. In this regard, States should therefore make every effort to facilitate and protect peaceful protests.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally

Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest on 20 August 2015 and current detention of Mr. Ermek Narymbaev, as well as the previous detention of Mr. Narymbaev between 4 and 19 July 2015, and explain how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and ICCPR.
3. Please explain what measures have been taken to ensure that everyone in Kazakhstan can carry out their peaceful and legitimate activities, online as well as offline, and exercise their rights to expression and opinion and peaceful assembly freely without fear of harassment or criminalization.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Seong-Phil Hong
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
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