

**Mandates of 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**

REFERENCE: UA  
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Mr. Alimbayev,

We have the honour to address you in our capacity as 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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Government information we have received concerning allegations of arbitrary arrest, detention and sentencing of Mr. **Ermek Narymbaev**.

Mr. Ermek Narymbaev is a human rights defender and blogger, 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. He is Chairman of “Arman” labour movement, which has organised since 2009 a series of demonstrations in Almaty, in protest of bad governance and corruption in Kazakhstan. He is also a member of a civil society group “Birge” that defends the rights of persons who were victims of banking fraud. In 2011, he received a national “Freedom” award from the Kazakh civil society. Mr. Narymbaev was the subject of a previous communication sent by various Special Procedures, dated 31 August 2015 (A/HRC/25/55, case no. KAZ 2/2015), concerning his repeated arrest and detention for his role in convening a peaceful assembly and denouncing corruption cases. We acknowledge the response from your Government received on 12 October 2015, and reiterate our concerns given the new information below.

According to the information received:

On 12 October 2015, the house of Mr. Ermek Narymbaev was raided by police, and a number of items, including mobile phones, tablets and laptops, were confiscated. Mr. Narymbaev was then arrested and charged with the use of social

media to incite national discord and insult the honour and dignity of the Kazakh nation, under article 174 (1) of the Criminal Code. The charge was in relation to the posting by the human rights defender on his Facebook of an excerpt from a book entitled “Wind from the street”, which had reportedly been published on the Internet by Mr. Murat Telibekov in 1993.

Two days prior to the arrest, the Almaty Department of the Ministry of Internal Affairs having reportedly received an anonymous phone call pointing to the materials on Facebook that were alleged to have offended the honour and dignity of the Kazakh nation, began an investigation on Facebook into the allegation made and located the posting as belonging to Mr. Ernek Narymbaev. In that posting, Mr. Narymbaev allegedly stated that while he accepted that the author’s words in the book may appear offensive, they should be considered as satirical.

Having spent three days in a temporary detention centre in Almaty, Mr. Narymbaev was denied bail by the judge of Almaty District Court of Almaty on 15 October 2015, and was moved to a pre-trial detention centre in Almaty. On 15 November, the court approved the detention of Mr. Narymbekov for two months.

On 4 December 2015, Mr. Narymbaev’s trial began in the Almaty District Court. The judge reportedly rejected more than 20 motions from the defence team related to the hearing. During the course of trial, Mr. Narymbaev had to be rushed to hospital, as a result of cardiovascular health condition. He was reportedly brought back to court on a stretcher, spending the entire trial lying on a bench.

On 22 January 2016, the court sentenced Mr. Narymbaev to three years in prison, with reported forfeiture of his right to engage in any public activities in the next five years. On 22 February, at the request of Mr. Narymbaev’s legal counsel, the court agreed to change Mr. Narymbaev’s pre-trial detention to house arrest, pending appeal that is scheduled to take place on 29 March 2016.

Serious concern is expressed at the alleged arbitrary arrest, detention and sentencing of Mr. Narymbaev, which appear to be in retaliation for his peaceful and legitimate human rights work and exercise of his rights to freedom of expression on the Internet and freedom of association. We remain concerned about authorities resorting to the criminalisation of the right to freedom of expression on the Internet, and call on the Government to respect and guarantee that right and ensure an enabling environment for human rights defenders to carry out their activities, online as well as offline, without fear of persecution.

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 14 of International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan ratified on 24 January 2006.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contravention with articles 19 and 22 of the ICCPR, which guarantee the right to freedom of expression and the right to freedom of association. In this context, we would like to refer your Excellency's Government to the General Comment No. 34 (2011) of the Human Rights Committee, which provides in paragraph 9 that "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature... The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1."

We would like to also reiterate the fundamental principles set forth in 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 and 2 the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, article 6 provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as for the right to freely publish, impart or disseminate that information and knowledge.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 Government to safeguard the rights of Mr. Narymbaev 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 on the legal grounds for the arrest, detention and the judicial procedures against Mr. Narymbaev, and explain how these measures are compatible with international human rights norms and standards, in particular with articles 9, 14, 19 and 22 of the ICCPR.
3. Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their human rights activities, including the exercise of their right to freedom of expression, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 also wish to advise that we are considering issuing a public statement to clarify our position on the alleged increase of targeting of human rights defenders and criminalizing their freedom of expression online and freedom of association.

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

Please accept, Mr. Alimbayev, the assurances of our highest consideration.

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and  
of association

Michel Forst  
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