

**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**

REFERENCE: UA  
KAZ 1/2015:

2 April 2015

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 alleged arbitrary arrest and detention of Mr. **Saken Baikenov**.

Mr. Baikenov is a human rights defender from the Antigepil human rights movement, which works on environment related issues. Mr. Baikenov is a prominent opponent of Proton launches and has taken part in several anti-proton protests in Almaty and Astana.

According to the information received:

On 7 March 2015, Mr Saken Baikenov was arrested by officers of the National Security Committee in the city Almaty and brought to Astana by plane on the same day. The National Security Committee also seized in Mr. Baikenov's apartment his laptop, iPad, two mobile phones and his Internet modem. The arrest and the subsequent charges brought against Mr. Saken Baikenov are linked to posts that he wrote on his Facebook page.

On 9 March 2015, Saryarkinskiy District Court No. 2 in Astana charged him of “incitement to social, national, tribal, racial, class or religious discord” under Article 174 of the Criminal Code, an offence punishable by 12 to 20 years of imprisonment. He is to serve a two-month pre-trial detention period pending investigation.

Concern is expressed regarding the alleged arbitrary arrest and continued detention of Mr. Saken Baikenov. Concern is also expressed that the charges brought against him may be directly related to his legitimate human rights work and to the exercise to his rights to freedom of expression, association and peaceful assembly, as enshrined in Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of Mr. Baikenov is arbitrary, the above allegations appear to be in contravention of his right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the ICCPR, which was ratified by the Republic of Kazakhstan on 24 January 2006.

In relation to the charges brought against Mr. Saken Baikenov under Article 174, we recall that restrictions to the right to freedom of expression must be applied strictly and exceptionally, must be provided for by law and may only be imposed for one of the legitimate grounds as set in Article 19(3) of the ICCPR. They must also conform to the strict tests of necessity and proportionality. Legislation must be crafted with care to ensure that possible restrictions comply with these standards and that they do not serve, in practice, to stifle freedom of expression.

We also recall that the detention of an individual for his legitimate human rights activities would contravene the United Nations 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, and in particular with the following articles: 1, 2, 6 and 12.

Last, these allegations also appear to be in contravention with the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR and article 14 of the ICCPR,

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 importance 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 in compliance with Kazakhstan's international human rights obligations and other international instruments, norms and standards

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 further information concerning the reason and legal grounds for the arrest and continued detention of Mr. Saken Baikenov and how these measures are compatible with Kazakhstan's international human rights obligations and other international human rights instruments, among them the the UDHR and the ICCPR.
3. Please provide information on measures taken to ensure that the implementation of Article 174 of the Criminal Code does not adversely impact on the enjoyment of the rights to freedom of association, peaceful assembly and the right to freedom of expression, as stated in Articles 19, 21 and 22 of the ICCPR.
4. Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their legitimate work in a safe and enabling environment without fear of intimidation and criminalization 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.

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.

Mads Andenas  
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  
Special Rapporteur on the rights to freedom of peaceful assembly and  
of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders