

Mandates of the 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:
AL KAZ 3/2019

17 July 2019

Excellency,

We have the honour to address you in our capacities as 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 33/30, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the travel ban issued against the human rights defender Mr. **Daniyar Khassenov**, his repeated detention, and threats made against him and his family members.

Mr. Khassenov is a university student and human rights defender who monitors the human rights situation in Kazakhstan, acts as a trial observer in the country and carries out human rights advocacy over social media.

According to the information received:

On 31 January 2019, Mr. Daniyar Khassenov shared a post on Facebook expressing solidarity with a person prosecuted by the State for supporting the Democratic Choice of Kazakhstan (DCK) opposition movement. Since then, Mr. Khassenov has been vocal on social media with regards to human rights violations in Kazakhstan and the political situation in the country.

On 27 February 2019, Mr. Khassenov was detained during a peaceful protest in Almaty and interrogated about his support for DCK. On 11 March 2019, a police officer and an official from the Prosecutor's Office came to his house and interrogated him about his support for DCK, warning him that he would be expelled from university if he participated in protests, notwithstanding their peaceful nature.

On 17 March 2019, Mr. Khassenov received a summons from the military enlistment office despite the fact that as a university student, he cannot be legally drafted into the army.

On 22 March 2019, the day of a planned peaceful protest in Almaty, Mr. Khassenov was detained outside his house by two police officers. He was taken to the Almaty Police Department, where he was interrogated again about his views on the DCK.

On 12 April 2019, a representative of the Almaty City Council came to the workplace of Mr. Khassenov's parents and warned them that their son had to stop posting critical content on Facebook and participating in peaceful protests.

On 1 May 2019, the day when another peaceful protest was planned in Almaty, three police officers detained Mr. Khassenov. He was taken to the Almaty Police Department, where he was questioned about his human rights activities and in particular his collaboration with human rights organisations outside the country. He was warned that these activities would be considered an act of spying for foreign countries and was asked how much money he was receiving for "destabilizing the situation in Kazakhstan". Mr. Khassenov's phone was temporarily seized during his detention, and his social media and messaging accounts surveilled. The police also attempted to log into his Telegram account on a computer at the Police Department, attempting thereby to preserve access to previous messages sent and received by Mr. Khassenov over the application.

On 9 May 2019, the day of another peaceful protest in Almaty, Mr. Khassenov was again detained outside his house and taken to the Almaty Police Department, where he was kept for over ten hours until the protest had ended.

On 16 May 2019, Mr. Khassenov received another summons to the military enlistment office, including a request to bring several documents and the results of various medical examinations.

On 30 May 2019, Mr. Khassenov posted an open letter by civil society to the President of the European Council on social media, denouncing human rights violations in Kazakhstan. The following day, an agent of the National Security Committee came to the workplace of Mr. Khassenov's parents and threatened that they would be dismissed and Mr. Khassenov expelled from university and imprisoned as a result of the open letter.

On 1 June 2019, two police officers detained Mr. Khassenov at his house and took him to the Almaty Police Department, where he was threatened with imprisonment if he participated in the peaceful protests during the presidential elections to be held on 9 June 2019 or continued denouncing human rights violations in the country.

On 10 June 2019, Mr. Khassenov was detained while walking near the area of a peaceful protest. He was interrogated at a police station and released after 7 hours.

On 13 June 2019, the bank accounts of Mr. Khassenov, his father and his sister were frozen upon the request of the Almaty Police Department. The decision was reportedly made in relation to a criminal case against DCK. The movement has been banned by the State as an “extremist organisation” and many participants in the peaceful protests organized by DCK, including Mr. Khassenov, have been detained and interrogated as “witnesses with the right to defence” in the case. Mr. Khassenov currently faces the risk of being charged for “participation in an extremist organization” under Article 405 of the Criminal Code.

On 22 June 2019, Mr. Khassenov was prevented from leaving Kazakhstan to attend meetings at the Council of Europe and the Organization for Security and Co-operation in Europe. He was informed that the Almaty Police Department had issued a travel ban against him. No justification was provided for this decision. Mr. Khassenov has a valid Shengen visa. The travel ban was also enforced on 29 June 2019, when Mr. Khassenov attempted to travel abroad to attend a summer medical school as part of his studies.

On 7 July 2019, Mr. Khassenov received a phone call from the Migration Police (OVIR). He was informed that the Almaty Police Department had not issued the travel ban against him. However, Mr. Khassenov had been given a document by the passport control officials, naming the Almaty Police Department as the issuer of the travel ban.

On 10 July 2019, Mr. Khassenov was prevented from leaving Kazakhstan again due to the ongoing travel ban issued against him.

We express our serious concern at the travel ban issued against Mr. Daniyar Khassenov, his repeated detentions and threats made against him and his family members, which appear to be directly linked to his peaceful human rights activities and his exercise of the right to freedom of opinion and expression, in particular through posts made on social media platforms concerning the human rights situation in Kazakhstan, as well as freedom of peaceful assembly and association. Further concern is expressed regarding the legal and factual basis of the detentions and interrogations of participants in peaceful protests organised by the Democratic Choice of Kazakhstan.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or any comment(s) you may have on the above-mentioned allegations.

2. Please explain the rationale for imposing a travel ban on Mr. Khassenov, and how this is compatible with international human rights norms and standards.
3. Please provide information on the legal procedure and grounds invoked for repeatedly detaining Mr. Daniyar Khassenov, summoning him to the military enlistment office, and freezing his and his family members' bank assets, and how these are compatible with the obligations of the Government of Kazakhstan under international human rights law.
4. Please provide information on how the detentions and interrogations of peaceful protesters, including Mr. Daniyar Khassenov, as "witnesses with the right to defence" in the case against the Democratic Choice of Kazakhstan is compatible with Kazakhstan's obligations under international human rights law, in particular with articles 21 and 22 of the International Covenant on Civil and Political Rights.
5. Please provide information as to what steps have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

We would appreciate receiving a response within 60 days. Beyond this period, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such allegation letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Leigh Toomey
Vice-Chair 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

Clément Nyaletsossi Voule

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 9, 12, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Kazakhstan on 24 January 2006.

Article 9 of the ICCPR states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Paragraph 4 of the same article states that anyone deprived of his liberty is entitled to bring proceedings quickly before a court, for it to determine the legality of such detention or to order the release of the person concerned without delay. The Human Rights Committee has established in its General Comment N° 35 on article 9 that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion, expression, assembly and association, is arbitrary (CCPR/C/GC/35, para. 17).

Articles 19 and 21 of the ICCPR guarantee the rights to freedom of expression and freedom of peaceful assembly.

We would like to remind your Excellency's Government that any limitation to the right to freedom of expression must meet the criteria established by the Covenant, in particular under article 19 (3). Under these standards, limitations must be provided by law, must conform to the strict test of necessity and proportionality, and must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

Article 12 of the ICCPR provides that everyone has the right to liberty of movement. We would like to emphasize that any restriction to the right to liberty of movement and the freedom to leave any country, including his/her own must be compatible with paragraph 3 of Article 12 of the ICCPR, which establishes that restrictions are only acceptable if they are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the ICCPR. The imposition of travel ban as a means to limit the exercise of freedom of expression and of association is also not compatible with article 19(3) of the ICCPR.

Furthermore, we wish to stress that the arbitrary imposition of travel bans against human rights defenders to prevent them from participating in activities outside their country of residence is contrary to the spirit of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognize Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders.

In particular, the allegations appear to be in contradiction to articles 1 and 2 of the UN Declaration on Human Rights Defenders, which 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, we also refer to article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance on these rights.

Furthermore, we would like to bring articles 5 (a) and 17 of the Declaration to the attention of your Excellency's Government. Article 5 (a) establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully. Article 17 provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Finally, we would like to refer to the report of the Special Representative of the Secretary-General on the situation on human rights defenders to the General Assembly in 2007 (A/62/225), which recommends that States create a safe and conducive environment for young adults and students to participate in demonstrations.