



Request for Letter of Allegation

on the case of:

Media Crackdown in Kazakhstan

Submitted to:

United Nations Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Submitted by:

Human Rights Foundation

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I. Procedural elements

a. Mandate of the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In accordance with the most recent mandate¹ of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur), renewed in 2011,² the tasks of the Special Rapporteur are:

- (a) To gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information;
- (b) To seek, receive, and respond to credible and reliable information from Governments, nongovernmental organizations, and any other parties who have knowledge of these cases;
- (c) To make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations;
- (d) To contribute to the provision of technical assistance or advisory services by the Office of the United Nations High Commissioner for Human Rights to better promote and protect the right to freedom of opinion and expression...

b. Standing of the Human Rights Foundation to request allegation letter

Pursuant to the Special Rapporteur's mandate,³ the Human Rights Foundation (HRF), a nongovernmental human rights organization, is permitted to provide information regarding violations of the right to freedom of opinion and expression.⁴

¹ See Human Rights Council's resolution 7/36 on the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. March 28, 2008. Available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf

² See Human Rights Council's resolution 16/4 which extended the mandate of the Special Rapporteur for a further period of three years. March 24, 2011. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/124/99/PDF/G1112499.pdf?OpenElement>

³ See supra note 1, 3(b):

To seek, receive and respond to credible and reliable information from Governments, nongovernmental organizations and any other parties who have knowledge of these cases...

⁴ See also Manual of Operations of the Special Procedures of the Human Rights Council. August 2008. ¶¶ 23, 38 and 133:

c. Grounds for the request of allegation letter

According to the website of the United Nations High Commissioner for Human Rights,⁵ the Special Rapporteur acts on information submitted to his attention regarding alleged violations of the right to freedom of opinion and expression by sending letters of allegation and urgent appeals to governments. Letters of allegation are used to communicate information about violations that are alleged to have already occurred and in situations where urgent appeals do not apply.

The case of the media crackdown in the state of Kazakhstan satisfies this requirement. In this case, the state has violated the right to freedom of expression of four independent media outlets,

23. Mandate-holders are called upon to take account of all available sources of information that they consider to be credible and relevant. This includes information emanating from Governments, inter-governmental organizations, international and national non-governmental organizations, national human rights institutions, academic community, the victims of alleged human rights abuses, relatives of victims, and witnesses. Wherever feasible and appropriate mandate-holders should endeavour to consult and meet with such sources, and they should seek to cross-check information received to the best extent possible.

38. Information submitted to the Special Procedures alleging violations should be in written, printed or electronic form and include full details of the sender's identity and address, and full details of the relevant incident or situation. Information may be sent by a person or a group of persons claiming to have suffered a human rights violation. NGOs and other groups or individuals claiming to have direct or reliable knowledge of human rights violations, substantiated by clear information, may also submit information so long as they are acting in good faith in accordance with the principles of human rights and the provisions of the UN Charter, free from politically motivated stands. Anonymous communications are not considered. Communications may not be exclusively based on reports disseminated by mass media.

133. Civil society in general, and international, regional and national NGOs in particular, provide invaluable support to the Special Procedures system. They provide information and analysis, help to disseminate the findings of the Special Procedures, and assist in follow-up activities, and thus help also formulate and implement relevant national policies and programmes for human rights education to improve situations of the issues under the Special Procedures. Meetings with their representatives are appropriate in all aspects of the work of the Special Procedures including in their activities in Geneva and New York, on field missions, and more generally. It is thus appropriate for mandate-holders to give careful and timely consideration to invitations from NGOs and academic institutions to participate in activities such as conferences, debates, seminars and regional consultations. The OHCHR should generally be kept informed of the relevant activities of mandate-holders as they relate to civil society.

Available at: http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf

See also Working with the United Nations Human Rights Programme: A Handbook for Civil Society (Handbook for Civil Society). 2008. Available at:

http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

⁵ Consistent with the abovementioned Manual of Operations of the Special Procedures of the Human Rights Council and the handbook Working with the United Nations Human Rights Programme: A Handbook for Civil Society. Available at:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>

failing to comply with its international obligations under the International Covenant on Civil and Political Rights (ICCPR).

d. Confidentiality waiver

In accordance with the Manual of Operations of the Special Procedures of the Human Rights Council (Manual of Operations), in communications sent to governments, the source is normally kept confidential. This manual also states that an information source may request that its identity be revealed.⁶ Accordingly, HRF waives its right to confidentiality and requests that its identity be revealed in the event that an allegation letter is sent to the government of Kazakhstan in connection with the information supplied herein.

II. Questionnaire

The following questionnaire was retrieved from the website of the United Nations High Commissioner for Human Rights in accordance with the Manual of Operations.⁷ The focus of this request for a letter of allegation is the December 2012 media crackdown in the state of Kazakhstan. The information supplied herein is the product of an investigation conducted by HRF, which is documented in a legal report available below (please see footnote 8).

1. Allegation regarding a person or persons

This section is not applicable. Please see section 2 below.

2. Allegation regarding a medium of communication

2.1 Description of the rights violations, including date, location, and circumstances of the event

For a comprehensive description and analysis of the violations of the international standard for the protection of the right to freedom of expression by the state of Kazakhstan, please see HRF's

⁶ See Manual of Operations of the Special Procedures of the Human Rights Council. August 2008. ¶ 35. Available at: http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf

⁷ See supra note, ¶ 41:

41. Each mandate-holder may adopt criteria or guidelines governing the acceptance of information or the taking of action. A number of Special Procedures have developed standard requirements/questionnaires to facilitate the collection of relevant information. It is up to mandate-holders to seek additional information from the original source or from other appropriate sources in order to clarify the issues or verify the credibility of the information.

The Special Rapporteur's questionnaire regarding the guidelines for the submission of information was retrieved from the following website:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionQuestionnaire.aspx>

legal report on the case of media crackdown in the country.⁸ For a general description, please find below a summary of the facts and the law involved in the case.

In December 2012, the government of Kazakhstan banned all publications, broadcasts, and dissemination of information by the newspapers Respublika and Vzglyad and TV stations K-plyus and Stan TV, along with all associated websites. This media crackdown was based on their critical coverage of a labor strike that took place one year earlier in the Kazakhstani town of Zhanaozen, where, on December 16, 2011, in a violent clash between police and striking oil workers, police killed at least 15 protestors and over 100 people were injured.

Over the last few years, Kazakhstan has systematically restricted the right to freedom of expression within its territory. Under the more than two-decade long rule of President Nursultan Nazarbayev, the country has endured serious irregularities in its electoral processes, as well as the harassment and prosecution of opposition leaders, human rights defenders, journalists, and media outlets. Following the events of Zhanaozen, the government of Kazakhstan has used all critical speech made during the strike as grounds for the prosecution of political opposition figures and independent media.

The court decisions that banned K-plyus, Stan TV, Respublika, and Vzglyad were based on a prior ruling on the case of Vladimir Kozlov, a Kazakhstani opposition leader who was wrongfully prosecuted and convicted in connection with the events in Zhanaozen. The criminal charges filed against these mass media outlets included, among others: extremism in the form of incitement to social discord and propaganda of violent government take over (Article 1(5) of the Law on Countermeasures against Extremism); breach of the prohibition of activities aimed at incitement to social discord in the form of national threats, as well as the distribution of materials undermining national security (Article 5(6) and Article 22(5)(2) of the Law on National Security); and breach of the prohibition of all propaganda and activism promoting the violent change of the constitutional systems, as well as propaganda of social, national, class, or tribal superiority, and any actions capable of upsetting inter-ethnic peace (Article 20(3) and Article 39(2) of the Constitution of the Republic of Kazakhstan).

According to international human rights law, the right to freedom of expression protects all forms of expression and the means of their dissemination. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others,

⁸ See Human Rights Foundation. Media Crackdown in Kazakhstan: The cases of Vzglyad, Respublika, Stan TV, and K-plyus. Legal Report. July 31, 2013. Authors: Javier El-Hage and Centa B. Rek. Available at:

http://humanrightsfoundation.org/uploads/Media%20Crackdown%20in%20Kazakhstan_FINAL%20as%20of%20Oct%2022%202013.pdf

including political discourse, commentary on one's own and public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. Means of expression include books, newspapers, pamphlets, posters, banners, dress, and legal submissions. They also include all forms of audio-visual, electronic, and internet-based modes of expression.

Under Article 20(2) of the ICCPR, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” (incitement prohibition). Under the ICCPR, government measures implementing the Article 20 incitement prohibition require a high threshold because, as a matter of fundamental principle, limitation of speech must always remain an exception. Such a threshold must be read in consonance with the Article 19(3) three-prong test for restrictions—namely, such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest.

The court decisions banning all publications, broadcasts, and dissemination of information by the newspapers Respublika and Vzglyad and TV stations K-plyus and Stan TV (along with all associated websites) as the speech-restrictive measure adopted by the state of Kazakhstan in order to prohibit incitement, failed to meet this three-prong test under the ICCPR. The criminal charges filed against these mass media outlets are based on unclear and overly broad legal provisions that restrict speech in a wide or untargeted way, especially when this speech may be found to be offensive, shocking, disturbing, or merely critical of the government.

The government of Kazakhstan failed to demonstrate at all times that the aforementioned legal provisions were clearly and narrowly defined to protect a legitimate government interest and respond to a pressing social need, especially considering society's interest to remain informed and aware of news in the public domain—such as the Zhanaozen labor strike—as well as the important role the media must play in a democratic society through broadcasting and publishing opinions and news about issues concerning figures in the public and political domain.

By failing the three-prong test for the legitimate prohibition of incitement, Kazakhstan violated the international standard for the protection of the right to freedom of expression. Specifically, Kazakhstan violated (1) the right of the media outlets to freely express opinions and ideas, even when these are offensive, shocking, or disturbing; (2) the general prohibition against the criminalization of expression, especially that directed at public officials; and (3) the right of the public to disseminate opinions or ideas freely, through any medium whatsoever.

This international standard is binding for Kazakhstan since January 24, 2006, when the country ratified the ICCPR. Through its actions, Kazakhstan failed, and continues to fail, to comply with its obligation to protect freedom of expression under the ICCPR.

It is worth mentioning that on April 18, 2013, the European Parliament approved a resolution on the human rights situation in Kazakhstan, in which it strongly criticized the banning of opposition parties and key independent media actors in the country; called on the government to respect the Organization for Security and Cooperation in Europe (OSCE) standards on freedom of expression; reiterated its concern over the detention of opposition leaders, journalists, and lawyers on the basis of trials that fall short of international standards; and reaffirmed its call to release all persons convicted on the basis of vague criminal charges that could be considered to be politically motivated—including Vladimir Kozlov—among other significant issues.

Moreover, Kazakhstan is considered “one of the world’s most repressive states” and ranks 160th out of 179 countries in the latest World Press Freedom Index published by Reporters Without Borders.

2.2 Type of affected media outlets, circulation and frequency of publication and broadcasting

Respublika is a newspaper with printed and digital editions.

Vzglyad is a newspaper with printed and digital editions.

K-plyus (K+) is a satellite TV station.

Stan TV is an online video portal.

As of today, all of these mediums are banned in Kazakhstan.

2.3 Political orientation of the media outlets

Independent media.

3. Information regarding the alleged perpetrators

Please see section 4 below.

4. Information related to state actions

4.1 Identity of the authorities involved in the restriction of the media outlets, the legal statute invoked, and steps taken to seek domestic remedy

a. Authorities involved (individual and/or ministry and/or department)

Under international law,⁹ the actions and/or omissions of any state organ are considered an act of the state for the purposes of determining its responsibility for violations of its international

⁹ During its 53rd session in 2001, the International Law Commission (ILC)—the body of legal scholars created by the U.N. General Assembly in 1947 for the purpose of codifying and developing international

obligations.¹⁰ In this case, the actions by the state of Kazakhstan consist of a series of speech-restrictive court decisions issued in the application of overbroad domestic anti-incitement provisions. These actions are outline below.

The court decisions that banned K-plyus, Stan TV, Respublika, and Vzglyad in Kazakhstan wrongfully relied on “expert psycho-philological and politological studies” carried out by a government agency in the previous criminal case of Vladimir Kozlov and broadly determined that a certain amount of material published or broadcast by the four media outlets analyzed in this report “contained signs of political extremism” and were tantamount to “propaganda constituting incitement to social enmity and discord, to the violent overthrow of the constitutional order and seizure of power and to undermining State security.”¹¹

Following the decision on Kozlov’s case, the attorney general’s office filed individual lawsuits against K-plyus, Stan TV, Respublika, and Vzglyad, requesting different Almaty courts to ban all publications by these media. All decisions ultimately granted the attorney general’s office request imposing a sweeping ban.

The Medeu District Court of the city of Almaty issued the decision on the case of Respublika on December 25, 2012. Judge Gulmira R. Beysenova chaired the court, and T. Autalipov was the

law—adopted the [Draft Articles on Responsibility of States for Internationally Wrongful Acts](#) (heretofore, “Draft Articles”). In the same year, the U.N. General Assembly adopted this text *ad referendum*. These articles set the general regime on state responsibility for international wrongful acts. The Draft Articles are considered the most authoritative text on customary international law on state responsibility. This is the single most universally accepted document on the topic—the product of over 40 years of legal scholarship. It provides the specific guidelines and terminology to be used when analyzing state responsibility for international law violations. According to the ILC:

...[t]hese articles seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts. The emphasis is on the secondary rules of State responsibility: that is to say, the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences, which flow there from. The articles do not attempt to define the content of the international obligations, the breach of which gives rise to responsibility. This is the function of the primary rules, whose codification would involve restating most of substantive customary and conventional international law...

¹⁰ See Draft Articles, article 4 (Conduct of organs of a State. 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State).

¹¹ Aktau City Court. Decision on Behalf of the Republic of Kazakhstan in the case of V.I. Kozlov, A.M. Aminov, and S.S. Sapargali. Available in English at: http://humanrightsfoundation.org/uploads/Kozlov_Court_Decision_English.pdf

representative of the prosecution.¹² On February 22, 2013, the board of appeals of civil cases of the Almaty City Court, chaired by Judge Raushan M. Adilbayeva, upheld the lower court decision.¹³ On June 6, 2013, the court of cassation of the Almaty City Court, chaired by Judge Galia Kasymkanovna Stikulova, upheld the decisions of the Medeu District Court and board of appeals.¹⁴

The Bostandyk District Court of the city of Almaty issued the decision on the case of Vzglyad on December 20, 2012. Judge Tatiana V. Chernysh chaired the court, and I.V. Tsvetova represented the plaintiff, the prosecutor of the city of Almaty, Berik Nogaevich Asylov.¹⁵ On February 8, 2013, the board of appeals of civil cases of the Almaty City Court, chaired by Judge Adilbayeva, upheld the decision of the Bostandyk District Court of Almaty.¹⁶ On May 28, 2013, the court of cassation of the Almaty City Court, chaired by Judge Sergey Valentinovich Lobach, upheld the decisions of the Bostandyk District Court and the board of appeals.¹⁷

The Bostandyk District Court of the city of Almaty issued the decision concerning the case of K-plyus on December 6, 2012. Judge Zh. A. Umarov chaired the court, and I.V. Tsvetova represented the plaintiff, the prosecutor of the city of Almaty, Berik Nogaevich Asylov.¹⁸ K-plyus didn't appeal this decision.

The Bostandyk District Court of the city of Almaty issued the decision on the case of Stan TV on December 4, 2012. Judge Chernysh chaired the court, I.V. Tsvetova represented the plaintiff, and Berik Nogaevich Asylov served as the prosecutor for the city of Almaty. Stan TV didn't appeal this decision. On March 13, 2013, its director held a press conference in Almaty and announced

¹² Medeu District Court. Decision on Behalf of the Republic of Kazakhstan in the case of the Respublika. December 25, 2012. Available in English at:

<http://humanrightsfoundation.org/uploads/Respublika%20Court%20Decision%20English.pdf>

¹³ Please see Adil Soz Foundation, Monitoring of violations of freedom of speech in Kazakhstan in February 2013 (Digest). Page 5. Available at: <http://www.adilsoz.kz/wp-content/uploads/2013/04/monitoring-02.13-digest.pdf>

¹⁴ Please see Adil Soz Foundation, Monitoring of violations of freedom of speech in Kazakhstan in June 2013 (Digest). Page 8. Available at: <http://www.adilsoz.kz/wp-content/uploads/2013/08/monitoring-06.13-digest.pdf>

¹⁵ Bostandyk District Court. Decision on Behalf of the Republic of Kazakhstan in the case of the newspaper Vzglyad. December 20, 2012. Available in English at:

<http://humanrightsfoundation.org/uploads/Vzglyad%20Court%20Decision%20English.pdf>

¹⁶ See supra note 13.

¹⁷ Please see Adil Soz Foundation, Monitoring of violations of freedom of speech in Kazakhstan in May 2013 (Digest). Page 9. Available at: <http://www.adilsoz.kz/wp-content/uploads/2013/08/monitoring-05.13-digest.pdf>

¹⁸ Bostandyk District Court. Decision on Behalf of the Republic of Kazakhstan in the case of K-plyus. December 6, 2012. Available in English at:

http://humanrightsfoundation.org/uploads/K-plyus_Court_Decision_English.pdf

the suspension of activities of the medium, given that the judgment concerning the closure of the media outlet within Kazakhstan had entered into force.¹⁹

b. Legal statutes invoked

The request of the attorney general's office was based on anti-incitement provisions—specifically, on Article 1(5) of the Law on Countermeasures Against Extremism; Article 5(6) and Article 22(5)(2) of the Law on National Security; Article 20(3) and Article 39(2) of the Constitution of the Republic of Kazakhstan; and Article 1, Article 2(3), Article 13, Article 14(4), and Article 24(3) of the Law on Mass Media.

In the application of the abovementioned legal provisions—that themselves fail to comply with Article 19(3) of the ICCPR, which establishes a three-prong test for the legitimate prohibition of incitement as established in Article 20 of the said instrument—the Kazakhstani courts ruled to terminate and ban all publications, broadcasts, and dissemination of information by Respublika, Vzglyad, K-plyus, and Stan TV in Kazakhstan, along with all associated websites.

c. Steps taken to seek domestic remedy

As seen above, two out of four of the independent mediums that were analyzed have exhausted all domestic remedies in Kazakhstan. In both cases, the higher courts upheld the decisions issued by the lower courts. Specifically, on June 6, 2013, the court of cassation of the Almaty City Court upheld the decisions of the Medeu District Court and board of appeals on the case of Respublika. In the case of Vzglyad, on May 28, 2013, the court of cassation of the Almaty City Court upheld the decisions of the Bostandyk District Court and the board of appeals.

4.2 Identity of the authorities involved in the arrest of a journalist and the legal statute invoked

On January 23, 2012, agents of the KNB, the Kazakhstani security service, arrested the editor-in-chief of Vzglyad, journalist Igor Vinyavskiy, for reporting on the events that took place in Zhanaozen in December 2011. He was charged for “exhortations for the forcible overthrow or changing of the constitutional order, or forcible disruption of the territorial integrity of the Republic of Kazakhstan,” according to Article 170 of the criminal code of the Republic of Kazakhstan. He was pardoned and freed two months later, on March 15, 2012,²⁰ the same day

¹⁹ Please see Adil Soz Foundation, *Monitoring of violations of freedom of speech in Kazakhstan in March 2013 (Digest)*. Page 4. Available at: <http://www.adilsoz.kz/wp-content/uploads/2013/05/monitoring-03.13-digest.pdf>

²⁰ See press release from the Committee to Protect Journalists, from January 24, 2012, “Editor detained, newsrooms raided in Kazakhstan.” Available at: <https://www.cpj.org/2012/01/independent-editor-detained-newsrooms-raided-in-ka.php>
See press release from Reporters Without Borders, from February 3, 2012, “Leading Independent Kazakh Newspaper at Centre of Major Media Crackdown.” Available at: <http://en.rsf.org/kazakhstan-leading-independent-kazakh-03-02-2012,41769.html>

that the European Parliament approved a resolution condemning his arrest, among others. To this date, HRF has no knowledge of further arrests of journalists related to these media. However, press freedom watchdogs, such as Reporters Without Borders and the Committee to Protect Journalists, have denounced numerous incidents of harassment, intimidation, violence, and prosecution of journalist at the hands of government authorities.

5. Information of the source of the communication

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III. Petition

In accordance with resolution no. 7/36 of March 28, 2008, HRF hereby submits the report below to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations, and respectfully calls on the Special Rapporteur:

(1) To inquire into the December 2012 media crackdown in Kazakhstan that resulted in the banning of independent media outlets K-plyus, Stan TV, Respublika, and Vzglyad, as well on the current situation of the individuals and/or entities that exercise independent journalism in Kazakhstan;

(2) To send a letter of allegation to the state of Kazakhstan, requesting an official and comprehensive answer regarding the state's violation of its international obligation under Articles 19 and 20 of the International Covenant on Civil and Political Rights, specifically on the case of the court proceedings against K-plyus, Stan TV, Respublika, and Vzglyad; and

(3) To make concrete recommendations on measures that the state of Kazakhstan should undertake, to offer remedy for the abovementioned situation.

See press release from the Committee to Protect Journalists, from March 19, 2012, "In Kazakhstan, editor released from jail." Available at:

<https://www.cpj.org/2012/03/in-kazakhstan-editor-released-from-jail.php>