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KAZAKHSTAN: MAKS BOKAYEV AND TALGAT AYAN SENTENCED TO FIVE YEARS IN PRISON FOR THEIR PARTICIPATION IN A PEACEFUL RALLY

On 28 November, 2016, a Kazakh court sentenced activists Maks Bokayev and Talgat Ayan to five years in prison. The court also banned them for three years from engaging in social activities and ordered them to pay 530,250 tenge (approximately 1,500 euros). The activists attended a peaceful rally, were engaged in social activities and expressed their views via social media. For these actions, they were accused of ‘inciting discord between the government and the nation’. The evidence base has obvious signs of tampering. The indictment lacks legal terminology and even the sentencing judge stated that the case bore a ‘political character’.

Bokayev and Ayan were convicted of ‘inciting social discord’ (Part 2, Art. 174 of the Criminal Code of the Republic of Kazakhstan), ‘spreading false information’ (Part 4, Art. 274 of the CC) and ‘violating the order of organising rallies’ (Art. 400 of the CC).

Renowned social activists Maks Bokayev and Talgat Ayan participated in a mass peaceful rally in Atyrau, which took place on 24 April, 2016. In April, various regions of Kazakhstan witnessed peaceful rallies against amendments to the Land Code. The protesters also expressed their distrust for the general policy of the corrupt authorities. The president threatened to take ‘the most severe measures,’ which led to the detention of more than 1,000 and the arrest of over 30 protesters.¹ The National Security Committee (NSC) filed criminal charges against several Atyrau activists. Maks Bokayev and Talgat Ayan faced the most serious charges. Since May 2016, they have remained under arrest.

On 12 October, 2016, the Second Atyrau City Court began to examine the case of Bokayev and Ayan (judge – Gulnar Dauleshova; prosecutors – Kasym Sydykov and Marat Khabibullin). Journalists and observers were seated in a room with access to an intermittent broadcast of the trial. The observers included, in particular, representatives of the embassies of Germany, Canada, the Netherlands, the United States and France.² The trial was also attended by the Kazakh activists and human rights defenders Eugene Zhovtis, Erlan Kaliyev, Asel Nurgaziyeva, Galym Ageleuov, Zauresh Battalova among others.

ACTIVISTS WERE CHARGED WITH PARTICIPATION IN A RALLY, WHICH ‘COULD HAVE ENDED WITH A RIOT’

The prosecutor's office and the court said that Bokayev and Ayan, “despite the lack of permission from the authorities and aware of the possibility of unrest and unlawful acts, encouraged others to participate in the protest”. In other words, the charge is based on assumption. The mass meeting in Atyrau was peaceful, as acknowledged by police officers in their testimonies. According to the investigators, the fact that Bokayev intended to ‘increase public and political awareness’ was a violation.

¹ <http://en.odfoundation.eu/a/7944,report-oppression-of-participants-in-rallies-against-land-reform-in-kazakhstan>

² https://bureau.kz/novosti/sobstvennaya_informaciya/priznali_krizisnoe_polojenie_naroda/; <http://rus.azattyq.org/a/atyrau-bokaev-ayan-sud-svideteli/28096291.html>; <http://rus.azattyq.org/a/28103315.html>

Especially noteworthy is the phrase uttered by prosecutor Sydykov in court: *“The state does not prohibit Bokayev from expressing his own opinion, as long as he does so while sitting at home.”*³

THE COURT CONSIDERED PUBLIC CRITICISM OF THE AUTHORITIES A CRIME

According to the charges, Bokayev and Ayan 'gave a negative assessment of activities of the authorities and manipulated the negative public opinion with respect to Land Reform'.⁴ Therefore, their actions supposedly bore 'signs of a threat to social stability'.

The investigation indicated that Bokayev and Ayan 'incited social discord by forming a negative opinion with respect to certain social groups (members of parliament, mayors) and professional groups (law enforcement employees and special agencies)'. In other words, the prosecutor's office and the court believe that the society and the representatives of government constitute two 'social groups'.⁵ Such a statement is absurd both from a sociological point of view and from the perspective of political science.

THE USE OF TESTIMONY OF THE JAILED INVESTIGATION-DEPENDENT WITNESS

The key prosecution witnesses were Kazakh oligarch Tokhtar Tuleshov and his associates Nurgali Dosanbaev and Olzhas Bekbauov. Tuleshov was arrested in January 2016. According to the authorities, while in prison, Tuleshov sponsored demonstrations against Land Reform. On 1 November, 2016, he was sentenced to 21 years in prison on charges of attempting to overthrow the government by starting a war between the elites. The investigation team could easily have managed to obtain the 'necessary' testimony from Tuleshov in prison.

The court questioned Tuleshov and his assistants via video conferencing. His testimony was periodically interrupted by problems with the internet connection. The court rejected a motion filed by the lawyers which called for the personal presence of the witnesses. According to their testimonies, through his associates Dosanbaev and Bekbauov, Tuleshov transferred 100,000 dollars to Ayan. At the same time, Tuleshov noted that he had never contacted Ayan. According to prosecutors, Talgat Ayan allegedly handed the money over to activist Marlan Esilbaev, whom he had only known for one day, 'for deposit'. Investigators claim that Esilbaev had the money.⁶

FALSIFICATION OF EVIDENCE

The evidence of the case is based on the following information and activities:

- Secret investigative actions – wiretapping with respect to Bokayev and Ayan. During their conversations, the activists expressed their intentions to participate in the rally.
- Testimonies of prosecution witnesses – several oil industry workers who participated in the rally. It turned out that their answers recorded in the report were almost identical (for example, they all referred to Bokayev as the 'provoker'). At trial, the oil industry workers said that they had not read the reports since the investigators instructed them to 'just sign' the documents.
- 'Psychological and philological analysis' of Bokayev and Ayan's posts on Facebook. Government experts have drawn conclusions that the activists were 'inciting social discord' between the society

³ <https://www.facebook.com/stoiken/videos/10207893377877077/>

⁴ <http://rus.azattyg.org/a/atyrau-prenia-storon-delo-bokaeva-i-ayana/28132165.html>

⁵ [https://bureau.kz/novosti/sobstvennaya-informaciya/obvinitelnyi-akt-po-maksu-bokaevu-i-talgatu-ayanu/;](https://bureau.kz/novosti/sobstvennaya-informaciya/obvinitelnyi-akt-po-maksu-bokaevu-i-talgatu-ayanu/)
http://www.ratel.kz/outlook/disfunksija_vlasti

⁶ Esilbaev was in possession of a t-shirt which was allegedly used by Ayan to hide the money. The lawyers asked the court to conduct a forensic examination in order to determine whether the t-shirt belonged to Ayan, but the court rejected the request as "the storage conditions of the t-shirt had been violated."

and authorities. Bokayev attempted to address questions to the experts, but the judge removed him from the room for ‘contempt of court.’⁷ Lawyers have cast doubt over the impartiality of expert Zhanna Baysalbaeva – a former employee of Academy of the National Security Committee. The defence team obtained opinions from independent experts, but the judge refused to submit them to the case file.

ACCUSATIONS OF THE COURT

On 10 October, 2016, judge Dauleshova decided to adapt additional security measures in respect of herself, explaining that “*the above-mentioned criminal proceedings are of a political nature and great public interest and it is important to prevent illegal actions of the relatives of the defendants and other persons.*” In this way, the judge herself referred to the case as ‘political’ and discriminated against the defendants.

The judge did not allow Bokayev to become acquainted with part of the case file. The majority of the lawyers' requests were rejected, including the request for the questioning of defence witnesses (for example, politician and activist Mukhtar Tayzhan). While in prison, Bokayev suffered exacerbation of symptoms of cholecystitis and hepatitis C. However, the judge refused to change his measure of restraint, thus ignoring doctors' recommendations. On 18 October, 2016, when Bokayev said he was feeling unwell, the judge ordered a recess, yet in the same breath she was heard to say: “*You can see how he is playing to the camera.*”⁸

International, Russian and Kazakh human rights organisations, and the UN Special Rapporteur on freedom of peaceful assembly referred to the prosecutions of Bokayev and Ayan as illegal and politically-motivated.

Bokayev and Ayan’s sentencing should not only be seen merely as a reprisal against the renowned activists, but also another ‘warning’ to the public about the dangers of engagement in opposition activities. Using totalitarian Soviet practices, the Kazakh regime demonstrates that any critical statement may lead to imprisonment. We hereby call on the international community to demand the immediate release of these new prisoners of conscience in Kazakhstan – Maks Bokayev and Talgat Ayan.

Kazakhstan grossly violates the provisions of the International Covenant on Civil and Political Rights and consistently ignores its obligations towards the UN and the EU. Therefore, the European Parliament and the parliaments of the EU member states must not ratify the agreement on cooperation with Kazakhstan. The condition for signing the agreement should be the exclusion of explicit political articles from the Criminal Code, cessation of political repression and compliance with Kazakhstan's obligations to protect freedom of speech and freedom of assembly. We also call on EU governments and foreign companies to boycott the ‘EXPO-2017’ exhibition in Astana so as to draw attention to the systematic violations of human rights in Kazakhstan.

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⁷ <http://rus.azattyq.org/a/28103315.html>

⁸ <http://rus.azattyq.org/a/28060258.html>