

Strengthened China-Kazakhstan Relations : What Impact on Human Rights ?

1. The situation of Kazakh lawyers in general

For just over 5 years, the CCBE has been particularly concerned about the situation of Kazakh lawyers. We must note a considerable deterioration in the situation and increasingly serious violations of the independence of lawyers and the bar.

Already in 2013-2014, the CCBE intervened on several occasions to denounce the forced psychiatric internment of lawyer Zinaida Mukhortova (02/09/2013¹, 07/10/2013², 06/08/2014³) immediately after she denounced government interventions in legal proceedings. At the same time⁴, the CCBE also intervened to denounce the lawyer Vadim Kuramshin's conviction to a severe prison sentence for having denounced the conditions of detention of certain political prisoners.

In 2015, the CCBE intervened in the defence of lawyer Ermek Narymbaev, apparently arrested under the sole charge that he had posted on a social network a message critical of his country's economic policy⁵.

On 20 July 2018, lawyer Elena Semenova was arrested on charges of "spreading false information" after giving information to members of the European Parliament about detention conditions in Kazakhstan⁶. Lawyer Sanat Bukenov (2014) was prosecuted under similar pretexts and sentenced to 4 years in prison for having relayed accusations of corruption.

In 2015, lawyer Tolegen Shaikov was also subjected to pressure and intimidation (threats of withdrawal of his license) for defending a client who had participated in a peaceful demonstration.

Even the exercise of defence in the courts is becoming increasingly difficult. Lawyers Gulnara Zhuaspayeva and Zhanara Balgabayeva were charged with contempt of court: the first in 2018 for "not calming the defendants" in a case where two of the terrorist propaganda defendants - who were not her clients - had slit their wrists; the second for refusing to stand up at the end of the proceedings in a dispute involving peaceful opponents. Sanctions were also imposed on lawyer Bauyrzhan Azanov for filming the proceedings in a similar case.

On 25 March 2019, the CCBE denounced the procedures put in place to relieve lawyers Anvar Tugel⁷ and Sergey Sizintsev⁸ of their responsibilities in the Bar Association and to remove them from the bar,

¹ [Concerns regarding the forced psychiatric confinement of Ms Zinaida Mukhortova, a human rights lawyer \(02/09/2013\).](#)

² [Concerns regarding the forced psychiatric confinement of Ms Zinaida Mukhortova, a human rights lawyer \(07/10/2013\).](#)

³ [Concerns regarding the forced psychiatric confinement of Ms Zinaida Mukhortova, a human rights lawyer \(06/08/2014\).](#)

⁴ [https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Kazakhstan - Kazakhstan/2013/EN_HRI_20130326_Kazakhstan_Vadim_Kuramshin.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Kazakhstan_-_Kazakhstan/2013/EN_HRI_20130326_Kazakhstan_Vadim_Kuramshin.pdf).

⁵ [Concerns regarding the case of Ermek Narymbaev, a human rights lawyer \(14/09/2015\).](#)

⁶ [Detention of lawyer Elena Semenova \(17/08/2018\).](#)

⁷ [Situation of lawyers in Kazakhstan \(14/02/2019\).](#)

⁸ [Disbarment proceedings against lawyer Sergey Sizintsev \(25/03/2019\).](#)

because they opposed the law reforming the bar, placing it under unacceptable government supervision.

Beyond these specific cases, the most important is that, in 2018, Kazakhstani authorities adopted a new law that lead to state control over the Bar Association. The norms of the law are rather vague, which creates opportunities for abuse by the state and reprisals against objectionable lawyers. The law provides, in particular, the following:

- The Ministry of Justice “coordinates” the activities of the bar association and “exercises control over the quality” of legal assistance.
- The prosecutor’s office, courts and other state bodies do not interfere with the activities of the attorneys and do not force them to disclose privileged legal information “except in cases provided for by the legislative acts of Kazakhstan”.
- Disciplinary commissions that consider complaints against lawyers will include representatives from the Ministry of Justice.
- The Ministry of Justice may ask the court to revoke the lawyer's license, bypassing the opinion of the bar association.
- One of the grounds for the ban on engaging in advocacy is dismissal from the civil service, from law enforcement agencies, courts and justice bodies “due to improper actions or conduct”, as well as exclusion from the bar association “due to improper actions or conduct”.
- A possibility of introducing “the state bar association, the basis, procedure and conditions of activity of which shall be established by law”, is envisaged.

Kazakhstani Republican Bar Association, International Bar Association⁹, International Commission of Jurists¹⁰ protested against the new law and stated that it violates the principles of independence and self-government of the bar. The law has also been criticised by the Council of Europe¹¹, the OSCE¹² and the UN¹³.

The authorities ignored criticism by the international community. In response to the UN Special Rapporteur, the Ministry of Justice stated that state participation in regulating the profession of a lawyer and the activities of the bar association is “inevitable”¹⁴.

We must remember that without an independent bar, there is no justice. Without an independent lawyer, there is no need for a judge. The police are enough. But then comes corruption, injustice, exploitation of the weakest, political and economic insecurity.

Human rights are not only for what some dictators call “capitalist-colonialist—westerners”. Human rights are for all the human beings.

2. The use of interstate mechanisms of harassment and blackmail : the Botagoz Jardemalie’s case

On 1st October 2019, the Belgian police, in the framework of legal cooperation with Kazakhstan, searched the apartment of lawyer and human rights activist Botagoz Jardemalie with gross violations. Representatives of Kazakhstan attended the search. They gained access to materials constituting a

⁹ <http://advokatura.kz/wp-content/uploads/Ekspertnyj-analiz-proekta-zakona-ob-Advokatskoj-Devat-ti-i-YUridicheskoj-pomoshhi-IBA-BIC.pdf>

¹⁰ <https://www.icj.org/kazakhstan-the-reform-of-the-legal-profession-should-aim-to-strengthen-its-independence-icj-says/>

¹¹ <http://advokatura.kz/ekspertnoe-zaklyuchenie/>

¹² <https://www.osce.org/ru/odihr/376192>

¹³ <https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL-KAZ-17-01-18.pdf>

¹⁴ https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL-KAZ-17-01-18_Reply.pdf

lawyer's secret. In this regard, her clients found themselves at risk of reprisals from the authoritarian regime of Kazakhstan.

Botagoz Jardemalie is a member of the New York Bar Association¹⁵. She provided legal advice to opposition politician Mukhtar Ablyazov, as well as victims of political persecution in Kazakhstan. Kazakhstan charged Jardemalie within the framework of the case of Ablyazov¹⁶ and also tried to extradite her.

In 2013, the Belgian authorities granted political asylum to Botagoz Jardemalie. In 2016, INTERPOL removed her name from the wanted list due to the political nature of the charges.

In 2014-2015, an attempt was made to find and kidnap Jardemalie in one of the EU countries. The perpetrators executed an order that came from Kazakhstan. Belgian prosecutors opened a criminal case on international espionage in connection with an attempted kidnapping. Judgment within two weeks.

In order to exert pressure on Botagoz Jardemalie, the Kazakhstani authorities began to pursue her brother Iskander Yerimbetov. In 2018, he was sentenced to a prison term in Kazakhstan, having been convicted on trumped-up charges. He was tortured in a pre-trial detention centre and forced to persuade Jardemalie to return to Kazakhstan. On 20 November 2018, the UN Working Group on Arbitrary Detention demanded the immediate release of Iskander Yerimbetov (the Opinion No. 67/2018), but authorities have not fulfilled the demand thus far¹⁷. It is difficult to admit that Belgian authority continue to cooperate with Kazakhstani authorities to prosecute Jardemalie.

The CCBE and the Belgian Bar Association have denounced this illegal search¹⁸.

Europe must not become the playground of dictatorships.

Patrick Henry

Former President of the CCBE's Human Rights Committee

Former President of AVOCATS.BE

Vice-President of AVOCATS SANS FRONTIÈRES

¹⁵ As Botagoz Jardemalie is not registered with a Belgian bar, the ordinary guarantees that apply to searches in law firms (presence of the President of the Bar or one of his delegates) did not apply. However, this did not authorize the investigating judge to authorize Kazakh agents to violate the professional secrets held by Me Jardemalie

¹⁶ <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/ce-9-decembre-2016-m.-o>

¹⁷ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_67.pdf

¹⁸ [Harcelement et intimidation a l'encontre de l'avocate Botagoz Jardemalie \(07/11/2019\)](#)