

Communication to the UN Human Rights Committee

Submitted in compliance with the Optional Protocol to the International Covenant on Civil and Political Rights

Communication to:
The Human Rights Committee
c/o Office of the High Commissioner for Human Rights
United Nations Office
8-14 avenue de la Paix
1211 Geneva 10, Switzerland

Date: May 25, 2015

I. INFORMATION ON THE AUTHOR OF THE COMMUNICATION

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Authorisation: **The representative is acting by virtue of a power of attorney signed by the Author 1 and Author 2 on Gulmira Birzhanova (see Annex №42)**

The North-Kazakhstani Legal Media Centre is assisted by ARTICLE 19, an international freedom of expression organisation.

In national courts, the Authors were represented by Ar.Rukh.Khak NGO.

II. THE STATE PARTY CONCERNED

This communication is submitted against **the Republic of Kazakhstan**, a State party to the International Covenant on Civil and Political Rights (ICCPR) as of 24 January 2006 and the State party to the Optional Protocol to the ICCPR as of 30 September 2009.

Events relating to violations of the rights of authors occurred within the period from April 24, 2013 to September 24, 2014 therefore, the communication meets the admissibility requirements set out in Article 1 of the First Optional Protocol to the ICCPR.

III. EXHAUSTION OF INTERNAL DOMESTIC REMEDIES

The authors have exhausted all available domestic remedies. They appealed the decisions of Almaty City (the first instance court) concerning cases on administrative offences of 7 August 2013 and 5 December 2013 to Appellate judicial division of the Almaty City Court (higher court) that serves as an appeals instance.

In accordance with the Kazakhstani legislation, the appeal courts are the last instance for cases on administrative offenses, to which the Authors can resort.

In addition, even though the review proceedings is not an effective remedy, the authors submitted requests into the Prosecutor's office of Almaty city and the Office of the Prosecutor General of Kazakhstan to lodge the prosecutor's protest in order to revise court decisions, which entered into force, but these requests were refused.

The Authors also appealed the ruling of the Bostandyksky District Court of Almaty city as of 24 February 2014 on civil case concerning the claim of the prosecutor's office to close Pravdivaya Gazeta newspaper, in all available higher court instances.

Both the appeal court and prosecution authorities confirmed the decisions of the first instance courts.

Copies of all court decisions and appeals of the authors, as well as the responses of the Prosecutor's Office are attached to this communication.

IV. OTHER INTERNATIONAL PROCEDURES

The facts and violations of rights stated in this communication have not been submitted for consideration to any other procedure of international investigation or settlement other than to the UN Human Rights Committee.

V. FACTS ON THE COMPLAINT

A. Description of facts and alleged violations

1. The second Author, Rozlana Taukina is a well-known independent journalist, who has been publishing articles criticizing the Kazakhstani authority in power for several years. The first Author, Alya Ismagulova, is the second Author's niece.
2. Previously, the second Author was also an employee in several now-closed opposition mass media. For example, she was the founder and chief of Totem, popular TV and radio company which lost its broadcast frequency and was closed in 1998 for being disloyal to authorities. She also worked as a director of Caravan radio station, chief editor of Obshestvennaya Oppozitsia newspaper ("The Public Opposition"), and Pravda Kazakhstanana

newspaper (“The Truth of Kazakhstan”). She is a correspondent for Reporters without Borders international organization. In 2001, the second Author established a non-governmental organisation, Journalists in Danger, which investigated attacks on journalists and engaged in a broad range of advocacy activities promoting freedom of expression and press freedom, including numerous rallies and flash mobs. In 2006, she was among 1000 Women of the World for Peace project, who were collectively nominated for the Nobel Prize. Previously, she was also the President of Association of Independent Mass Media of Central Asia (now closed in Kazakhstan), member of the Forum of Democratic Forces of Kazakhstan, a member of the political council of the Democratic Choice of Kazakhstan movement, a board member of Soros-Kazakhstan Foundation. Due to her activities, the second Author has been repeatedly subjected to administrative fines.

3. In 2009, the second Author made the first attempt to register Pravdivaya Gazeta – a print media outlet - with the Ministry of Culture and Information of Kazakhstan; followed by the second try in 2011. The registration of media outlets is required by the Kazakhstan law. At both instances, the registration was refused for formal reasons; such as a claim that the suggested name of the entity was not approved due to a similar name was already registered. She also tried to register other editions under different names, but the registration was again refused for formal reasons.
4. On 27 March 2013, the second Author registered Pravdivaya Gazeta under the name of the first Author, her niece, a student of the Technical University. She hoped that avoiding registration under her own name would increase the chance of approval. Under a mutual agreement, the first Author gave the second Author a full control and a management authority on the newspaper, and asked her to act as the editor-in-chief.
5. The Pravdivaya Gazeta was officially registered in March 2013 and its release commenced at on 23 April 2013.
6. ***The first court proceedings:*** On 24 April 2013, immediately after the release of the first issue, the Department for Internal Policy of the Akimat (Mayor’s Office) of the city of Almaty opened an administrative case against the first Author on the grounds that the newspaper has not specified the publication frequency in the imprint. According to Article 350(1) of the Code of Administrative Offences of the Republic of Kazakhstan (Administrative Offences Code), valid at this time, this was an offence punishable by a fine up to 50 monthly calculated rates (MCR) with the confiscation of newspaper circulation or suspension of a media outlet issuance up to three months. The first Author was fined by 20 MCR (KZT34620 - €173 equivalent), and the entire circulation of the first issue was confiscated.
7. Until August 2013, the issuance of the newspaper continued without any obstacles. The repressions began after publication of a series of materials based on the excerpts from memoirs of Zamanbek Nurkadilov, ex-Minister of Emergency Situations of Kazakhstan, who was also the former Mayor of Almaty city, killed in Almaty in 2005.
8. ***Second court proceedings:*** On 6 August 2013, the Department for internal policy of the Akimat of Almaty city opened another administrative case against the first Author under article 350(2) of Administrative Offence Court due to the circulation of two newspaper issues indicated 8,000 copies, whereas only 7,000 copies were printed.
 - 8.1. According to the protocol # 20, on 5 August, the Department for internal policy allegedly received a letter from a certain citizen, K. Bayzhanov, requesting to consider a mismatch between the actual data and those specified in the circulation in Pravdivaya Gazeta. In her remarks to the protocol , the First Author indicated that the circulation in the imprint was overstated by 1000 copies compared to actually printed and distributed because she received information from distributors (on the needed number) when the newspaper had already been sent to print.

- 8.2. On 7 August 2013, during the court hearing the First Author did not admit her fault and pointed out that there were no essential elements of an offence in her deeds. The Second Author explained to the judge that the number of copies of the newspaper was requested by distributors who sell it. The difference in 1,000 copies did not bring any damage neither to readers nor to the government. The newspaper did not contain advertisement, so it did not follow any commercial interest. It was already submitted that Mr. Baizhanov (who allegedly filed the complaint) was not in a position to know the exact number of prints and it was submitted that his complain was suspicious. The Authors asked the court to call him as a witness, but this request was refused, Mr Baizhanov could not be identified as his complaint included no contact details).
- 8.3. On 7 August 2013, the specialized inter-district court of Almaty City found the First Applicant guilty in committing an administrative offense and issued a suspension of the release of Pravdivaya Gazeta newspaper for 3 months.
- 8.4. On 14 August 2013, the First Author filed an appeal against the decision. She claimed that the court made a broad interpretation of article 350(1) of Administrative Offences Code because the liability for release of a medium on air “without declaring its name, as well as with unclear or knowingly false imprint” was applicable only to the electronic media, whereas Pravdivaya Gazeta was the print medium. She highlighted the provisions of the Code on electronic media were not applicable to the newspaper. She also indicated that the alleged violations were found by the Akimat as a result of an inspection initiated by an anonymous person. Since, the Kazakhstan legislation stipulates that anonymous complaints of citizens are not subject to review, the inspection was illegal, accordingly the evidence obtained as a result of it were illegal as well.
- 8.5. The appeal court hearing was held in the absence of the Authors. The summons indicated an address unfamiliar to the First Author, hence it was deliberately misleading. The newspaper office never received a summons.
- 8.6. On 22 August 2013, the appellate judicial division of the Almaty City Court, having considered the complaint of the First Author, decided to uphold the decision of the court of first instance. At that, the court did not properly assess violations stated by the First Author, instead it repeated the arguments of the court of first instance and pointed out that the court’s findings “correspond to the actual circumstances of the case and are based on evidence proven in court hearing”. The decision came to force immediately.
- 8.7. In February 2014, the First Author filed a petition to the Prosecutor’s Office of Almaty City requesting the Prosecutor to file a protest against the decision of 7 August 2013. She argued that the inspection of the newspaper was carried out in violation of applicable laws of Kazakhstan. The Akimat did not issue a warning to the newspaper thereby violated the principle of priority of warning over the punishment by applying the maximum penalty (a suspension). She also pointed out the political pressure on the independent medium; and also argued the violation of her rights under international freedom of expression standards, namely Article 19 of ICCPR.
- 8.8. On 26 May 2014, the Prosecutor’s Office of Almaty found there were no reasons for the response and reiterated the reasoning from the first instance.
- 8.9. On 28 May 2014, the First Author filed a petition to the General Prosecutor of Kazakhstan requesting the Prosecutor’s protest against the decision of 7 August 2013. She, *inter alia*, argued that her rights under the ICCPR were violated, in particular Article 14 (fair trial) and Article 19 (freedom of expression). She also pointed out that the suspension of the issuance of Pravdivaya Gazeta newspaper was a political pressure on this independent medium.

8.10. In the reply of 14 July 2014, the General Prosecutor referred to the possibility of restricting the rights under the ICCPR without assessing the need for such restrictions in a democratic society, or without stating a legitimate objective of such restrictions and assessing proportionality and necessity of this objective in the case. The General Prosecutor referred to the lack of grounds to bring the Prosecutor's protest to reconsider the court decision as well.

9. ***The third court proceedings:*** On 20 November 2013, the Department for Internal Policy of Almaty Akimat instituted administrative proceedings against the First Author claiming the alleged violation of the decision on suspension of newspaper. According to Akimat's protocol, on the night from 19 – 20 November, the printing house printed an issue №17 of Pravdivaya Gazeta (dated 22 November). At that, basing on the allegation of a certain Mr. Baizhanov, this issue was already on sale on 20 November, i.e. before the end of the newspaper suspension.

9.1. The First Author (and her lawyer) did not receive a summons to the hearing and was not notified of the date of the court hearing. Allegedly, the summons was sent to an address where she has never resided.

9.2. On 5 December 2013, the Appeal Court of the Almaty City found the First Author in her absence guilty of an offense under article 342 of Code of the Administrative Offences ("distributing the media outlet after the suspension of its release") and imposed a fine in the amount of 50 MCR (KZT86550 equivalent of €435) with confiscation of Pravdivaya Gazeta edition. The court referred to a protocol on administrative offense (dated 20 November 2013 prepared by the Department for internal policy of Akimat of Almaty city) a letter of the printing-house Business-Inform Corporation LLP (stating that the newspaper was printed on the night from 19 to 20 November 2013), an explanatory notes from a "regular reader Baizhanov" (dated 20 November 2013 although this explanatory note was not in the case files); and an explanatory note of a certain news-seller, A. Ignatchenko (stating that Pravdivaya Gazeta with the release date of 22 November 2013 was already on sale on 20 November; however such a news-seller on Auezov St.-Abai cross St. in Almaty did not exist).

9.3. On 19 December 2013, the First Author filed an appeal against this court decision. She argued a violation of her right to fair trial, namely that in violation of Article 587(4) of the Code of Administrative Offences, neither Author nor their representatives were properly notified of the date and place of court hearing and, consequently, could not protect their rights and interests during the court hearing. Moreover, she also pointed out that at the time of submitting the appeal, she still has not received court's decision of 5 December 5, 2013; and this also constituted the violation of her rights. In her appeal, she provided the evidence that the newspaper was printed on 20 November and it went on sale only on 22 November 2013. The court hearing was held in the presence of the Authors and their lawyers and numerous observers from the public. Ivan Egorov, the newspaper distributor, was also present and clarified that the newspaper was submitted for sale on 22 November only. The printing-house did not possess signatures proving the receipt of the circulation on 20 November.

9.4. On 28 December 2013, the Appellate judicial division on civil and administrative cases of Almaty City Court confirmed the first instance decision and rejected the appeal. It concluded that "the fully and objectively proved guilt is supported by the protocol on administrative offense, by the sample of the printed issue, which is included into the case records, by explanations of the offender, as well as by other materials of the case studied during the consideration of the complaint". Thus, the court completely ignored significant violations alleged by the First Author which were of fundamental importance for the establishment of truth and for guaranteeing fair trial.

- 9.5. On 13 March 2014, the First Author filed a petition to the Almaty Prosecutor, requesting the Prosecutor to protest against the 5 December court decision. She argued that the actions of Akimat of Almaty City towards Pravdivaya Gazeta constituted a political pressure and censorship, in violation of the right to freedom of expression enshrined in the Kazakhstan Constitution, Articles 14 and 19 of the ICCPR.
- 9.6. On January 22, 2014 the Prosecutor's Office refused the petition.
- 9.7. On 11 May 2014, the First Author submitted a petition to the General Prosecutor of Kazakhstan, in which she asked to check the legality of court decision of 5 December 2013 and to protest it. She pointed out the same violations set out in her petition to the Prosecutor's Office of Almaty city.
- 9.8. On 14 July 14, he General Prosecutor informed the First Author that there were no grounds for a protest against the court's decision and referred to article 19(3) of the ICCPR that permits restrictions on the right to freedom of expression. However, the General Prosecutor did not provide any further reasoning re the application of permissible restrictions.
10. ***Fourth court proceedings:*** On 20 November 2013, the Department for internal policy of Almaty Akimat filed the fourth administrative case against the First Author for violation of the order of imprint announcement. The case stated that the newspaper did not clearly indicate the address of the newspaper office, the number of the certificate of registration of media outlet and the newspaper issue date, as required by Article 15(1) of the Law on Mass Media, and thus, violated Article 350(2) of the Code of Administrative Offences.
 - 10.1. The First Applicant again received no summons to the hearing, no information about the court date and did not receive a copy of №34 protocol of the Akimat.
 - 10.2. On 5 December 2013, the specialized inter-district administrative court of Almaty City found the First Author guilty in her absence of an offense under article 350(2) ("the release of a periodic publication with unclear or knowingly false imprint"), and imposed an administrative penalty in the form of suspension of the release of the newspaper for three months. The Court referred to the protocol on administrative violation (dated 20 November 2013), the certificate of registration of a media outlet and a sample of the newspaper containing the defect submitted to court (Annex № 39).
 - 10.3. On 19 December 2013, the First Author filed an appeal against this court decision, arguing that the actions of the Akimat were illegitimate because the released newspaper indicated the imprint fully. She indicated that the printing house (the Business-Inform) made a technical defect in the plate discharge. For this, the printing house apologised and suggested to re-print it (Annex № 38).
 - 10.4. Similar to the previous process, on 28 December 2013, the Appellate judicial division on civil and administrative cases of Almaty City Court confirmed the first instance decision.
 - 10.5. On 13 March 2014, the First Author filed a petition to the Almaty Prosecutor, requesting him to file a protest against the court decision. In the response dated 5 April 2014, the Prosecutor stated that there was a lack of grounds for the Prosecutor to act.
 - 10.6. On 11 May 2014, the First Author submitted a petition to the Kazakhstan General Prosecutor, also asking to check the legality of the 5 December court decision and to protest it, based on the same grounds as listed above. In the response, of 14 July 2014, the General Prosecutor stated that there were no grounds for a protest and again broadly referred to article 19(3) of the ICCPR.
11. ***Fifth court proceedings:*** On 10 January 2014, the Prosecutor of Bostandyksky District of Almaty City filed a lawsuit to stop the issuance of Pravdivaya Gazeta on the basis of Article

13(4) of the Law on Mass Media. It claimed that the newspaper failed to eliminate the reasons, which caused the suspension, namely a repeated violations of the order of the imprint announcement, as well as the production and distribution of the newspaper in the period of its suspension, in conjunction with article 15(5) of the Law on Mass Media. Article 15 of the Law envisages the annulment of the certificate of registration in the event of termination of the release of a media outlet.

11.1. On 12 February 2014, the First Author filed a petition requesting the Ministry of Culture and Information of Kazakhstan to step into the process as a third independent party; and to act as a mandatory participant in the process of the deputy Prosecutor of Almaty City. Both petitions were refused.

11.2. On 21 February 2014, the First Author filed two more petitions. The first one concerned the interpretation by the Constitutional Court of Article 13(4) of the Law on Mass Media re whether the nonrecurring, incoherent and non-interacting administrative violations that have been corrected can serve as a ground for closure of the newspaper. The second one concerned the request to conduct the review of the aforementioned provision of the Mass Media Law.

11.3. Also, on 21 February 2014, the First Author filed a counterclaim, which pointed the groundlessness of the Prosecutor's claim.

11.4. On 24 February 2014, the Bostandyksky District Court approved the petition of the Almaty Prosecutor to stop the issuance of Pravdivaya Gazeta. The Court stated that the repeated error in the imprint, as well as production and distribution of the newspaper in the period of its suspension, were the grounds for termination of the media outlet release basing on article 13(4) of the Law on Mass Media. Thus, the issuance of the newspaper was banned because of the minor remarks on the imprint. In Annex 43 one can find support letters from international and national organizations concerning Pravdivaya Gazeta reflecting the groundlessness of its closure.

11.5. On 26 February 2014, the Bostandyksky District Court returned the claim of the First author because the Prosecutor's claim has already been examined by the court on the merits and the decision had already been made. The First Author filed a procedural appeal against this decision on 7 March. She stated that the hearings were held in her absence and that at the time of filing a counterclaim the court had not yet made its decision.

11.6. On 7 March 2014, the First Author filed an appeal against the 24 February 2014 court decision. She argued that each time different claims were presented against the newspaper, they concerned the same matter and not repeated violations.. In addition, the appeal stated that in reaching the decision the court ignored the motion for recusal of the judge due to the reasonable doubts in his impartiality.

11.7. On 10 April 2014, the First Author filed two petitions to assign the philological expertise of the Law on Mass Media provision on reasons for termination of the media outlet, and to make the court to appeal to the Constitutional Council for an explanation of the constitutionality these. On 11 April 2014, an additional motion for recusal of the judge was submitted, challenging his impartiality.

11.8. On 16 April 2014, the Appellate judicial division on civil and administrative cases of Almaty City Court upheld the court decision of February 26, 2014; and on 18 April, upheld the decision of the court of 24 February 2014.

11.9. On 19 May, the First Author filed a cassation appeal which repeated the same arguments set out in the petition submitted on the appellate instance. This appeal was rejected by the cassation judicial division of Almaty City Court on 18 June 2014.

11.10. On 7 July 2014, the First Author filed a petition to review the court decisions in the review procedure, based on previously raised arguments; and on 14 July, also a

motion for recusal of the judge due to the reasonable doubts in his impartiality. On 21 August 2014, the Kazakhstan Supreme Court of Kazakhstan refused to initiate review proceedings.

11.12. On 3 September 2014, the First Author filed a petition to the Kazakhstan General Prosecutor to file the protest against court decision, repeating the same arguments as outlined above. This petition was rejected by the letter of 24 September 2014.

12. All relevant decisions are final, and no appeal or review proceedings are available to them under the domestic law.

Context of the violations: freedom of the media in Kazakhstan

13. The freedom of expression is guaranteed by Article 20 of the Kazakhstan Constitution.¹ Permissible limitations on the right stipulated in Article 39 of the Constitution, which state that limitations are possible “only to the extent necessary for protection of the constitutional system, defence of the public order, human rights and freedoms, health and morality of the population”. In addition, the Constitution prohibits the restriction of the rights and freedoms of the citizens on political grounds.²

14. Despite these guarantees, the right to freedom of expression is a subject of systematic abuse and violations in the country. This has been documented by a number of international and national human rights organizations over the last several years, highlighting instances of intimidation and pressure on the opposition independent mass media and journalists in Kazakhstan. They have also documented that as a result, Kazakhstan journalists practice self-censorship, and the activities of independent and pro-opposition media outlets (print, internet, radio, television) is practically impossible.³ For example:

14.1. In 2014 the Human Rights Watch stated that

In Kazakhstan, journalists operate in an environment of anxiety, faced with constant intimidating lawsuits and, not infrequently, direct threats to their person. Libel continues to be a criminal, rather than a civil, offense and carries stiff penalties. Even when journalists do not admit to outright self-censorship, they speak privately of the tightly regulated environment and topics they do not dare to cover. Threatening phone calls, visits by the police, and successive lawsuits are common. There are no independent television stations, and websites critical of the government are often blocked by the authorities.⁴

14.2. The US Department of State, in the 2012 report on Kazakhstan stated:

The constitution and the law provide for freedom of speech and of the press; however, the government used a variety of means to control the media and limit freedom of expression, including laws, harassment, licensing regulations, Internet restrictions, and criminal and administrative charges. Judicial actions against journalists and media outlets, including civil and criminal libel suits filed by government officials, led to the suspension of media outlets and self-censorship. Freedom of speech. The government limited individuals’ ability to criticize the country’s leadership; regional leaders attempted to limit local media outlets’

¹ Article 20 of the Constitution of RK states “1. The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited. 2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law. 3. Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence shall not be allowed.

² Clause 3 art. 39 of the Constitution of RK

³ For example, see Report of Human Rights Watch “An Atmosphere of Quiet Repression: Freedom of Religion, Assembly and Expression in Kazakhstan”, <http://www.hrw.org/reports/2008/12/01/atmosphere-quiet-repression>; Amnesty International Annual Report FY 2013, <http://www.amnesty.org/en/region/kazakhstan/report-2013>, “The situation with freedom of speech in Kazakhstan in the first half of 2014” Analytical report (from materials of Adil Soz International Foundation for Protection of Freedom of Speech)

⁴ An Atmosphere of Quiet Repression: Freedom of Religion, Assembly and Expression in Kazakhstan (Brief summary) <http://www.hrw.org/reports/2008/12/01/atmosphere-quiet-repression-0>

criticism of them. The law prohibits insulting the president, the president's family, and other senior officials.

Freedom of press. According to official statistics, the government owned 16 percent of the country's 2,783 media outlets. Many privately owned newspapers and television stations received government subsidies. Companies allegedly controlled by members of the president's family or loyal associates owned the majority of those broadcast media outlets that the government did not control outright. Media observers believed that the government wholly or partly owned most of the seven nationwide television broadcasters. Regional governments owned several frequencies, and the Ministry of Culture and Information (MCI) distributed them to independent broadcasters via a tender system. All media were required to register with the MCI, although Web sites were exempt from this requirement.⁵

- 14.3. In his report on the visit to Kazakhstan in 2004, the UN Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, pointed out that

Article 20 of the Constitution guarantees the right of all persons to freedom of expression. However, freedom of expression, according to reports, is closely monitored by the government. A number of court cases against members of the political opposition, journalists and other activists are still under the control of the Special Rapporteur. This reflects the potential abuse by the judges in respect to the control of the political opposition or opponents and undermines the rule of law.⁶

15. The reports also highlight that activities of independent media outlets are regularly restricted via legal means. For instance,

- 15.1. In February 2008, an Astana court has ordered Law and Justice independent newspaper to be closed, alleging that errors were made when the newspaper was registered. According to the editor-in-chief of this newspaper, the court mixed up two different companies under the same name. Nevertheless, he was sure that this error was deliberate and politically motivated, since the newspaper published an article containing the allegations of judicial corruption.⁷

- 15.2. In autumn 2012, the court found that 8 newspapers and 23 online resources, as well as K+ and Stan TV television stations working over the Internet, to be a single media conglomerate. All these media outlets were closed allegedly for the extremism, inciting social discord and threat to national security,⁸ although, during the court trial not a single evidence was provided.⁹ In December the Almaty City Prosecutor petitioned the court to suspend the Guljan.org opposition Web site for three months for allegedly calling for an unsanctioned demonstration. The court ordered Guljan.org to cease all operations until the case could be heard.¹⁰ Guljan.org stopped its activity.

- 15.3. On 1 April 2014, the Medeusky District Court of Almaty held a court hearing in absentia on the claim of the Medeusky district prosecutor to find Assandi Times newspaper as a part of the closed "The Republic" single media conglomerate" and that it distributed products of the latter, and to cease the activities of Assandi Times in Kazakhstan. None of the employees of the newspaper were notified about the court hearing and the claim filed. After several court hearings, on April 21, 2014 the court sustained the prosecutor's claim – namely, Assandi Times was recognized as a structural part of "The Republic" single media conglomerate", and the issuance of the newspaper was ceased,¹¹ although Assandi Times newspaper was not in the list of those media outlets (belonging to "The Republic"). The journalists of the closed

⁵ [Country Report on human rights practices for 2012](#), Kazakhstan. US State Department.

⁶ Report of the Special Rapporteur on the independence of judges and lawyers, Commission on Human Rights, 61st Session, E/CN.4/2005/60/Add.2, 7 January 2005

⁷ Bruce Pannier, [Kazakhstan: One of Few Independent Newspapers Faces Closure](#), Eurasia Insight, 17 February 2008,

⁸ Amnesty International, [Kazakhstan must not muzzle media outlets](#). 22 November 22, 2012

⁹ Adil Soz, The situation with freedom of speech in Kazakhstan in the first half of 2014, Analytical Report

¹⁰ US State Department, [Country Report on human rights practices for 2012, Kazakhstan](#). US State Department,

¹¹ Radio Azattyk (Radio Freedom), [Assandi Times is closing](#), 21 April 2014

Assandi Times newspaper were not able to register a new newspaper since the authorized body refused them the state registration.¹²

VI. THE VIOLATED PROVISIONS UNDER THE COVENANT

16. The Authors submit that the fact outline above constitute the following violations of their rights, as guaranteed by the ICCPR:
 - a) The right to freedom of expression, including the right to impart information and ideas through the press
 - b) The right to a fair trial, in particular the right to have sufficient time and facilities to prepare his/her defence, the right to be personally present at the court hearing of his/her case, the right to examine witnesses speaking against the defendant or the right to ensure that this type of witnesses are interrogated, and to have the right to call and put questions to his/her witnesses

A. Violation of the right to freedom of expression

Violation of the rights of the Second Author

17. It is submitted that although the proceedings were taken against the First Author, the Second Author was actually the chief editor, she managed the newspaper, including all financial matters, therefore *de facto* she was the owner of the newspaper. This arrangement was done after the proceedings taken against her and due to her inability to run the newspaper openly. She also covered all costs for lawyers and paid all fines. Thus, all the restrictions imposed on the newspaper office in fact were imposed primarily on the Second Author.
18. The authors of the communication claim that the imposition of administrative fines, confiscation of newspaper circulation, the suspension of its release, as well as the court's decision to terminate the newspaper release were significant limitation of their right to freedom of expression. The Authors note that the Committee had already bluntly pointed out that the editor has the right to impart information and the limitation of this right can be a violation of the State's obligations under article 19(2) of the ICCPR.¹³
19. The Authors submit that the violations of their right to freedom of expression fell short of the requirement for restrictions under Article 19 para 3 of the ICCPR and they fail to meet the requirements of the three part test.
20. **The restrictions were not prescribed by the law.** The Authors recall that in order to be characterized as a "law", a norm must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.¹⁴ At that, laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.¹⁵
 - 21.1. The Authors point out that Article 13(4) of the Law on Mass Media of Kazakhstan in part relating to "non-eliminatio[n] of reasons for suspension of the release of a media outlet or the dissemination of mass media products within the specified period", do not meet this requirements. These provisions were used to terminate the release of Pravdivaya Gazeta , and were the basis for the decisions making. The provisions are vague and overbroad and provide wide scope of subjecting interpretation. As documented by the present case, they can be used to suspend the media for minor errors in printing.

¹² Adil Soz, The situation with freedom of speech in Kazakhstan in the first half of 2014, Analytical Report

¹³ Communication № 1334/2004, *Mr. Mavlonov and Mr. Sa'di*, CCPR/C/95/D/1334/2004, April 29, 2009, §8.4.

¹⁴ Communication № 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995.

¹⁵ General comment № 34, CCPR/C/GC/34, September 12, 2011, §25

21. **The restrictions did not pursue a legitimate aim.** The Authors point out that in the court decisions, the judicial and law enforcement authorities failed to invoke a protection of rights provided for in Article 19 para 3. The Authors submit that the sole purpose of the restrictions was political harassment and the retractions on publication that might be critical of governmental and public authorities. The judicial authorities indicated that the reasons for their decisions were the omission of frequency of circulation, overstatement of the number of copies obscure imprint in the defective batch of the newspaper issue. The Authors submit that none of these could jeopardize respect for the rights or reputations of others, pose a threat to national security or create danger to public order or public health or morals.
22. The authors reiterate that the actions of the authorities had purpose to prevent the production and distribution of the newspaper. These actions were clearly politically motivated because of the critical publications in Pravdivaya Gazeta addressed to Kazakhstani authorities. It was also a part of a broader and long-term tactics of the authorities of Kazakhstan to suppress opposition and independent media and journalists.
23. **The restrictions were not necessary and proportionate.** Even if the Human Rights Committee accepts that the restrictions did pursue a legitimate aim, they submit that the sanctions were disproportionate to any possible aim. They refer to previous decisions of the Committee on that the imposition of a substantial administrative fine raises the question of the necessity and proportionality of the restriction. Especially, this should be considered when the authorities suspend and consequently prohibit the issuance of a media outlet.
24. The Authors believe that the circumstances of the case and available evidence clearly show that the persecution of the newspaper began the very next day after the first issue went out. They also reiterate that the proceedings were initiated on formal and insignificant violations related to the newspaper imprint. The actions of the authorities were clearly directed to stop the newspaper. Any alleged violations by state authorities of the domestic laws were extremely minor and could have been corrected by less restrictive means (e.g. request for correction or, at maximum, a minor warning). Hence, severe fines and eventual suspension, were clearly not necessary and were disproportionate to any possible pursuit.

B. Violation of the right to a fair trial

25. The First Author also submits that the proceedings of 5 December 2013 on two administrative offense were carried out with fundamental violations and were manifestly unfair. She argues that neither she nor her authorized representative, Ramazan Yesergepov, were properly admitted to the court hearing. They were also not notified of the time and place of the court hearing. Hence, the First Author's right to fair trial, as provided for in Article 14 paragraph 2(b), (d), (e) of the ICCPR was fundamentally violated.
26. **Hearing in the absence of the First Author:** As the outlined above, the First Author was not duly notified of the place and date (time) of the court hearing on her case. The summons were sent to Almaty, Zhetysu-3 mcrd, 106, Apt.102, which was neither the her address (at which she is registered as a private entrepreneur) nor the address of the newspaper office, nor her address of her permanent or actual residence. This address was allegedly provided to the court by the Department for internal policy of Almaty city Akimat, and the court registry used it without any verification. It is not clear while this was so as the Court was aware of the actual address of the First Author, as it was used by the Court in other pending cases. This failure was not recognised by the appeal court.
27. In this context, the First Author point out that the Committee, as a rule, does not consider the circumstances of the case and the evidence considered in a particular process, unless it can be concluded that their assessment was manifestly unreasonable or was tantamount to a denial of justice.¹⁶ The authors state that, taking into account the above described substantive violations and serious consequences of the proceedings that led to the forced

¹⁶ Communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, §6.2.

closure of the newspaper, namely a hearing in the absence of the defendant as a result of improper notice and the refusal of courts to properly investigate the circumstances of the case and the admissibility of the evidence before it, which led to their clearly unreasonable assessment, - amounted to a denial of justice.

28. **The right to fair trial in administrative proceedings.** The Author recalls that the Article 14(3) of the ICCPR refers to situations when “charged with criminal offenses.” However, she submits that the present proceedings should benefit from the procedural guarantees of Article 14 for the following reasons.
- 29.1. As stipulated in the jurisprudence of the European Court of Human Rights, “national classification of offenses by categories “administrative” and “criminal” is not critical and has only a relative value.”¹⁷ Hence, for qualification of the offense to determine whether to treat a specific process as a criminal or administrative, the nature and degree of severity of the penalty, which the defendant may be at risk. Should be considered instead.¹⁸
- 29.2. In terms of the nature and severity of the penalty, the First Author points out that she received an administrative fine in the amount of 50 MCR, which is twice the size of the minimum fine under the Criminal Code of the Republic of Kazakhstan.¹⁹ In addition, the entire print run of issue №17 of the newspaper was confiscated and its release was banned for a period of three months, which fully paralyzed the newspaper. In addition, this penalty did not allow the newspaper to make a profit from its sale, which formed its budget, including the payment of salaries to employees, etc. In view of the above, the penalty had a punitive value that reached the severity comparable to those of the criminal law. Coupled with the fact that this decision served as the basis to ban the newspaper, this punishment certainly equals to a criminal punishment.
29. The Authors also draw attention to the already evolved practice of the Committee, in cases of administrative offenses where the person has not been duly notified of the proceedings and the court as a result imposed the administrative fine, to consider it as a violation of the right to a fair trial according to article 14(3)(b), (d), (e) of the ICCPR²⁰, which is fully applicable to the circumstances set out in this communication.

VII. EFFECTIVE REMEDIES REQUESTED

The authors of this communication request the UN Human Rights Committee to

- a) find that Kazakhstan violated the right of the Authors to freedom of expression under Article 19 of the ICCPR;
- b) find that Kazakhstan violated the right of the First Author to fair trial under Article 14 of the ICCPR;
- c) Oblige Kazakhstan to ensure that the authors have an access to effective remedies, including the payment of compensation for incurred court costs and fines imposed, as well as to review the decision on termination of Pravdivaya Gazeta issuance and the annulment of its registration in files;
- d) Oblige Kazakhstan to take measures to prevent similar violations in the future, as well as to review and make amendments into the Law on Mass Media and the Code of Administrative Offences in order to bring them in compliance with international human rights standards.

¹⁷ Ziliberg v Moldova, ECtHR, 1 February 2005, §30.

¹⁸ Engel and others v the Netherlands, ECtHR, 8 June 1976, para 82. More recent court precedents: Benham v the United Kingdom, ECtHR, 10 June 1996, para 56; Garyfallou AEBE v Greece, ECtHR, 24 September 1997, paras 32-33; Lauko v Slovakia, ECtHR, 2 September 1998, para 56.

¹⁹ According to article 40(2) of the Criminal Code of the Republic of Kazakhstan, a fine is imposed within the limit from twenty five to twenty thousand monthly calculated rates (MCR) set by the legislation of the Republic of Kazakhstan

²⁰ See communication № 1311/2004 *Ivan Osiyuk v. Belarus*, observations adopted July 30, 2009.

I, hereby, basing on the best of my knowledge and belief, declare that all the information specified in the present communication is true.

May 25, 2015.

Gulmira Birzhanova, lawyer, representative, acting on the basis of the power of attorney

Signature

The list of attached documents

1. Copy of the protocol №7 of 24.04.2013 of the Department for internal policy of Almaty city
2. Copy of the decision of the specialized inter-district administrative court of Almaty city of 24.04.2013
3. Copy of the protocol №20 on administrative offence dated 06.08.2013
4. Copy of the decision of the specialized inter-district administrative court of Almaty city of 07.08.2013
5. Copy of the appeal dated 14.08.2013 against the court decision of 07.08.2013
6. Copy of the decision of the appellate instance № 3a-608 of 22.08. 2013
7. Copy of the petition to the Prosecutor's Office of Almaty city to reconsider the court decision of 07.08.2013
8. Copy of the letter from the Prosecutor's Office of Almaty city dated 26.05.2014 (response to petition – refusal in filing the protest)
9. Copy of the petition to the General Prosecutor's Office of the Republic of Kazakhstan of 28.05.2014 to reconsider the court decision of 07.08.2013
10. Copy of the letter of the General Prosecutor's Office of the Republic of Kazakhstan of 14.07.2014 in response to the petition of 28.05.2014 (refusal in filing the protest)
11. Copy of the protocol №33 on administrative violation of 20.11.2013
12. Copy of the decision of the specialized inter-district administrative court of Almaty city of 05.12. 2013
13. Copy of the appeal dated 19.12.2013 against the court decision on the administrative offense dated 05.12.2013
14. Copy of the decision of the appellate judicial board №3a-991/2013 dated 28.12.2013
15. Copy of the petition of 13.03.2014 to file the Prosecutor's protest against court decision
16. Copy of the response of the Prosecutor's Office of Almaty city dated 05.04.2014 (refusal in filing the protest)
17. Copy of the petition of 11.05.2014 to file the Prosecutor's protest against court decision
18. Copy of the letter from the General Prosecutor's Office of the Republic of Kazakhstan dated 14.07.2014 (refusal in filing the protest)
19. Copy of the protocol №34 on administrative offense dated 20.11.2013
20. Copy of the decision of the specialist inter-district administrative court of Almaty city of 05.12.2013
21. Copy of the appeal dated 19.12.2013 against the court decision on administrative offense dated 05.12.2013
22. Copy of the decision of the appellate judicial board №3a-986/2013 dated 28.12.2013

23. Copy of the appeal of 13.03.2014 to file the Prosecutor's protest against the court decision.
24. Copy of the response from the Prosecutor's Office of Almaty city of 05.04.2014 (refusal to file the protest)
25. Copy of the petition of 11.05.2014 to file the Prosecutor's protest against the court decision
26. Copy of the letter of the General Prosecutor's Office of the Republic of Kazakhstan dated 14.07.2014 (refusal to file the protest)
27. Copy of the lawsuit to cease mass media outlet dated 10.01.2014
28. Copy of the court decision of 24.02.2014
29. Copy of the appeal against the court decision of 24.02.2014
30. Copy of the appeal decision dated 18.04.2014
31. Copy of the cassation appeal of 19.05.2014
32. Copy of the decision of the cassation division of June 18, 2014
33. Copy of petition of 07.07.2014 concerning the reconsideration of judicial decisions in review procedures
34. Copy of the decision of August 21, 2014 of the supervisory division on civil and administrative cases of the Supreme Court of the Republic of Kazakhstan
35. Copy of petition of 03.09.2014 to protest court decisions which came into force
36. Copy of the response of the General Prosecutor's Office on the refusal to protest court decisions on the case
37. Copy of petitions to the Constitutional Council to hold a philological examination, the claim for recusal of the judge
38. Copy of the letter from Business-Inform printing-house stating the admission of the error when printing the newspaper
39. Samples of newspaper issues №17 as of November 22, 2013 with the defect and without the latter
40. Excerpts of Law on Mass Media of Kazakhstan (art.13)
41. Excerpts of CAO RK (art.342, art.350)
42. Power of attorney to represent the authors' interests in the UN Human Rights Committee procedures, including the submission of communication