

Working Group on Arbitrary Detention
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COMMUNICATION

The Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR) is approaching regarding the case of Duman Mukhamedkarim, a political activist, journalist, and author of the YouTube channel “Ne deidi” (“What do they say”), where he actively covered information about the victims of the “January events” in Kazakhstan, which occurred during the period from 2 to 7 January 2022.

Duman Mukhametkarim is particularly known for openly criticizing the authorities in his broadcasts and being active during the parliamentary elections in March this year. He ran as an independent candidate for the Mazhilis of the Parliament of the Republic of Kazakhstan from Almaty oblast. Initially, the territorial election commission did not register him as a candidate under the pretext that he had “not been registered anywhere for eight months.” However, the journalist filed a lawsuit against the commission and eventually obtained the candidate's certificate, allowing him to participate in the elections. According to the official results announced by the Central Election Commission of the Republic of Kazakhstan, he was not successful in winning the election. After the announcement of the official election results, D. Mukhametkarim stated that he would not recognize the election outcome and would organize a peaceful protest action. He also called on other people to protest against the unfair elections. After that, the journalist was detained three times and subjected to administrative arrest, each time for 25 days.

Before this, in one of his broadcasts on the eve of the snap presidential elections in November last year, the journalist stated that this political campaign was unlawful and called on people to

participate in a peaceful rally. For this, he was arrested for 15 days on charges of “violating the rules of holding peaceful assembly.” During the last four months, the journalist has spent 75 days in detention, not including the 15 days of administrative arrest before the presidential elections in November last year. In all cases, he was subjected to administrative arrest under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offenses for violating the rules of organizing and conducting peaceful assembly, which included expressing his intention to organize and conduct a protest action without notifying the authorities and obtaining their approval. An important point is that D. Mukhamedkarim was not able to exercise his right to freedom of peaceful assembly as he did not hold the rallies he called for.

From March to June 2023, he spent more days in detention than he did as a free person. After his latest release from custody, he stated that the authorities “stole 61 days from him, but he remains steadfast in his convictions and will continue to call on the people to participate in rallies”. During his administrative arrests, he declared a hunger strike several times. Galym Nurpeissov, his lawyer, says that now his health has deteriorated.

On 22 June 2023, D. Mukhametkarim was given as a preventive measure and remanded in custody for a period of two months. He was charged with two “extremist” charges under the Criminal Code of Kazakhstan (Article 258 Part 1 “Financing of terrorist or extremist activities and other assistance to terrorism or extremism” and Article 405 Part 2 “Organization and participation in the activities of a public or religious association or other organization after a court decision on their prohibition or liquidation due to their involvement in extremism or terrorism” of the Criminal Code of the Republic of Kazakhstan).

The court's decision to remand him in custody was announced at 10:00 p.m. on 22 June 2023, the day he was supposed to be released after serving another administrative arrest. The lawyer was not present to hear the court's decision. After the court's decision was announced, D. Mukhametkarim was taken to the pre-trial detention facility in Taldykorgan, the regional center of Almaty oblast.

The basis for the charges were D. Mukhametkarim's interviews with Mukhtar Ablyazov, a former banker and opposition politician and the leader of the banned “Democratic Choice of Kazakhstan” movement (the “DVK”). The DVK is a civil society organization actively operating on social media, which has been declared extremist by the court in Astana and consequently banned in the Republic of Kazakhstan. According to independent observers and human rights activists, the charges of DVK being extremist are not substantiated and, in essence, represent persecution for freedom of speech, expression of opinions, and civil activities.

On 22 December 2022, D. Mukhamedkarim aired with M. Ablyazov under the title “Exclusive! A political chess player outside the country! Live broadcast with Mukhtar Ablyazov” (“Эксклюзив! Жырақта жүрген шахматшы. Мұхтар Аблязовпен тікелей эфир”). On his YouTube channel “Ne deidi”, D. Mukhametkarim published information about fundraising for the DVK, where he provided the account number and other necessary information for the donations. Authorities of the pre-trial investigation claim that during a live broadcast, Mukhtar Ablyazov allegedly called for the forcible seizure of power and changes to the country's constitutional order, and D. Mukhamedkarim supposedly supported and expressed loyalty to the entire program of the DVK.

But, in the expert examination opinion dated 8 June 2023, it was concluded that there were no calls for the forcible seizure of power in the video material of the live broadcast. There are, on the

contrary, calls for peaceful efforts for political changes. Nevertheless, these facts formed the basis of the charges of financing a banned extremist organization.

During his public civic activities, D. Mukhamedkarim attempted to exercise his constitutional rights to peaceful assembly and freedom of opinion and expression as a professional journalist and civil activist. However, the authorities took various measures to suppress D. Mukhamedkarim's peaceful civic activities.

Based on the information available to us, we believe that the rights of D. Mukhamedkarim, guaranteed by the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan, including the right to liberty and personal security (Article 9 of the ICCPR), the right to freedom of expression (Article 19 of the ICCPR), and the right to freedom of peaceful assembly (Article 21 of the ICCPR), are being severely violated by Kazakhstani authorities.

In his recommendations to Kazakhstan in 2015, the Special Rapporteur on the right to freedom of peaceful assembly noted it was necessary “*(b) to implement the rights to security, to liberty and to be presumed innocent until proved otherwise, including by ensuring that no one is subject to “preventive detention” for the exercise of the right to peaceful assembly...*”

In its Opinion adopted during its sixtieth session on 2-6 May 2011, the Working Group on Arbitrary Detention, based on the message from Mikalai Statkevich, stated that detentions and arrests were conducted in connection with the exercise of the rights and freedoms that are guaranteed under Article 19 (freedom of opinion and expression), Article 20 (freedom of assembly and association) of the Universal Declaration of Human Rights, Article 19 (freedom of opinion and expression), Article 21 (freedom of peaceful assembly) of the International Covenant on Civil and Political Rights. Notably, when the Working Group is dealing with the matters of freedom of expression of political views and freedom of assembly, it carries out its analysis in a specifically thorough fashion, in recognition of the fact that the exercise of freedoms as part of political process touches upon the very essence of those fundamental freedoms.

In accordance with the Resolution 7/36 of the Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:

“The Human Rights Council, ...*stressing the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression,*

recognizing the importance of all forms of media, including the print media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression, and also the importance for all forms of media to report and to deliver information in a fair and impartial manner...

3. Decides to extend for a further three years the mandate of the Special Rapporteur whose tasks will be: (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 ...”

According to Article 9 (1) of the International Covenant on Civil and Political Rights, it follows that: ***“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”***

As mentioned above, the court's decision to arrest Mukhametkarim was made at 10:00 p.m. on 22 June 2023, on the day he was supposed to be released after serving another administrative arrest. During the decision-making process when a preventive measure was considered by the investigative court, D. Mukhamedkarim did not have a lawyer. During D. Mukhamedkarim's detention, his procedural rights were violated. The most important is that he was arrested in connection with the peaceful exercise of his right to freedom of expression, which constitutes an arbitrary detention.

Furthermore, according to Information Bulletin No. 26, the Working Group on Arbitrary Detention noted:

*“Thus, according to the Group, **deprivation of liberty** is considered arbitrary if the case falls under one of the following three categories:*

*B) Deprivation of liberty is related to the exercise of rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, as far as Member states are concerned, by Articles 12, 18, **19, 21**, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights (Category II)...*”

In connection with the above, Kazakhstan International Bureau for Human Rights and the Rule of Law urges you to call on the Kazakhstan government to take immediate measures to rectify the situation and bring the legislation and law enforcement practice in the Republic of Kazakhstan in the area of observance of fundamental human rights and freedoms, in particular the rights to freedom of peaceful assembly and freedom of expression, as well as the rights to liberty and security of person, in compliance with the international standards, including the provisions of the International Covenant on Civil and Political Rights, and reinstate the violated rights of Duman Mukhamedkarim.



Yevgeniy Zhovtis

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