

URGENT ACTION

PRISONERS OF CONCIENCE'S CONVICTION UPHELD

On 20 January, the Atyrau Regional Court in western Kazakhstan upheld the decision to sentence human rights defenders and prisoners of conscience Maks Bokaev and Talgat Ayan to five years in prison for their involvement in the organization of peaceful demonstrations and their posts on social media. On 3 February they will be transferred to a penal colony 1500 km from their home city where they will serve their sentence.

The five year sentence against human rights defenders and prisoners of conscience **Maks Bokaev** and **Talgat Ayan** was confirmed by the appeal chamber of the Atyrau Regional Court, in western Kazakhstan, on 20 January. Talgat Ayan's lawyer is lodging an appeal with the Supreme Court of Kazakhstan.

Despite the fact that Kazakhstan's law provides that prisoners should serve their sentence near their place of residence, Maks Bokaev and Talgat Ayan were transferred on 28 January to a pre-trial detention facility in Aktobe, more than 500 km away from Atyrau, their home city. According to Talgat Ayan's lawyer, on 3 February they will be transferred to a penal colony in Petropavlovsk, northern Kazakhstan. Petropavlovsk is 1500 km from Atyrau, and there is no direct train or flight. Maks Bokaev and Talgat Ayan were not informed in advance of their transfer to Petropavlovsk and do not have adequate clothing for the winter temperatures in northern Kazakhstan, that can reach -20 C. Their relatives have expressed concerns about the detention conditions and the health of Maks Bokaev and Talgat Ayan since their arrest.

Maks Bokaev and Talgat Ayan were detained initially on 17 May 2016 after publicly stating in social media posts their intention to participate in demonstrations planned for 21 May, and encouraging others to do so. They have been held in detention since. Their trial, which began on 12 October, did not meet the requirements of a fair trial. On 28 November they were convicted of "inciting social, national, clan, racial, class, or religious discord" (Article 174 of the Criminal Code), "spreading of false information" (Article 274) and organizing unsanctioned demonstrations and meetings (Article 400).

Please write immediately in Kazakh, Russian, English or your own language:

- Urging the Kazakhstani authorities to release Maks Bokaev and Talgat Ayan immediately and unconditionally, as they are prisoners of conscience detained solely for the peaceful exercise of their rights;
- Urging them in the meantime to ensure that Maks Bokaev and Talgat Ayan have access to adequate medical care;
- Calling on them to respect the rights to freedom of expression and peaceful assembly for all in Kazakhstan.

PLEASE SEND APPEALS BEFORE 14 MARCH 2017 TO:

Prosecutor General

Zhakup Assanov
Office of the Prosecutor General
14 Orynbor Street
Astana, 010000
Republic of Kazakhstan
Fax: +7 7172 506 402

Salutation: Dear Prosecutor General

Minister of Justice

Marat Beketaev
Ministry of Justice
House of Ministries, 13 entrance
Left Bank, Mangilik El street 8
Astana, 010000
Republic of Kazakhstan
Fax: 7 7172 74-09-54
Email: kanc@adilet.gov.kz

Salutation: Dear Minister

And copies to:

Human Rights Commissioner
Askar Shakirov
8 Orynbor Street
Astana, 010000
Republic of Kazakhstan
Fax: +7 7172 740 548
Email: info@ombudsman.kz

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY MR ERZHAN KAZYKHANOV, Embassy of the Republic of Kazakhstan, 125 Pall Mall SW1Y 5EA, 020 792 51757, london@kazembassy.org.uk

Please check with your section office if sending appeals after the above date. This is the fourth update of UA 115/16. Further information: <https://www.amnesty.org/en/documents/EUR57/5235/2016/en/>

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ADDITIONAL INFORMATION

Maks Bokaev and Talgat Ayan were detained on 17 May in Atyrau City, Atyrau Region, western Kazakhstan, after publicly stating in posts on social media that they intended to participate in demonstrations planned for 21 May, and encouraging others to do so as well. In these posts, they also stated that they had put in requests with the local authorities in Atyrau City to hold a demonstration on 21 May (as required under national law), but that these requests had been refused. On 17 May, both Maks Bokaev and Talgat Ayan were sentenced to 15 days' administrative detention under Article 488 of the Administrative Offences Code for "violation of the legislation of the Republic of Kazakhstan on organizing and holding peaceful assemblies". At least 32 other people were also detained in the days leading up to 21 May, across Kazakhstan, and placed in administrative detention for 10-15 days; most were detained for stating in posts on social media that they intended to demonstrate on 21 May.

On 24 May, a week before their administrative detention was due to expire, Maks Bokaev and Talgat Ayan were charged under the Criminal Code and placed in pre-trial detention, where they remained until they were convicted and sentenced on 28 November. Their convictions relate to the posts on social media that they made in the days leading up to 17 May, and their involvement in an earlier "unsanctioned" demonstration on 24 April.

The trial began on 12 October and was not conducted in line with fair trial guarantees, including those provided for in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan has ratified. For instance, access to trial monitors was restricted, and Maks Bokaev's and Talgat Ayan's lawyers were not given access to some of the information contained in the prosecutor's case against them or did not have enough time to analyse case materials.

Maks Bokaev has been living with chronic hepatitis C for five years. Following successful treatment two years ago, the disease had gone into remission, but since his detention, Maks Bokaev's health has deteriorated considerably. According to his family, he has been denied adequate medical care, including access to antiviral therapy, and has developed further health complications. On 18 October, an ambulance was called to attend to him in the court room, and he was taken to hospital, where he was diagnosed with cholecystitis and pancreatitis. The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) clarify that the provision of health care for prisoners is a state responsibility and that prisoners should enjoy the same standards of health care that are available in the community and without discrimination. Furthermore, the Mandela Rules also provide that prisoners who require specialist treatment must be transferred to specialized institutions or outside hospitals when such treatment is not available in prison. Failure to provide adequate healthcare to prisoners may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including under Article 7 of the ICCPR and the Convention Against Torture, both of which have been ratified by Kazakhstan.

Demonstrations took place across Kazakhstan throughout late April and into May, against proposed changes to the Land Code that would have allowed unused, state-owned agricultural land to be privatized and sold off to Kazakhstani citizens, or leased for up to 25 years to foreign citizens. A presidential moratorium was placed on the changes in May, meaning that they have been dropped for the time being.

The right to freedom of peaceful assembly is provided in legally binding international human rights treaties that Kazakhstan has ratified, including Article 21 of the International Covenant on Civil and Political Rights. This right, as detailed by international law and standards, should not be subjected to the permission of government authorities. The authorities may require prior notification of assemblies in order to facilitate the right of peaceful assembly and to take measures to protect public safety or the rights of others, but this should never translate into advanced authorization of such demonstrations.

Further information on UA: 115/16 Index: EUR 57/5599/2017 Issue Date: 31 January 2017