



**Kazakhstan v.
Nazym Tabyldieva**

November 2025

TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE

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C. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice** that provides free legal aid in defense of free speech. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world.

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EXECUTIVE SUMMARY



Catherine Anite, a member of the TrialWatch Experts Panel, assigned this trial a **Grade of F** and stated:

The trial process of Ms. Nazym Tabyldieva in Kazakhstan embodies the state's continued legal overreach and the courts' chilling effect on free expression. Her conviction is a clear example of a restriction to freedom of expression beyond what is strictly necessary, reasonable and proportionate. Articles 274 and 378 of the Kazakh Criminal Code, under which she was charged and prosecuted, lack clarity, making the law vulnerable to arbitrary interpretation and subsequent abuse. The provisions are broad and ambiguously worded, intentionally suppressing dissenting views from political critics and in the process, restricting freedom of expression. Ms. Tabyldieva's conviction is an outcome of an unfair trial, incompatible with international human rights standards, as seen in the excessive application of the law, improper analysis of evidence by the court and judicial partiality.

In October and November 2023, the Clooney Foundation for Justice's TrialWatch initiative monitored the trial of government critic Nazym Tabyldieva in Kazakhstan. The Kazakh government prosecuted Ms. Tabyldieva under Articles 274 and 378 of the Criminal Code of the Republic of Kazakhstan (the "Kazakh Criminal Code") for social media posts criticizing government officials and policies. After a trial marred by prima facie violations of internationally recognized fair trial and free expression rights, she was found guilty and sentenced to 18 months of house arrest and a 5-year ban on social media activities.¹ As a result of this conviction, Ms. Tabyldieva lost her job as a soil expert at a government research department in Almaty. Her prosecution highlights a broader and deeply concerning trend in Kazakhstan: the systematic suppression of free speech on social media using vague and overbroad laws and unfair trial procedures, with convictions that result in further restrictions on speech.² While there has been a partial decriminalization of 'defamation', Kazakhstan has also tightened the legal regulation of online speech

¹ See Analysis, Section B, 'Violations of the Right to a Fair Trial', and Section C, 'Violations of the Right to Freedom of Expression' below.

² UN Human Rights Committee, Concluding Observations on the Third Periodic Report of Kazakhstan ('Concluding Observations'), UN Doc. CCPR/C/KAZ/CO/3 (July 18, 2025), ¶ 49; <https://rsf.org/en/country/kazakhstan>. See also, Background Information, Section A 'Political and Legal Context' below.

throughs laws criticized by the United Nations (“UN”) Human Rights Committee as “overly broad.”³

Although it is party to several international human rights treaties, including the International Covenant on Civil and Political Rights (the “ICCPR”), Kazakhstan has frequently been criticized for its repressive approach to free speech and political dissent. Most recently, the Human Rights Committee underlined the continued “politically motivated prosecutions of journalists and activists” in Kazakhstan and called on the State to “ensure that everyone can freely exercise the right to freedom of expression” in line with its international obligations.⁴

Based on the evidence described in this report, the case of Ms. Tabyldieva exemplifies this repressive climate where human rights defenders, journalists, and opposition figures face significant risks to their liberty for expressing their opinions—and where the criminal justice system is used to silence them even where it does not imprison them.

Articles 274 and 378 of the Kazakh Criminal Code are key tools in this regard. Article 274 criminalizes the dissemination of “false information” that could disrupt “public order” or “state interests,” while Article 378 criminalizes the making of insults to government officials in the performance of their duties.⁵ Both provisions are so vaguely written that they can be applied to a vast and undefined range of speech that the authorities may find objectionable.

At the same time, Article 50 of the Kazakh Criminal Code allows courts to impose on a defendant a “deprivation of the right” to hold a specific position or to engage in certain professional or other “defined” activities as punishment for certain specified crimes, or for any other crime where the court finds that the defendant cannot maintain such a right considering the “nature and extent of social danger” of the offense and the defendant’s identity. The Kazakh authorities have begun to invoke this provision in a wide range of cases to silence speech, whether or not the trial also results in a custodial sentence.⁶

³ Concluding Observations, ¶ 49.

⁴ Concluding Observations, ¶ 50.

⁵ This report references the Criminal Code here:
https://online.zakon.kz/document/?doc_id=31575252&pos=6217;-25#pos=6217;-25.

⁶ Kyle Delbyck, *Instead of a Cell, a Muzzle: How Kazakhstan Stifles Critics and Avoids Criticism*, THE DIPLOMAT (June 23, 2023), <https://thediplomat.com/2023/06/instead-of-a-cell-a-muzzle-how-kazakhstan-stifles-critics-and-avoids-criticism/>.

A. Summary of Case History

In September 2022, Ms. Tabyldieva posted a 12-minute video on social media with her criticism of what she characterized as Kazakh President Kassym-Jomart Tokayev’s pro-Russian policies. On October 6, 2022, without her knowledge, prosecutors opened a case against her for alleged violations of Article 274 of the Kazakh Criminal Code—Kazakhstan’s “fake news” law.⁷ In December 2022, however, the prosecutors closed their investigation, concluding that Ms. Tabyldieva’s September 2022 video posed no threat to public order and that she lacked the “deliberate intent” to spread false information required by Article 274.⁸

When Ms. Tabyldieva posted additional messages on social media criticizing Kazakhstan’s government and its prosecution of other human rights defenders and critics, prosecutors revived the case against her. In November 2022, Ms. Tabyldieva made 14 posts containing the statements that the Kazakhstan government let 20,000 “terrorists” and “2 million drunks” into the country.⁹ In February 2023, she made 9 posts and a 41-second video clip on Facebook mentioning “scumbags of Kazakh National Security.”¹⁰ And in April 2023, she posted comments on Facebook expressing criticism of the prosecution of a civil activist.¹¹ In July 2023, the authorities charged Ms. Tabyldieva based on the September 2022 video at issue in the earlier dismissed case, as well as the new November 2022, February 2023 and April 2023 posts, alleging violations of both the “falsity” law—Article 274—and the “insulting public officials” law—Article 378.

Ms. Tabyldieva’s trial took place over several sessions in October and November 2023. During the trial, there were clear signs of bias against the defense, as the court appeared to systematically favor the prosecution’s arguments while dismissing evidence and arguments presented by Ms. Tabyldieva and her counsel. Among other things, the judge seemingly pressured Ms. Tabyldieva to plead guilty, allowed the alleged Article 378 “victims” to question her on matters unrelated to her posts about them, and seemingly attempted to intimidate the defense expert by accusing her of disloyalty to President Tokayev.¹²

⁷ R.T. Usserov, Senior Investigator of Almaty Police Department, *Order to Terminate Pre-Trial Investigation* (Dec. 20, 2022).

⁸ *Id.*

⁹ Bostandyk District Court of Almaty Region, *Judgment*, Case No. 7550-22-00-1/418 (Nov. 10, 2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² See Background Information, Section B, ‘Case History’, (iii) Trial and Conviction below.

The trial centered on the reports of expert “philologists,” who specialize in testifying at the trials of human rights defenders, opposition figures and government critics. These reports contained a good deal of irrelevant detail and linguistic jargon,¹³ but their ultimate function appears to have been to preclude any serious consideration of Ms. Tabyldieva’s free expression defense and to allow the court to rely on supposedly objective scientific opinions about the offensive or insulting nature of her words, instead of discharging its responsibility to determine for itself whether the alleged facts met the definition of the charged offenses and warranted criminal punishment under the law, as required by international standards.¹⁴

On November 10, 2023, the judge found Ms. Tabyldieva guilty as charged and sentenced her to 18 months of house arrest and a 5-year ban on social media activities.¹⁵

The court’s written judgment appears conclusory, indicating no meaningful engagement with the defense.¹⁶ The prosecution’s case depended on the assertion that Ms. Tabyldieva’s posts contained false information, yet the prosecution failed to meaningfully explain or substantiate their position. The judgment further appears to presume falsity in the challenged posts without grounds, while blurring the line between the “falsity” and “insult” offenses. Additionally, the judgment failed to address the defense’s core argument that Ms. Tabyldieva was expressing her political opinion through her social media posts, expression which is protected under international human rights standards.

B. Summary of Violations of Fair Trial Rights

The trial and judgment in effect violated Ms. Tabyldieva’s right to be presumed innocent. Article 14 of the ICCPR requires that “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty.” Here, by failing to examine seriously the truth or falsity of Ms. Tabyldieva’s social media posts, the judge effectively presumed her guilt solely due to their purportedly objectionable content.

Article 14 of the ICCPR also provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal,” and the Human Rights Committee has explicitly stated that the competence, independence, and impartiality

¹³ See examples cited in Background Information, Section B, ‘Case History’, (iii) Trial and Conviction below.

¹⁴ European Court of Human Rights, *Dmitriyevskiy v. Russia*, App. No. 42168/06 (Oct. 3, 2017), ¶ 113 (noting that “all legal matters must be resolved exclusively by the courts” and expert opinions should not exceed the “resol[ution] . . . [of] language issues, such as . . . defining the meaning of particular words and expressions”).

¹⁵ Judgment (Nov. 10, 2023).

¹⁶ See Background Information, Section B, ‘Case History’, (iv) Judgment below.

requirements represent “*an absolute right that is not subject to any exception.*”¹⁷ Throughout the trial and in his decision, the judge in Ms. Tabyldieva’s case repeatedly (i) made remarks showing a lack of impartiality, (ii) accepted conclusions by the prosecutor even before Ms. Tabyldieva could present her defense, and (iii) called upon Ms. Tabyldieva to “re-evaluate her worldview.”¹⁸ In his decision, the judge appeared to have disregarded Ms. Tabyldieva’s defenses without serious analysis and seemingly rejected the testimony of her expert because it contradicted the prosecution’s expert and because her expert declined to opine on the accuracy of Ms. Tabyldieva’s speech—something that was equally true of the prosecution’s experts.¹⁹

The broader implications of the lack of judicial independence and impartiality observed in this case are concerning, particularly given that judges in Kazakhstan reportedly operate under significant pressure from political authorities.²⁰ Kazakh courts must not allow the authorities to enjoy unchecked discretion in applying overly broad and vague criminal provisions to silence critical voices.

C. Summary of Violations of Rights to Free Speech

The conviction of Nazym Tabyldieva under Articles 274 and 378 of the Kazakh Criminal Code represents a blatant violation of her right to freedom of expression, a fundamental human right protected under Article 19 of the ICCPR.

Article 19, as interpreted by the Human Rights Committee, requires that laws that restrict freedom of expression meet a three-part test. Any restriction on protected speech must: (i) be clearly prescribed by law (the principle of legality); (ii) serve a legitimate objective; and (iii) be necessary to achieve and proportionate to that objective. Both Article 274 and Article 378, and their application in Ms. Tabyldieva’s case, fail all three parts.

First, the provisions are vaguely written, such that individuals are not on notice of what speech is prohibited and the vagueness affords the authorities excessive discretion to punish speech that merely takes exception to current orthodoxy. Second, they pursue

¹⁷ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 19.

¹⁸ See Background Information, Section B, ‘Case History’, (iii) Trial and Conviction below.

¹⁹ See examples cited in Background Information, Section B, ‘Case History’, (iii) Trial and Conviction below.

²⁰ U.S. State Department, *2023 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kazakhstan/> (“Freedom House’s Nations in Transit 2023 report stated that the judiciary was effectively subservient to the executive branch, with the president nominating or directly appointing judges based on the recommendation of the Supreme Judicial Council, which was itself appointed by the president.”)

objectives, such as protecting public figures from insults, that the Committee has deemed insufficient to justify restrictions on speech. Finally, they are far from necessary and proportionate, imposing serious penalties that should be reserved for only the most egregious and dangerous speech, *e.g.*, the advocacy of genocide or terrorism.

The use of these laws to prosecute Ms. Tabyldieva reflects a broader pattern of repressing free speech in Kazakhstan. According to reports, the government has a well-documented history of using defamation and “fake news” laws, alongside other criminal provisions, to target journalists, human rights defenders, and opposition figures.²¹ These practices not only undermine democratic principles but also stifle civic engagement and discourage critical discourse. The fear of prosecution and the consequent self-censorship severely limit the free exchange of ideas, which is essential for a healthy and functioning democracy.

Protecting freedom of expression is not just a legal obligation but a cornerstone of democratic society. The Kazakh government must take immediate steps to align its legal framework with international standards and uphold the fundamental right to free speech using fair trial procedures.

D. Summary of Abuse of Process

The ICCPR and Article 18 of the European Convention on Human Rights (the “European Convention”) prohibit the abuse of judicial proceedings to intimidate, discriminate against, or punish individuals for the exercise of their rights. The prosecution of Ms. Tabyldieva indicated an abuse of process in multiple ways.

First, the (i) initial dismissal of the investigation against Ms. Tabyldieva—for lack of any credible indication of public harm or intent to disseminate false information—and the (ii) reinstatement of the investigation—when she persisted in making posts critical of the government—strongly suggest an improper motive.

Second, the judge failed to seriously reckon with the defense’s credible arguments, thus abetting the improper motivation. To no avail, the defense repeatedly raised the suspicious circumstances under which the “victims” of the alleged insults were recruited, informed of the “insults” and furnished with suspiciously similar witness statements—all strongly suggestive of an improper motive.

Finally, the guilty verdict and sentence, including its five-year silencing of Ms. Tabyldieva’s voice, further suggest improper motivation.

²¹ See Background Information, Section A, ‘Political and Legal Context’, (i) Freedom of Speech below.



A. Political & Legal Context

Freedom of Speech

Authorities in Kazakhstan have, according to reports, suppressed freedom of expression for decades.²² This pattern has continued under the current president, Kassym-Jomart Tokayev, who has held power since 2019.²³ The government—which Reporters Without Borders describes as having “*increasing control of the internet*”²⁴—uses a variety of means to quell criticism, such as arrests, prosecutions, and violence, as described below. In its 2025 review of Kazakhstan, the Human Rights Committee criticized the continued “surveillance, harassment and shutdowns” faced by independent media.²⁵

In early 2022, initially peaceful anti-government protests in several Kazakh cities turned into violent riots which were, according to a U.S. State Department report, incited by criminal elements as part of an “internal elite conflict.”²⁶ Kazakh authorities reportedly suppressed the riots using excessive force against protesters, and arbitrarily arrested, detained and tortured others, denied them access to lawyers, and restricted press

²² *Kazakhstan*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/country/kazakhstan>; *Freedom in the World 2024: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2024>; *The calm in Kazakhstan is restored, but the pressing questions on multiple human rights violations remain unanswered*, AMNESTY INTERNATIONAL (Jan. 25, 2022), <https://www.amnesty.org/en/latest/research/2022/01/the-calm-in-kazakhstan-is-restored-but-the-pressing-questions-on-multiple-human-rights-violations-remain-unanswered/>; U.S. Embassy in Kazakhstan, *2023 Country Reports on Human Rights Practices: Kazakhstan* (Apr. 23, 2024), <https://kz.usembassy.gov/2023-country-reports-on-human-rights-practices-kazakhstan/>; *World Report 2024: Kazakhstan, Events of 2023*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2024/country-chapters/kazakhstan>.

²³ *Freedom in the World 2024: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2024>.

²⁴ *Kazakhstan*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/country/kazakhstan>.

²⁵ Concluding Observations, ¶ 49.

²⁶ U.S. State Department, *2023 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kazakhstan/> (“On January 5 through 8, as part of an apparent internal elite conflict, criminal elements incited to violence initially peaceful protests in several cities, which led to attacks on government buildings, security service personnel, and critical infrastructure. During the government’s response to the violence, authorities detained approximately 10,000 persons, most of whom were subsequently released.”).

coverage of the authorities' actions.²⁷ Nearly 10,000 people were arrested and at least 227 were killed, according to the Kazakh government.²⁸ The authorities shut down the internet nationwide, and Russian-led forces arrived in Kazakhstan as part of a "peacekeeping" mission to help neutralize what President Tokayev had labeled a "terrorist threat."²⁹

As part of the authorities' crackdown on the protests, criminal prosecutions ensued. For example, civil activist Erkin Kaziev was arrested and prosecuted in connection with performance art protesting the Kazakh government during the January 2022 events.³⁰ Kaziev was subsequently sentenced to two years in prison for violence against a representative of the authorities and for participation in the activities of a banned extremist organization, the latter charge added midway through the investigation.³¹ International human rights observers have widely criticized Kaziev's arrest, trial, and sentencing.³² The Human Rights Committee recently decried the "overly broad" formulation of the anti-

²⁷ *Kazakhstan: Protesters Arbitrarily Arrested, Beaten*, HUMAN RIGHTS WATCH (Feb. 1, 2022), <https://www.hrw.org/news/2022/02/01/kazakhstan-protesters-arbitrarily-arrested-beaten>.

²⁸ Monitor, *Widespread impunity for 'Bloody January' violations, pressure on media and targeting of activists*, CIVICUS (Mar. 18, 2023), <https://monitor.civicus.org/explore/widespread-impunity-for-bloody-january-violations-pressure-on-media-and-targeting-of-activists/>; OHCHR, *Experts of the Committee against Torture Commend Kazakhstan for Enhanced Legislation, Ask Questions about January 2022 Events and Complaint Mechanisms for Prisoners*, (May 3, 2023), <https://www.ohchr.org/en/news/2023/05/examen-du-rapport-du-kazakhstan-le-comite-contre-la-torture-se-penche-sur-les>; Hugh Williamson, *Independent investigation into Kazakhstan killings, torture a priority*, HUMAN RIGHTS WATCH (Feb. 21, 2022), <https://www.hrw.org/news/2022/02/21/independent-investigation-kazakhstan-killings-torture-priority>.

²⁹ Stephanie Farior & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022), https://cfj.org/wp-content/uploads/2022/11/EN-Zheksebaev-Fairness-Report_November-2022.pdf.

³⁰ *No real space for opposition activities in 'new Kazakhstan'*, INTERNATIONAL PARTNERSHIP FOR HUMAN RIGHTS (Jul. 31, 2023), available at <https://iphronline.org/articles/no-real-space-for-opposition-activities-in-new-kazakhstan/>.

³¹ *Id.*

³² *Key trends regarding the protection of fundamental rights in Kazakhstan*, INTERNATIONAL PARTNERSHIP FOR HUMAN RIGHTS (Mar. 2023), <https://www.iphronline.org/wp-content/uploads/2023/03/IPHR-KIBHR-briefing-paper-for-EU-Kazakhstan-HR-dialogue-2023.pdf>; Monitor, *Widespread impunity for 'Bloody January' violations, pressure on media and targeting of activists*, CIVICUS (Mar. 18, 2023), <https://monitor.civicus.org/explore/widespread-impunity-for-bloody-january-violations-pressure-on-media-and-targeting-of-activists/>.

extremism law (under which Kaziev was prosecuted), and the use of this law (and others) to restrict freedoms of expression, assembly and association, and religion.³³

The anti-extremism laws invoked in Kaziev’s case are one of the authorities’ key tools to suppress dissent and opposition.³⁴ But they are not the only ones.

The Kazakh authorities have also brought criminal prosecutions against journalists and bloggers critical of the government under charges of false information (“fake news”) and for insulting the authorities—the same charges under which Ms. Tabyldieva was convicted.³⁵ For example, in 2020, blogger Alnur Ilyashev was prosecuted under Article 274 of the Kazakh Criminal Code for “disseminat[ing] knowingly false information” in a state of emergency on the basis of three Facebook posts that criticized the ruling Nur Otan party for its response to the COVID-19 pandemic.³⁶ The proceedings—held over videoconference because of COVID-19—were marred by grave violations of Ilyashev’s right to a fair trial, and he received, as did Ms. Tabyldieva, a five-year ban on civic and political activism.³⁷ In another similar case, journalist and political opposition leader Zhanbolat Mamay was sentenced to a six-year ban on “social or political” activism and social media activity,³⁸ after being convicted for participating in a peaceful protest, under the same provisions as Ms. Tabyldieva—insulting a government representative and spreading false information.³⁹ In October 2024, a court in Astana sentenced investigative journalist, Daniyar Adilbekov, to four a half years in prison on similar charges to Ms.

³³ Concluding Observations, ¶ 17.

³⁴ *Key trends regarding the protection of fundamental rights in Kazakhstan*, INTERNATIONAL PARTNERSHIP FOR HUMAN RIGHTS (Mar. 2023), <https://www.iphronline.org/wp-content/uploads/2023/03/IPHR-KIBHR-briefing-paper-for-EU-Kazakhstan-HR-dialogue-2023.pdf>; Monitor, *Widespread impunity for ‘Bloody January’ violations, pressure on media and targeting of activists*, CIVICUS (Mar. 18, 2023), <https://monitor.civicus.org/explore/widespread-impunity-for-bloody-january-violations-pressure-on-media-and-targeting-of-activists/>.

³⁵ Clooney Foundation for Justice, *Kazakhstan*, <https://cfj.org/country/kazakhstan/>; Stephanie Farrior & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022).

³⁶ Catherine Putz, *Kazakhstan v. Alnur Ilyashev: Punishing Dissent in Ways Old and New*, THE DIPLOMAT (Mar. 12, 2021), <https://thediplomat.com/2021/03/kazakhstan-v-alnur-ilyashev-punishing-dissent-in-ways-old-and-new/>.

³⁷ Vânia Costa Ramos & Staff at the American Bar Association Center for Human Rights, TrialWatch Fairness Report, *Kazakhstan v. Alnur Ilyashev* (Mar. 2021), <https://cfj.org/wp-content/uploads/2023/07/fair-trial-report-kazakhstan-alnur-ilyashev.pdf>.

³⁸ Mihra Rittmann, *Opposition Figure Convicted in Kazakhstan*, HUMAN RIGHTS WATCH (Apr. 12, 2023), <https://www.hrw.org/news/2023/04/12/opposition-figure-convicted-kazakhstan>.

³⁹ *Kazakhstan: Further information: Suspended sentence for activist: Zhanbolat Mamay*, AMNESTY INTERNATIONAL (Apr. 25, 2023), <https://www.amnesty.org/en/documents/eur57/6707/2023/en/>.

Tabyldieva - “disseminating knowingly false information” under Article 274 of the Criminal Code, and making a “knowingly false denunciation” under Article 351 of the Criminal Code.⁴⁰ The alleged basis for Mr. Adilbekov’s prosecution was a Telegram post that accused a Government official of corruption.⁴¹

Due Process and Fair Trial Rights

International and domestic organizations and institutions have also raised concerns about Kazakhstan’s respect for due process and fair trial rights. Freedom House has noted that “[p]olitically motivated prosecutions and prison sentences against activists, journalists, and opposition figures are common.”⁴² Human Rights Watch has observed “disproportionate use of force against protesters, arbitrary arrest and imprisonment, and ill-treatment and torture of detainees.”⁴³ And in a 2022 report on human rights practices, the U.S. State Department noted that the Kazakh government “frequently arrested and detained political opponents.”⁴⁴

TrialWatch has previously reported on several prosecutions of opposition figures and journalists under Kazakhstan’s “extremism” laws, all of which involved targeting and suppression of dissenting voices.⁴⁵ The political nature of such trials and accompanying

⁴⁰ *Kazakhstan: Release Adilbekov and repeal the ‘false information’ law*, Article 19 (Nov. 20, 2024), <https://www.article19.org/resources/kazakhstan-release-adilbekov-and-repeal-the-false-information-law/>

⁴¹ *Id*

⁴² *Freedom in the World 2020: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2020>.

⁴³ *World Report 2023: Kazakhstan, Events of 2022*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2023/country-chapters/kazakhstan>

⁴⁴ U.S. State Department, *2023 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kazakhstan/>.

⁴⁵ Stephanie Farior & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022); Vanja Skoric & Covington & Burling LLP, TrialWatch Fairness Report, *Kazakhstan v. Duman Mukhammedkarim* (Jan. 2025), https://cfj.org/wp-content/uploads/2025/01/Fairness-Report_Duman-Mukhammedkarim_Kazakhstan-January-2025-Final.pdf; *TrialWatch and Covington Challenge Kazakh Opposition Figure’s Conviction in Petition to UN*, CLOONEY FOUNDATION FOR JUSTICE (Oct. 6, 2024), <https://cfj.org/news/trialwatch-and-covington-challenge-kazakh-opposition-figures-conviction-in-petition-to-un/>; *Journalist Convicted Under Unfair Anti-Extremism Law in Kazakhstan Should Have Conviction Overturned*, CLOONEY FOUNDATION FOR JUSTICE (Apr. 27, 2022), <https://cfj.org/news/journalist-convicted-under-unfair-anti-extremism-law-in-kazakhstan-should-have-conviction-overturned/>.

rights violations have also been documented by bodies ranging from the U.S. State Department to the UN.⁴⁶

With respect to judicial independence in particular, according to Freedom House, “[j]udges are subject to political influence, and corruption is a problem throughout the judicial system.”⁴⁷ Citing Freedom House’s Nations in Transit Report for the year 2022, the U.S. State Department commented:

*[W]hile the constitution provides for judicial independence, courts had yet to prove this independence in cases involving high-profile officials, political activists, and independent NGOs. Evaluators from the Group of European States Against Corruption noted the president heavily influenced key appointments in the judiciary, prosecution, specialized anticorruption bodies, and law enforcement.*⁴⁸

Ms. Tabyldieva’s trial and conviction thus occurred within a systemic pattern of repression of activism and dissent.

B. Case History

Events Leading to Arrest and Prosecution

Until her conviction and five-year ban on activism, Ms. Tabyldieva was a Kazakh blogger and civil servant. Prior to her conviction, she maintained an active presence on social media. She posted frequently about Kazakh politics, alleged corruption, Kazakhstan’s warming ties with Russia and its suppression of activism.

In September 2022, Ms. Tabyldieva posted a 12-minute video on Facebook titled “Discussion of the message by President Kasym-Jomart Tokayev to the people of Kazakhstan,” where she criticized the government for “*bow[ing] down*” to Russia and implementing pro-Russian policies that would “subjugat[e]” the Kazakh people,⁴⁹

⁴⁶ U.S. State Department, *2023 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kazakhstan/>; U.N. Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46/Add.1, (Jan. 22, 2020), ¶ 39, https://digitallibrary.un.org/record/3852204/files/A_HRC_43_46_Add-1-ES.pdf.

⁴⁷ *Freedom in the World 2020: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2020>.

⁴⁸ U.S. State Department, *2022 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/kazakhstan/>.

⁴⁹ N.A. Ybraimoldaev, Deputy Prosecutor, Almaty, *New Bill of Indictment* (Aug. 31, 2023) [hereinafter “Revised Indictment”].

including President Tokayev's declaration that 2023 would be the year of the Russian language. This post was later reportedly redistributed on the YouTube account of another Kazakh citizen, Zhandybaev Kairat Sergazyuly, without Ms. Tabyldieva's knowledge.⁵⁰

In November 2022, Ms. Tabyldieva published 14 posts on Facebook sarcastically commenting on President Tokayev's allegations that the 2022 protests were instigated by foreign terrorists, allegations regarded by opposition figures as pretext for the violent repression of the protests. The posts also commented that the government had admitted "drunks" into the country (referring to reports of high numbers of Russian citizens crossing into Kazakhstan in 2022 to avoid military service).⁵¹

In February 2023, Ms. Tabyldieva published nine additional posts and a 41-second video using the phrase "*scumbags of the Kazakh National Security Service*."⁵² After Ms. Tabyldieva posted the video, government authorities identifying themselves as members of the National Security Committee (the "NSC") reportedly contacted Ms. Tabyldieva's employer and informed them that a criminal case was opened against her for her social media posts.⁵³ In April 2023, Ms. Tabyldieva posted a photograph of a prosecutor in the Karasay district who had been on the team that prosecuted civic activist Erkin Kaziev (as described above), stating "*Try to identify the type of black face . . . This is the same person who requested three years imprisonment for Kaziev. He is destroying his family by using illegal evidence.... People will be prosecuted illegally while the authorities are doing this kind of work!!! . . . Spit on DISGRACE*."⁵⁴

Finally, Ms. Tabyldieva commented on another person's post about the proceedings against Sultanov (mentioned above), which had photographs of two prosecutors involved in Sultanov's case. Similar to comments posted by other users under that post, Ms. Tabyldieva's comment stated: "*filth, bribe takers, scoundrels, enemies of the people, disgrace!!!*"⁵⁵

⁵⁰ *Id.*; see also Judgment (Nov. 10, 2023).

⁵¹ Revised Indictment (Aug. 31, 2023).

⁵² *Id.* The Revised Indictment is unclear whether the posts or the video contained the statement "scumbags of the Kazakh National Security Service."

⁵³ Monitor Notes (Nov. 7, 2023).

⁵⁴ Revised Indictment (Aug. 31, 2023).

⁵⁵ *Id.*

Investigations

In October 2022, prosecutors opened a criminal investigation against Ms. Tabyldieva for the September 2022 video—which focused on President Tokayev’s Russia policies—alleging a violation of Article 274 of the Kazakh Criminal Code, *i.e.*, for “*disseminat[ing] knowingly false information that creates the danger of disrupting public order and causing substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law.*” Ms. Tabyldieva was not notified of the opening of this investigation. Expert Opinion No. 695, ordered shortly after the investigation was opened in October 2022, confirmed that “[t]he text of the video under the examination does **not** contain the words of a defamatory or derogatory nature towards the honour and dignity of government officials.”⁵⁶ (emphasis added)

In December 2022, the case was closed for lack of evidence and due to the expert report conclusions, again without notifying Ms. Tabyldieva.⁵⁷ The case termination order stated, among other things:

In this case, it has been determined that the disseminated information lacked the potential to sway public opinion negatively. The widely disseminated information also did not result in any financial harm to the state or its officials.

*From a subjective standpoint, this type of action typically involves deliberate intent. However, in this particular case, Tabildieva N. did not purposefully intend to spread false information.*⁵⁸

On February 1, 2023, prosecutors reopened the case against her via a “Resolution on the cancellation of decision to terminate the criminal case” (the “Resolution to Reopen Investigation” or “Resolution”), citing the same charges under Article 274 and the same facts, which had previously been found harmless and unintentional.⁵⁹ According to the Resolution, the initial investigator did not “*take all measures prescribed by law for a comprehensive, complete and objective examination of the circumstances such as is*

⁵⁶ Order to Terminate Pre-Trial Investigation (Dec. 20, 2022).

⁵⁷ E.T. Qilymzhanov, Deputy Chief of Criminal Prosecution, *Resolution on Cancellation of Decision to Terminate Criminal Case* (Feb. 1, 2023) [hereinafter “Resolution to Reopen Investigation”] (“According to the results of the investigation of December 20, 2022, the criminal proceedings were terminated on the basis of lack of *corpus delicti*.”).

⁵⁸ Order to Terminate Pre-Trial Investigation (Dec. 20, 2022).

⁵⁹ Resolution to Reopen Investigation (Feb. 1, 2023).

*necessary and sufficient for the proper resolution of the case.*⁶⁰ It labelled the initial decision “*hasty*” and asserted the decision had not “*fully examin[ed] whether what was said in the video corresponded to reality or not.*”⁶¹ The Resolution further noted that Ms. Tabyldieva’s Facebook posts “*show signs of publicly insulting the President of the Republic of Kazakhstan or encroaching upon his honor and dignity.*”⁶² Even though the December 2022 case termination order confirmed that the initial investigation had been complete and the findings were supported by Expert Opinion No. 695,⁶³ the Resolution nevertheless concluded without evidence or explanation that there had not been “*a full, comprehensive, and objective investigation of the circumstances to a necessary and sufficient degree for proper resolution of the case.*”⁶⁴

Tabyldieva was not notified of the Resolution and remained unaware of the revived case until August 2023, when an investigator called her, demanding she appear at a police station to be interviewed.⁶⁵ When Ms. Tabyldieva went to the police station with her lawyer to review the case against her, she was surrounded by police officers, who she later said harassed and groped her private parts as she was searched in a public area of the station.⁶⁶ As detailed in a complaint filed by Ms. Tabyldieva’s lawyer on August 11, 2023 (the “Complaint”), authorities then searched Ms. Tabyldieva’s apartment under the authority of a reportedly out-of-date search warrant, but found no incriminating evidence.⁶⁷ Ms. Tabyldieva’s lawyer filed the Complaint objecting to the harassment that Ms. Tabyldieva underwent during the search; the untimeliness of the search warrant; the fact that the case was reopened despite its earlier termination; and the lack of notice

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Order to Terminate Pre-Trial Investigation (Dec. 20, 2022) (stating that the order was “based on a thorough, comprehensive, and unbiased examination of all evidence, guided by both the law and their conscience” and “[a]ccording to expert opinion No. 695 . . . [t]he text of the video under the examination does not contain the words of a defamatory or derogatory nature towards the honour and dignity of government officials”).

⁶⁴ Resolution to Reopen Investigation (Feb. 1, 2023).

⁶⁵ Monitor Notes (Nov. 10, 2023); Monitor Notes (Nov. 7, 2023).

⁶⁶ Defense Counsel of Nazym Tabyldieva, *Complaint* (Aug. 11 2023); Monitor Notes (Nov. 7, 2023).

⁶⁷ *Complaint* (Aug. 11, 2023).

about the case’s reopening.⁶⁸ The Complaint further requested the case be dismissed “due to the absence of elements of the crime in [Ms. Tabyldieva’s] actions.”⁶⁹

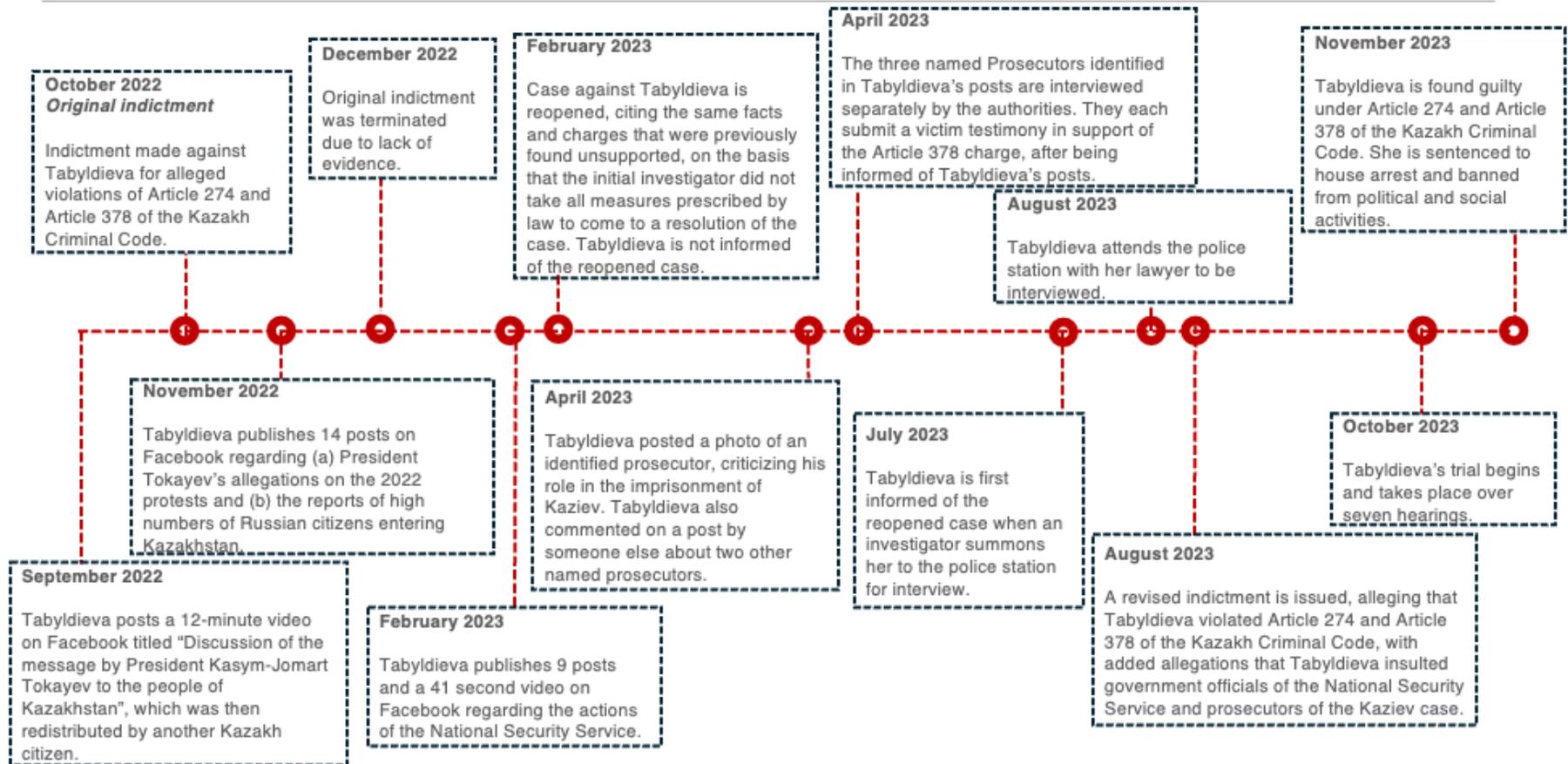
On August 31, 2023, the prosecution issued a Revised Indictment alleging that Ms. Tabyldieva violated (i) Article 274, quoted above (the “fake news” charges), and (ii) Article 378 of Kazakh Criminal Code, which prohibits “*insulting a government official in the performance of his/her duties*” (the “insulting government officials” charges). The Revised Indictment repeated the same factual allegations as those in the initial investigation regarding the 12-minute video Ms. Tabyldieva posted in September 2022—that she spread false news in violation of Article 274 through posts that were damaging to the honor and dignity of public authorities—and added allegations that Ms. Tabyldieva knowingly spread false information through the 14 Facebook posts she made in November 2022. It also raised new allegations under Article 378 that she insulted government officials working at the National Security Service, as well as prosecutors about whom she had commented, through Facebook posts she made in February and April 2023.⁷⁰

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Revised Indictment (Aug. 31, 2023).

Timeline of Events Leading up to Trial



Trial and Conviction

Ms. Tabyldieva's trial began on October 19, 2023. Judge Azamat Karipzhanovich Abdraimov presided. Ms. Tabyldieva was represented by counsel.

The trial took place over seven hearing sessions. Ms. Tabyldieva and each of the three alleged "victims" of the Article 378 charges—i.e., the three prosecutors—testified, as well as Kairat Zhandybaev, the prosecution's witness who reposted Ms. Tabyldieva's initial 12-minute video on his YouTube page. Both the prosecution and defense presented expert philologists, who were questioned by both sides and the judge about their respective reports.

The Prosecution. The prosecution largely reiterated the allegations made in the indictment. With respect to the "fake news" charges under Article 274, the prosecution argued that Ms. Tabyldieva knowingly spread false information because she, knowing that Kazakhstan is an independent state, stated that the government "*bows the people of the country to the Russian Federation, pursues the policy of the Russian Federation, and enters into its subjugation and slavery.*"⁷¹ According to the prosecution, Ms. Tabyldieva knowingly spread false information through her September 2022 video and her 14 posts from November 2022 *because* her words insulted the honor and dignity of the authorities:

*In the content of the screenshots provided for examination, there are words insulting the honor and dignity of the public authorities. Therefore, [the defendant], spread knowingly false information using mass media or social networks, creating a danger of disturbing public order or causing substantial harm to the rights and legitimate interests of citizens.*⁷² (emphasis added)

Although the prosecution questioned Ms. Tabyldieva about her sources, it did not attempt to affirmatively prove her statements were false, despite the fact that many of Ms. Tabyldieva's comments were based on public reporting.⁷³ Instead, it appears that the prosecution and the judge considered statements about Kazakhstan's policies towards Russia and about government officials to be false merely because they were critical:

- Judge Abdraimov asked the philologist, Tausogarova: "*Thrown at the feet of the Russian Federation, pursuing a pro-Russian policy, we will become slaves. What*

⁷¹ Revised Indictment (Aug. 31, 2023); Monitor Notes (Oct. 19, 2023); Monitor Notes (Nov. 10, 2023).

⁷² Monitor Notes (Oct. 19, 2023) (emphasis added).

⁷³ Monitor Notes (Nov. 7, 2023).

can you tell about that?” Tausogarova responded: “I’m not a political scientist, but a philologist, I can’t analyze this.”⁷⁴

- Judge Abdraimov asked the philologist, Tausogarova: “Is there false information in this video clip?” Tausogarova responded: “I can’t answer that. . . . Whether Russians come to our country is not within my competence.” The judge responded, “You should have written in your report that such issues were not within your competence. . . . When I read your report, I got the impression that you were against the President’s message.”

With respect to the “insulting government officials” charges under Article 378, the prosecution simply recited the indictment, which had merely stated that the terms Ms. Tabyldieva used in her February and April 2023 posts were insulting.⁷⁵ As in the indictment, the prosecution also referred to the experts’ “conclusions” regarding Ms. Tabyldieva’s posts:

- *In the screenshots of posts published on the page ‘Nazka Tabyldieva’ on social network Facebook provided for examination, there are words like ‘disgrace,’ ‘bastard,’ ‘scoundrel,’ ‘bribe taker,’ which are offensive to the honor, dignity and reputation of the public authorities, i.e., employees of the Prosecutor’s Office. In case of inconsistency with the truth, the post and the photo provided for examination contain information damaging the reputation of the prosecutors.*⁷⁶
- *During the questioning, the specialist philologist Abdulzhanova Z. confirmed that the statements of Tabyldieva N.A. “sumyrai, parakor, karabetter (filth, bribe takers, disgrace)” are offensive and offend the honor and dignity of the authorities’ representatives, namely, employees of the Prosecutor’s Office. Therefore, Tabyldieva N.A. committed an insult of the public authority representatives during their performance of their official duties, publicly or using mass media or social networks. Under Article 378 part 2 of the Criminal Code of the Republic of Kazakhstan, it is considered a criminal offense.*⁷⁷

The Defense. Ms. Tabyldieva testified repeatedly that her statements consisted of nothing more than her personal, political opinion: “I don’t consider myself guilty, I have just expressed my opinion.”⁷⁸ She maintained her political position—particularly her

⁷⁴ Monitor Notes (Oct. 20, 2023).

⁷⁵ Monitor Notes (Nov. 10, 2023).

⁷⁶ Monitor Notes (Oct. 19, 2023).

⁷⁷ Monitor Notes (Nov. 10, 2023).

⁷⁸ Monitor Notes (Oct. 20, 2023).

disagreement with what she perceived as a concerning increase of Russian influence in Kazakhstan—and testified at length regarding her frustration with the current government:

In 2022, President Tokayev. . . said that ‘he was going to declare the next year as a year of the Russian language’ and that Russian language should be learned equally with the Kazakh language. I expressed my opinion about that matter. If Kazakhstan is an independent state, why do we need a ‘Year of the Russian language?’ I am, as a citizen, against it. In 2022 in February, Russia announced mobilization. This information was posted at all websites. I expressed my opinion about that matter as well. I was against Russian citizens coming to our country, as it is not safe for us, and I expressed my opinion that the border should be closed.⁷⁹

Regarding the posts about the three alleged victims, Ms. Tabyldieva did not deny her statements but, referring to the fact that she had commented on another’s post as opposed to creating original content, she contended: “*I do not consider that I insulted a government official because I did not post the photo of [the] three victims, [and] I did not share the post [on t]he internet. I do not know them personally, don’t know who they are and where they work. I only saw the title in the post’s header and expressed my opinion in my comment at the bottom.*”⁸⁰ She argued that she had been commenting generally on the prosecutions that she believed were unfair and tainted by corruption, and not on the prosecutors as individuals. When questioned whether she would file a complaint if similar statements were posted about her, she testified “[w]e have freedom of speech. Let them write. If you are going to be hurt after every opinion, I don’t know.”⁸¹

Witness and “Victim” Testimony. According to one of the alleged victims of the Article 378 offenses, the authorities summoned him and the two other “prosecutor-victims” in the summer of 2023 and interviewed each of them in turn.⁸² The authorities showed them Ms. Tabyldieva’s February 2023 and April 2023 posts and the “victims” were “*instructed to answer these questions*” (likely related to supporting the prosecution’s case with respect to the charge of insulting public officials) and “*told what [they] had to say about the case*” and “*[t]hen we answered the questions and the case was opened.*”⁸³

Ms. Tabyldieva’s lawyer also pointed out that “*the answers of [two of the victims] are especially similar,*” that “*they themselves said that they learned about this post in the*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Monitor Notes (Oct. 20, 2023).

⁸³ *Id.*

*Police Department, and they did not write a statement or complaint” and that “[d]uring the last hearing, [one of the victims] first said that he had written a statement and that it was in the case materials, then he looked for it, when he did not find it, he said that he did not write it.”*⁸⁴

Article 378 is so vague and overbroad that it does not require any connection to actual harm to a person or their reputation, such that at trial, even though the “victims” could not identify any concrete instance where a third party had formed negative opinions about them due to Ms. Tabyldieva’s posts, she was nonetheless found guilty of violating the law after the “victims” testified that Ms. Tabyldieva’s posts had subjected them to potential embarrassment or disrespect.⁸⁵

According to defense counsel, each of the alleged victims’ protocols of interrogation, consisting of more than three pages and containing similar allegations, was completed in 15 to 20 minutes (based on notations in the documents).⁸⁶ When defense counsel asked one of the prosecutors how the prosecution could have produced such lengthy documents after relatively short interviews and why the three protocols so closely resembled each other, he stated that the question should “*be addressed to the investigative authorities.*”⁸⁷

The alleged victims were permitted to offer their views about why political commentary should be punished if it took the form of insulting government officials. One stated, for example: “*if strangers write such things about government officials [on the] [i]nternet, where will respect come from?*”⁸⁸ Another testified that the statements were “*demeaning to our honor and dignity.*”⁸⁹ When asked by Ms. Tabyldieva whether her comment could be considered “*an expression of [her] personal opinion*”, the third prosecutor-victim responded “*everyone is entitled to their opinion, but it shouldn’t be illegal,*”⁹⁰ apparently suggesting that opinions expressed in insulting terms were “illegal” and thus punishable regardless of whether they expressed political opinion or were statements incapable of verification.

⁸⁴ *Id.*

⁸⁵ Monitor Notes (Oct. 19, 2023); Monitor Notes (Oct. 20, 2023).

⁸⁶ Monitor Notes (Oct. 20, 2023).

⁸⁷ *Id.* It was not addressed in court why the investigators were not brought in for questioning, despite the defense repeatedly raising this issue.

⁸⁸ Monitor Notes (Oct. 19, 2023).

⁸⁹ *Id.*

⁹⁰ Monitor Notes (Oct. 20, 2023).

No “victims” testified for the prosecution with respect to the “fake news” charges. However, Kairat Zhandybaev, the individual who had reposted Ms. Tabyldieva’s September 2022 video to his YouTube page, testified that he does not know Ms. Tabyldieva, but he remembers that the video said, “*there were not enough wages, not enough to buy clothes*” and that he liked the video because “[*m*]y salary is not enough too.” When questioned by the defense whether the information was true or false, he responded, “*It is true. I don’t have enough salary to buy everything I need.*”⁹¹ He admitted to deleting the video in August, recalling when he “*was called in for questioning, that’s when I deleted it.*”⁹² No other witnesses were called with respect to the Article 274 charges apart from the experts, as will be discussed below.

Expert Opinions. The trial turned to a significant extent on expert opinions. Both the prosecution and defense presented expert “philologists” who had submitted expert opinions that were introduced into the case file.⁹³ The prosecution relied on four separate expert reports, one by E.N. Nurlybek and three by Ziyada Abdulzhanova, and the defense relied on one expert report by Ayauzhan Kairatkyny Tausogarova.

The prosecution’s experts’ reports consisted primarily of lengthy, jargon-filled exposition that had little to do with the actual speech of Ms. Tabyldieva. For instance, they use ostensibly scientific terms such as “lexeme,” “functional-pragmatic analysis,” and “lexico-phraseological units,” but in essence, they merely convey the experts’ *opinions* that the terms used by Ms. Tabyldieva (i) negatively describe Kazakhstan’s president and (ii) could be deemed insulting towards government officials *if proven false*. Moreover, the reports all relied on definitions without relating them to any provisions in Kazakh law or any other legal standards.

Nonetheless, as further discussed below, the prosecution quoted the reports during the trial proceedings as proof of falsity, even though their expert Ms. Abdulzhanova testified that she could not opine on truth or falsity. Finally, the reports are vague with respect to whether they are considering Article 274 or Article 378 charges, resulting in (a) blurring of the line between falsity and insult charges, respectively, and (b) lack of clarity in the prosecution’s and judge’s reasons to find the defendant guilty.

The written opinion of the first prosecution expert, Mr. Nurlybek, focused on the September 2022 video, and was drafted on December 9, 2022, as “Expert Opinion No. 695,” in connection with the initial investigation that was dismissed. Nowhere in the report does Mr. Nurlybek mention the provision which the challenged video allegedly violated

⁹¹ *Id.*

⁹² *Id.*

⁹³ Both parties submitted reports by the testifying experts, and additional reports from an expert witness who did not testify.

according to the police investigators—Article 274. Mr. Nurlybek concluded that the September 2022 video content posted by Ms. Tabyldieva (i) constituted an opinion, (ii) did not contain defamatory language against the “honour and dignity” of government officials, and (iii) contained content that, only “***if proven false, could be defamatory towards the honour, dignity, and professional reputation of government officials.***”⁹⁴ (emphasis added)

The dismissal order dated 20 December 2022—to terminate the pre-trial investigation—agreed with Expert Opinion No. 695’s conclusions. At trial, the prosecutor mischaracterized the conclusions in Expert Opinion No. 695, citing it for the proposition that the video contained “*information damaging the honor, dignity and reputation of the public authorities.*”⁹⁵ Defense counsel stated that she does “*not fully agree with the conclusions*” of Expert Opinion No. 695.⁹⁶

The second prosecution expert, Ms. Abdulzhanova reviewed the video posted on September 2022, as well as the content of the November 2022 posts. Her first report from March 2023, Expert Opinion No. 809, focused on the Article 274 charge and initially concluded that the materials contained elements that, if proven false, would “*defame the business reputation*” of the president, as well as “*words of a defamatory or derogatory nature towards the honour and dignity*” of the president.⁹⁷

Her second report from May 2023, Expert Opinion No. 2408, focused on the Article 378 charge and reviewed the same materials along with the February 2023 posts, finding that (i) Ms. Tabyldieva’s posts criticized the policies of the president, the Committee of National Security, and law enforcement officers; and (ii) one of the terms used by Ms. Tabyldieva “*carries a derogatory connotation towards the honour and dignity of representatives of government officials (CNS officers).*”⁹⁸

Her third report from June 2023, Expert Opinion No. 3256, re-examined her two prior reports and reviewed the same materials along with the April 2023 posts, but it did not clarify whether it addressed the Article 274 or 378 charges, and reconfirmed prior findings.⁹⁹ She concluded that Ms. Tabyldieva’s social media posts contained “*adverse*

⁹⁴ E.N. Nurlybek, Expert Opinion No. 695 (Dec. 9, 2022) (emphasis added).

⁹⁵ Monitor Notes (Nov. 10, 2023).

⁹⁶ *Id.*

⁹⁷ Z. Abdulzhanova, Expert Opinion No. 2408 (May 5, 2023) (quoting from Z. Abdulzhanova, Expert Opinion No. 809 (Mar. 20, 2023)).

⁹⁸ Z. Abdulzhanova, Expert Opinion No. 2408 (May 5, 2023).

⁹⁹ Z. Abdulzhanova, Expert Opinion No. 3256 (June 9, 2023).

*content about the employees of the Prosecutor's Office," words that "defame the honour and dignity of the government officials (employees of the Prosecutor's Office)," and content that "if proven false . . . defames the professional reputation of the employee of the prosecutor's office."*¹⁰⁰ (emphasis added)

At trial, Ms. Abdulzhanov testified she could not opine on the truth or falsity of Ms. Tabyldieva's posts.¹⁰¹ Ms. Abdulzhanov only testified that Ms. Tabyldieva's posts were of an *"informative, critical and analytical type"* and were generally *"offensive in nature."*¹⁰²

The defense, after learning of the prosecution's expert reports, submitted a rebuttal report on September 15, 2023, reviewing all of the challenged social media posts. The defense and their expert only had two weeks to draft and file the report. The expert for the defense, Ms. Tausogorova, explained in her report and testified during the hearing that Ms. Tabyldieva's posts expressed her personal opinion.¹⁰³

Ms. Tausogorova also testified that Ms. Tabyldieva's posts consisted of *"normative vocabulary"* and were not the type of *"[o]bscene language . . . considered to be those words for which a penalty may be imposed."*¹⁰⁴ She underscored that Ms. Tabyldieva did not address her comments at any particular individual, rather, she expressed her general opinion: *"these are just comments, a subjective opinion. Especially, considering that she doesn't know these individuals. She could have addressed [her statements] to other individuals."*¹⁰⁵ Similar to the prosecution's experts, Ms. Tausogorova refrained from testifying about whether Ms. Tabyldieva's posts were true or false, explaining that the answer to those questions was outside the remit of her expertise as philologist.¹⁰⁶

Conduct of the Judge. Following the reading of the indictment, Judge Abdraimov's first question to Ms. Tabyldieva was "do you plead guilty?"¹⁰⁷ The judge repeated the question

¹⁰⁰ *Id.*

¹⁰¹ Monitor Notes (Nov. 8, 2023) (stating—in response to the judge's question: "Is there any false information in that video clip?"—that "[t]his question has not been put before me. This is not the competence of a specialist philologist").

¹⁰² *Id.*

¹⁰³ A.K. Tausogorova, Conclusion of the Experts (Sept. 15, 2023).

¹⁰⁴ Monitor Notes (Oct. 20, 2023).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Monitor Notes (Oct. 19, 2023).

several times throughout the trial, in contexts that implied he considered the evidence against her to be irrefutable. The judge repeatedly admonished Ms. Tabyldieva for her actions and, with respect to the Article 378 charges, took the side of the “victims”:

- *“You should be doing your job, not writing ‘disgrace.’ Why do you need all this for? This man [referring to one of the alleged victims] has a college degree, he works in the prosecutor’s office. Do you know how they get there? They take exams, participate in competitions. There are five stages to go through, it’s not easy. You have seen it yourself how [one of the victim-prosecutors] participated in the trial and helped the prosecutor. Right?”*¹⁰⁸
- *“I repeat, do you plead guilty under Article 378 of the Criminal Code of the Republic of Kazakhstan? Look what you wrote about him, or did you praise him like that?”*¹⁰⁹
- *“How can you call and write ‘halyk jau’ (enemy of the people)? If you have a problem, you run towards a prosecutor and police officers and ask them to help you. How can you call public officials bribe takers and enemies of the people? If you are robbed in the street whom do you approach to get help? Tabyldieva, **I repeat to you one more time, re-evaluate your position and worldview.**”*¹¹⁰ (emphasis added)

The judge also exhibited hostility to Ms. Tabyldieva’s position during the examination of the defendant’s expert by questioning the expert’s loyalty to the president: *“Do you support the president? . . . It seems to me that you are against the President”*¹¹¹ and *“When I read your report, I got the impression that you were against the President’s message.”*¹¹²

The judge also interjected what appeared to be his own views during the defense’s questioning of the prosecution’s expert witness, who was somewhat equivocal as to whether Ms. Tabyldieva’s statements were insulting. In contrast with his treatment of the defense’s expert, however, the judge made no comments questioning the prosecution’s expert’s loyalty to the president and interrupted the questioning only to emphasize the expert’s conclusions that supported the prosecution’s case: *“Listen to me, it’s like this.*

¹⁰⁸ Monitor Notes (Oct. 20, 2023).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (emphasis added).

¹¹¹ *Id.*

¹¹² *Id.*

There are signs of insult to dignity in the words ‘scumbags of Kazakh National Security Service.’”¹¹³

Judgment

On November 10, 2023, the court found Ms. Tabyldieva guilty under Article 274, Part 2, Clause 3, and Article 378, Part 2, of the Kazakh Criminal Code.¹¹⁴ She was sentenced to 1 year and 6 months of house arrest, and banned from political and social activities, including publications on social media, for five years.¹¹⁵ The judgment reflects an unequivocal acceptance of the prosecution’s arguments on virtually all aspects of the case, and neglected or dismissed the arguments and testimony for the defense.

The judge did not provide separate analyses of liability under Article 274 and Article 378, which further obfuscated the basis for finding the elements of each crime to have been met. In fact, the judge repeatedly conflated the standards under each provision. For instance, the court credited the view of the prosecution expert Mr. Nurlybek that the September 2022 video, which focused on President Tokayev’s Russia policies, could “*harm the honor, dignity, and business reputation of government representatives,*”¹¹⁶ merging the liability for “fake news” into that of insulting public officials under Article 378. Similarly, the court referenced the prosecution expert Ms. Abdulzhanova’s conclusions about the posts concerning President Tokayev and the National Security Committee in which the expert discerned “*language derogatory to the honour and dignity of government representatives,*” in the context of asserted liability for disseminating false information under Article 274.

The judgment gave scant attention to the requirements in Article 274 that “false information” be, in fact, false, let alone “knowingly” false, and that it pose an actual danger to society. With respect to both Ms. Tabyldieva’s September and November 2022 posts, the judge (i) presumed the falsity of the statements; (ii) failed to analyze the “knowingly” requirement, assuming knowledge based on the presumed falsity; and (iii) failed to address the “threat to public order” requirement, assuming threat based on the presumed falsity.

With respect to the September 2022 video, the judge presumed falsity and knowledge of such falsity by refusing to acknowledge that Kazakhstan could both be independent and be subject to Russia’s power: “*Despite being aware that the Republic of Kazakhstan is an independent state, she claimed that its authorities were subjugating the population to*

¹¹³ Monitor Notes (Nov. 8, 2023).

¹¹⁴ Judgment (Nov. 10, 2023).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

the Russian Federation, following Russia's policies, and leading the country into subjugation and slavery."¹¹⁷ Without explaining the court's conclusion as to the existence of a threat, the judge then found that, in Ms. Tabyldieva's 12-minute video, "*she knowingly disseminated false information that posed a threat to public order.*"¹¹⁸

With respect to Ms. Tabyldieva's posts from November 2022,¹¹⁹ the judge failed to provide any reasoning for finding her statements that 20,000 terrorists had entered the country to kill Kazakh citizens and "that 2 million drunkards were allowed into the country" to be false and "significantly" threatening to public order.¹²⁰ The judge thus was willing to find criminal falsity in statements that were only satirical exaggerations, intended to poke fun at the government's claim that the Zhanaozen riots were the work of outside "terrorists", and to complain about Russian immigration by referring to Russians as drunkards.

Not only did the judge fail to discuss how Ms. Tabyldieva's statements might cause harm to the public order, but the whole concept of "disturbing order" (in the judge's formulation) is such an elastic and undefined one that any speech that varies from public orthodoxy could be punished under Article 274.

As to the Article 378 charges based on Ms. Tabyldieva's 2023 posts about the three prosecutors, the judge concluded that Ms. Tabyldieva had "*falsely accus[ed] law enforcement officials of unethical conduct,*"¹²¹ despite the fact that there had been no examination of such conduct during the trial—nor does Article 378, by its terms, appear to require proof of falsity—and yet the court appears to have leaped from presuming falsity to equating it with insult.

The judge also found sufficient basis for criminal punishment under Article 378 in the fact that Ms. Tabyldieva had "*the intention of criticizing the actions of the law enforcement agency while they were carrying out their responsibilities,*" and that she "*posted derogatory words directed at this representative of authority*" in making such criticism.¹²² That is, the judge appears to have conflated an intent to criticize the work of public officials with an intent to insult them.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

Ms. Tabyldieva made two principal arguments in her defense: that all the posts were the expression of her personal, political opinions, and that, in the case of the posts about the prosecutors, she did not direct her harsh words (“*disgrace*,” “*bastard*,” “*bribe-taker*”) at them individually, but rather intended them as a generalized complaint about the justice system. However, in the judgment, the judge went to some pains to refute the second argument (connecting the individual prosecutors with the prosecutions of activists Kaziyeu and Sultanov, about which Ms. Tabyldieva was expressing outrage),¹²³ but he never confronted Ms. Tabyldieva’s principal argument that her posts expressed her opinions (and hence should be protected under free expression principles).

Instead of addressing the free speech concerns raised by Ms. Tabyldieva, the judge turned to the reports of the prosecution’s expert philologists, which had concluded that her posts “*include[d] words/statements that are considered derogatory to the honour and dignity of government officials.*” In his findings, the judge gave significant weight to the prosecution’s expert conclusions and gave disproportionate deference to the prosecution’s claims to convict Ms. Tabyldieva under the “fake news” provision, Article 274, and under the “insulting government officials” provision, Article 378.

The judge briefly considered the defense’s expert report but, without even reciting its conclusions or providing any explanation, the judge rejected Ms. Tausogarova’s report on the ground that it was “*refuted*” by the findings of the prosecution’s experts.¹²⁴

The judge also impugned Ms. Tausogarova’s expertise on the ground that “*she cannot fully vouch for the reliability or unreliability of [the] information*” in Ms. Tabyldieva’s posts.¹²⁵ The judge’s criticism suggests a bias against the defense, as he did not make a similar observation with respect to the prosecution’s experts who had likewise declined to opine on the truth or falsity of Ms. Tabyldieva’s posts.¹²⁶ By implying that it was the job of the defense to prove the “reliability” or “truth” of the posts, the judge was also shifting the burden of proof to the defense, contrary to the presumption of innocence that Kazakh courts are theoretically bound to apply.

The judge gave only conclusory reasoning in support of the sentence that he imposed. He stated that the 18 months of house arrest was being imposed under Article 274, and that a fine of “80 (eighty) monthly calculation indices” was being imposed under Article

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Monitor Notes (Nov. 8, 2023) (at trial, prosecution expert Ms. Abdulzhanov testified she could not opine on the truth or falsity of Ms. Tabyldieva’s posts).

378.¹²⁷ The judge then explained that he was “*combining the criminal offenses*” under Article 274 and Article 378, “*leading to a more severe punishment*” in the form of “*prohibiting her from engaging in socio-political and public activities on social networks for a period of 5 years.*”¹²⁸

¹²⁷ Judgment (Nov. 10, 2023).

¹²⁸ *Id.*

METHODOLOGY



A. Monitoring

This report is based on the monitoring of Ms. Tabyldieva's trial as well as review of available court documents (including police resolutions, the indictment, the expert reports commissioned by the prosecution and the defense, and the judgment).

B. Assessment

To evaluate the trial's fairness and arrive at a grade, TrialWatch Expert Catherine Anite reviewed an analysis of the case and the political and legal context in Kazakhstan drafted by Covington & Burling LLP and set out in this report, expert opinions and reports from the proceedings, the trial judgment, and TrialWatch's Submission to the Human Rights Committee at the 144th Session during the Review of Kazakhstan in mid 2025, and concluded that:

- i. The prosecution of Ms. Tabyldieva presented a clear case of abuse of process. The case was initially dismissed due to a demonstrable absence of any credible indication of public harm or intent to disseminate false information. This initial dismissal underscored the lack of a legitimate basis for legal action. However, the subsequent reinstatement of the investigation, occurring precisely when she continued to publish posts critical of the government, strongly suggests an improper motive behind the legal proceedings. This sequence of events points to a situation where legal mechanisms were arguably adopted to suppress dissent rather than to uphold justice, highlighting a politically motivated prosecution rather than one driven by genuine public interest or a legitimate concern for harm.
- ii. For an accused to have a fair trial, there must be clarity in defining the offence. The provisions under which Ms. Tabyldieva was charged are prohibitively vague. When a state opts to criminalise expression, it is imperative that the laws adhere to stringent international principles of freedom of expression. Specifically, any restrictions imposed must be demonstrably justifiable, necessary, reasonable, and proportionate to the intended objective. The ambiguity inherent in Articles 274 and 378 of the Criminal Code pose a significant threat to fundamental rights, as it creates an environment where individuals face arbitrary or overly broad interpretations of the law. This lack of clarity stifles legitimate discourse and inhibits the free flow of information, both of which are cornerstones of a healthy democratic society.
- iii. In this case, the aspects of the offence are left to the discretion of the state to determine. This unfettered discretion grants those in power broad authority to interpret any form of criticism or expression that portrays them negatively as something likely to cause public mischief. Such wide latitude in defining "mischief"

can lead to the suppression of dissenting voices and legitimate scrutiny, as the line between constructive criticism and perceived harm becomes blurred, ultimately hindering accountability and open discourse. These provisions have been misused to unfairly target Ms. Tabyldieva.

- iv. The trial and subsequent judgment contravened Ms. Tabyldieva's right to be presumed innocent, until proven guilty as stipulated under Article 14 of the ICCPR. The judge's failure to thoroughly examine the veracity or falsity of her social media posts effectively established a presumption of guilt based solely on their purportedly objectionable content.
- v. The judge appeared biased and intent on convicting Ms. Tabyldieva as demonstrated by his constant intimidation during the trial, seeking to force her to plead guilty, persistently interfering during the defense's questioning of the prosecution, accusing a defense expert of being disloyal to the President and his final verdict undermining the defense's arguments and finding the accused guilty and providing a harsh sentence.

ANALYSIS



A. Applicable Law

This report draws upon (i) the ICCPR, ratified by Kazakhstan on 24 January 2006; (ii) jurisprudence and commentary from the UN Human Rights Committee, tasked with interpreting and monitoring implementation of the ICCPR; and (iii) commentary from UN Special Procedures. Relevant domestic law includes Article 4 of the Kazakh Constitution, which recognizes ratified international treaties as having primacy over domestic law; Article 20 of the Kazakh Constitution, which recognizes the right of freedom of expression and prohibits censorship, and the following articles from the Kazakh Criminal Code:

- ***Distribution of false information.*** Article 274 prohibits the dissemination of “knowingly false information that creates the danger of disrupting public order and causing substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law.”
- ***Insulting a public official.*** Article 378 prohibits “insulting a government official in the performance of his or her duties.”

B. Violations of the Right to a Fair Trial

Ms. Tabyldieva’s prosecution violated her right to a fair trial under Article 14 of the ICCPR. This right includes (i) the right to be presumed innocent until proven guilty, and (ii) the right to a public hearing by an independent court.

Article 14(2) of the ICCPR requires that “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Article 14 of the ICCPR also requires that “[a]ll persons shall be equal before the Courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Right to be Presumed Innocent

The presumption of innocence under the ICCPR is an essential element of the right to a fair trial. It requires that anyone accused of a crime be considered innocent until proven guilty, in line with a prescribed procedure set forth by domestic law and in accordance

with international law.¹²⁹ As stated by the Human Rights Committee, the presumption “imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”¹³⁰

The Human Rights Committee has ruled that the presumption of innocence can be violated if a court ignores serious evidentiary issues.¹³¹ For example, in *Ashurov v. Tajikistan*, the Committee found that the Tajik court had failed to consider major gaps in the case, meaning that the accused was “not afforded the benefit of this doubt.”¹³²

Article 274

The proceedings violated Ms. Tabyldieva’s right to be presumed innocent on multiple occasions. With respect to her posts of September and November 2022, Ms. Tabyldieva was charged under Article 274, which prohibits “disseminat[ing] knowingly false information that creates the danger of disrupting public order and causing substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law.” As noted earlier, Ms. Tabyldieva criticized President Tokayev’s allegedly pro-Russian policies following Russia’s invasion of Ukraine in 2022 and commented on the Kazakh government’s reporting that “20,000 terrorists” had entered the country.

First, despite that Article 274 prohibits dissemination of “false information,” there was no attempt on the part of the prosecution nor the judge to establish the falsity of Ms. Tabyldieva’s statements. As described in the indictment, Ms. Tabyldieva stated in her September 2022 video that the Kazakh government “bows” to the Russian Federation, “pursues the policy of the Russian Federation” and “enters into [the Russian Federation’s] subjugation and slavery.” The indictment implies that these statements are false under Article 274 solely because Kazakhstan is an independent nation. However, at no point in the proceedings did the prosecution or the judge engage in a separate analysis of whether these statements in fact denied Kazakhstan’s independence, or of Kazakhstan’s relationship with or policies towards Russia. Likewise, as described in the indictment, Ms.

¹²⁹ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 30.

¹³⁰ *Id.*; see also UN Human Rights Committee, *Saidov v. Tajikistan*, UN Doc. CCPR/C/122/D/2680/2015 (Sept. 20, 2018), ¶ 9.4.

¹³¹ UN Human Rights Committee, *Larrañaga v. The Philippines*, UN Doc. CCPR/C/87/D/1421/2005 (July 24, 2006), ¶ 7.4.

¹³² UN Human Rights Committee, *Ashurov v. Tajikistan*, UN Doc. CCPR/C/89/D/1348/2005 (Mar. 20, 2007), ¶ 6.7.

Tabyldieva stated in her November 2022 posts that “20,000 terrorists entered the country and exterminated [Kazakhstan’s] own people.” Again, there is no meaningful analysis on the falsity of this statement in the indictment, the prosecution’s case at trial, or the judgment,¹³³ or any consideration of whether Ms. Tabyldieva’s statements were an exaggeration meant to cast doubt on the government’s assertions about terrorist infiltration.

Instead, the prosecution and the judge focused on Ms. Tabyldieva’s criticism of government officials not only from the 2022 posts, but also from the February and April 2023 posts, and seemed to assume that such criticisms are inherently false because of their divergence from official orthodoxy, leveraging that assumption to find Ms. Tabyldieva guilty of spreading false news. On the first day of Ms. Tabyldieva’s trial, the prosecution referred to one of the expert conclusions: “*In case of inconsistency with the truth of the materials provided for examination, there is information that brings damage to honor, dignity and reputation of the public authorities.*”¹³⁴ The judgment then accepts the premise of “inconsistency with the truth” without explanation: “*According to the conclusions of the court examinations, N.A. Tabyldieva deliberately disseminated false information through her posts on social media. Specifically, she tarnished the reputation and respect of law enforcement.*”¹³⁵

As with the 2022 posts, there is no meaningful analysis of the truth or falsity of Ms. Tabyldieva’s statements criticizing government officials in her February and April 2023 posts, and there is no meaningful analysis of whether her criticisms constituted legitimate political opinion. The government and the court simply assumed that because Ms. Tabyldieva criticized government officials, her statements must be false, and these allegedly false statements must therefore cause “*substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law.*”

Moreover, the judge failed to presume Ms. Tabyldieva’s innocence because he did not require the prosecution to bear the burden of proof on the issue of falsity, and instead appeared to suggest that the defendant had to prove the truth. The prosecution submitted expert reports with conditional conclusions, *i.e.*, that Ms. Tabyldieva’s posts, *if proven*

¹³³ The judgment states that Ms. Tabyldieva “claims that the government of the Republic of Kazakhstan killed its own people by fabricating a story about 20,000 terrorists entering the country. She also alleges that 2 million drunkards were allowed into the country, among other misleading information shared across social media platforms”—but did not address the substance of these statements. See Judgment (Nov. 10, 2023).

¹³⁴ Monitor Notes (Oct. 19, 2023).

¹³⁵ Judgment (Nov. 10, 2023).

false, could be harmful to the honor of public officials.¹³⁶ The experts, however, did *not* conclude that any information in these posts was in fact false.

Despite the prosecution’s failure to prove elements of the case, the court convicted Ms. Tabyldieva. The judgment merely accepts the prosecution’s position, without cognizable engagement with the defense’s arguments. The reasoning fails to explain which false information was disseminated, let alone *knowingly* disseminated. Instead, the judge appears to have simply presumed falsity on the basis that Ms. Tabyldieva’s posts varied from official government positions and criticized the job performance of government employees whom he believed to be reputable.

Article 378

Ms. Tabyldieva’s prosecution pursuant to Article 378’s ban on insulting public officials also violated her right to be presumed innocent. During the prosecution’s examination, the judge asked Ms. Tabyldieva: “*Do you plead guilty under Article 378 of the Criminal Code of the Republic of Kazakhstan?*”¹³⁷ A few minutes later, he again asked, “*I repeat, do you plead guilty under Article 378 of the Criminal Code of the Republic of Kazakhstan? Look what you wrote about him, or did you praise him like that?*”¹³⁸ This rhetorical question indicates that the judge presumed Ms. Tabyldieva was guilty.

Both at trial and in his judgment, the judge disregarded the fundamental principles underlying the right to be presumed innocent—that the prosecution bears the burden to prove the accused’s guilt beyond a reasonable doubt and that the accused is entitled to the benefit of the doubt—thereby violating Ms. Tabyldieva’s right under Article 14(2) of the ICCPR.

¹³⁶ Z. Abdulzhanova, Expert Opinion No. 2408 (May 5, 2023) (“The content of the materials submitted for examination contains information that, *if found to be inconsistent with reality*, may detrimentally affect the business reputation of the President of the Republic of Kazakhstan K. Tokayev” (quoting from Z. Abdulzhanova, Expert Opinion No. 809 (Mar. 20, 2023)) (emphasis added)); E.N. Nurlybek, Expert Opinion No. 695 (Dec. 9, 2022) (“The material under examination contains content that, *if proven false*, could be defamatory towards the honour, dignity, and professional reputation of government officials” (emphasis added)).

¹³⁷ Monitor Notes (Oct. 20, 2023).

¹³⁸ *Id.*

Right to be Tried by an Independent and Impartial Court Established by Law

The Human Rights Committee has explicitly stated that the competence, independence, and impartiality requirements under Article 14 of the ICCPR represent “an absolute right that is not subject to any exception.”¹³⁹ The guarantee of judicial impartiality encompasses both a subjective dimension, meaning that judges must be free from preconceptions, prejudice, or personal bias that might influence their judgments and must refrain from taking actions that would unfairly advantage one party to the proceedings over another;¹⁴⁰ and an objective dimension, requiring that even in the absence of actual bias, a tribunal must appear to be impartial to a reasonable observer.¹⁴¹ In *Ashurov v. Tajikistan*, the Committee found a violation of Article 14(1) where the court, as recounted by the complainant, asked leading questions and assumed the role of the prosecutor.¹⁴²

Ms. Tabyldieva’s right to be tried by an independent and impartial court was violated throughout the trial by the judge, who repeatedly (i) made remarks against the defense that suggest bias, (ii) accepted conclusions by the prosecutor before Ms. Tabyldieva could present her defense, and (iii) called upon Ms. Tabyldieva to “re-evaluate” her “worldview.”¹⁴³

Article 274

With respect to the Article 274 charges, the judge failed to treat the witnesses equally, creating an appearance of bias and violating the defendant’s right to an impartial tribunal. While both prosecution and defense experts refrained from expressing a view on the falsity of the challenged posts, both in their reports and during their testimonies, the judge only admonished the defense’s expert, effectively shifting the burden of proof on the issue of falsity to the defense.

¹³⁹ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 19.

¹⁴⁰ *Id.*, ¶ 21; see also UN Human Rights Committee, *Ashurov v. Tajikistan*, UN Doc. CCPR/C/89/D/1348/2005 (Mar. 20, 2007), ¶¶ 2.8, 6.6; UN Human Rights Committee, *Karttunen v. Finland*, UN Doc. CCPR/C/46/D/387/1989 (Nov. 5, 1992), ¶ 7.2.

¹⁴¹ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 21; see also UN Human Rights Committee, *Karttunen v. Finland*, UN Doc. CCPR/C/46/D/387/1989 (Nov. 5, 1992), ¶ 7.2.

¹⁴² UN Human Rights Committee, *Ashurov v. Tajikistan*, UN Doc. CCPR/C/89/D/1348/2005 (Mar. 20, 2007), ¶¶ 2.8, 6.6.

¹⁴³ Monitor Notes (Oct. 20, 2023).

The expert witness for the defense, Ms. Tausogarova, explained in her expert report as well as during her testimony, based on a philological analysis, that the terms used in Ms. Tabyldieva's Facebook posts should not be considered profanity, but rather an expression of subjective opinion. However, when Ms. Tausogarova was explaining her analysis, the judge repeatedly and insinuatingly questioned her loyalty to the president of Kazakhstan and suggested that the expert's statements indicated disagreement with the president.¹⁴⁴ Such treatment of the defense's expert violated Ms. Tabyldieva's right to an impartial court.

The court's apparent disproportionate reliance on the prosecution's experts served to obscure any question of whether Ms. Tabyldieva *should* have been punished for her speech, consistent with the free speech norms that Kazakhstan is obligated to respect. Instead, the expert reports allowed the court to hide such questions behind a pseudo-scientific smokescreen and decide issues of guilt and innocence based on the purportedly objective classification of "language units." The judge failed to assess the key legal question of whether Ms. Tabyldieva's speech was protected by the constitutional right to free speech, merely referring to the opinions described in the reports of the prosecution's experts. The reports were thus used to create a veneer of objectivity to the proceedings. However, even a superficial examination of the reports makes it clear that they only served as an excuse for the judge to reach an outcome inconsistent with international standards, namely Ms. Tabyldieva's conviction. This outsourcing of the core judicial function of determining guilt or innocence not only undermines the integrity of the proceedings but also represents a direct assault on the fundamental rights of free expression and right to be tried by an independent court.

Article 378

During the proceedings, the judge also demonstrated improper bias against Ms. Tabyldieva and clear support of the alleged Article 378 "victims" in violation of fair trial standards.

On the second day of the trial, in the context of Ms. Tabyldieva's alleged criticism of the prosecutor who requested a three-year jail term for Erkin Kaziev, the judge remarked that another prosecutor would have requested the same term.¹⁴⁵ The judge thus demonstrated his alignment with the prosecution in dismissing Ms. Tabyldieva's criticism before hearing the defense's case. The judge continued admonishing Ms. Tabyldieva regarding her criticism of the prosecutors, stating:

You should be doing your job, not writing 'disgrace.' Why do you need all this for? This man [the alleged victim] has a college degree, he works in the

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

prosecutor's office. Do you know how they get there? They take exams, participate in competitions. There are five stages to go through, it's not easy.

...

How can you [Ms. Tabyldieva] call public officials bribe takers and enemies of the people? If you are robbed in the street to whom you approach to get help? Nazym Tabyldieva, I repeat to you one more time, re-evaluate your position and worldview.¹⁴⁶

Furthermore, the judge allowed the so-called “victims”—who were in fact co-prosecutors working in the same district as the lead prosecutor in this case—to interrogate the defendant and the defendant's expert witness during trial. These “victims” were, for instance, allowed to ask probing questions about critical remarks Ms. Tabyldieva made about the pro-Russian stance of the President of Kazakhstan, even though those remarks were irrelevant to the “insulting officials” charges that brought the “victims” to court. One “victim” asked Ms. Tabyldieva, “You said that the President stole the votes and that's how he gained the power. Is it your opinion?”¹⁴⁷ When she confirmed that it was her opinion, he pressed, “Do you have any proof?” Then, another “victim” asked, “Why do you believe that the authorities of Kazakhstan made the people to kneel down before Russia by pursuing its policies? What evidence do you have? . . . If Russian citizens get our Individual Identification Numbers, it means that the people of Kazakhstan are on their knees before Russia, that's what you think?”¹⁴⁸

At some point, Ms. Tabyldieva was interrogated by both the prosecutor and two of the “victims”, while the judge failed to intervene and even joined the questioning himself.¹⁴⁹ Protests from Ms. Tabyldieva's lawyer, including protests that the questions were outside the scope of the indictment, were ignored or disregarded by the judge. In addition, the “victims” interfered with the testimony of the defendant's expert witness and started interrogating her along with the lead prosecutor.¹⁵⁰ The judge, again, failed to intervene, but insisted that the expert witness answer the questions posed by the “victims.”

The judge also allowed the prosecutor to ask questions outside the scope of the indictment, while pressuring the defense's expert witness about her loyalty to the

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

president of Kazakhstan, and more generally appeared to side with the prosecution on a number of key elements of the case.¹⁵¹

In conclusion, the proceedings violated Ms. Tabyldieva's right to a fair trial under Article 14 of the ICCPR because the court (i) failed to presume her innocence and (ii) exhibited bias throughout the trial. The court violated Ms. Tabyldieva's right to the presumption of innocence by finding her guilty despite the prosecution failing to produce evidence as to the falsity of her posts. The court violated her right to judicial impartiality on both the subjective and objective dimensions (i.e., the judge (i) exhibited bias that seemed to influence his judgment, (ii) took actions that unfairly advantaged the prosecution, and (iii) asked leading questions and assumed the role of the prosecutor throughout trial).

C. Violations of the Right to Freedom of Expression

Articles 274 and 378 of the Kazakh Criminal Code, and Ms. Tabyldieva's prosecution and conviction under these provisions, violated her right to freedom of expression—specifically, they do not meet the requirement of legality, necessity, and proportionality under Article 19 of the ICCPR.

Article 19 of the ICCPR guarantees the right to freedom of expression, i.e., the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media”.¹⁵²

According to the Human Rights Committee, Article 19 protects “political discourse, commentary on one's own and on public affairs, . . . discussion of human rights, [and] journalism.”¹⁵³ Notably, expression and/or dissemination of opinions that are critical of – or not in line with – official government policy are protected.¹⁵⁴ The Committee has established that heads of state and government are “legitimately subject to criticism and political opposition,” emphasizing that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.”¹⁵⁵ As such, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to

¹⁵¹ *Id.*

¹⁵² ICCPR, Article 19(2).

¹⁵³ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 11.

¹⁵⁴ *Id.*, ¶¶ 38-42.

¹⁵⁵ *Id.*, ¶ 38.

justify the imposition of penalties.”¹⁵⁶ The Committee has therefore raised concern “regarding laws on such matters as . . . disrespect for authority . . . defamation of the head of state and the protection of the honour of public officials.”¹⁵⁷

Pursuant to Article 19 of the ICCPR, any restriction on protected speech must: (i) be prescribed by law (the principle of legality); (ii) serve a legitimate objective; and (iii) be necessary to achieve and proportionate to that objective.¹⁵⁸

To satisfy the principle of legality, which is broadly enshrined in Article 15(1) of the ICCPR,¹⁵⁹ legislation must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly . . . [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”¹⁶⁰

To satisfy the second prong, the legislation must serve a legitimate objective as recognized by the ICCPR—the protection of public morals, public health, national security, public order, and/or the rights and reputation of individuals.¹⁶¹

To satisfy the necessity and proportionality test, there must be no other means besides the legislation that could achieve the stated objective without restricting free expression.¹⁶² The necessity requirement overlaps with the proportionality requirement, as the latter means that a restriction must be the “least intrusive instrument amongst those which might achieve their protective function.”¹⁶³ As such, laws that restrict expression

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ See UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶¶ 22, 34; UN Human Rights Committee, *Kim v. Republic of Korea*, UN Doc. CCPR/C/64/D/574/1994 (Nov. 3, 1998), ¶ 12.2.

¹⁵⁹ “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

¹⁶⁰ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 25; see also UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/74/486 (Oct. 9, 2019), ¶ 6(a) (any restriction on freedom of expression “must be provided by laws that are precise, public and transparent; it must avoid providing authorities with unbounded discretion”).

¹⁶¹ ICCPR, Article 19(3).

¹⁶² UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 33 (stating that a restriction “violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression”).

¹⁶³ *Id.*, ¶ 34.

cannot be overbroad.¹⁶⁴ In line with the necessity and proportionality standards, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression has concluded that criminal penalties for speech are warranted in only the most serious and exceptional cases.¹⁶⁵

Article 274 and Article 378 violate the principle of legality because they are vague and imprecise

Article 274

Article 274 of the Kazakh Criminal Code¹⁶⁶ is insufficiently precise to fulfill the legality prong of the UN Human Rights Committee’s three-part test. The law criminalizes sharing false “information,” which the European Court of Human Rights (the “European Court”) has previously referred to as an “indiscriminate approach to the assessment of speech” due to its failure to distinguish between statements of fact and value judgements, and thus amounting to a *per se* violation of the right to freedom of expression.¹⁶⁷ None of Article 274’s terms—including “*false information*” or “*danger of disrupting public order*”—are clearly defined. This means that individuals legitimately exercising their right to freedom of expression are at risk of having protected speech criminalized under Article 274. The sweeping and indefinite language of the law makes it difficult for individuals to “*regulate [their] conduct accordingly*,” affording the authorities discretion that is ripe for abuse.

International bodies have raised concerns about the vagueness of Article 274 and other “fake news” laws like it. Human Rights Watch called for the Kazakh government to “amend or repeal laws that criminalize peaceful expression of critical views, such as article 274 of the Criminal Code” after it was invoked to investigate a Kazakh citizen running a satirical website.¹⁶⁸ The International Press Institute cautioned that “[a]ccording to legal experts, [Article 274] can be broadly interpreted, which poses a great threat to journalists and other

¹⁶⁴ *Id.*

¹⁶⁵ UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/66/290 (Aug. 10, 2011), ¶ 40.

¹⁶⁶ “Disseminat[ing] knowingly false information that creates the danger of disrupting public order and causing substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law.”

¹⁶⁷ European Court of Human Rights, *Gorelishvili v. Georgia*, App. No. 12979/04 (June 5, 2007), ¶ 38.

¹⁶⁸ Mihra Rittmann, *Authorities in Kazakhstan Can’t Take a Joke*, HUMAN RIGHTS WATCH (May 20, 2021), <https://www.hrw.org/news/2021/05/20/authorities-kazakhstan-cant-take-joke>.

media professionals who can be held liable for the dissemination of opinions.”¹⁶⁹ More generally, international and regional human rights experts have expressed alarm at the growing prevalence of fake news laws in a Joint Declaration on ‘Fake News’, Disinformation, and Propaganda: “[g]eneral prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression . . . and should be abolished.”¹⁷⁰

As discussed above, the vague wording of Article 274 permitted the Kazakh authorities to deem Ms. Tabyldieva’s statements “false” because they contradicted or criticized the government’s policies, while the vague nature of the prohibition on “*disrupting public order and causing substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society or the state protected by law*” allowed them to criminalize her speech without establishing any resulting disruption or harm.

In light of the above, Article 274 clearly fails to comply with the principle of legality and therefore fails the first prong of the Human Rights Committee’s three-part test.

Article 378

Article 378—which prohibits “insulting a government official in the performance of his/her duties”—provides no guidance as to what constitutes an insult, or what type of activity or “duties” are within scope of the law.

International bodies have criticized similar laws for their vagueness and overbreadth. In *Akçam v. Turkey*, for example, the European Court found that a law criminalizing the “public[] degrad[ation] [of] the Turkish nation, the State of the Republic of Turkey, the Grand National Assembly of Turkey, the Government of the Republic of Turkey or the judicial bodies of the State” to be “too wide and vague” such that it “constitut[ed] a continuing threat to the exercise of the right of freedom of expression.”¹⁷¹ Similarly, the

¹⁶⁹ *Kazakhstan Should Drop ‘False Information’ Case Against Critical Media Outlets*, INTERNATIONAL PRESS INSTITUTE (Apr. 13, 2018), <https://ipi.media/kazakhstan-should-drop-false-information-case-against-critical-media-outlets/>.

¹⁷⁰ UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda*, FOM.GAL/3/17 (Mar. 3, 2017), Section 2(a), <https://www.osce.org/files/f/documents/6/8/302796.pdf>.

¹⁷¹ European Court of Human Rights, *Akçam v. Turkey*, App. No. 27520/07 (Oct. 25, 2011), ¶ 93. (The European Court of Human Rights analyzed the right to free expression under Article 10 of Convention for the Protection of Human Rights and Fundamental Freedoms, which parallels the right to freedom of expression under Article 19 of the ICCPR.)

UN Working Group of Arbitrary Detention (the “WGAD”) found that charges relating to “insulting the Supreme Leader” under the Islamic Penal code were “so vague and overly broad that they could . . . result in penalties being imposed on individuals who have merely exercised their rights under international law.”¹⁷² The WGAD also found that Article 112 of Thailand’s Criminal Code—a lèse-majeste law making it a crime to defame, insult, or threaten the Thai monarch—was inconsistent with international human rights law because it failed to “define what kinds of expression constitute defamation, insult or threat to the monarchy, and leaves the determination of whether an offense has been committed entirely to the discretion of the authorities.”¹⁷³

So too here, the vagueness of Article 378 allows the Kazakh government to sweep legitimate political speech within its scope—precisely the “*unfettered discretion*” the Human Rights Committee warns against. For this reason, Article 378 fails the first prong of the three-part test.

Neither Article 274 or Article 378 themselves, nor Ms. Tabyldieva’s prosecution under the provisions, pursue a legitimate objective

Article 274

Article 274 fails the second prong of the Human Rights Committee’s three-part test because it extends beyond the permitted legitimate grounds for restrictions on the right to freedom of expression. While restrictions geared toward protecting the rights and reputations of citizens and public order may be legitimate under the ICCPR, Article 274 also refers to protecting the interests of the state, without tailoring its scope to one of the enumerated objectives—public health, national security, public morals, or public order. Therefore, Ms. Tabyldieva’s prosecution under Article 274 violates the second prong of the Human Rights Committee’s three-part test.

Article 378

Although Article 19(3) of the ICCPR recognizes that restrictions on speech may seek to protect the “*rights or reputations of others*,” “*all public figures*” remain “*legitimately subject to criticism and political opposition*.”¹⁷⁴ Laws that criminalize insulting the government can impermissibly chill political opinion by labeling any criticism of the government—whether or not it is false or defamatory—as illegal. The WGAD came to a similar conclusion in

¹⁷² UN WGAD, *Concerning Atena Daemi (Islamic Republic of Iran)*, Opinion No. 83/2018, UN Doc. A/HRC/WGAD/2018/83 (Nov. 22, 2018), ¶ 58.

¹⁷³ UN WGAD, *Concerning Siraphop Kornaroot (Thailand)*, Opinion No. 4/2019, UN Doc. A/HRC/WGAD/2019/4 (Apr. 24, 2019), ¶ 55.

¹⁷⁴ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶¶ 28, 38.

Somyot Prueksakasemsuk v. Thailand, finding that Thailand’s “lèse-majeste” law “suppress[ed] important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression.”¹⁷⁵

Criminal prosecution under Articles 274 and 378—and Ms. Tabyldieva’s punishment under these provisions—is neither necessary nor proportional to the laws’ stated aims

Ms. Tabyldieva was sentenced to eighteen months of house arrest and a five-year ban on public, political, and journalistic activities on social media under Articles 274 and 378 of the Kazakh Criminal Code. Neither the laws that she was prosecuted under, nor her sentence, satisfy the final prong of the Human Rights Committee’s three-part test.

First, the government failed its burden to “*demonstrate in specific and individualized fashion the precise nature of the threat*” posed by Ms. Tabyldieva’s statements and the “*necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.*”¹⁷⁶

Second, the prosecution and judge’s presumption of falsity in Ms. Tabyldieva’s statements, without any analysis as to whether her statements were true or false, demonstrate the danger in the authorities’ use of these provisions to penalize impossible-to-prove value judgments, instead of false statements of fact, effectively criminalizing political opinion.

Finally, the provisions countenance imprisonment, which is “*never an appropriate penalty*” for defamation or legitimate public criticism of government authorities.¹⁷⁷

The Kazakh authorities failed to demonstrate a connection between Ms. Tabyldieva’s speech and a threat.

As stated, the indictment fails to connect the speech in Ms. Tabyldieva’s posts to a threat. In fact, after reciting Ms. Tabyldieva’s statements criticizing government policy—including

¹⁷⁵ UN WGAD, *Concerning Somyot Prueksakasemsuk (Thailand)*, Opinion No. 35/2012, UN Doc. A/HRC/WGAD/2012/35 (Aug. 30, 2012), ¶ 20.

¹⁷⁶ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 35.

¹⁷⁷ The Human Rights Committee calls for the decriminalization of defamation and notes that imprisonment is never an appropriate penalty. Although Article 378 is not explicitly a defamation law, by criminalizing “insults”, the law encompasses speech that could be defamatory. In fact, the Human Rights Committee’s position against criminal penalties for defamation cases would apply equally, if not more strongly, to the criminalization of “insults” to public officials because (as is the case here) the latter category encompasses speech the Committee has deemed deserving of heightened protection, thereby posing a greater threat to freedom of expression.

that the Kazakh government “bows the people of the country to the Russian Federation” and “enters into its subjugation and slavery” and that “20,000 terrorists entered the country”—the indictment omits any discussion of how these statements threaten public order. Instead, it pivots to a discussion of the screenshots of the alleged Article 378 victims, stating “In the content of the screenshots provided for examination, there are some words that insult the honor and dignity of the public authorities’ representatives.” Directly following, the indictment concludes: “[t]herefore, Tabyldieva ... fulfilled her criminal intentions aimed at disseminating knowingly false information.”

Similarly, the judgment contains no analysis of how Ms. Tabyldieva’s statements about the Kazakh government, its relationship with Russia, or its immigration policies pose any threat to public order. Instead, it ignores these statements and focuses solely on her criticism of government officials, blurring the line between its Article 274 and Article 378 analysis. It states, for example:

- *“The video . . . contains information that, if found to be inconsistent with reality, may harm the honor, dignity, and business reputation of government representatives”*
- *“The post under examination, if proven false, contains content that defames the professional reputation of the employee of the prosecutor’s office.”*
- *“...the case materials include photos of N.A. Tabyldieva holding a poster with derogatory statements that harm the business reputation of government representatives, which were posted on the Facebook page ‘Nazka Tabyldieva.’”*
- *“. . . during the examination, it was found that N.A. Tabyldieva, in her posts on the social media platform, distorted the information by falsely accusing law enforcement officials of unethical conduct and expressing derogatory words against them. She utilized words undermining the dignity and respect of law enforcement officials and misrepresented facts about their professional conduct.”*

Without further substantive analysis, the judgment concludes:

“According to the conclusions of the court examinations, N.A. Tabyldieva deliberately disseminated false information through her posts on social media. Specifically, she tarnished the reputation and respect of law enforcement officials, and she damaged the authority and reputation of the prosecutors. These actions were considered an intentional attempt to harm the rights and interests of organizations, as N.A. Tabyldieva used misleading information to lower the public’s trust in law enforcement agencies, causing harm to their legal rights and interests.”

Instead of demonstrating the specific nature of the threats posed by Ms. Tabyldieva’s statements, the judgment (a) omits discussion of them, (b) focuses wholly on Ms.

Tabyldieva's insults to the local prosecutors, and (c) concludes, without justification, that such statements "harm the rights and interests of organizations."¹⁷⁸ This is insufficient to demonstrate that Ms. Tabyldieva's statements posed any threat whatsoever, let alone a threat grave enough to merit her sentence.

The majority of Ms. Tabyldieva's statements were value judgments that could not be proved true or false.

The European Court has found that defamation laws must distinguish between value judgments and statements of fact. Criminalizing the former "*infringes freedom of opinion itself*" as value judgments are unable to be proved true or false.¹⁷⁹ The same can be said for criminalizing "insults"—a broad category which could encompass false statements of fact but could equally encompass protected opinion. Similarly, it follows that a law which purportedly criminalizes "false information" cannot be applied to value judgments which cannot be proven true or false.

Grinberg v. Russia is instructive. The Court found that a civil defamation case against an applicant who published a newspaper piece stating that the Governor had "*no shame or scruples!*" violated Article 10 of the European Convention. The Court noted the "*applicant's liability for the pretended damage to [the Governor's] reputation was solely based on his failure to show that [the Governor] had indeed lacked 'shame and scruples'*" and underscored that the "*burden of proof was obviously impossible to satisfy.*" The same can be said of the majority of Ms. Tabyldieva's statements, including the terms "*filth*", "*scoundrels*", "*enemies of the people*" and "*disgrace.*"

The Court in *Grinberg* further emphasized that the domestic courts:

did not convincingly establish any pressing social need for putting the protection of the politician's personality rights above the applicant's right to freedom of expression and the general interest in promoting this freedom where issues of public interest are concerned. In particular, it does not appear from the domestic courts' judgments that the applicant's statement affected [the target of the article's] political career or his professional life.

¹⁷⁸ Of note, in a decision examining the prosecution of two journalists who published a story alleging intelligence and police authorities were involved in the abduction of human rights activities, the Supreme Court of Zimbabwe emphasized that "[a] remote possibility of harm to the maintenance of public order or preservation of public safety cannot be a reasonable basis for the legislative imposition of a restriction on the exercise of freedom of expression." *Chimakure v. Attorney-General of Zimbabwe*, Judgment No. SC 14/2013 (Sup. Ct. Zimbabwe 2013), p. 64.

¹⁷⁹ European Court of Human Rights, *Grinberg v. Russia*, App. No. 23472/03 (Jul. 21, 2005), ¶ 30. In *Grinberg*, the law at issue was a defamation law.

The same is true here, where the authorities targeted speech critical of government officials and policies. As already discussed, neither the prosecution nor the judge made any attempt to establish the falsity of Ms. Tabyldieva's statements, nor did they engage with the defense's arguments that she was expressing her personal opinion over certain government actions. Instead, they presumed falsity merely because her statements were critical of the government.

The prosecution also failed to establish that the alleged "victims" suffered negative professional or reputational consequences as a result of Ms. Tabyldieva's statements. There is no evidence the victims lost their jobs, income, or were otherwise disciplined. In fact, according to testimony regarding the victims' statement, each asserted that they "*found [out] about [Ms. Tabyldieva]*" only after the "*Police Department of Almaty invited us for a conversation.*"¹⁸⁰ And although the victims testified they were personally offended by Ms. Tabyldieva's statements,¹⁸¹ evidence of actual reputational damage is wholly conclusory.¹⁸² Like the court in *Grinberg*, the court here failed to weigh the negligible effect on the victims' reputations against Ms. Tabyldieva's right to freedom of expression. Had it done so, it would have found her prosecution disproportionate.

Ms. Tabyldieva's sentence is unnecessary and disproportionate to the alleged offense.

The fact that Articles 274 and 378 provides for potential imprisonment clearly fails the third prong of the Human Rights Committee's three-part test. Even if a speech restriction pursues a legitimate objective (and here it did not) it can still "*violate[] the test of necessity if the protection could be achieved in other ways that do not restrict freedom of*

¹⁸⁰ Monitor Notes (Oct. 20, 2023).

¹⁸¹ Monitor Notes (Oct. 19, 2023) (one prosecutor stating: "*We saw it ourselves that she wrote on her page: 'Filth, bribetakers, disgrace.' It's demeaning our honor and dignity. Because of this, we wrote a statement.*"; another stating: "*When I saw this post, I got emotional about it, especially when strangers comment about you. It would be understandable if I would know the person, but I didn't. If strangers write such things about government officials in Internet, where will respect come from?*"; Monitor Notes (Oct. 20, 2023) (a third stating: "*If it is said about a public servant that he had something to do with corruption, but the public servant has nothing to do with corruption, they would still take it to heart*").

¹⁸² Monitor Notes (Oct. 19, 2023) (one 'victim' stating: "*I didn't think it was necessary back then. Why does she write comments like this? I have a family and relatives*"; Monitor Notes (Oct. 20, 2023) (a second 'victim' stating: "*This was published in Internet, there's no guarantee it won't be shown to my kids. My first thought was about my kids, now everyone has a cell phone*").

expression.”¹⁸³ To be proportionate, the restriction must also be the “*least intrusive instrument amongst those [restrictions] which might achieve their protective function.*”¹⁸⁴

The Human Rights Committee has established that “*in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.*”¹⁸⁵ As such, “*the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.*”¹⁸⁶ In fact, the Human Rights Committee has previously found that criminal penalties are not “*a proportionate measure to protect public order or the honor and the reputation of [a public figure].*”¹⁸⁷

Article 378’s criminalization of the insulting of government officials, which carries a prison sentence of up to 40 days, is inconsistent with the right to freedom of expression on its face. Further, by leveraging Article 274—which also provides for restriction of liberty as a punishment—to prosecute speech critical of public officials, the government effectively recasts the provision as a defamation law with criminal penalties, in contravention of General Comment 34 of the Human Rights Committee, calling for States to decriminalize defamation and emphasizing that “*the application of the criminal law should only be countenanced in the most serious of cases.*”¹⁸⁸

Finally, Ms. Tabyldieva’s sentence—1 year and 6 months of house arrest, and a 5-year ban from political and social activities—is grossly disproportionate to the alleged offense. Although the judge purported to impose the 18-month sentence for Ms. Tabyldieva’s supposed violation of Article 274, he stated that he was imposing the enhanced sentence of 5 years’ ban from social media activism as a consequence of Ms. Tabyldieva’s having been found guilty under both Article 274 and Article 378. Confining Ms. Tabyldieva to her

¹⁸³ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 33.

¹⁸⁴ *Id.*, ¶ 34.

¹⁸⁵ *Id.*, ¶ 38.

¹⁸⁶ *Id.*

¹⁸⁷ UN Human Rights Committee, *Marques de Morais v. Angola*, UN Doc. CCPR/C/83/D/1128/2002 (Mar. 29, 2005), ¶ 6.8 (finding “the severity of the sanctions imposed”—*i.e.*, arrest, detention, conviction, and travel restraints—“on the author cannot be considered as a proportionate measure to protect public order or the honour and the reputation of the President, a public figure who, as such, is subject to criticism and opposition”).

¹⁸⁸ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 47.

home, depriving her of her livelihood, and prohibiting her from communicating with the public surely fails the necessity and proportionality requirements under the ICCPR.

Therefore, Ms. Tabyldieva's prosecution, conviction, and sentencing under Articles 274 and 378 for the expression of her personal, political opinion about government authorities violated her right to freedom of expression.

D. Ulterior Motive

Legal Standard for Abuse of Process

The ICCPR and European Convention prohibit the abuse of judicial proceedings to intimidate, discriminate against, or punish individuals for the exercise of their rights.¹⁸⁹ While the Human Rights Committee has yet to establish clear criteria for assessing violations arising from the abuse of judicial proceedings, jurisprudence from the European Court is instructive in evaluating whether a legal proceeding has been driven by improper motives. Among the factors considered are: the political context in which the prosecution was brought, such as a pattern of arrests and prosecutions; the timing of the charges; whether the prosecution had reasonable suspicion to bring the charges; how the criminal proceedings were conducted; and whether the ultimate decision was well-reasoned and based on law.¹⁹⁰

The European Court has also made clear that if a legal proceeding has both proper and improper motives, the Court will nevertheless find an abuse-of-process violation where improper motives "predomina[ted]."¹⁹¹ Further, the European Court has held that proof of an illegitimate purpose may be shown by sufficiently strong, clear and concordant circumstantial evidence.¹⁹²

¹⁸⁹ European Convention on Human Rights, Article 18; ICCPR, Article 9(1). For example, Article 18 of the ECHR states that "the restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed." The UN Human Rights Committee has also determined that detention on the basis of an individual exercising their right to freedom of opinion and expression violates the right to liberty protected by ICCPR Article 9(1). UN Human Rights Committee, *Khadzhiyev & Muradova v. Turkmenistan*, UN Doc. CCPR/C/122/D/2252/2013 (May 28, 2018), ¶ 7.7.

¹⁹⁰ See European Court of Human Rights, *Guide on Article 18 of the European Convention of Human Rights, Limitations on Use of Restrictions and Rights* (Aug. 31, 2022), ¶ 116.

¹⁹¹ *Id.*, ¶ 60; European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13 (Nov. 28, 2017), ¶¶ 305, 318-319.

¹⁹² See European Court of Human Rights, *Guide on Article 18 of the European Convention of Human Rights, Limitations on Use of Restrictions and Rights* (Aug. 31, 2022), ¶¶ 102-103.

The European Court’s ruling in *Navalnyy v. Russia* provides useful guidance on abuse of process in the context of suppressing someone’s political views, as was the case with Ms. Tabyldieva. In finding that the repeated arrest and detention of Mr. Navalny was a violation of Article 18 of the European Convention—specifically, that the proceedings were aimed at preventing Mr. Navalny from participating in the domestic political process¹⁹³—the European Court cited indicia such as patterns of harassment of the political opposition, the lack of justification for some of the arrests and charge, and the flawed conduct of the proceedings against Mr. Navalny.¹⁹⁴

Ms. Tabyldieva’s Case Amounts to an Abuse of Process

Based on the European Court’s criteria, Ms. Tabyldieva’s case constitutes an abuse of process. The most important factors are 1) the political context in which the prosecution took place; 2) the specific timing of the criminal case; 3) the flawed conduct of the case by the presiding judge; and 4) serious inconsistencies and gaps in the prosecution’s evidence.

Political Context of the Prosecution

First, the authorities in Kazakhstan have repeatedly used the justice system in cases similar to Ms. Tabyldieva’s, to target members of political opposition groups and critics of the government, including journalists and human rights defenders. Freedom House’s 2024 country report on Kazakhstan, for example, has highlighted that opposition parties have been banned or marginalized via anti-extremism laws and that politically motivated prosecution and incarceration of activists, journalists, and opposition figures is common.¹⁹⁵ For instance, in 2020 blogger Aigul Utepova was convicted for social media posts and other public activities that the authorities perceived as supporting various opposition parties.¹⁹⁶ From the outset of the criminal proceedings against Utepova, which included her forced commitment to a psychiatric clinic despite no evidence of mental illness, it was clear that the case was but a means to punish her for independent commentary and that the outcome was predetermined. Ms. Tabyldieva has been critical

¹⁹³ European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12 (Nov. 15, 2018), ¶¶ 174-176.

¹⁹⁴ *Id.*, ¶¶ 167-176 (noting another indicator of abuse is targeting of the defendant amongst similarly situated individuals).

¹⁹⁵ *Freedom in the World 2024: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2024>.

¹⁹⁶ Éva Szeli & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Aigul Utepova* (Apr. 2022), <https://cfj.org/wp-content/uploads/2023/07/EN-Aigul-Utepova-Fairness-Report-April-2022.pdf>.

of the authorities, and is a journalist and a human rights defender: her prosecution thus aligns with documented patterns of harassment of dissenting voices.

The case against Ms. Tabyldieva also coincided with a larger crackdown on journalists in Kazakhstan. In April 2023, the Open Observatory of Network Interference accused Astana of “*throttling*” the website of Azattyq, the Kazakh service of Radio Free Europe/Radio Liberty (RFE/RL).¹⁹⁷ In 2023 new legislation introduced administrative fines for the dissemination of purportedly “false news.”¹⁹⁸ Reporters Without Borders (“RSF”) criticized the legislation as draconian, and as having the aim of “*censoring and intimidating dissenting voices*.”¹⁹⁹ In the same year, a new law on online platforms entered into force, requiring owners of online platforms operating in Kazakhstan to cooperate with the authorities on preventing the spread of ‘false information.’²⁰⁰ In 2024 a law on mass media was enacted, requiring online publications to be registered with an authorized state body, and have a physical presence in Kazakhstan. The law also allows for “mass media monitoring,” which Human Rights Watch has criticized as surveillance to ensure adherence with national laws and “national, cultural and family values” (which are not defined under the law).²⁰¹

Specific Timing of the Criminal Case against Ms. Tabyldieva

Second, the timing of the case against Ms. Tabyldieva was suspicious, with the prosecutor initially terminating it based on lack of evidence and then subsequently re-

¹⁹⁷ *Throttling of news media amid Kazakhstan’s 2022 presidential election*, OPEN OBSERVATORY OF NETWORK INTERFERENCE, (Apr. 28, 2023), <https://ooni.org/post/2023-throttling-kz-elections/>.

¹⁹⁸ International Partnership for Human Rights, *Kazakhstan: Crackdown on the opposition, fight against “false” information and publication of “foreign agent” list*, (Dec. 21, 2023), <https://iphronline.org/articles/kazakhstan-crackdown-on-the-opposition-fight-against-false-information-and-publication-of-foreign-agent-list/>.

¹⁹⁹ *Kazakhstan urged to rescind draconian new ‘fake news’ law*, REPORTERS WITHOUT BORDERS (Aug. 9, 2023), <https://rsf.org/en/kazakhstan-urged-rescind-draconian-new-fake-news-law>.

²⁰⁰ International Partnership for Human Rights, *Kazakhstan: Crackdown on the opposition, fight against “false” information and publication of “foreign agent” list*, (Dec. 21, 2023), <https://iphronline.org/articles/kazakhstan-crackdown-on-the-opposition-fight-against-false-information-and-publication-of-foreign-agent-list/>.

²⁰¹ Human Rights Watch, *New Mass Media Law Threatens Freedom of Speech, Information in Kazakhstan* (June 22, 2024), <https://www.hrw.org/news/2024/06/22/new-mass-media-law-threatens-freedom-speech-information-kazakhstan>.

opening it after Ms. Tabyldieva continued to post critical comments about Kazakhstan on social media, only a few months after the re-election of President Tokayev.²⁰²

Ms. Tabyldieva's case had been terminated in December 2022, after it was found that, in posting her 12-minute video criticizing the president, she lacked the intent to disseminate false information. Only two months later, however, the case against her was re-opened, citing in part the same facts and the same charges that had previously been found unwarranted, and adding new charges based on her continued political speech criticizing the government and authorities in November 2022, February 2023, and April 2023—without any explanation for the claim that the initial investigation had been incomplete.²⁰³

Ms. Tabyldieva was not notified of the Resolution to Reopen Investigation and reportedly remained unaware of the revived case until July 2023, when an investigator called her demanding she attend an interview at a police station. The timing of these charges indicates a clear attempt by the Kazakh authorities to intimidate Ms. Tabyldieva so that her comments criticizing the government would no longer be disseminated, bringing up the threat of charges whenever she continued to express such criticisms.

Flawed Conduct by the Presiding Judge

Third, as documented throughout this report, the judge presiding over Ms. Tabyldieva's case conducted the proceedings in a deeply flawed manner. This included his repeated interference with defense questioning of prosecution witnesses, his seeming attempts to intimidate Ms. Tabyldieva and pressure her to plead guilty, his seeming attempts to intimidate the defense expert, and his convicting judgment, which dismissed all defense arguments and evidence and resolved all uncertainties and contradictions in the prosecution's favor.

Such apparent lack of impartiality in a case brought against a government critic further reflects widespread reports of the Kazakhstan judiciary's lack of independence in political trials.²⁰⁴ In effect, the government shoehorns political dissent into a violation of a "fake news" law to suppress protected speech—this is an illegitimate objective under the ICCPR.

²⁰² *Kazakh President Tokayev wins re-election with 81.3% of vote*, REUTERS (Nov. 21, 2022), <https://www.reuters.com/world/asia-pacific/tokayev-wins-kazakh-presidential-election-with-813-vote-2022-11-21/>.

²⁰³ Resolution to Reopen Investigation (Feb. 1 2023).

²⁰⁴ U.S. State Department, *2022 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/kazakhstan/>.

Serious Inconsistencies and Gaps in the Prosecution's Case

Fourth, as described in this report, key parts of the prosecution's evidence were developed under concerning circumstances. A particular example is the testimony of the three "victims," discussed above—their apparent recruitment and coaching by the prosecution and signing of suspiciously similar statements.²⁰⁵

In light of the above, there are sufficient grounds to conclude that the proceedings against Ms. Tabyldieva were an abuse of process under international human rights law and were intended to intimidate and punish Ms. Tabyldieva for her legitimate expression of political speech and criticism of the government authorities.

²⁰⁵ Monitor Notes (Nov. 10, 2023); Monitor Notes (Oct. 19, 2023).

CONCLUSION AND GRADE



Article 19 of the ICCPR, to which Kazakhstan is a party, guarantees protection of an individual's right to freedom of expression, which includes holding, receiving and imparting all forms of opinions, ideas and information. This is not limited to correct opinions, sound ideas or truthful information. As stated by the European Court in the *Lingens* case, "*freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. It is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broad-mindedness without which there is no 'democratic society.'*"²⁰⁶

The Kazah court's actions contravene international human rights standards pertaining to freedom of expression and fair trial. It is trite that in a democratic society, those who hold office in government must always be open to criticism. Any attempt to stifle such criticism amounts to political censorship.

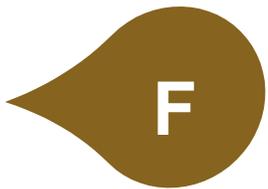
Ms. Tabyldieva's prosecution is a clear example of abuse of process. Expert Opinion No. 695, commissioned immediately after the criminal investigation against Ms. Tabyldieva in October 2022, plays a pivotal role in shaping the understanding of this case. In December 2022, the legal proceedings against Ms Tabyldieva were officially terminated, due to lack of corroborating evidence. The experts concluded that the disseminated information, despite its widespread distribution, did not possess the inherent capacity to negatively influence public sentiment or significantly sway public opinion and that Ms. Tabyldieva did not act with a purposeful or malicious intent to circulate false information. However, the reinstatement of the case suggests an improper, politically motivated attempt to suppress dissent.

For a fair trial, offenses must be clear. The charges against Ms. Tabyldieva are vaguely defined under Articles 274 and 378 of the Criminal Code, violating international freedom of expression principles under Article 19 of the ICCPR. The trial and judgment further violated Ms. Tabyldieva's right to be presumed innocent (Article 14 of the ICCPR). The judge's failure to examine her posts' veracity effectively presumed guilt. The judge appeared biased, intimidating Ms. Tabyldieva, seeking to force a guilty plea, interfering with the defense, accusing a defense expert of disloyalty to the president, and issuing a harsh sentence. A five-year 'speech ban', denying her the right to engage in "social and

²⁰⁶ European Court of Human Rights, *Lingens v. Austria*, App. No.9815/82, July 8, 1986, ¶ 41.

political activities, as well as journalistic activities on social networks,” under fake news and insult laws exemplifies a wider trend of free speech suppression in Kazakhstan. It is for these reasons that this case has been graded “F”.

GRADE:



F