

INTERNATIONAL POLICE FORCE OR TOOL FOR HARASSMENT OF HUMAN RIGHTS DEFENDERS AND POLITICAL ADVERSARIES: INTERPOL'S RIFT WITH THE HUMAN RIGHTS COMMUNITY

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I. INTERPOL MISUSE—A CASE STUDY: KAZAKHSTAN

A. *De jure*

The limits imposed on member states are explicitly set forth in Article III of the ICPO-Interpol Constitution and General Regulations. Thus, it is strictly forbidden for the organization to undertake any intervention or activities of a political, military, religious, or racial character. According to the interpretation given to Article III, a political offense is one that is considered to be of a predominantly political nature because of the surrounding circumstances and underlying motives, even if the offense itself is covered by ordinary criminal law in the country in which it is committed. This interpretation, based on the *predominant* aspects of the offense, was first mentioned in a resolution adopted by the Interpol General Assembly in 1951. A resolution adopted in 1984 states that, in

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general, offenses are not considered to be political when they are committed outside a "conflict area," and when the victims are not connected with the aims or objectives pursued by the offenders.

B. De facto

The principles seem sound, but how do they work in reality? What if a member state abuses Article III and seeks to use the organization in pursuit of its own authoritarian objectives? What if that member state repeatedly invokes Interpol's apparatus but fails to carry forward its obligation to obtain extradition of the detainee? That is precisely the case that we describe here in relation to the actions of the repressive Nazarbayev regime in Kazakhstan during 1999 and 2000, as it sought to interfere and disrupt the political opposition and criminalize the activities of the leading opposition figure, former Prime Minister Akezhan Kazhegeldin.

II. BACKGROUND

In early October 1998, Kazhegeldin participated in an organizational meeting of the "Movement for Free Elections" in anticipation of presidential elections to be scheduled in Kazakhstan. Kazhegeldin had emerged as the most viable opposition candidate to challenge incumbent president Nazarbayev, the holdover president from the Soviet era.

Kazhegeldin was charged with an administrative violation for participation in the activities of an "unregistered organization." He was convicted while away from the country, *i.e.*, *in absentia*, and subsequently "disqualified" as a result of that conviction from becoming a candidate for the office of president. Prior to his "disqualification," but in an effort to discredit and intimidate him, Kazhegeldin was accused of income tax evasion, abuse of office (bribe taking), illegal ownership of property outside of the country (specifically real estate in Belgium), and other economic crimes. Each accusation was rebutted and disproved by Kazhegeldin with specific evidence, and at considerable expense. The international community, including OSCE, the United States Department of State, and numerous human rights organizations, uniformly criticized the eventual "reelection" of President Nazarbayev.

Following the elections, Kazhegeldin continued his efforts to reform the political and economic conditions in Kazakhstan by supporting efforts to create an independent media, establishing an opposition political party (Republican Peoples Party of Kazakhstan "RPPK"), and criticizing the Nazarbayev regime outside of the country before various governmental forums.

III. DETENTION IN MOSCOW—SEPTEMBER 1999

In May 1999, Kazhegeldin testified before the United States Congress concerning conditions in Kazakhstan and was particularly critical of the Nazarbayev regime. Shortly after his hearing before Congress, the Kazakh authorities “reopened” the “tax investigation” that had been previously closed upon a determination that all taxes had been paid and no criminal activity had occurred in connection with the payments.

In early summer 1999, the Kazakhstan Security Police (“KNB”), the successor to the KGB, requested Interpol to issue a Red Alert for the arrest and extradition of Kazhegeldin. The purported reasons for his detainment were the 1997 tax charge against Kazhegeldin and the allegations of misconduct with respect to property he allegedly owned in Belgium.¹

While traveling to Russia to meet with political activists and members of the RPPK who were organizing for Parliamentary Elections in Kazakhstan, Kazhegeldin was temporarily detained by Russian police authorities on the basis of the Interpol Red Alert. When the General Prosecutor of Kazakhstan was unable to provide sufficient evidence to support an arrest or extradition, Kazhegeldin was released. According to the contemporaneous press accounts, the Russian General Prosecutors Office studied the charges brought against Kazhegeldin and came to the conclusion that the detention was not substantiated. By this action, however, he was prevented from meeting with his political supporters and from exercising rights guaranteed to him under the United Nations Universal Declaration on Human Rights.

IV. DETENTION IN ROME—JULY 2000

Again, in July 2000, while he traveling to Rome to pursue political activities directed at advancing democracy and a free press in Kazakhstan, Kazhegeldin was detained by Italian authorities on the basis of an Interpol

1. These are the same allegations that first arose during Kazhegeldin's effort to run for president in 1998. In May 1999, Professor A. I. Khudyakov, a leading authority on Kazakh Tax Law, who was directly involved in drafting the law, rendered an unqualified legal opinion that “the criminal proceedings [against Kazhegeldin] were initiated without sufficient grounds.” All of the relevant facts concerning the handling of Kazhegeldin's receipt of income and payment of his taxes, albeit late, of his taxes made clear that the requisite intent to avoid payment was absent. Indeed, on October 16, 1998, the Almaty Tax Committee confirmed that Kazhegeldin had not engaged in any criminal activity with respect to the payment of his taxes. Likewise, the persistent allegations concerning the ownership of property in Belgium were repeatedly disproved, first by submission of certified land records showing the absence of any ownership of property by Kazhegeldin and, ultimately, by securing a Court decision in the Dutch Court establishing that Kazhegeldin never owned the property or corporation that the Kazakh authorities alleged he did. Ironically, Nazarbayev's close political advisor and business partner owned the property in Belgium.

alert issued at the request of Kazakhstan KNB. The request was based on the same previously rejected allegations and a “new,” equally frivolous, allegation that Kazhegeldin was engaged in “terrorism.” Again, the Kazakhstan General Prosecutor was not able to justify the arrest and extradition of Kazhegeldin. The Justice Ministry announced that the Rome Appeals Court had ordered Kazhegeldin’s release from preventative detention after concluding that there were no grounds to detain him.

V. AN UNCONSTITUTIONAL AND INTERNATIONALLY REPUGNANT TRIAL *IN ABSENTIA*

In March 2001, Nazarbayev signed a most pernicious law permitting the trial and conviction of Kazakh citizens “*in absentia*.” This new law is regionally known as the “Kazhegeldin Amendments” and has been employed to obtain a conviction “*in absentia*” of former Prime Minister Kazhegeldin of the very same charges that have been leveled against him since 1998 when he challenged Nazarbayev for the presidency.² The conviction was assailed as particularly unfair by the OSCE whose representatives in Kazakhstan personally observed the “trial.” The conviction was also the subject of a formal demarch issued by the United States Department of State. The Nazarbayev regime, yet again, has used this false “conviction” as the basis for requesting that Interpol use its apparatus to detain Kazhegeldin as an enemy of the state. The obvious objective of the request is to stifle dissent and to interfere with the political rights of the Kazakhstan opposition.

VI. A SOLUTION

The adage that “every dog is entitled to one bite” seems apt. Here, the authoritarian Nazarbayev regime has now demonstrably had “two” bites. No matter how vicious or rabid its attempts have proven to be, on both occasions it has been unprepared to present justification or credible basis for the obvious interference with protected political activities of the opposition within the country. Having twice acted in direct contravention of Article III’s prohibitions against use of the organization to interfere with “predominantly political” activities, Kazakhstan police authorities should

2. Recognizing that it had on at least two prior occasions failed to convince a legitimate and objective “trier of fact” (e.g., Russian and Italian authorities, among others) that the charges were justified or credible, the Nazarbayev regime now tried Kazhegeldin not for taking bribes, but rather for soliciting them. Of course, those who testified against him and claimed to have made the bribes were close supporters of the regime, in fear of the own status in the country, or persons with motives to fabricate the charges. The court sitting in judgment of Kazhegeldin was comprised of a single Supreme Court judge who had been personally appointed by Nazarbayev and was related to him. His judgment is not appealable.

not be permitted to use the organization's apparatus. Kazakhstan should first establish, in a competent and credible forum, that the request is not a further violation of Interpol's constitution and regulations. In these circumstances Interpol, or some judicial authority outside of the member state, should make an initial determination that the request is legitimate. The burden should then shift to the member state seeking use of the organizations apparatus to explain, justify, and establish credible basis for a detention.