

Report on the results
of the visit of the international

HUMAN RIGHTS MONITORING MISSION TO KAZAKHSTAN

in the period between 14-17 April 2018

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1. EXECUTIVE SUMMARY

A human rights monitoring mission (the mission) took place in Kazakhstan from 14 to 17 April 2018. The mission, whose members were Marcin Świącicki, member of the Polish Sejm, and Antonio Stango, President of the Italian Federation for Human Rights, visited Kazakhstan at the request of Kazakhstani human rights organisations. The purpose of this visit was to monitor how Kazakhstan is fulfilling its obligations pursuant to international human rights treaties.

With the cooperation of the Foreign Ministry of Kazakhstan, the mission met with a deputy minister of the Ministry of Internal Affairs and a deputy prosecutor general, as well as with other representatives of law-enforcement bodies. In addition, the mission met with civil society representatives: human rights defenders, civil activists, lawyers, and relatives of detainees. The government made possible a visit to a detention centre in Almaty in order to meet three detainees.

The government denied the mission to visit the penal colony where Mukhtar Dzhakishev is held. Therefore, the mission did not succeed to obtain first-hand information whether the human rights of Mr. Dzhakishev – who is suffering from life-threatening diseases – are respected.

During the meetings with the state officials, special attention was drawn to the issue of the lack of efficiency, independence and transparency in the National Preventive Mechanism, as well as the need to reduce its dependence on the state so as to bring the situation up to international standards. The mission recommends that the government bodies investigate torture complaints more thoroughly in order for complainants to be able to bring such complaints before courts.

Meeting with civil society representatives brought new insights into the accusatory tendency of Kazakhstani judicial and law-enforcement bodies. Moreover, it was pointed out that insufficiently clear definitions of terms in some articles of the Criminal Code of Kazakhstan (for instance, such terms as “*extremism*” and “*incitement of social discord*”) give room for abuse of different kinds; for example, it facilitates violations of the right to freedom of opinion and the right to freedom of association.

The mission examined the situation of those people whose prosecution is, according to human rights defenders, politically motivated. The mission members met with detainees Iskander Yerimbetov, Almat Zhumagulov and Kenzhebek Abishev in the detention facility in Almaty. The meetings with the detainees took place in the presence of government representatives.

There are reasons to believe that businessman Iskander Yerimbetov was tortured during his detention in order to make him “cooperate with the investigators”. According to his testimony, the investigators and those who tortured him let him know that he might be released if only his sister who has refugee status in Belgium returns to Kazakhstan and provides testimony against exiled regime opponent Mukhtar Ablyazov. As a result of beatings, psychological pressure and harsh detention conditions, Mr. Yerimbetov’s health has deteriorated: he was badly beaten, he believes that one of his ribs was broken, he sustained head injuries, for several months he has suffered from bronchitis, he has developed a hand tremor and his eyesight has worsened. Moreover, he has been having a constant low-grade fever for over three months.

The law-enforcement bodies closed a criminal case on the use of torture against Mr. Yerimbetov, despite the conclusions of independent human rights defenders that had confirmed the fact of torture. Mission member Marcin Świącicki expressed his willingness to provide a personal guarantee for Mr. Yerimbetov to be released. The mission recommends that the government change Mr. Yerimbetov’s measure of restraint and resume the investigation of the case on the use of torture.

Opposition activist Almat Zhumagulov and poet Kenzhebek Abishev pointed out that charges against them bear traces of a setup. They called attention to the fact that they were exerting their legal right to freedom of expression. Messrs. Zhumagulov and Abishev were presented in state-friendly mass media as if they have been proved guilty.

Lawyers and human rights defenders have reported threats to and ill-treatment of the detainees. Mr. Yerimbetov was intentionally put in a cell with previously convicted persons which is categorically prohibited by law. Mr. Abishev's health condition is poor. All detainees have already spent over half a year under arrest. Taking into account the above, as well as considering the fact that the detainees have minor children, the mission recommends that the government change their measures of restraint to methods not requiring detention.

Pre-trial detention is the most severe form of a guarantee that a suspect remains available for investigation and trial, but should not be used as a rule (article 9.3 of the International Covenant on Civil and Political Rights - ICCPR). Other pre-trial restrictive measures such as home arrest, bail, obligation to report to police, and/or personal guarantee should be applied. Restriction on freedom applied during pre-trial investigation should be as minimal as possible until a final court sentence.

Ardak Ashim, Kazakhstani opposition activist and popular blogger from the city of Shymkent, fell victim to prosecution which Kazakhstani human right defenders characterise as "punitive psychiatry". The grounds for criminal charges against her were her Facebook publications criticising the government of Kazakhstan. The mission has serious reasons to believe that the decision for forced placement in a mental hospital was based on a falsified medical certificate: the history of psychiatric disease of her late sister was used as Ms. Ashim's to forge her medical certificate. We hereby welcome the fact that two and a half weeks after the mission had left Kazakhstan, the authorities released Ms Ashim from a mental hospital. Currently, Ms Ashim is under the guardianship of her relatives. The criminal prosecution against her continues.

Former head of the company Kazatomprom, Mukhtar Dzhakishev, has been imprisoned since 2009. In 2015, having considered Mr. Dzhakishev's complaint, the UN Human Rights Committee acknowledged that Kazakhstan had violated a number of articles of the ICCPR in its criminal prosecution of Mr. Dzhakishev. The UN Committee called for Mr. Dzhakishev to be released. The mission members call on Kazakhstan to implement the decision of the UN Committee.

Freeing Mr. Dzhakishev is all the more important because he is suffering from several life-threatening diseases and needs urgent qualified medical assistance. His lawyers claim that there are no facilities available in Kazakhstan to provide him with appropriate medical assistance. The government did not allow the mission to visit Mr. Dzhakishev in detention.

2. THE MONITORING MISSION: ORGANISATIONAL ISSUES

The human rights monitoring mission dated 14-17 April, 2018, took place at the invitation of Yevgeniy Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, and Bakhytzhan Toregozhina, Head of the Kazakhstani human rights organisation "Ar-Rukh-Hak". On 9 March 2018, these two organisations sent the monitors a letter in which they described the human rights situation in Kazakhstan and asked them to schedule an observation visit to Kazakhstan.

Additionally, the letter requested to assess the situation of people whose prosecution is, according to the human rights defenders, politically motivated; in particular, Mukhtar Dzhakishev,¹ Iskander Yerimbetov,² Almat Zhumagulov³ and Kenzhebek Abishev.⁴ Facts pointing to their health and life being

¹ The Norwegian Helsinki Committee – Letter: Grant pardon to critically ill political prisoner, 15 March 2018 – http://nhc.no/en/countries/asia/kazakhstan/Letter%3A+Grant+pardon+to+critically+ill+political+prisoner.b7C_wHUSI.ips

² Human Rights Watch – Kazakhstan: Businessman Alleges Torture, 15 February 2018 – <https://www.hrw.org/news/2018/02/16/kazakhstan-businessman-alleges-torture>

³ PACE written declaration № 655 - Kazakhstan must respect the freedom of speech, the freedom of peaceful assembly, and stop blocking social media sites, 25 April 2018 – <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24722&Lang=EN>

in danger have repeatedly been publicised. Moreover, not long before the monitoring visit, yet another case had been made public – the persecution of Ardak Ashim,⁵ involving the “punitive psychiatry” methods described below. This is why the mission paid attention to this case as well.

The monitors express their gratitude to the Kazakhstan International Bureau for Human Rights and Rule of Law and to the NGO "Ar-Rukh-Hak" for helping the mission solve organisational and logistical issues, and to the Italian Federation for Human Rights, which covered the mission-related expenses.

The visit was preceded by communication with the Kazakhstani authorities. On 29 March 2018 and 5 April 2018, Marcin Świącicki filed requests to meet with representatives of the Foreign Ministry and the law-enforcement bodies of Kazakhstan, as well as with pre-trial detainees Iskander Yerimbetov, Almat Zhumagulov, Kenzhebek Abishev and prisoner Mukhtar Dzhakishev. On 10 April 2018, the Embassy of Kazakhstan in Poland informed Marcin Świącicki about agreement for meetings with Messrs. Yerimbetov, Zhumagulov and Abishev, who are held in a detention facility in Almaty. As for the meeting with Mr. Dzhakishev, imprisoned in the Karaganda region, the Kazakhstani authorities denied the mission this visit.

The mission appreciates good cooperation with the Kazakhstani authorities: the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Prosecutor General’s Office, the Embassy of Kazakhstan in Warsaw and others who were available for the question and answers session, who made the visit to the detention centre and meetings with the detainees possible – with the above-mentioned exception.

Observation missions of this kind are common practice because they have to do with how states fulfil their obligations under international human rights agreements. Kazakhstan ratified the International Covenant on Civil and Political Rights, the UN Convention against Torture and its Optional Protocol. Moreover, as an OSCE member, Kazakhstan assumed human dimension commitments.

The mission’s visit was aimed, among other things, at monitoring whether Kazakhstan is adhering to the standards of fair investigation and justice, and whether it respects the right to protection from torture, the right to appropriate detention conditions, the right to freedom of opinion and freedom of association, and whether and how the state makes sure that the rights of arrestees and prisoners are respected.

3. MEETINGS WITH REPRESENTATIVES OF THE AUTHORITIES

On 16 April 2018, in Almaty, the mission members met with Deputy Minister of Internal Affairs Rashid Dzhakupov, Deputy Foreign Minister Roman Vasilenko, Deputy Prosecutor General Yerlik Kenenbayev and Head of the Investigation Department of the National Anti-Corruption Bureau of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption (Anti-Corruption Service) Sergey Perov. That meeting was also attended by other representatives of the authorities – in particular, Deputy Head of the Almaty Department of Internal Affairs Kaziz Nurkayev, and MPs Saule Aytpayeva and Tuleubek Mukashev. On 17 April 2018, an additional meeting with Deputy Minister of Internal Affairs Rashid Dzhakupov was held.

The officials presented information about the following issues: judicial reforms, reducing the number of prisoners in the country, the system of checking and investigating reports about use of torture in places of detention, modernising medical units in places of detention and the use of plea bargaining.

Issues concerning the freedom of peaceful assembly were also touched upon. Among other things, the representatives of law-enforcement bodies pointed out that the prohibition of rallies is within the

⁴ Statement of Kenzhebek Abishev, 30 April 2018 – <https://www.facebook.com/gulnara.ju/posts/1404911942988327>

⁵ Reporters Without Borders – Kazakhstan escalates harassment of media, confines blogger to clinic, 4 April 2018 – <https://rsf.org/en/news/kazakhstan-escalates-harassment-media-confines-blogger-clinic>

competence of local authorities. According to official statistics, over a period of three months of 2018, 12 requests to hold a rally were filed, of which three were withdrawn, eight were rejected and one was approved. Other issues discussed at the meetings concerned respect for the rights of the detainees Yerimbetov, Zhumagulov and Abishev, involuntary psychiatric patient Ashim, and prisoner Dzhakishev.

4. MEETINGS WITH CIVIL SOCIETY REPRESENTATIVES

On 14 April 2018, the mission met with human rights defenders Yevgeniy Zhovtis and Bakhytzhana Toregozhina, with Mr. Dzhakishev's lawyer Nurlan Beysekeyev, and with the former political prisoner Vladimir Kozlov, who now promotes the rights of other prisoners.

On 15 April 2018, the mission members met with: Mr. Abishev's lawyer Gulnara Zhuaspayeva; the lawyer for Messrs. Zhumagulov and Yerimbetov, Zhanar Balgabayeva; Iskander Yerimbetov's family – his mother Gaini Yerimbetova, his father Myrzakhan Yerimbetov and his wife Madina Yerimbetova (they are also members of Yerimbetov's defence counsel team under Article 66 of the Criminal Procedure Code of Kazakhstan); Ardak Ashim's daughter Aynura Ashim; and civil activists Dilnara Insanova and Suyundyk Aldybergenov, who have been persecuted for participating in peaceful assemblies.

One of the issues the mission discussed with the civil society representatives was enhancing the effectiveness of the National Preventive Mechanism (NPM), which lacks independence and whose effectiveness should be enhanced. According to the participants in the discussion, the NPM is controlled by the Ombudsman who is appointed by the President of Kazakhstan and depends on the government.

Human rights defender Yevgeniy Zhovtis presented the statistics according to which Kazakhstani courts order that suspects be placed under arrest in 90% of cases. In fewer than 1% of cases the courts rule to acquit the defendant. Ninety-nine percent of those placed under arrest are subsequently sentenced to imprisonment, the verdicts often being based on the defendant's "confession".

These facts may indicate that there is a certain collusion between the law-enforcement bodies, the National Security Committee (KNB) and the judiciary. As a result, the equality of parties is not ensured in criminal proceedings. Moreover, the participants in the meetings pointed out that the terms "extremism" and "incitement of social discord" are not sufficiently defined in the Criminal Code, which leads to state abuse.

The representatives of civil society were particularly concerned about the systematic violations of the right to peaceful assembly in Kazakhstan. The authorities refuse to authorise rallies; participants in unauthorised rallies are detained, arrested, fined, prosecuted and threatened.

Moreover, in March 2018 a Kazakhstani court banned the opposition civic movement Democratic Choice of Kazakhstan as an "extremist" organisation. This decision has led to criminal liability and possible long-term imprisonment for those who support Democratic Choice of Kazakhstan (the "support" may take various forms including social media publications, reposts, "likes" and comments online).

Former political prisoner Vladimir Kozlov informed the mission that after being released from prison he was included on the discriminatory list of "organisations and people involved in financing terrorism and extremism". As a result, serious restrictions were imposed on him in connection with his movement, employment, access to banking services, documentation, etc.

With the civil activists, the mission also discussed violations of the human rights of prisoner Mukhtar Dzhakishiev,⁶ detainees Iskander Yerimbetov,⁷ Kenzhebek Abishev and Almat Zhumagulov and involuntary psychiatric patient Ardak Ashim.

5. MEETINGS WITH PEOPLE BEING HELD IN PLACES OF DETENTION

On 16 April 2018, the mission met with the detainees Iskander Yerimbetov, Almat Zhumagulov and Kenzhebek Abishev in the building of Almaty detention facility LA-155/1, in the presence of representatives of the authorities. The detainees had an opportunity to speak out and answer questions. However, Kenzhebek Abishev was given the least time to speak, and the law-enforcement officers repeatedly interrupted him. The mission was also allowed to have a separate 10-minute talk with Mr. Yerimbetov in the presence of KNB Colonel Turimbetov.

The mission expresses its disappointment at the fact that the authorities denied the mission a visit to the penal colony in Karaganda region where Mukhtar Dzhakishiev is detained. Due to this, the mission failed to verify the alarming reports about his health and to see whether his rights are being respected.

5.1. THE CASE OF ISKANDER YERIMBETOV

Iskander Yerimbetov is a well-known Kazakhstani businessman, certified pilot, founder of a successful light aviation company and shareholder of the Karaganda confectionery factory. On 13 November 2017, Mr. Yerimbetov was arrested in Almaty. On 15 November 2017 he was ordered detained for two months. On 9 January 2018 and on 13 March 2018, his detention was extended by two months. Mr. Yerimbetov's lawyer filed complaints against all the decisions to extend the detention, but all the complaints were rejected. The mission wishes to express its deep regret that on 5 May 2018, the Medeuskiy District Court of Almaty extended the arrest with regard to Mr. Yerimbetov until 13 June 2018.

Mr. Yerimbetov is suspected of "legalization (laundering) of money and (or) other property obtained in a criminal way" (Article 193 of the 1997 Criminal Code of Kazakhstan) and "fraud" (Article 177 of the 1997 Criminal Code and Article 190 of the 2014 Criminal Code of Kazakhstan). His case is connected to the case of exiled Kazakhstani regime opponent Mukhtar Ablyazov.⁸ On 9 December 2016, the French Council of State refused to extradite Mr Ablyazov and recognised this case as political. INTERPOL removed the name of Mukhtar Ablyazov from the wanted list in connection with the political overtones of the criminal charges. Mr. Yerimbetov's sister, Botagoz Jardemalie was Mr. Ablyazov's lawyer (Ms. Jardemalie has been granted political asylum in Belgium).

The body conducting the investigation of Mr. Yerimbetov's case is the interagency operative-investigative group that includes representatives from the department of investigations of the Anti-Corruption Service, the department of investigations of the Ministry of Internal Affairs, the department of investigations of the KNB, and the Committee of State Revenues of the Ministry of Finance of the Republic of Kazakhstan. However, according to the defence team, in fact the KNB controls the work of the interagency operative-investigative group and the detention conditions of Mr. Yerimbetov.

⁶ Letter of the Members of the European Parliament Brando Benifei, Mady Delvaux, Ana Gomes, Tunne Kelam, Urmas Paet, Pier Antonio Panzeri, Lola Sanchez Caldentey, Helmut Scholz, Igor Soltes, Barbara Spinelli, Bart Staes, Hilde Vautmans, Julie Ward to the President of the Republic of Kazakhstan, 19 October 2017 – http://en.odfoundation.eu/i/fmfiles/pdf/27-11-2017-meps-letter-on-tokmadi-and-dzakishiev-eng_1.pdf

⁷ Freedom House – Kazakhstan Holds Citizens Hostage in Pursuit of Regime Opponent, 12 March 2018 – <https://freedomhouse.org/blog/kazakhstan-holds-citizens-hostage-pursuit-regime-opponent>

⁸ Letter of the Chair of the General Committee on Democracy, Human Rights and Humanitarian Questions of the PA OSCE Ignacio Sanchez Amor to President of the Republic of Kazakhstan Nursultan Nazarbayev, 23 February 2018 – <http://odfoundation.eu/i/fmfiles/pdf/23-02-2018-sanchez-osce-pa-vienna-yerimbetov-dzhakishiev-signed.pdf>

Mr. Yerimbetov's family stated that KNB officers interrogated him several times in the detention facility without his lawyer present, demanding that he convince his sister to return to Kazakhstan and falsely testify against Mr. Ablyazov for the benefit of the prosecution.

Together with Mr. Yerimbetov, three of his employees were arrested as well. At the meeting of officials with the mission, Mr. Yerimbetov's case was presented by Sergey Perov, head of the investigations department of the Anti-Corruption Service and as well as head of the interagency operative-investigative group. According to Mr. Perov, Mr. Yerimbetov's employees (who are also facing the same criminal allegations) started testifying against Mr. Yerimbetov. They have "confessed" to the crimes, and the prosecutor's office initiated their transfer to house arrest (on 4 May 2018, the court granted the petition of the prosecutor's office).

During the meeting at the detention facility, Mr. Yerimbetov gave a detailed description of the ill-treatment and torture that he has been subjected to. According to Mr. Yerimbetov, he was tortured in December 2017 and the first half of January 2018. On many occasions he was interrogated by KNB officers in the absence of his lawyer. Attempts were made to compel him to confess to laundering money for Mr. Ablyazov. The interrogators wanted him to convince his sister, who lives in Belgium, to return to Kazakhstan and testify against Mr. Ablyazov. Mr. Yerimbetov denied any contacts or business cooperation with Mr. Ablyazov or his bank. According to Mr. Yerimbetov, an investigator showed to him a photo of Mr. Ablyazov taken at the wedding of Mr. Yerimbetov's sister in 2006; this was one of the "proofs" of cooperation between Messrs. Yerimbetov and Ablyazov.

In March 2018, when Mr. Yerimbetov, despite torture and threats, refused to testify against himself, his sister and Mr. Ablyazov and to pressure his sister to return to Kazakhstan, the investigators issued fraud allegations against him, specifically that his aviation company sold its services "above the justified price". He also denies these new allegations.

According to Mr. Yerimbetov, KNB officers demanded that Mr. Yerimbetov confess to laundering money for Mr. Ablyazov and thus falsely incriminate himself. They threatened that otherwise Mr. Yerimbetov would be sentenced to 5-10 years of strict regime prison. He was also threatened to be put in a "harem cell" or a cell with terrorists if he would not collaborate with the investigation. Mr. Yerimbetov was locked in punitive confinement for 7 days for being in possession of nail clippers.

Mr. Yerimbetov was also placed in a cell with previously convicted persons. According to Mr. Yerimbetov, his cellmates there beat him with a wooden stick wrapped in a towel, strangled him with shoelaces, threatened to rape him with a broomstick and to inject him with a syringe of HIV-infected blood. Mr. Yerimbetov believes that his cellmates were acting on instructions from the authorities.

Gaini and Myrzakhan Yerimbetov also spoke publicly about torture being used against their son. According to the parents, the first time they were allowed to see their son after his arrest was for 2-3 minutes on 7 December 2017, almost one month after he had been detained. That meeting was in the presence of Mr. Perov. According to Gaini Yerimbetova, her son's face was swollen, he was uncharacteristically subdued and scared, and his head was shaven.

A particularly cruel beating took place on 10 January 2018, after Mr. Yerimbetov's parents held a press conference to speak publicly about torture and other violations that had taken place during the criminal proceedings against their son. The next day, Gaini Yerimbetova visited her son in the detention facility. According to her, he had been beaten as revenge for the press conference: there were haematomas on his face, arms, hands, fingers and legs, his arms were swollen, and he could hardly walk. Mr. Yerimbetov was extremely scared and he refused to tell his mother what happened to him, saying only that he had a "fall from the bunk bed" and that "no more press conferences" should be held.

During the mission meeting, in the presence of government officials, Mr. Yerimbetov explained why he had said to his mother that he had fallen from the bunk bed. The convicts that brutally beat him after the press conference told him that they would kill him if he tells anyone once again about the beating and torture. He told the mission in detail how he was beaten. The four convicts were beating him. Two were holding him by the hands; one beat him with fists on his face, stomach, groin and head. One of them took a metal bowl with two hands and was beating him on the head until the bowl collapsed and bent. The beatings continued around 2 hours. They broke his 7th rib on the left side with a strong punch with a fist. Mr. Yerimbetov was ordered to “deliver” 400 thousand dollars to them. They threatened that if he does not deliver the money in the course of 3 days then they would break some bone and are going to break it every time as soon as it starts to heal.

However, on 11 January 2018, Yerimbetov’s mother made public on her Facebook page the fact that her son was severely beaten after the parents’ press conference. It caused public outrage on Facebook.

Because of the public reaction, the administration of the detention center sent the in-house doctors to examine Mr. Yerimbetov. He was taken to a cell across the corridor where there were three doctors. However, the convicts who had broken his rib were allowed to stand in the doorways and listen to what Mr. Yerimbetov was saying to the doctors. So, Mr. Yerimbetov said that he “fell from the bunk bed” and that bedbugs had bitten up his head.

On 13 January 2018, Mr. Yerimbetov’s parents and lawyer were summoned by Investigator Valiyev for investigative actions. However, no such actions were conducted, because Mr. Yerimbetov was suffering severe pains in the head, as well as in the left rib. At some point, the investigator had to call ambulance. He removed Mr. Yerimbetov’s parents and lawyer from the room as medical aid was being administered. When they subsequently spoke with Mr. Yerimbetov, he complained that Mr. Valiyev had filmed parts of the medical examination on his smartphone, including images of the medical personnel’s injection of a syringe into Mr. Yerimbetov’s buttock.

According to Mr. Yerimbetov, the beatings only stopped after the attention of human right defenders and the international community were drawn to his case.

Representatives of the law-enforcement agencies assured the mission that they had investigated the allegations of torture against Mr. Yerimbetov. They claim not to have discovered any evidence of torture. The investigators interrogated detention facility officers and Mr. Yerimbetov’s cellmates, who said that no torture had been used against him. Mr. Perov said that Mr. Yerimbetov’s parents were lying when they claimed that their son was tortured. The criminal case investigating the torture allegations has been closed by the authorities.

Lawyer Zhanara Balgabayeva and Mr. Yerimbetov’s parents, with whom the mission met on 15 April 2018, believe that the investigation of the torture allegations was conducted in a biased way. The defense is trying to re-open the investigation but all their complaints have been rejected so far. According to the lawyer, the investigation of the torture case was conducted by Special Prosecutor Dunbayev who before that was a member of the interagency operative-investigative group working on Mr. Yerimbetov’s case. This group might have been responsible for ordering tortures. The conflict of interest seems to be evident.

Mr. Yerimbetov’s lawyer and his parents claim that his health has deteriorated as a result of beatings and harsh detention conditions. Due to the concussion, he has developed a hand tremor, and his eyesight has worsened. Moreover, his body temperature is constantly elevated and he has a constant low-grade fever. According to Mr. Yerimbetov, his rib was broken as a result of beatings. During a medical examination, a doctor detected a fracture in Mr. Yerimbetov’s rib, but the authorities allegedly lost the x-ray image. According to Mr. Yerimbetov’s parents, the doctors told them that their son’s elevated body temperature might be related to the inflammatory process in his body.

During the mission's meeting with Mr. Yerimbetov, representative of the Ministry of Interior Affairs Rashid Zhakupov said that foreign doctors had arrived to examine Mr. Yerimbetov in the detention facility and that he refused to be examined. According to Mr. Yerimbetov, he refused because the doctors arrived a month after the torture, so they would not be able to find any traces of beating anyway. He was taken from the detention centre to a psychiatric clinic on a Saturday, 10 February 2018. Mr. Yerimbetov agreed to be examined by the foreign doctors on the condition that his lawyer would be informed about it and would give her approval. The investigator, however, refused to inform the lawyer.

He did not trust the doctors that had been brought there to conduct an ostensibly independent examination without informing him or his lawyer in advance. He did not know who had invited and paid the foreign doctors and they did not provide him with a copy of their official assignment.

Marcin Świącicki asked Mr. Yerimbetov whether he was willing to give testimony about the torture that had been used against him, on condition that his security is ensured. Mr. Yerimbetov replied positively and added – answering the question of the Deputy Minister of Internal Affairs – that he was also ready to take a polygraph test but only in the presence of foreign experts because he does not trust the Kazakhstani ones.

Mr. Yerimbetov's lawyers provided the mission with a report by psychologist Svetlana Chernikova in which she confirms the truthfulness of Mr. Yerimbetov's testimony.⁹

On 17 April 2018, during the end-of-mission press conference, Marcin Świącicki was asked a question regarding the charges of economic crimes against Mr. Yerimbetov. According to these charges, Mr. Yerimbetov's company allegedly overcharged its clients for the services provided. Marcin Świącicki replied that in a free market, clients are free not to purchase the service if the price does not suit them.

5.2. THE CASE OF ALMAT ZHUMAGULOV AND KENZHEBEK ABISHEV

Almat Zhumagulov is an activist of the opposition civic movement "Democratic Choice of Kazakhstan" (DCK). This organisation is not registered in Kazakhstan. On 13 March 2018, the Yesil district court of Astana, at the request of the Prosecutor General's Office, recognised DCK as an "extremist" organization and banned it on the territory of Kazakhstan. According to human rights organisations, over 10 people were subsequently subjected to criminal prosecution as a result of the court's decision to ban DCK.

Kenzhebek Abishev worked as a security guard in a bank before his arrest; he was also an active Facebook user. Abishev writes and publishes poetry in the Kazakh language.

Both Messrs. Zhumagulov and Abishev were arrested in November 2017. According to human rights defenders, in order to stop the growing popularity of DCK and scare off its supporters, the authorities fabricated a video and attributed its production to Messrs. Zhumagulov and Abishev. The short video that calls for "*jihad*" in Kazakhstan was posted online and shown by state-friendly media. The authorities accused Messrs. Zhumagulov and Abishev of "spreading the propaganda of terrorism" (Article 256 of the Criminal Code of Kazakhstan). Messrs. Zhumagulov and Abishev claim that the allegations against them are fabricated and the video shooting was a set up by the KNB.

On 23 November 2017, Mr. Zhumagulov was invited to an apartment to meet three people who called themselves "new supporters of DCK". He saw them for the first time. According to Mr. Zhumagulov, he told them that in the DCK, everything will be done according to the law. After he left, those people allegedly filmed a video that calls for *jihad*. Mr. Abishev was not at the apartment and he has several witnesses who confirmed his whereabouts that day. However, the authorities accused Mr. Abishev,

⁹ Report on the results of a psychological evaluation of mister Yerimbetov, 16 February 2018 – <http://odfoundation.eu/i/fmfiles/2018-02-16-psychological-evaluation-yerimbetov-eng.pdf>

Mr. Zhumagulov and his acquaintance of making the video of so-called “propaganda of terrorism.” Although Messrs. Zhumagulov and Abishev did not appear in the video nor film it, they were arrested. At the same time, the people who actually appear in the video were neither arrested nor charged by the authorities.

During the meeting with the mission, Mr. Zhumagulov demanded that the law-enforcement bodies provide the complete unedited footage of the video and asked why the investigators did not detain the people who actually filmed the video and appear in it. Deputy Minister of Interior Affairs Rashid Zhakupov responded by telling him “not to interfere” with the investigation.

Mr. Zhumagulov claims that he has never called for overthrow of the government; on the contrary, he has always supported peaceful and lawful protests. He has published his opinions on his Facebook page.

Mr. Abishev says that he does not support the DCK and is not connected to the opposition. He added that he criticises the government as a poet but he does not consider this a crime. During the meeting with the mission, he was only given a few minutes to speak; the pretext for this was "lack of time". It is worth noting that Deputy Minister of Interior Affairs Rashid Zhakupov repeatedly interrupted Mr. Abishev and demanded that he not speak of any aspects of the criminal case.

Representatives of law-enforcement bodies organised a public presentation of the case of Messrs. Zhumagulov and Abishev, during which they referred to them as if they had already been proven guilty, thus violating the presumption of innocence. The law-enforcement bodies claimed that Messrs. Zhumagulov and Abishev planned to “seize power” and “destroy infrastructure facilities”.

Messrs. Zhumagulov and Abishev have been kept in the detention facility since November 2017. Their lawyers have published on social media the personal statements of the detainees in which they claimed that the investigators demanded that they sign "self-incriminating" testimonies, threatening to cause problems for their families, and had been keeping them in cold cells under inappropriate conditions.¹⁰

Lawyer Gulnara Zhuaspayeva said that upon her insistence, the authorities opened a criminal case regarding torture inflicted upon Mr. Abishev. However, she says that the authorities are denying the independent psychologist Svetlana Chernikova access to Mr. Abishev.

Mr. Abishev suffers from cardiac problems. His lawyer informed the mission that he had acute pain in the heart area while in the detention facility. According to Mr. Abishev, on 16 February 2018, he was allowed to undergo an examination at a cardiology centre, where he was diagnosed with "ischemia, intercostal neuralgia and hypertonia". Mr. Abishev complains about the lack of appropriate medical care – he is only allowed to take pills, which is not enough for him to recover.

Moreover, Mr. Abishev has five children, all minors, and is the sole breadwinner of the family because his wife suffers from an oncological disease. Mr. Zhumagulov has three children, all minors.

On 19 April 2018 – two days after the mission had left Kazakhstan – the Almaly District Court of Almaty extended the detention of Messrs. Zhumagulov and Abishev until 28 May 2018.

6. THE CASE OF ARDAK ASHIM

Ardak Ashim is an opposition activist and a blogger from the city of Shymkent. We were told that in February 2018 the authorities brought charges against Ms. Ashim, accusing her of “incitement of social discord” (Article 174 of the Criminal Code of Kazakhstan). The grounds for criminal charges against her

¹⁰ Statement of Kenzhebek Abishev about use of pressure during the crime proceedings (in Russian), 20 January 2018 – <https://www.facebook.com/gulnara.ju/posts/1330792163733639>

were her Facebook entries, which the investigators interpreted as “negative publications directed against the government”.¹¹

On 15 March 2018, the Abay District Court of Shymkent issued a search warrant against Ms. Ashim and a decision requiring she be subjected to a compulsory psychiatric assessment. The assessment report prepared after a meeting with doctors stated that Ms. Ashim was suffering from “delirium syndrome” and “paranoid schizophrenia”. There are serious reasons to believe that these conclusions were made based on a falsified medical certificate.

It is known that in 1988 Ms. Ashim’s late sister was diagnosed with schizophrenia. In the new medical documents regarding Ms. Ashim’s “schizophrenia”, a number of material factual errors were detected; e.g., the dates of the marriage and the birth of the child in fact belong not to Ms. Ashim, but to her late sister. It appears that Ms. Ashim’s “schizophrenia certificate” is based on her late sister’s medical files (the only thing that was changed was the name). According to Ms. Ashim’s daughter, her mother’s medical file from the outpatient clinic did not contain any records regarding mental disorders.

Representatives of law-enforcement bodies promised to the mission that they would conduct an investigation regarding the alleged fabrication of Ms. Ashim’s medical documents.

On 27 March 2018, the Abay District Court of Shymkent ordered that Ms. Ashim be forcefully placed in a psychiatric hospital for a month. Her family and lawyers informed us that neither they nor Ms. Ashim herself knew about those court hearings; Ms. Ashim had been tried *in absentia*. On 31 March 2018, Ms Ashim was placed in a psychiatric hospital.

Ms. Ashim’s daughter said that in March 2018, the authorities appointed a person unknown to the family to be Ms. Ashim’s legal guardian. This decision appears to be non-transparent, since the authorities have ignored the fact that Ms. Ashim has immediate family. Moreover, the guardian was appointed without the court recognising Ms. Ashim as mentally incapable.

In April 2018, the court changed the charges against Ms. Ashim from “incitement of social discord” to “insulting a state agent” (Article 378 of the Criminal Code of Kazakhstan) which is a lesser charge. Ms. Ashim’s current guardian is her daughter.

Ms. Ashim’s family members state that the law-enforcement bodies have put pressure on them to prevent them from spreading information about the case and demanded that the family members “make a public statement” about Ms. Ashim having health problems.

While in the psychiatric hospital, Ms Ashim told her daughter about her suspicion that psychotropic drugs had been added to her food in order to make her ‘insane’.

On 26 April 2018 the Abay District Court in Shymkent extended her pre-trial detention for another month. Representatives of Ms. Ashim appealed this decision. On 5 May 2018, the appeals court panel of the South Kazakhstan Regional Court revoked the decision on the forced placement of Ms Ashim in a psychiatric hospital. The court dismissed Ms Ashim from the hospital and placed her under the guardianship of her daughter. The mission hereby welcomes the decision to release Ms Ashim from the psychiatric hospital. However, the prosecution of Ms. Ashim continues.

¹¹ Amnesty International - Civil activist detained in psychiatric facility, 27 April 2018 – <https://www.amnesty.org/en/documents/eur57/8298/2018/en/>

7. THE CASE OF MUKHTAR DZHAKISHEV

Mukhtar Dzhakishev is a former head of the state-owned company Kazatomprom (1998-2001, 2002-2009). In May 2009, Mr. Dzhakishev was detained by the KNB on allegations of committing criminal offenses while occupying his post as head of Kazatomprom. In 2010 and 2012, two closed (not public) trials were carried out against Mr. Dzhakishev, as a result of which he was sentenced to 14 years imprisonment in a maximum-security penal facility. He was convicted of “embezzlement of entrusted property” (Article 176 of the Criminal Code of Kazakhstan), “accepting bribes” (Article 311 of the Criminal Code of Kazakhstan) and ‘fraud’ (Article 177 of the Criminal Code of Kazakhstan). Mr. Dzhakishev pleaded not guilty to the crimes he was charged with.

On 14 April 2018, the mission participants met with Mr. Dzhakishev’s counsel, Nurlan Beysekeyev. According to the counsel, the allegations against Mr. Dzhakishev were accompanied by accusations of links with the Kazakhstani regime opponent Mukhtar Ablyazov.¹²

On 9 December 2015, after having studied Mr. Dzhakishev’s case, the UN Human Rights Committee determined that Kazakhstan had violated a number of provisions of the International Covenant on Civil and Political Rights. Also, according to the Committee, there is reason to believe that Mr. Dzhakishev was subjected to arbitrary arrest and detention. The UN Committee called on Kazakhstan to revoke the verdict against Mr. Dzhakishev, release him and, if necessary, carry out a new court trial.¹³ Kazakhstan has not implemented this decision.

From the reports of human rights activists, the mission learned that Mr. Dzhakishev suffers from a number of life-threatening diseases. In 2009, when Mr. Dzhakishev was still free, German doctors diagnosed him with arterial hypertension and left ventricular hypertrophy. In addition, in the years 2015-2017, when Mr. Dzhakishev was already imprisoned, Kazakhstani doctors concluded that he had coronary heart disease, transient ischemic attacks, aortic atherosclerosis, kidney diseases (chronic pyelonephritis and nephroptosis) and other diseases. Mr. Dzhakishev suffers from excessively high blood pressure (which rises to 150/260 mm Hg). Due to this fact he risks stroke or heart attack.

Mr. Dzhakishev is being held in the penal colony AK 159/6 in the village of Dolinka, Karaganda Province, 1,000 km from his family house. This penal colony has one of the strictest regimes in Kazakhstan, and human rights defenders have repeatedly documented cases of torture there. The Karaganda Province has a very harsh climate, which is also having a negative impact on Mr. Dzhakishev's health.¹⁴

According to Mr. Beysekeyev, his client needs urgent medical treatment, but in Kazakhstan there are no facilities to provide him the necessary medical assistance. At the moment, Mr. Dzhakishev is being held in the medical unit of the penal colony.

Mr. Beysekeyev informed us that Mr. Dzhakishev can apply for parole on health grounds. However, in order to do this, he must undergo a laborious medical examination to be qualified for disability status. Alternatively, Mr. Dzhakishev may be pardoned by the decision of President Nursultan Nazarbayev, but for this, according to the existing practice, the prisoner must admit his guilt and ask personally for pardon (the mission did not find these to be legal requirements). Mr. Dzhakishev does not consider himself

¹² PACE written declaration № 638 - Kazakhstan: political oppression, injustice and torture must be stopped, 11 October 2017 – <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24151&Lang=EN>

¹³ United Nations Human Rights Committee – Communication №2304/2013, 9 December 2015 – http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f115%2fd%2f2304%2f2013&Lang=en

¹⁴ PACE written declaration № 652 - Kazakhstan has to fully comply with its commitments under the International Covenant on Civil and Political Rights, 25 January 2018 – <http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24490&Lang=EN>

guilty, and he therefore categorically refuses to ask for a pardon. Mr. Dzhakishev is the father of five children.

On 19 April 2018, following the end of the monitoring mission, a representative of the General Prosecutor's Office, Kayrat Zhakipbayev, gave information on Mr. Dzhakishev's health condition at a press conference. He stated that Mr. Dzhakishev had indeed been diagnosed with a number of diseases, but that, at the same time, he allegedly receives the necessary medications and does not need to be hospitalised. Mr. Zhakipbayev also stated that civil society monitoring commissions are allowed to visit Mr. Dzhakishev on a regular basis. The mission hereby expresses its regret that it was not permitted to visit Mr. Dzhakishev in prison and was unable to verify the conditions of his detention.

8. RECOMMENDATIONS

During the monitoring mission to Kazakhstan, as well as discussions with representatives of law enforcement agencies, representatives of civil society, prisoners, their defenders and relatives, we noticed a number of problems. We suggest that they be considered by the competent authorities of Kazakhstan.

Concerning the fulfilment of obligations regarding fair justice and protection from torture:

- Ensure the conditions for the functioning of the National Preventive Mechanism (NPM) in full compliance with international standards; in particular, reduce the state centralisation of the NPM, and increase the efficiency and publicity of the work of the NPM.
- Properly and thoroughly investigate reports of torture.
- Reconsider the criminal cases in which it has been recorded that the evidence and testimonies were obtained under torture.
- Immediately cease the practice of the so-called *punitive psychiatry* employed against critics of the authorities as a means of silencing and reprisals.
- Continue the reform of the justice system in order to ensure full compliance with international standards for independent and fair investigations and trials.
- Proceeding from international standards, the law should clearly define the concepts of “extremism” and “incitement of social discord” in order to avoid selective application of these norms and violation of the right to freedom of speech and freedom of association.

Regarding the case of Iskander Yerimbetov:

- Change the measure of restraint to one not requiring detention, taking into account the personal guarantee of Member of the Polish Sejm, Marcin Świącicki, as well as the personal guarantees of renowned people in Kazakhstan: poet Olzhas Suleymenov, musician and composer Yerkesh Shakeyev and others; and taking into account the presumption of innocence as well as the fact that Mr. Yerimbetov has been already detained for over half a year, has three underage children and is in poor health.
- Provide Mr. Yerimbetov with prompt, appropriate medical care, including outside the detention facility, due to the fact that the assistance rendered in the detention facility is ineffective, and also taking into account the low-grade fever, lung problems, tracheobronchitis, and pain in the area of the ribs from which he is suffering.

- Resume the criminal case investigating allegations of the torture of Mr. Yerimbetov; include in the case file the independent report of expert psychologist Svetlana Chernikova and the findings of human rights defenders Yevgeniy Zhovtis and Zhemis Turmagambetova;¹⁵ investigate the involvement in the torture of officials of detention facility LA-155/1 in Almaty.
- Ensure conditions for unimpeded familiarisation with the case file and extend the time for this review.
- Ensure the security of Mr. Yerimbetov and protection from possible further torture, pressure and threats.

Regarding the case of Mukhtar Dzhakishev:

- Ensure proper and effective treatment for Mr. Dzhakishev, taking into account the complexity of his illnesses.
- Facilitate the conducting of the medical examination which can grant Mr. Dzhakishev a disability status that can qualify him for early release from prison.
- Implement the UN Human Rights Committee decision on the release of Mr. Dzhakishev.
- Permit the next independent monitoring mission to visit Mr. Dzhakishev.

Regarding the case of Almat Zhumagulov:

- Change the measure of restraint to one not requiring detention, taking into consideration that Mr. Zhumagulov has been already detained for almost half a year, he has three minor children and is the only breadwinner in the family, and also taking into account that the accusation against him is based on a set-up and on manipulated words that were not followed by any activity. Refute the statements of law enforcement agencies that, in violation of the presumption of innocence, labelled Mr. Zhumagulov a “jihadist” (without any grounds or court decision).
- Provide Mr. Zhumagulov and his counsel with access to the full materials of the pre-trial investigation, including complete video materials, with the aim of conducting an alternative examination.
- Prevent the possibility of exerting further pressure on Mr. Zhumagulov's relatives, including those who are state employees.
- Permit Mr. Zhumagulov's wife to represent him as defence counsel under Article 66 of the Criminal Procedure Code of Kazakhstan.

Regarding the case of Kenzhebek Abishev:

- Change the measure of restraint to one not requiring detention, taking into consideration that he has been in detention for almost half a year, his poor state of health, his five children all being minors and his wife being seriously ill, and also taking into account his testimonies about the signs of fabrication of the criminal charges against him.

¹⁵ Information note on the visit to detainee Iskander Erimbetov by the monitoring group, 01 February 2018 – <http://odfoundation.eu/i/fmfiles/pdf/2018-02-01-information-note-monitoring-group-re-yerimbetov-eng.pdf>

- Ensure proper medical examination and treatment of heart problems.
- Carefully investigate the pressure and threats exercised against the family and his improper treatment, and bring to justice the officials who committed these crimes.
- Refute the statements of law enforcement agencies that, in violation of the presumption of innocence, labelled Mr. Abishev “jihadist” (without any grounds or court decision).
- Permit Mr. Abishev’s wife to represent him as defence counsel under Article 66 of the Criminal Procedure Code of Kazakhstan.
- Grant Mr. Abishev full access to the case file and all copies of expert opinions.

Regarding the case of Ardak Ashim:

- Investigate the facts that indicate possible falsification of medical documents.
- To withdraw the criminal charges against Ms Ashim, as she is being prosecuted for peaceful expression of her opinions.
- Cease the practice of forcible isolation of people who have relatives who are willing to be their guardians.
- Prevent the exertion of further pressure on Ms. Ashim’s relatives.

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