# THE ISKANDER YERIMBETOV CASE:

## THE TRIAL OF THE KAZAKHSTAN REGIME'S HOSTAGE

In Kazakhstan, there is a practice of using criminal prosecution and cruel torture against people having family ties with opponents of the regime. Iskander Yerimbetov, brother of the Kazakhstani human rights defender Botagoz Jardemalie, has been sentenced to a real prison term on absurd charges. Factually, he was accused of extracting benefit from carrying out private entrepreneurial activity.


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*Italian Federation for Human Rights*

In June 2018, on the request of Kazakhstan's human rights organisations, an international human rights observation mission arrived in Kazakhstan. It was organised by the Italian Federation for Human Rights with the support of the national parliaments of Poland, Italy and Switzerland. The mission continues its work in Kazakhstan.

In the course of the mission, a number of meetings were held with activists, human rights defenders, family members of political prisoners, and former prisoners who had been subjected to torture. Mission participants also attended the court trials of those accused for political reasons. In particular, observers were present at the trial in the case of Iskander Yerimbetov. Based on the results of the monitoring of the trial, this joint report of the Italian Federation for Human Rights and the Open Dialogue Foundation has been prepared.

**The Open Dialogue Foundation** was established in Poland in 2009 on the initiative of Lyudmyla Kozlovska (who is currently the President of the Foundation). The statutory objectives of the Foundation include the protection of human rights, democracy and the rule of law in the post-Soviet area. The Foundation focuses its attention on Kazakhstan, Russia, Ukraine and Moldova.

The Foundation has its permanent representative offices in Warsaw, Kyiv and Brussels.

The Foundation pursues its goals through the organisation of observation missions, including election observation and monitoring of the human rights situation in the post-Soviet area. The Foundation has extensive expert experience in the field of protection of the rights of political refugees and political prisoners.

The Foundation distributes its reports among the EU institutions, the OSCE, PACE, UN, human rights organisations, foreign ministries and parliaments of the EU, as well as the media. The Foundation is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relationships with the post-Soviet countries.

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**The Italian Federation for Human Rights** (FIDU) is active since 6 October 1987 as Italian Helsinki Committee. FIDU promotes the protection of human rights as enshrined in the Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, the Charter of Fundamental Rights of the European Union of 2007 and in other relevant international documents. FIDU therefore intends to work to spread the knowledge of human rights, monitor and report their violations, create greater awareness in public opinion, and exert influence on the States so that they comply with their own commitments on human rights.

FIDU is based in Rome and operates throughout Italy and worldwide; carries out its activities through its national and local bodies, and achieves its goals in compliance with international and EU standards, as well as with the Italian Constitution and laws.

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## 1. INTRODUCTION: ENTREPRENEUR SUBJECTED TO TORTURE AND SENTENCED TO 7 YEARS OF IMPRISONMENT FOR "UNJUSTIFIED OVERSTATEMENT OF RATE SCALES"

A high-profile political court trial in relation to the entrepreneur Iskander Yerimbetov and his business colleagues Mikhail Zorov, Dmitriy Pestov and Vasilina Sokolenko has ended in Kazakhstan. All of the defendants were found guilty of "fraud". According to the prosecution's account, the private joint-stock company (AO) Sky Service, in which Yerimbetov had invested, was supposedly "unjustifiably" overstating the rate scales for services being offered.

In the meantime, freedom of entrepreneurial activity is guaranteed at the constitutional level in Kazakhstan, including freedom of price formation. The "injured parties" designated by the investigation had not advanced any claims whatsoever against Sky Service. The company had been selling its services at open state tenders. The winner of the tenders became the participant with the most suitable price for the services.

The Italian Federation for Human Rights (FIDU) organised a human rights observer mission to Kazakhstan. A series of meetings with activists, human rights defenders, relatives of political prisoners, and former prisoners who had been subjected to torture, was conducted in the course of the mission. Likewise, the mission participants attended court trials in relation to persons charged for political motives: those of Iskander Yerimbetov, Aset Nurzhaubay, Aygul Akberdiyeva, Aset Abishev, Ainura Ashim, Bakiza Khalelova Ablovas Dzhumayev, Almat Jumagulov and Kenzhebek Abishev.

The mission began its work in June 2018 and is continuing to conduct monitoring of court trials. The Open Dialogue Foundation is cooperating with the FIDU observers and is using the materials and observations gathered by them in its reports. The Open Dialogue Foundation and the Italian Federation for Human Rights are working on preparing a comprehensive report based on the results of the observations of politically motivated trials in Kazakhstan.

Ten observers visited the court trial in the Iskander Yerimbetov case:

- **Oleksii Pivtorak** – analyst with the civic movement "Chesno" (Ukraine).
- **Andrii Chernousov** – head of the Ukraine-wide civic organisation "Association of independent monitors".
- **Simon Sven Muschick** – employee of the German organisation "AktionSühnezeichenFriedensdienste".
- **Olha Anoshkina** – lawyer and project manager of the civic organisation "Vostok-SOS" (Ukraine).
- **Iryna Zemlyana** – media expert with the civic organisation "Institute of mass information" (Ukraine).
- **Maksym Sytnikov** – political analyst.
- **Yury Fabisheuski** – head of the regional organisation "Young democrats" (Minsk, Belarus), participant in many observer missions at parliamentary and presidential elections in Belarus, Russia, Ukraine.
- **Oleksandr Iermochenko** – photographer.
- **Sergii Kharchenko** – photographer.
- **Oleksandr Ratushniak** – photographer.

This joint report of the Italian Federation for Human Rights and the Open Dialogue Foundation was prepared based on the results of the mission.

**The brother held to account for his sister**

Iskander Yerimbetov is the brother of the human rights defender and lawyer Botagoz Jardemalie. She had been furnishing legal consultations to the opposition politician Mukhtar Ablyazov and other persons being prosecuted for political motives in Kazakhstan.

In 2013, Kazakhstan began prosecute Jardemalie within the framework of Ablyazov's case. In October 2013, the authorities of Belgium granted Jardemalie political asylum. Interpol removed Jardemalie (in 2016) and Ablyazov (in 2017) from its wanted list in connection with the political character of the charges. Kazakhstan organised surveillance of Jardemalie and was likely involved in an attempt to kidnap her. The Belgian police are conducting an inquest into the available facts.[1]

In order to force Botagoz Jardemalie to return to Kazakhstan and "cooperate with the investigation" in the case against Ablyazov, the authorities subjected her brother Iskander Yerimbetov to criminal prosecution. Mikhail Zorov, Dmitriy Pestov, and Vasilina Sokolenko became random victims in the war that Kazakhstan's authorities are waging against Ablyazov and his supporters.

**As long as there's a person, a charge will be found**

At first, all the defendants were charged with being involved in a "criminal conspiracy" with the opposition politician Mukhtar Ablyazov. It was being demanded of Iskander Yerimbetov that he provide false testimony against the sister and the opponent. However, after he had refused to commit perjury and give false evidence, and no ties between Yerimbetov and Ablyazov had been established, the investigation completely changed the charges to ones not connected with Ablyazov's case.

At the court trial, the judge prohibited any mention about the opposition politician and Yerimbetov's sister – Botagoz Jardemalie. At the last court session, the judge yelled at Yerimbetov and interrupted him, inasmuch as the latter was making mention of torture, Ablyazov, and Jardemalie.

**Torture**

Iskander Yerimbetov and his parents reported on numerous occasions about torture being used on him with the objective of getting testimony advantageous for the investigation. Yerimbetov was detained on 13 November 2017; however, it was only on 1 February 2018 that independent human rights defenders were first allowed to visit him. This took place thanks to a request to the government of Kazakhstan by the UN Special Rapporteur on Torture Nils Melzer The monitoring group noted that the arrestee was in a poor mental state and looked ill.[2] The human rights defenders noted that Yerimbetov had been examined by doctors for the first time only on 11 January 2018, that is after more than a month had gone by since the first reports about torture.[3]

Besides that, in February 2018, Iskander Yerimbetov was examined by the independent psychologist Svetlana Chernikova. She came to the conclusion that Yerimbetov's psychological evaluation data bear witness to torture endured and to treatment demeaning to human dignity.[4]

Ignoring the demands of the international community, Kazakhstan's authorities refused to conduct an inquest into the facts of torture in relation to Yerimbetov. On 22 February 2018 the investigation with respect to the report on the use of torture on Iskander Yerimbetov was **terminated in connection with the "absence of the event of a crime"**. In the meantime, a multitude of bodily injuries had been discovered on Yerimbetov's body in the course of the medical expert examination; however, the authorities declared that they had appeared from Iskander having **"bumped into a nightstand and a bed"**.

[1] http://www.levif.be/actualite/belgique/comment-le-kazakhstan-traque-les-dissidents-politiques-en-exil-aussi-en-belgique/article-normal-781657.html
[2] https://bureau.kz/novosti/sobstvennaya_informaciya/press-reliz_o_poseshenii_sledstvenno_arestovannogo_iskandera_erimbetova/
[3] http://odfoundation.eu/i/fmfiles/pdf/2018-02-01-information-note-monitoring-group-re-yerimbetov-eng.pdf
[4] http://odfoundation.eu/i/fmfiles/2018-02-16-psychological-evaluation-yerimbetov-eng.pdf

The investigation about the torture was conducted by special prosecutor Almas Dunbayev, who before this had been a part of the inter-agency operative-investigative group.[5] Dunbayev did not question Yerimbetov about the torture even once during the investigation. The investigation's conclusion cannot be considered objective, inasmuch as an obvious conflict of interests existed.

During investigation the defendants Dmitriy Pestov and Vasilina Sokolenko admitted their guilt and gave false testimony against Iskander Yerimbetov. However, at the trial, they declared that the investigators had been exerting pressure on them, inclining them toward self-denunciation. They repudiated their previous testimony, and likewise declared that they do not admit guilt of the crime being inculpated to them.

**An unprecedented quantity of violations at the court trial**

The observers bring attention not only to the fabrication of the charges, but likewise to their absurdity. **Factually, what Yerimbetov was charged with was that an enterprise in which he had invested had gotten benefit from entrepreneurial activity**. Representatives of the prosecution could not explain in court what "unjustified overstatement of rate scales" is as applies to a private commercial enterprise and what norms of the Criminal Code had been violated by the suspects. In the meantime, a necessary condition for a fair trial is clarity of charges.

The Kazakhstani and international human rights advocates were shocked by the quantity of violations at the court trial in Yerimbetov's case. The trial had an obvious accusatory bias. Yerimbetov was deprived of the right to communicate with his lawyers before court sessions. During the trial, he was being kept in a special "aquarium", which separated him from his lawyers and the other participants in the trial. The judge denied or did not consider key petitions from the defence, ignored reports of torture, while he demonstrated an interest in the gathering of evidence in favour of the prosecution's position.

In order to speed up the examination of the case, Yerimbetov and the other accused were forcibly delivered to court even in a period of illness. The defendants and their defenders were not allowed to express their position in a reasoned manner and in full. The judge systematically interrupted them or terminated their speeches. The judge did not allow Dmitriy Pestov to appear with a last word at all.[6] The penultimate session of the trial lasted 15 hours and nearly without breaks.

**The latest threat to Kazakhstan lawyers**

The incident of the prosecution of Botagoz Jardemalie and her brother Iskander Yerimbetov is a vivid example of the kind of risks that Kazakhstan lawyers encounter, and how far Kazakhstan's authorities are capable of going in their aspiration to crack down on those of them who have fallen out of favour.

In Kazakhstan, lawyers systematically face threats, intimidation, surveillance and other kinds of pressure. This especially concerns those who enter into the defence of those who are charged for political reasons. At the present moment, there are only a few lawyers in Kazakhstan who dare to participate in politically motivated cases.

Kazakhstan's lawyers risk being deprived of their profession or being subjected to prosecution if they take a position of principle in standing up for a client's interests. Kazakhstan's authorities find ways to persecute even those lawyers who have been forced to leave the country.

[5] https://www.facebook.com/photo.php?fbid=344863959339151&set=pcb.344866169338930&type=3&theater
[6] https://www.facebook.com/100014466496600/videos/514242789067933/

**Business is in danger in Kazakhstan**

In October 2018, President Nursultan Nazarbayev took part in the "Asia-Europe" (ASEM) Forum. During a meeting with entrepreneurs from the whole world, Nazarbayev called on them to do business in Kazakhstan. "*We will do everything possible for you to come to Kazakhstan, to put in and earn your money and help Kazakhstan develop industry and the economy,*"[7] declared the president of Kazakhstan.

In the international rating DoingBusiness-2019, Kazakhstan took 28th place out of 190 countries of the world, having risen in the rating by 8 points in comparison with the previous year. However, the rating does not take into account the level of corruption and the level to which business is protected from lawless interference in its activity by state organs.

Iskander Yerimbetov's case sends an alarming signal to international investors, inasmuch as it shows how business is not protected in actuality in Kazakhstan. It follows from the essence of the charges brought against Yerimbetov that obtained profit is "stolen", while competitive entrepreneurship is "fraud". There is no independent judiciary and rule of law does not function in Kazakhstan. Any investor can end up in Iskander Yerimbetov's place if the authorities decide to prosecute him for any political reasons.

## 2. THE HISTORY OF THE CRIMINAL PROSECUTION OF ISKANDER YERIMBETOV

### 2.1. The unsuccessful attempt at charging with "criminal cooperation" with Mukhtar Ablyazov

Iskander Yerimbetov is an investor in the private joint-stock company Sky Service, which used to offer aviation services. The Sky Service fleet was used for conveying cargo and passengers, patrolling forest and mountain zones, accident rescue work, exploration, aerial photography and video shoots, and patrolling power transmission lines, gas pipelines and oil pipelines.

On 13 November 2017, Yerimbetov was detained in Almaty. Detained on this same day were: the chief of Sky Service, president **Mikhail Zorov**; head of the board of directors **Dmitriy Pestov**; and member of the board of directors **Vasilina Sokolenko**. On 15 November 2017, a Kazakhstan court arrested Iskander Yerimbetov. Likewise taken into detention were Zorov, Pestov and Sokolenko.

At first, charges of "legalisation of money obtained in a criminal way" (pt. 3 art. 193 of the CC – Criminal Code in the revision of 16 June 1997) were inculpated to all those who had been detained, and specifically "money laundering" of funds supposedly stolen by Mukhtar Ablyazov. In the decree on classification of the actions of a suspect, it was asserted that in 2005, Ablyazov and Jardemalie had "involved" Yerimbetov in the activity of a "criminal group". Yerimbetov was charged with supposedly having organised the opening of Kazakhstan companies that were getting money from "offshore companies under the control of Ablyazov". In such a manner, he was supposedly an accessory to the "laundering" of 5.4 million dollars.

Key events in the "money laundering" case took place on one day – 13 November 2017[8]:

- Deputy chairman of the management board of the state BTA Bank Nurlan Nurgabylov reported a crime to the Agency of the Republic of Kazakhstan for Civil Service Affairs and Counteracting Corruption (the Anti-Corruption Bureau). He accused Yerimbetov of laundering money in Ablyazov's interests. On that same day, a criminal case file was opened based on Nurganbylov's complaint. In parallel, an inter-agency operative-investigative group (MSOG) was created, consisting of employees of the National Security Committee (KNB), the Anti-Corruption Bureau, and the Ministry of Internal Affairs (MVD). The MSOG was headed by the chief of the investigative department of the Anti-Corruption Bureau, Sergey Perov. The MSOG immediately took on the criminal case for investigation based on Nurgabylov's complaint.

[7] https://tengrinews.kz/kazakhstan_news/kazahstan-luchshe-drugie-nazarbaev-priglashal-evropeyskih-355891/
[8] http://tirek.info/iskander-erimbetov-arest/

- Anti-Corruption Bureau investigator Ruslan Orazbatev compiled a report, in which he reported that the management of the private company Sky Service had supposedly engaged in theft of the funds of state companies by way of entering into agreements on the provision of services. In connection with Orazbayev's report, a criminal case file on "misappropriation of another's entrusted property" was registered.
- Investigator Sergey Perov registered a new criminal case file on "money laundering" (per art. 193 of the CC in the revision of 16 June 1997), by way of combining the two criminal cases indicated above with a case opened earlier in relation to Ablyazov and other persons.
- Iskander Yerimbetov, Mikhail Zorov, Dmitriy Pestov and Vasilina Sokolenko were detained.[9]
- Searches were conducted in Yerimbetov's, Zorov's, Pestov's, and Sokolenko's places of residence, as well as in the offices of several companies, including Sky Service.

Such a whirlwind development of events bears witness to the "contract" character of the prosecution and that it had been planned in advance.

**It is likely that the investigation was not able to find evidence in the case of the "money laundering", as 4 months after Yerimbetov was detained completely different charges unconnected with Ablyazov's case were brought against him and the other people featuring in the case.**

On 1 March 2018, the investigation split some of the charges into separate criminal proceedings. In relation to Iskander Yerimbetov, Mikhail Zorov, Dmitriy Pestov, and Vasilina Sokolenko, a criminal case on charges of "fraud" (art. 177 of the CC in the revision of 16 June 1997) was registered. Three days later, on 3 March 2018, investigators reported to Iskander Yerimbetov and his defenders about the conclusion of the pre-trial investigation with respect to this case.[10] The inquest into the "money laundering" case pursuant to art. 193 of the CC in the revision of 16 June1997 is supposedly continuing.

The collapse of the charges in the "money laundering" case and the rushed conclusion of the "fraud" case bear witness to the obvious political undercurrent of the criminal prosecution. Kazakhstan's authorities have demonstrated the firm intention to bring Iskander Yerimbetov down.

> *"I have always lived only in Kazakhstan. While many businessmen aspire to leave the country, I've continued to invest in our country. I wanted for my children to live in our country, I aspired to create something in our country. I have always believed in our country, in its potential. For the last two years, people have been hinting to me that it would be better for me to leave the country because of my sister. But I didn't take these hints, because I was convinced that nobody would ever attack me because of a sister,"* – from Iskander Yerimbetov's concluding speech in the trial.

### 2.2. The charges of "fraud"

According to the materials of the criminal case file, the accused persons are accomplices in fraud, and specifically in **"theft of a particularly large amount by way of deceit** from state enterprises and organisations of the quasi-state sector in the period from 2010 through the year 2017". According to the investigation's account, **the deceit consisted of the fact that** the price offers submitted by Sky Service at tenders (competitions) were 6–10% higher than the company's internal costing. It is worth noting that the consumers of the services were recognising the prices and conditions being proposed by Sky Service as acceptable and economically advantageous, entering into the corresponding agreements and carrying

[9] http://tirek.info/iskander-erimbetov-arest/
[10] https://www.facebook.com/bota.jardemalie.1/posts/282737375845500

out settlements with the Sky Service for the services rendered. This was corroborated by their representatives in court.

That being said, Sky Service is a private joint-stock company, is not affiliated with state organs, and is not a subject of natural or state monopolies. Freedom of price formation and of enterprise on the whole is legislatively guaranteed for such legal entities.

Charges were brought with respect to seven episodes, in the period from 2010 through 2016, for an overall sum in excess of 208 million tenge (which is a bit more than 550,000 dollars at the exchange rate as of November 2018).

Indicated in the case file are seven "injured parties", from whom, according to the prosecution's account, the defendants had "stolen" monetary funds – the state enterprises "Kazavialesookhrana", the "Republican centre for sanitary aviation" of the Ministry of Health, AO "Akademia grazhdanskoy aviatsii" (*Civil Aviation Academy*), AO KEGOC, AO "Kazaviaspas", and AO "Aviakompaniya Euro-Asia Air", as well as the administrative staff of the *akimat* of Zhambyl Oblast.[11]

From the start Iskander Yerimbetov, did not admit his guilt. Vasilina Sokolenko and Dmitriy Pestov did admit guilt during the pre-trial inquest; however, in the trial they changed their position, having declared that the investigators had been exerting pressure on them, compelling them to commit self-denunciation. Mikhail Zorov admitted guilt.

In the course of the pre-trial investigation, Zorov, Pestov and Sokolenko admitted their guilt and were released under house arrest. Iskander Yerimbetov's defense insists that for more than 4 months he was being illegally held in a SIZO [*a pre-trial detention prison*]. Thus, Yerimbetov was placed under detention on 13 November 2017 in connection with the "money laundering" case. With respect to the "fraud" case, a measure of restraint was not selected in judicial order. In the meantime, the measure of restraint in connection with the "money laundering" case was last extended on 05 May 2018 by 1 month – until 13 June 2018. **From 13 June 2018 until the issuance of the verdict on 22 October 2018, Iskander Yerimbetov was factually being illegally held in detention**, as the measure of restraint was no longer extended by the court.[12]

## 3. THE COURT TRIAL

The unprecedented quantity of violations at the court trial in Iskander Yerimbetov's case could bear witness to the desire of the Kazakhstan authorities to demonstratively intimidate lawyers conducting the defence of persons being prosecuted for political motives and victims of torture. In such a manner, the authorities are sending a signal that not only the lawyers themselves, but their relatives as well, are going to be subjected to prosecution for professional activity and taking a civic stand.

The court trial in the "fraud" case began on 14 June 2018 in Medeu District Court No. 2 of Almaty and lasted more than 4 months – until 22 October 2018. The case was heard by judge **Taken Shakirov**. The position of the state prosecution was represented by prosecutors **Yerkin Baymagambetov** and **Timur Shamoi**.

Despite the fact that the court trial was announced as open, the sessions took place in a courtroom with a capacity of up to 20 persons, which could not fit all those who desired to follow the trial. The judge permitted only the prosecution, the defence and the defendants to be present in this courtroom. In such a manner the principle of openness of a court trial was violated.

[11] https://rus.azattyq.org/a/29323667.html
[12] https://www.facebook.com/bota.jardemalie.1/posts/282737375845500

A special room was equipped in the court building, to which a direct video transmission from the courtroom was streamed. Representatives of the public complained that the video transmission and the related audio were not of high quality and they could not follow what was going on in the courtroom in a proper manner. There were several instances when the judge did not allow international observers (Marcin Święcicki, Maksym Sytnikov, Oleksander Iermochenko, Antonio Stango) into the courtroom under the pretext that they could observe the trial by the direct video transmission.[13]

Unknown persons "in civilian clothing" (presumably employees of the National Security Committee) were regularly present in the room where the direct video transmission from the courtroom was taking place. They kept watch on those present and listened in on their conversations.

Yerimbetov's interests in the trial were represented by the lawyers Igor Lifshitz, Zhanara Balgabayeva, Serik Aytbayev, and family members – his father, mother, and wife. In January 2018, when independent observers were not being allowed access to Iskander Yerimbetov and he had only one lawyer (Zhanara Balgabayeva), a lawyer from the USA, Jared Genser, stepped into the matter of Yerimbetov's defense on aspects of international law. Judge Taken Shakirov did not allow Genser to participate in the court trial. Genser was likewise not allowed access to the SIZO to see Yerimbetov.

During a recess in the first court session, Iskander Yerimbetov announced to journalists that he considered his case to be politically motivated, and that he had been subjected to torture and beatings in the SIZO. Yerimbetov had reported the use of torture and cruel treatment on numerous occasions during the court trial. However, judge Shakirov systematically and harshly interrupted such reports on the grounds that Iskander was speaking "not to the point" and the facts of the use of torture "had not been confirmed by the investigation".

### 3.1. Violation of the right to an honest and fair trial

The court trial in the "fraud" case took place in obvious violation of the principle of equality of the parties. The court adopted decisions that cast doubt on its objectivity and independence:

1. Examination of a representative of the *akimat*[14] of Zhambyl Oblast, representing the interests of an injured party was planned at the court session on 18 July 2018. It turned out that the administration represented by the *akimat* employee no longer existed, as it had been liquidated several years prviously. Instead of the administration, a section had been created at the *akimat*. Judge Shakirov demanded that documents be furnished from the *akimat* that would confirm that the section is the legal successor of the liquidated administration. Furthermore, he threatened that he would personally contact the *akim* of Zhambyl Oblast if the representative of the *akimat* did not have the documents by the next session. Such actions can be assessed as **the judge's interest in the gathering of evidence**.[15] Later on, judge Shakirov, in violation of the requirements of legislation on legal succession, recognised the administrative staff of the *akimat* of Zhambyl Oblast as an injured party, even without the documents earlier demanded by him having been furnished.
2. Until 17 August 2018, Iskander Yerimbetov, by permission of judge Shakirov, had had the opportunity to meet with his lawyers in the court building before court sessions, in order to receive

> *"Yet another one of these 'injured parties' – an administration that had been liquidated several years ago. In order to not end up without an injured party and not drop the charges, judge Shakirov decided to recognise the administrative staff of the* akim *of Zhambyl Oblast as the legal successor to the initial injured party."* – from Iskander Yerimbetov's concluding speech in the trial.

[13] https://rus.azattyq.org/a/29407027.html , https://rus.azattyq.org/a/29447406.html
[14] *Akimat* – a regional organ of executive power in Kazakhstan
[15] https://rus.azattyq.org/a/29378035.html

legal consultations and to coordinate the defence's legal position. However, on 17 August 2018, Iskander's meeting with the lawyers was interrupted by chairman of the Medeu district court Dauren Maukeyev. He announced that **Iskander could no longer meet with his defenders in the court building, and that he was revoking judge Shakirov's permission**. Factually, Dauren Maukeyev interfered in the trial in Yerimbetov's case and restricted his right to communicate with his lawyers and to get skilled legal assistance. During the court session that took place after the incident, judge Shakirov confirmed that Yerimbetov could no longer meet with his defenders.[16] **Such actions by judge Shakirov bear witness that pressure could be exerted on him and he was not independent in the adoption of decisions.**

3. On 22 August 2018, judge Shakirov granted a petition by Yerimbetov's defence on the examination of deputy to the Polish *Sejm* Marcin Święcicki at a court session in the capacity of an economic expert. However, at the session of 23 August 2018, prosecutor Baymagambetov submitted a petition on not conducting Święcicki's examination. Shakirov granted the prosecutor's petition.[17] Marcin Święcicki is a former minister of Foreign Trade and former deputy minister of Economy of Poland and has the scholarly degree of candidate of Economic Sciences. Święcicki had taken part, in the name of the Polish *Sejm*, in several international human rights missions to Kazakhstan, in the course of which he had met with victims of political repressions and their relatives and had been present at court trials.[18]

4. At the demand of the prosecutors, during the court sessions, Yerimbetov was being kept in a special "aquarium", which separated him from the other participants in the trial and did not allow him to freely communicate with his lawyers or to get legal assistance in a timely manner. In the meantime, the other accused persons were sitting in the courtroom side by side with their lawyers.

5. At the last court sessions, it was noticeable that **the judge was trying to end the court trial as quickly as possible**. The trial moved on to the final submissions when the examination of specialists, an expert and witnesses had not yet been finished. The penultimate session began on 19 October 2018 at 10:30 in the morning and lasted **15 hours** (until 01:30 at night on 20 October 2018). In the meantime, Iskander Yerimbetov was forcibly delivered to court without warm clothing despite the fact that he was sick and had a high temperature. One of Yerimbetov's lawyers could not participate in the session, inasmuch as he was supposed to be at another trial, about which he had warned the judge in advance and had filed the corresponding petition to reschedule the court session.[19]

   And at the last session, on 22 October 2018, **the final submissions of the parties were finished, and the defendants and their defenders appeared with a last word, and the verdict was issued as well, in one day**. At the same time, judge Shakirov was interrupting those appearing and not giving them the opportunity to finish their speeches.[20] The defendant Pestov was deprived by the court of the opportunity to appear with a last word.[21] The defendants and their defenders were restricted in the right to appear with replies to the state prosecutor's address (art. 383 CCP – *Code of Criminal Procedure*). Likewise, in violation of the norms of the CCP, none of the representatives of the injured parties in the criminal case was allowed by the court to participate in the final submissions, and none of them appeared with a speech in support of the charges. The fact that the verdict was issued so quickly (on the same day as the final submissions had finished) may bear witness that it had been prepared in advance.

The incidents indicated above are an example of the violation by the court of Iskander Yerimbetov's right to a defence as guaranteed by the International Covenant on Civil and Political Rights. After all, it is

[16] https://www.facebook.com/photo.php?fbid=294452271340677&set=a.157389241713648&type=3&theater
[17] https://rus.azattyq.org/a/29449209.html
[18] https://fidu.it/en/kazakhstan-the-final-report-of-fidus-april-mission/
[19] https://www.facebook.com/photo.php?fbid=326106124841958&set=a.157389241713648&type=3&theater
[20] https://www.facebook.com/bota.jardemalie.1/posts/327451701374067
[21] https://www.facebook.com/100014466496600/videos/514242789067933/

specifically **the court that must provide a defendant with sufficient time and opportunity to prepare and implement his defence**.

Kazakhstan human rights advocates noted that the trial in Yerimbetov's case differs from previous political cases in the unprecedented quantity of violations and the absurdity of the charges that were laid.

Director of the Kazakhstan International Bureau for Human Rights **Yevgeny Zhovtis** put the actions of Saudi Arabia's authorities in connection with the murder of the journalist Khashoggi and the actions of the Kazakhstan authorities in connection with the criminal prosecution of Iskander Yerimbetov on one and the same plane. In the human rights defender's words, authoritarian regimes are trying to use the law as a means for attaining political objectives.

**Vladimir Kozlov**, former leader of the opposition party "Alga!", was astonished that the judge had deprived Iskander Yerimbetov of the opportunity to finish his address at the final submissions. "*When they were trying me, the judge did not restrict my time at the final submissions of the parties, even though my address lasted a whole three days,*"[22] recounted Kozlov, recalling the concluding stage of his court trial, which took place six years ago in Aktau and based on the results of which he had been sentenced to a prison term of seven years and six months on charges of incitement of social discord.

In the opinion of human rights defender **Sergey Duvanov**, the guilty verdict for Yerimbetov had been predetermined, taking into account that he had refused to submit to the regime. "*Yerimbetov went against the System, because he refused to play by its rules. On top of that, he was complaining about torture, and by the unwritten rules of the System this must be severely punished. So that others wouldn't get any ideas. But Iskander's main 'crime' is that he refused to cooperate with the authorities against Ablyazov. It is precisely this that gave the investigators complete* carte blanche *to do everything they deem necessary to punish the defiant businessman,*" declared Duvanov.[23]

### 3.2. Iskander Yerimbetov's defense reports about the absurdity of the charges

Levelled against Yerimbetov and the other defendants in the case were charges of fraud, that is "theft of another's property by way of deceit". Factually, Yerimbetov and the others were being charged with and were found guilty of the fact that in 2010–2017, the private company Sky Service had submitted price bids at open tenders (competitions) that were 6–10% higher than theoretical "minimally possible prices". Yerimbetov's defence insists that representatives of customers were never in collusion with representatives of Sky Service and were not even acquainted with them, while the prices for services were not changed between the moment an agreement was entered into and when it was carried out completely.

According to the legislation of Kazakhstan (art. 26 of the Entrepreneurial Code), a commercial organisation shall have the right to independently determine the price for its services and to offer it to a potential customer. Articles 9, 14 and 18 of the Entrepreneurial Code of the RK directly prohibit state organs from interfering in legal entrepreneurial activity. Freedom of entrepreneurial activity, including freedom of price formation, is legislatively guaranteed, and observance of the commercial confidentiality [*confidentiality of proprietary information*] is protected. Not a single normative act exists in Kazakhstan prescribing that a subject of enterprise such as Sky Service should furnish anyone at all services at a "minimal possible price".

Yerimbetov's defenders assert that Sky Service's prices for services were not higher than the average market prices, and were unequivocally lower than their competitors' bids. If the price offered did not suit the customers that appeared in the capacity of an injured party, they could have turned down Sky Service's bid and entered into an agreement with another company. During her examination as a witness, head of the state purchases section of the "Kazlesaviaokhrana" company Moldyr Adilova reported that in

[22] https://rus.azattyq.org/a/kazakhstan-almaty-prigovor-erimbetovu/29557975.html
[23] https://bureau.kz/novosti/sobstvennaya_informaciya/chto_zakon_kogda_est_ustanovka/

the course of the tender, the company was selected that would furnish a better quality of services for a lower price than competitors.[24] And it is for this reason that the choice was made in favour of Sky Service.

The investigation reached the conclusion that Sky Service had deceived the customer; however, at the trial, a representative of a general contractor did not agree with these conclusions. He likewise expressed the opinion that such understandings as "overstated rate scales" and "unjustified surcharges" cannot be applicable in a commercial organisation, which is free in establishing the prices for its services.[25]

The examination of Sky Service financial director Tatiana Filipova shows in what manner the charges against Iskander Yerimbetov and the company management were built. In Filipova's words, the investigator himself thought up the wording about an unjustified surcharge, when she could not find grounds for such a surcharge. "*In the course of the interrogation it came to the investigator. The investigator drew a table with percentages in his own hand. I was forced to accept such a wording. In connection with this, I signed such a wording,*" recounted Filipova. She was interrogated without a lawyer being present.

On numerous occasions Yerimbetov's defence brought to the court's attention the fact that Yerimbetov is not a shareholder in Sky Service. Consequently, he is not authorised to take part in the financial and business activity of the company in coming up with rate scales or entering into and carrying out agreements. Yerimbetov was not getting any monetary funds from Sky Service.

University of Illinois professor Peter Maggs, who specialises in the legislation of the countries of the post-Soviet space, conducted an expert analysis of the bill of indictment in relation to Iskander Yerimbetov and the other accused persons. He came to the conclusion that there is no warning in the provisions of the Criminal Code of Kazakhstan on "fraud" about how setting a certain price in the course of entering into public contracts is an unlawful act.

> *"That is, in the given court trial, neither the defendants, nor the defenders, nor the lawyers, nor the so-called injured parties, nor even the prosecutor and the judge have an understanding of the essence of the charges. None of them is in a position to explain what 'unjustified overstatement of prices' is for a commercial organisation,"* – from Iskander Yerimbetov's concluding speech in the trial.

Iskander Yerimbetov's lawyers petitioned before the court about the head of the investigative group in Yerimbetov's case **Sergey Perov** and the other investigators who had conducted the inquest being examined as witnesses. As grounds, the lawyers cited the argument that a defendant has the right to know and understand the charges filed against him, in particular the meaning of the term "unjustified overstatement of rate scales" that was extensively used in the charges. Sergey Perov and the other investigators were summoned for examination;[26] however, they did not appear in court. Only one investigator was examined in court – Zhandos Aryp. Sergey Perov is known for the fact that as an investigator, he had participated in other criminal cases against Mukhtar Ablyazov and his relatives. The given cases were recognised as politically motivated.[27]

[24] https://www.facebook.com/photo.php?fbid=1756281407752276&set=a.376373649076399&type=3
[25] https://rus.azattyq.org/a/29435737.html
[26] https://www.facebook.com/toregozhina/posts/2135115566501017?__tn__=-R
[27] https://ru.odfoundation.eu/a/6265,mezhdunarodnaya-obshchestvennost-prizyvaet-franciyu-ne-dopustit-ekstradicii-oppozicionnogo-politika-muhtara-ablyazova

### 3.3. The accused Sokolenko and Pestov declared that pressure had been exerted on them, and repudiated their previous testimony

During their examination in the trial, the defendants Vasilina Sokolenko and Dmitriy Pestov[28] declared that investigators had been exerting pressure on them at the pre-trial investigation stage. It was being demanded of them that they give the testimony necessary to the investigation in exchange for a change in their measure of restraint and a mitigation of their sentence. The investigators exerted pressure on them likewise during court session recesses, reminding them that they must give testimony consistent with that which they had signed during the investigation.

On 15 October 2018, Vasilina Sokolenko recounted in trial that the texts of the interrogation records that she had been signing were prepared in advance by investigators by dictation from her appointed lawyer. During her detention in confinement, she was in one and the same cell as previously convicted persons ill with dangerous diseases (HIV infected persons, persons sick with tuberculosis). In Sokolenko's words, she had been **"stripped naked under cameras"**. Likewise, for around four months, she was held in a solitary cell and "did not see people for weeks at a time".[29] In Sokolenko's words, the investigators had been warning her that **if she was "obedient", then she would get only 2 years suspended**, but if not, then it would be a real [*i.e. not suspended*] term of 5 years. In the words of the investigators, Yerimbetov was going to be sentenced to a term of from 7 to 10 years in prison.[30] Subsequently, just as promised, the prosecutors demanded that the court sentence Sokolenko to 5 years of deprivation of liberty.

After Sokolenko's examination, Iskander Yerimbetov's lawyer Igor Lifshitz filed a petition before the court to strike the testimony she had given under pressure during the investigation, from the criminal case file materials. Judge Shakirov declared that a decision on the petition would be adopted in the verdict. **The judge acted in a similar manner in response to the majority of the key petitions by Yerimbetov's defense, in such a manner simply avoiding adopting a decision**.

Vasilina Sokolenko and Dmitriy Pestov declared that they were repudiating their previous testimony and were not admitting their guilt. In such a manner, of the four accused persons, only Mikhail Zorov declared that he admitted his guilt, but in so doing he was never able to explain what specifically he had violated. At the court session on the 8th of October, Iskander asked Zorov whether the latter was going to be ashamed of his testimony. To which Zorov replied: *"And aren't you ashamed that I've been sitting [*in prison*] for 11 months already because of your sister!".*[31] **Thus did Zorov factually confirm that the reason for the prosecution is not a criminal offense, but the aspiration of Kazakhstan's authorities to exact vengeance on Botagoz Jardemalie**.

According to Botagoz Jardemalie's information, after Dmitriy Pestov had refused to admit that he was guilty in court and had repudiated the testimony given earlier, he was delivered to head of the MSOG Sergey Perov. Perov tried to persuade Pestov to acknowledge all over again the testimony given during the pre-trial inquest in which he had admitted his guilt and falsely accused Iskander Yerimbetov.[32]

It is worth noting that according to the conclusions of the ECHR (the "Golubjatnikov and Zhuchkov v. Russia" case), testimony obtained as a result of torture or treatment that is inhuman or degrading of dignity (irrespective of its evidentiary value) automatically makes the entire criminal prosecution unfair.[33]

### 3.4. The "injured parties" declared an absence of harm

On 4 July 2018, examination began of representatives of the companies that had supposedly been injured from working together with Sky Service.

[28] https://rus.azattyq.org/a/29540133.html
[29] https://www.youtube.com/watch?v=sTYX_J-kns8
[30] https://rus.azattyq.org/a/29544013.html?fbclid=IwAR1fqXuNGiTl-qIl6czlfavOHAUU7frxZ23jpORCXZQSEGiV_Qp1Zww-XbM
[31] https://www.facebook.com/erzakovna/posts/1916301921768574
[32] https://www.facebook.com/photo.php?fbid=321703721948865&set=a.157389241713648&type=3&theater
[33] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186723%22]}

During their examination in the trial, representatives of the injured organisations declared that they had not had claims against Sky Service during the time they had worked together, and that **they had been given notice by investigators** about the harm caused.[34] "*In my testimony I did not say that we had been cheated. I repeat: it has been conveyed to us that we had been cheated ... the overall sum of the harm was conveyed to us by the investigation, while* ***as an enterprise we do not have harm****. We did not see this cheating, did not know, until the investigation told us ...,*"[35] reported one of those who was examined. To a lawyer's question about what specifically had been stolen by the Sky Service company from the "Kazavialesokhrana" company, a representative of the latter replied "I don't know."[36]

A representative of the *akimat* reported that he had found out about the presumed harm from the investigation and based on the results of the report of a specialist appointed by the investigation.[37] A representative of the "Euro-Asia Air" company declared that the company's owner had changed and it does not have claims against the defendants.[38]

All in all, 85 prosecution witnesses figure in the criminal case file; however, at the court trial, the prosecutors decided to examine just 8 of them. In such a manner, the right of the accused persons to a defence was violated, inasmuch as they did not have the opportunity to examine the prosecution witnesses. The right to examine witnesses is stipulated in art. 17 of the International Covenant on Civil and Political Rights. Yerimbetov's defence managed to achieve the examination of 15 other prosecution witnesses. Those being examined were surprised that they had been included as witnesses. All of them had been interrogated by the investigators still back within the framework of the "money laundering" case (art. 193 of the CC in the revision of 16 June 1997). Many found out about the fact that they were witnesses in the "fraud" case when the court trial was already taking place. None of them corroborated facts of the commission of fraud. Summing up the examination of the prosecution witnesses, judge Taken Shakirov noted: "***There was not one witness who had exposed*** *[*a term of art in Kazakhstani jurisprudence*]* ***the defendants, but the prosecutors had included them in the (prosecution) list.***"[39]

> *"In the course of the judicial examination, all of the so-called witnesses exposing the crime whom the prosecution wanted to examine were examined. And so, not one of those people gave testimony that would corroborate the charges. We did not see any exposing in the interrogation records of the other witnesses. Not only that, those who were examined were surprised that they had been written down as prosecution witnesses. All of them had been questioned by the investigators within the framework of the laundering case. None of them corroborated facts of any commission of fraud."* – from Iskander Yerimbetov's concluding speech in the trial.

Iskander Yerimbetov's defence studied the interrogation records of the rest of the witnesses and did not find corroboration of the charges of fraud that had been filed.

Iskander Yerimbetov's lawyers assert that **some of the witness interrogation records had been fabricated by the investigation.** Thus, on 08 August 2018, lawyer Igor Lifshitz submitted a petition on the court finding some interrogation records of one of the employees of the Sky Service company to be unlawful. During her examination at the trial, the witness reported that the investigator had on his own been entering into the record responses that she had not given. A representative of the prosecution factually confirmed this, having objected that **only four words** [*in Russian*] **had been entered into the record** in

[34] https://rus.azattyq.org/a/29345311.html , https://www.facebook.com/bota.jardemalie.1/videos/pcb.248456032606968/248454769273761/?type=3&theater
[35] https://bureau.kz/novosti/sobstvennaya_informaciya/gorbatyi_so_svetodioidnoi_nityu/
[36] https://rus.azattyq.org/a/29338428.html
[37] https://rus.azattyq.org/a/29389879.html
[38] https://rus.azattyq.org/a/29374523.html
[39] https://www.facebook.com/sergey.duvanov.14/posts/2089161994468469

such a manner **– those for "overstated rate scale" and "unjustified overstatement"**. Judge Shakirov left the petition open, having declared that he would give it an assessment in the verdict.[40]

During the examinations of some prosecution witnesses in court, it turned out that their testimony differed from that which they had been giving during the investigation. The prosecutors reminded them about criminal liability for giving false testimony. In response, **the witnesses had asserted that pressure had been being exerted on them during the investigation**.[41]

### 3.5. The verdict

On 22 October 2018, after more than 4 months had passed since the start of the court trial, judge Taken Shakirov issued a verdict for all of the accused persons:

- **Iskander Yerimbetov** – 7 years of deprivation of liberty with confiscation of property.
- **Dmitriy Pestov** and **Vasilina Sokolenko** – 5 years of deprivation of liberty with confiscation of property.
- **Mikhail Zorov** – 3 years suspended (the prosecution had been asking for 5 years of deprivation of liberty suspended).

In such a manner, Mikhail Zorov, who opted to cooperate with the investigation and bore false witness against himself and Yerimbetov[42], managed to avoid imprisonment. Dmitriy Pestov and Vasilina Sokolenko, who had initially also cooperated with the investigation, but in the trial had declared about pressure on the part of investigators and had refused to admit guilt, were sentenced to real prison terms.

### 3.6. List of persons involved in the criminal prosecution and the use of torture and cruel treatment in relation to Iskander Yerimbetov, Mikhail Zorov, Dmitriy Pestov and Vasilina Sokolenko

Given below is a list of persons who by their actions or inaction might be considered responsible of the illegal criminal prosecution of Iskander Yerimbetov, Mikhail Zorov, Dmitriy Pestov, and Vasilina Sokolenko, as well as of the use toward them of torture and cruel treatment:

1. The top leadership of the Kazakhstan law-enforcement organs – General Prosecutor **Kayrat Kozhamzharov**, Head of the National Bureau for Counteracting Corruption **Alik Shpekbayev**, Chairman of the National Security Committee of Kazakhstan **Karim Masimov**, Minister of Internal affairs **Kalmukhanbet Kasymov**.
2. Judges of Medeu district court No. 2 – **Anina Baydauletova**, **Farukh Umarov**, **Taken Shakirov**, **Dauren Maukeyev** (chairman of the court).
3. Head of the inter-agency operative-investigative group of the National Bureau for Counteracting Corruption **Sergey Perov**.
4. Chief of the investigative department of the KNB **Berik Bekzhanov**.
5. The KNB investigators who were interrogating Iskander Yerimbetov without a lawyer present in the basement of the SIZO – **Vitaly Patsan**, **Daniyar Suleymenov**.
6. Investigators of the inter-agency operative-investigative group of the National Bureau for Counteracting Corruption – **Gulmira Abdullayeva**, **Zhandos Kayratuly**, **Zhandos Aryp**, **Erik Valiyev**, **Bakhytzhan Muzhikov**, **Ruslan Orazbayev**.
7. The prosecutors at the court trial – **Yerkin Baymagambetov**, **Timur Shamoi.**

[40] https://rus.azattyq.org/a/29420529.html
[41] https://www.facebook.com/bota.jardemalie.1/posts/283155785803659 , https://rus.azattyq.org/a/29410120.html
[42] https://bureau.kz/novosti/sobstvennaya_informaciya/mesyacev_sledstviya_let_tyurmy/

8. Special prosecutor **Almas Dunbayev**, who examined the report on the use of torture in relation to Iskander Yerimbetov.
9. Chief of SI-1 [*an investigative isolator*] of the DUIS [*Department of the Penalties Execution System*] in the city of Almaty – **Azamat Iztleuov**, deputy – **Mukhtar Orazbayev**.

## 4. THE INTERNATIONAL COMMUNITY CALLS FOR THE IMMEDIATE RELEASE OF ISKANDER YERIMBETOV

The international community's attention has been drawn to Iskander Yerimbetov's case. Deputies of the PACE, the European Parliament, and Parliaments of European states, as well as a range of international organisations, have expressed concern at reports about the use of torture on Iskander Yerimbetov and have called on Kazakhstan's authorities to immediately release the political prisoner.

On 6 February 2018, representatives of the embassies of the EU, Germany, the USA, Belgium, and Great Britain met with Iskander Yerimbetov in the SIZO (pre-trial detention centre). The visit followed the reports by Yerimbetov's relatives and lawyers about the use of torture on him.

On 6 April 2018, Iskander Yerimbetov was visited[43] in the SIZO by human rights defenders from Europe – deputy of Poland's *sejm* Marcin Święcicki and president of the Italian Federation for Human Rights Antonio Stango. During the meeting in the SIZO, Yerimbetov recounted in detail the cruel treatment and torture he had experienced. Marcin Święcicki expressed his readiness to take Yerimbetov under personal surety. The members of the Mission recommended to the authorities that they change the measure of restraint for Yerimbetov and reopen the investigation into the case of torture.

From 20 August 2018 through 26 August 2018, yet another international human rights monitoring mission was in Kazakhstan. Taking part in the mission were deputies of the Swiss Parliament Carlo Sommaruga and Claude Béglé, and journalist Patrick Chuard, as well as president of the Italian Federation for Human Rights Antonio Stango.[44] The mission participants sent the Kazakhstan authorities a request for a meeting with Iskander Yerimbetov. The Ministry of Justice of Kazakhstan denied their request for the meeting, citing that Iskander Yerimbetov had "already been visited by international observers" and that he was "participating in a court trial".

Within the framework of the PACE, 4 written declarations have been signed[45,46,47,48] in which Iskander Yerimbetov's case is mentioned. In the declaration of 25 January 2018, it is noted that Kazakhstan's authorities were holding Yerimbetov as a hostage. In the declaration of 11 October 2018, the PACE deputies called on the EU and the Council of Europe to deprive Kazakhstan of financial support until the human rights situation in the country improves.

Iskander Yerimbetov's case is mentioned in letters by Europarliament deputies[49] (dated 13. December 2017 and 12 July 2018) to president Nursultan Nazarbayev in connection with the violation of human rights and the proliferation of incidents of politically motivated political prosecutions in Kazakhstan. In the letters, *inter alia*, attention is brought to the example of the prosecution of Iskander Yerimbetov, who, in the opinion of the deputies, is being held as a hostage in order to exert pressure on his sister Botagoz Jardemalie.

On 15 February 2018, Human Rights Watch and the Norwegian Helsinki Committee called on Kazakhstan's authorities to immediately provide medical assistance to Iskander Yerimbetov, and to conduct an

[43] https://fidu.it/en/kazakhstan-the-final-report-of-fidus-april-mission/
[44] https://fidu.it/en/kazakhstan-report-on-august-2018-human-rights-monitoring-mission/
[45] http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24722&Lang=EN
[46] http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25007&Lang=EN
[47] http://www.assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24490&lang=EN
[48] http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25176&lang=EN
[49] Jaromir Stetina, Petras Austrevicius, Tunne Kelam, Wolf Klinz, Anna Gomes, Heidi Hautala, Valentinas Mazuronis, Javier Nart, Indrek Tarand, Kazimierz Michal Ujazdowski, Julie Ward, Tomas Zdechovsky

impartial, swift, and thorough investigation in connection with the allegations of torture and ill-treatment.[50] On 1 November 2018, the Norwegian Helsinki Committee came out with a statement in which it called for the release of Iskander Yerimbetov and his colleagues. In the opinion of human rights advocates, those being prosecuted had not violated any laws, while the criminal case had been completely fabricated.[51]

On 23 April 2018, President of the Council of Bars and Law Societies of Europe (CCBE) Antonín Mokrý approached president Nursultan Nazarbayev with a letter. Mokrý expressed concern in connection with the prosecution of Botagoz Jardemalie, who, allegedly, is a victim of politically motivated prosecution and abuse of the Interpol system. Noted in the letter are the declarations of human rights advocates about the use of torture on Iskander Yerimbetov.[52]

On 17 May 2018, the organisation International Observatory for Lawyers came out with a declaration in defence of Botagoz Jardemalie, having noted that the prosecution of Iskander Yerimbetov is an attempt to exert pressure on Jardemalie. The organisation called on Kazakhstan's authorities to immediately end the ill-treatment of Yerimbetov and to release him.[53]

On 8 November 2018, the USA mission at the OSCE expressed concern in connection with allegations of mistreatment while in custody and procedural irregularities in the trial of Iskander Yerimbetov. The mission called on Kazakhstan to ensure that international legal standards are upheld as Yerimbetov appeals his sentence, and to conduct an independent investigation into the allegations of torture that had been used on him in custody.[54]

## 5. CONCLUSIONS AND RECOMMENDATIONS

The Kazakhstan entrepreneur Iskander Yerimbetov has become one more victim in the war that Kazakhstan's authorities have been waging over a span of many years against the opposition movement in the country and, in particular, against the politician Mukhtar Ablyazov. It was demanded of Yerimbetov that he give false testimony against Ablyazov; however, he refused to do this. The investigation did not get evidence of Yerimbetov's connection with Ablyazov. It is probably for precisely this reason that the first criminal case charging Yerimbetov with "money laundering" fell apart.

Those used by the investigation aiming to bring Iskander Yerimbetov to criminal liability were Sky Service president Mikhail Zorov, and members of the board of directors Dmitriy Pestov and Vasilina Sokolenko. They likewise are victims of politically motivated prosecution.

The court trial in Yerimbetov's case took place with an accusatory bias and violation of the right of the accused to a defence. The trial was not objective and independent, while the guilty verdict, as always happens in political cases, was predetermined. The testimony of the witnesses and of the "injured party" in the court trial bears witness to the groundlessness and even the absurdity of the charges.

The court trial became a warning to Kazakhstan lawyers that it makes no sense to participate in political cases; after all, the court will accept even the most absurd charges. Now, only a few lawyers in Kazakhstan resolve to participate in the defence of those being prosecuted for political motives.

Independent human rights advocates and observers note that Iskander Yerimbetov was subjected to torture and cruel treatment during the pre-trial investigation; however, Kazakhstan's authorities did not

[50] https://www.hrw.org/news/2018/02/16/kazakhstan-businessman-alleges-torture
[51] https://www.nhc.no/en/kazakhstan-must-release-iskander-yerimbetov-and-co-defendants/?fbclid=IwAR0y9X-pm7BOHEtC38PmIufybPcAB4dwwmDMYxiJxCT6qubEWDy-fE1Mawk
[52] https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Kazakhstan_-_Kazakhstan/2018/EN_HRL_20180423_Kazakhstan_Concerns-over-lawyer-Botagoz-Jardemalie.pdf
[53] http://www.protect-lawyers.com/oiad-content/uploads/2018/05/17-05-2018-appeal-iol-jardemalie-case-en.pdf
[54] https://osce.usmission.gov/on-the-treatment-of-iskander-yerimbetov-in-kazakhstan/?fbclid=IwAR2xBVBZlHCTBscHrWr2nDgpekc2hGof43IFuwae52sQK2H8oZ7mP-TfOVQ

conduct an objective and independent inquest in connection with this. Witnesses at the court trial likewise claimed pressure on the part of the investigation. During the court trial, the defendants Vasilina Sokolenko and Dmitriy Pestov repudiated their "confessionary testimony" that they had given during the investigation. They declared that investigators had been exerting pressure on them.

**The members of the human rights observer mission, the Italian Federation for Human Rights and the "Open Dialogue" Foundation address the competent organs of the UN, the EU, the OSCE, the Council of Europe, and of the governments of democratic states with a call to condemn the actions of Kazakhstan's authorities for the criminal prosecution of Iskander Yerimbetov and his colleagues. The international community must embark on a policy of zero tolerance in relation to countries that openly violate fundamental human rights and freedoms. Kazakhstan, as a participant-country in the UN and the OSCE, is obligated to adhere to the obligations taken upon itself in the sphere of human rights.**

**Large international economic and financial institutions and organisations (the World Bank, the International Bank for Reconstruction and Development, the "Asia-Europe" Forum, the Organisation for Economic Cooperation and Development), as well as their participant countries, must pay attention to the egregious example of the prosecution of the entrepreneur Iskander Yerimbetov and reconsider the principles of cooperation with Kazakhstan's regime. It is imperative to inform investors about the risks of doing business in Kazakhstan, and in particular to reflect this in existing ratings of doing business (DoingBusiness, Index of Economic Freedom). The case of Iskander Yerimbetov is a warning to international investors about how Kazakhstan is not a safe country for doing business. Any entrepreneur can end up in Iskander Yerimbetov's place and will not be able to defend his interests in court, inasmuch as rule of law is not in effect in Kazakhstan and there is no independent judiciary.**

**We call on the international community to embark on concrete actions in connection with the violations in Iskander Yerimbetov's case:**

- To introduce personal sanctions against the persons involved in the political prosecution of all the participants in Iskander Yerimbetov's case and the use of torture in relation to Iskander Yerimbetov.
- To demand of Kazakhstan's authorities the immediate release of Iskander Yerimbetov, Dmitriy Pestov and Vasilina Sokolenko.
- To demand of Kazakhstan's authorities a reconsideration of the criminal case against Iskander Yerimbetov, Dmitriy Pestov, Vasilina Sokolenko and Mikhail Zorov.
- To demand of Kazakhstan's authorities that an objective and independent inquest be conducted based on the reports of the use of torture on Iskander Yerimbetov.
- To demand of Kazakhstan's authorities that an objective and independent inquest be conducted based on the reports of the exerting of pressure on Vasilina Sokolenko and Dmitriy Pestov during the investigation
- To demand of Kazakhstan's authorities that independent doctors be allowed access to Iskander Yerimbetov, so that they can objectively investigate his state of health.
- To send independent observers to Kazakhstan for participation in the court of appeals in Iskander Yerimbetov's case.
- Economic and financial cooperation with Kazakhstan, including within the framework of the World Bank and the International Bank for Reconstruction and Development, must be implemented in a close tie-in with the execution by Kazakhstan of obligations with respect to observing human rights and fundamental freedoms.