



**REPORT:
FRANCE SHOULD NOT ALLOW
THE DEADLY RENDERING
OF THE KAZAKH OPPOSITIONIST**



Ukraine and Russia do not provide guarantees of a fair trial, adequate conditions of detention or protection against torture. Extradition of the opposition politician Mukhtar Ablyazov to these countries would threaten his security and would be tantamount to rendering him into the hands of the Kazakh authorities

The Open Dialog 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 protection of human rights, democracy and rule of law in the post-Soviet area. Particular attention of the Foundation is focused on the region's largest countries: Kazakhstan, Russia and Ukraine.

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In addition to observational and analytical activities, the Foundation is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relationships with the post-Soviet countries, in order to support the process of democratisation and liberalisation of their internal policies. Significant areas of the Foundation's activities also include support programmes for political prisoners and refugees.

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1. INTRODUCTION

The political context of the case of Mukhtar Ablyazov has been repeatedly referred to in the statements of human rights organisations, members of the European Parliament and the PACE. Russia and Ukraine are not safe countries for extradition as these countries do not guarantee the right to a fair trial or adequate conditions of detention, and torture is used systematically without any consequences for the perpetrators. The rendering of the Kazakh opposition politician and refugee would contravene the international agreements on human rights. [\[1\]](#)

Extradition should not be allowed in a situation where Ukraine's corrupt justice system strongly resists any attempts at reform, while Russia continues to ignore the Minsk Agreements, provides military support to the pro-Russian rebels and refuses to exert due influence on them. Repeated calls, including those of the French Government, which has acceded to sanctions against Russia and is making great efforts to bring about a ceasefire in the east of Ukraine, are being ignored. US Vice President Joe Biden stated: *"President Putin continues to call for new peace plans as his troops roll through the Ukrainian countryside and he absolutely ignores every agreement that his country has signed in the past and that he signed recently, including in Minsk"*. [\[2\]](#)

Human Rights Watch has noted that, following the resumption of Putin's role as president, *"The government began, an unprecedented in the country's post-Soviet history, oppression of civil society, which exacerbated with the beginning of the Ukrainian crisis in the winter of 2013 and spring of 2014"*. [\[3\]](#) And so, the fact that, on the Canal + TV channel, Francois Hollande labelled Putin *"a straight man with nothing to hide"*, caused our concern.

The international community has noted the opacity of the Russian and Ukrainian requests for extradition, with the Kazakh authorities as the true orchestrators behind the motions. Ukraine and Russia continue to remain on the list of the most corrupt countries in the world. For this reason, in these countries, Ablyazov may not only face an unfair trial and ill-treatment, but also interrogations in line with Kazakhstan's agenda and even an actual transfer to Kazakhstan.

Many EU member states (the Czech Republic, Spain, Poland, Austria, Great Britain, Italy and Latvia) have refused to extradite individuals who are involved in the case of Ablyazov, granting them asylum.

"The French did not receive our petition, and so we have to make an agreement on the extradition of Ablyazov with Ukraine, i.e. the problem has shifted..." – in this way, on 27 October, 2014, journalists quoted the statement of Kazakhstan's Deputy General Prosecutor Logan Merkel. On 4 November, 2014, the Kazakh Prosecutor's Office denied this statement, but on 21 January, 2015, the department's representative, Andrey Kravchenko assured that Kazakhstan will seek the extradition of Ablyazov and, in the case of a refusal, they will provide materials for a trial in another country. At the same time, Kravchenko stressed: *"It is highly illogical for any country in the world to spend its taxpayers' money on trying Kazakhstan's criminals who committed crimes in Kazakhstan"*. [\[4\]](#)

Lest we forget that Kazakhstan's agreements on cooperation in criminal matters with Ukraine and Russia allow the virtually unimpeded execution of extradition. [\[5\]](#)

Before the French Government issues a decision on the case of extradition of the Kazakh opposition politician, we would like to highlight, in subsequent sections of this report, the statements of the United Nations, the European Court of Human Rights (ECHR), the Council of Europe, the European Parliament, human rights organisations and government bodies on the actual state of law enforcement and judicial systems in Ukraine and Russia (the data for 2014 and 2015).

2. NONCONFORMITY OF THE LAW ENFORCEMENT BODIES' ACTIVITIES WITH INTERNATIONAL STANDARDS

The state of affairs in Ukraine

According to a sociological survey conducted in March 2015, 75.9% of Ukrainian society does not trust the prosecutor's office, and 69.2% - the police. [6] The need to carry out “*de-politicisation and demilitarisation of the structures of law enforcement agencies*” in Ukraine was declared by the European Parliament on 17 July, 2014. [7] Reform in this area has been significantly delayed. Transparency International noted that Ukraine, occupying the 142nd position (out of 175) in the corruption rankings for countries, has not resulted in a deviation from the illegal schemes of the previous regime. [8]

Evidence of illegal cooperation between Ukrainian and Kazakh law enforcement agencies in the case of Ablyazov received widespread international publicity. As it transpired, the Ukrainian investigation, as well as the Russian was biased in this matter, and acted on the direct orders of Kazakhstan. [9]

Over the past year, the work of Ukrainian law enforcement authorities has been subjected to stark criticism. On 12 December, 2014, the UN Committee against Torture pointed to the ineffectiveness of the investigation into the tragic events in Odessa and Mariupol. [10] On 31 March, 2015, the International Advisory Group of the Council of Europe underlined the insufficient accountability of the police to civil society and stated that the investigation into crimes against members of Maidan was not consistent with the practice of the European Convention on Human Rights and the ECHR. [11] Amnesty International also noted the impunity of police actions during Maidan. [12]

The state of affairs in Russia

According to the well-known Kazakh political refugee Muratbek Ketebayev, Ablyazov's prosecution in Russia has resulted from a personal request made by Nazarbayev to Putin. [13] This is not the first time that the Kazakh authorities have attempted to get their hands on their political opponents through Russian extradition requests. The Czech Republic and Austria have refused to extradite to Russia Tatiana Paraskevich and Artur Trofimov, who are participants in the case of Ablyazov. They have been granted protection in accordance with the law on asylum.

In Russia, the case against Ablyazov and his associates has been carried out by investigators and judges who appear on the list of sanctions in connection with the Magnitsky case. Financier William Browder enunciated: “*Until officials involved in the Magnitsky case, are brought to justice in accordance with the law, Russia will not see an objective investigation*”. [14] In the case against Ablyazov, Paraskevich and Trofimov, Russian investigators used illegal methods: attempts to induce them to testify against Ablyazov in exchange for the closure of the criminal cases against them; falsification of the case file; intimidation of their relatives.

Another example of the Russian investigators' bias is the case of the kidnapped Ukrainian soldier, Nadiya Savchenko. The European Parliament, European governments and departments, including the Ministry of Foreign Affairs of France, called for her immediate release. The Ukrainian Parliament supported the initiative of the Open Dialog Foundation and voted for a resolution to impose personal sanctions against investigators and other Russian officials responsible for fabricating the case of Savchenko. [15] The Russian reluctance to release Savchenko, who is a Ukrainian delegate to PACE, was one of the reasons for the deprivation of its right to vote in this organisation. In response, Russia suspended relations with the PACE and threatened to completely withdraw from the Council of Europe, which would further alienate its justice system from those of western countries.

3. LACK OF GUARANTEES OF A FAIR TRIAL

The state of affairs in Ukraine

On 11 March, 2015, Deputy Head of the Presidential Administration and the Coordinator of the Council for Judicial Reform, Alexey Filatov stated: *"Corruption exists in all courts at all levels"*. [16] 81.4% of the population does not trust Ukrainian courts. [17] The European Parliament stressed the need to *"strengthen the rule of law, in particular, through judicial reform, which would contribute to the restoration of public confidence in the justice system"*. [18]

According to the report by Freedom House, even after the adoption of the Law 'On restoring confidence in the judiciary in Ukraine', the majority of representatives of the former regime managed to maintain their senior positions in courts. [19] Ukrainian authorities noted: judges resist the changes, which complicates the already slow process of reform. Representatives of the Ministry of Justice reported that it is in the judicial system that they have encountered the greatest problems with lustration. [20] On 17 November, 2014, the Supreme Court challenged the provisions of the law on lustration in the Constitutional Court. Let us remind ourselves that in 2010, the Constitutional Court issued a decision allowing Yanukovich to strengthen his presidential power.

On 2 February, 2015, President of Ukraine Petro Poroshenko called for the speeding up of judicial reform, having noted that: *"The only thing that prevents us from talking about the complete rebooting of power, is the judicial branch of the authorities. (...) Thus far, it has stood as a rock, against which the most powerful waves of reform have broken. This also applies to law enforcement agencies, and the investment climate; everything that we decide to have a crack at (...) I have a stack of reports about judges releasing the 'Berkut' fighters who shot people, about judges removing attachments of property of criminals from the previous government who stole from the people of Ukraine"*. [21]

According to experts of the Council of Europe, judgments handed down by judges within the framework of the Maidan-related trials, carried out at the moment, are 'inadequate' and weaken the justice system as a whole. For example, the court handed down the minimum possible sentence and released from custody Mikhail Gavrilyuk, guilty of the ill-treatment of protesters. Representatives of the Council of Europe noted complaints from the GPU that the courts *"are acting in the same manner as they did under the previous regime"*. [22] Currently, in Ukraine, several judges are under investigation for alleged miscarriage of justice (also during the Maidan protests).

In 2015, the ECtHR recognised violations by Ukraine of the right to a fair trial in many court cases: 'Zhizitsky vs. Ukraine', 'Ogorodnik vs. Ukraine', 'Petrenko vs. Ukraine', 'Bochan vs. Ukraine', 'A.V. vs. Ukraine'. [23]

The state of affairs in Russia

The UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut visited Russia in 2013 before expressing the need for the Russian state institutions to respect the independence of courts and to appoint judges via an independent body, free from the influence of the executive branch of the power. [24] This issue was also brought up by Freedom House. Experts of the organisation recalled that in 2014, by decree of the President, one of the most independent courts in Russia – the Supreme Arbitration Court was restructured. [25]

On 25 April, 2014, the Netherlands' Foundation 'Lawyers for Lawyers' expressed its concern over the inability of the Russian authorities to *"guarantee effective access to legal services provided by an independent legal profession"*. [26] Russian human rights activists stated that: *"Not all persons deprived of their liberty are guaranteed by law, and in practice, from the very outset of their deprivation of liberty, the right of access to a lawyer and to a doctor"*. [27]

In February 2015, the International Commission of Jurists noted that *"the system of selection and appointment of judges in the Russian Federation does not guarantee transparency, fairness and predictability"*. [28] In March 2015, the UN Committee on Human Rights reported that judges in Russia are subject to extra-procedural influences, also from the presidential commission. Should judges hand down acquittals, they may be subject to disciplinary sanctions. [29]

In 2015, Russia has lost a number of lawsuits in the ECHR relating to the violation of the right to a fair trial: 'Volkov and Adamski vs. Russia', 'Malmberg and others vs. Russia', 'Eshonkulov vs. Russia'. [30]

4. TORTURE AND ILL-TREATMENT

The state of affairs in Ukraine

In September 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited prisons in Kiev and Kharkov. The Committee had received repeated reports of torture and corruption in prisons as well as the exploitation of prisoners for economic purposes. It was noted that the prison administration uses ill-treatment as a 'tool' to maintain order. European experts have criticised the impunity of police officers who tortured protesters on Independence Square. [31]

On 12 December, 2014, the UN Committee against Torture stated that torture in Ukraine is often categorised as 'abuse of office', 'abuse of authority' or 'coercion of a witness'. [32] In its statement to the Committee, the Ukrainian Helsinki Group noted that the preventive measures, taken by the government, only give the appearance of a fight against torture. [33]

The website of the Ukrainian ombudsman regularly posts information about illegal detentions and violence by police officers. As early as in 2015, such violations were recorded all over Ukraine: in Kiev, Fastov, Zhitomir, Odessa, Berdyansk, as well as in the Dnepropetrovsk, Cherkasy and Zaporozhye provinces. The Kharkov Human Rights Group also reported incidents of torture across the country in late 2014 to early 2015. [34]

During the first months of 2015, Ukraine lost in the ECHR 5 cases regarding the use of torture. In most cases, victims were beaten in police stations in order so that they became compelled to confess to crimes (for example, in the case of 'Kirpichenko vs. Ukraine', 'Zhyzitsky vs. Ukraine'). [35]

The state of affairs in Russia

Russian courts use testimonies given under torture, and those who make attempts to challenge violations of their rights are subjected to persecution. This was stated in the latest Amnesty International report on human rights in the world. [36] In March 2015, the UN Committee on Human Rights reported on the widespread use of torture in Russia. The Committee cited the latest example of a high-profile case against Zaur Dadayev and other suspects who stated that they had confessed to the murder of politician Boris Nemtsov under torture. [37]

According to the information held by Russian human rights organisations, the Russian investigative committee set up a special body to investigate into police crimes. However, this body has no clear competencies, or a sufficient number of personnel; 84 inspectors are unable to consider more than 60,000 complaints, filed recently. [38]

Only in the first three months of 2015, in 16 cases, the ECtHR found Russia guilty of torture. Incidents of torture were recorded both by the police ('Razzakov vs. Russia', 'Zelenin vs. Russia' and others) and by members of the Federal Security Service ('Dzhabbarov vs. Russia'). Several people were forcibly expelled from Russia to Uzbekistan (the cases of 'Khalikov vs. Russia', 'Eshonkulov vs. Russia', 'Nazarov vs. Russia'). [39] The ECtHR has considered this as a factor, conducive to torture.

5. INAPPROPRIATE CONDITIONS OF DETENTION AND THE FAILURE TO PROVIDE MEDICAL ASSISTANCE IN PRISONS AND DETENTION FACILITIES

The state of affairs in Ukraine

In December 2014, the UN Committee against Torture reported the deteriorating conditions for maintaining health in Ukraine's prisons, especially manifesting themselves by the spread of tuberculosis. [40] At the same time, human rights organisations have concluded that there exists a lack in terms of guarantees in connection with the provision of medical care from medical professionals from outside penal colonies, as well as a high level of mortality and suicide in the colonies. [41] The Association of Ukrainian Human Rights Monitors on Law Enforcement regularly notes that the condition of the premises, sanitary conveniences and lighting in prisons do not meet standards. [42]

On 16 March, 2015, the Ombudsman's Office in Ukraine informed the Open Dialog Foundation that in 2014, monitoring visits to Ukrainian detention centres and penal colonies identified "systemic violations of the order of detention and punishment, resulting in the cruel or degrading treatment of detainees and prisoners". [43] The Ombudsman noted that typical violations in prisons in 2014 were: the delayed and poor nutrition of detainees, the lack of sustainable access to safe drinking water, the lack of storage space for food and personal care products. [44]

It is noteworthy that the data of the Ministry of Internal Affairs regarding compliance with the standards of space for individuals taken into custody do not correspond with the data of the Ombudsman. On 7 April, 2015, the Ministry of Interior informed the Open Dialog Foundation that the standard living space dimensions for persons taken into custody is 4 square metres. However, three weeks prior, i.e. on 16 March, 2015, the Ombudsman stated that "standards, provided for under the current legislation for a detainee (2.5 sq. m.), do not meet European standards".

According to human rights defenders, in 2014, 792 people died in Ukraine's prisons, while from 2005 to the end of 2013, more than 1,350 people were killed in detention facilities. [45]

In December 2014, the ECtHR issued several decisions regarding inadequate conditions of detention and the failure to provide medical assistance in places of detention, which is tantamount to torture ('Kushnir vs. Ukraine', 'Buglov vs. Ukraine'). [46]

The state of affairs in Russia

In September 2014, the representative of the Council of Europe's Human Rights Commission, Nils Muižnieks, when speaking about the results of his visits to Kiev, Moscow and Simferopol, reported the problem of a lack of food and medicines in overcrowded prisons of Ukraine and Russia. [47] On 16 February, 2015, Secretary of the Public Chamber of Russia, Alexander Brechalov informed President Vladimir Putin of a sharp increase in the number of detainees in pre-trial detention centres and of the inadequate conditions of their detention. [48]

In 2015, several ECtHR decisions on inadequate conditions in places of detention in Russia have been issued ('Bogdanov vs. Russia', 'Khloyev vs. Russia'). [49]

6. NAZARBAYEV'S 'INVISIBLE HAND' IN FRANCE

The Kazakh authorities, in violation of the law, apply lobbying mechanisms in order to bring about the extradition of Mukhtar Ablyazov and his associates from Europe, which once again proves the political nature of the case. The incidents of Kazakhstan's illegal influence on law enforcement agencies of the Czech Republic (the case of Ablyazov's colleague, Tatiana Paraskevich), Spain (the case of Ablyazov's security chief Alexander Pavlov), Italy (the case of Ablyazov's wife, Alma Shalabayeva) were made public, which provoked an international scandal. As a result, Paraskevich, Pavlov and Shalabayeva have been granted political asylum. At the same time, the Italian authorities are prepared to press charges against

5 law enforcement officers who contributed to the illegal expulsion of Ablyazov's wife to Kazakhstan.

Unfortunately, France has also become a contributor to the scandal due to Kazakhstan's illegal influence in the context of Ablyazov's trial.

Previously, information was published that Prosecutor Solange Legras had exchanged data and advice with representatives of Ukraine, Russia and Kazakhstan's BTA Bank who demanded the extradition of Ablyazov; the information immediately hit the headlines. The prosecutor was on friendly terms with these persons, and even apologised to the Ukrainian representatives following her request to give priority to the Russian extradition request. [\[50\]](#)

On 27 April, 2015, the Mediapart published information about an employee of the Kazakh Embassy in France, Jean Galiev who, on a regular basis, exchanged correspondence concerning the case of Ablyazov with François Delahousse, the head of the Department for the Caucasus and Central Asia at the French Ministry of Foreign Affairs, and François Revardeaux, Laurent Fabius's advisor. [\[51\]](#)

On 31 July, 2013, François Delahousse warned Jean Galiev about the arrest of Mukhtar Ablyazov in the South of France. Galiev assured him that the detention of Ablyazov is solely legal in nature. Delahousse replied that it was 'ridiculous' because 'experts from Ablyazov's PR-team' had called him and reported that the case was politically motivated. The Foreign Ministry official told Galiev that he had responded to the calls with the following words: "The French courts will independently decide his fate". It should be noted that the French court did not consider the case from the point of view of the charges brought against Ablyazov, but only verified the compliance of extradition requests with procedural rules.

Through Revardeaux, Fabius's advisor, the Kazakh General Prosecutor's Office has sent to the French Ministry of Justice three letters, in which it expressed 'deep concern' over the fact that France had rejected Kazakhstan's request for extradition of Ablyazov. Kazakh authorities have offered to render Ablyazov to them based on the UN Convention against Transnational Organised Crime. On 24 January, 2014, Jean Galiev again addressed Revardeaux: "*In regard to the file known by you, we would like once again to draw your kind attention to the absence of any response from the French Ministry of Justice to three letters the Prosecutor General of Kazakhstan. Astana wants to understand what causes this silence*". A month and a half before, the Fabius adviser promised to "*see the point with justice*".

In addition, Galiev requested that Revardeaux and Delahousse informally transfer to the Ministry of Justice articles presenting Ablyazov in a negative light. According to the correspondence, Revardeaux fulfilled the request, and Delahousse handed the materials to his department at the Ministry of Foreign Affairs. Also, on 11 March, 2014, Jean Galiev drew François Revardeaux's attention to the need for the sending to the Central African Republic (CAR) of a request for the cancellation of passports, issued to the Ablyazov family, due to the fact that Kazakhstan believed that they were issued illegally. The request was sent on the same day, on behalf of Laurent Fabius. Fabius' advisor did not see anything wrong in the fact that he, on behalf of the Ministry of Foreign Affairs of Kazakhstan, informed the Central African Republic about the passports, as, eventually, the passports were not withdrawn and the issue "*did not affect the extradition process*".

In addition, two and a half months after the arrest of Ablyazov, Jean Galiev appealed to Laurent Taieb, the founder of the 'Presitge' company, which cooperates with the Nazarbayev regime promoting his positive image in Europe. In a letter marked 'confidential', Galiev asked Taieb to pass to the 'right people' information about Ablyazov's biography and criminal charges, levied against him in Kazakhstan. According to Galiev, 'the right people' must promptly put the information into use without mentioning the source of the information.

7. RECOMMENDATIONS

In light of recent news about the possible involvement of some French officials in pursuit of Mukhtar Ablyazov, we wish to stress that the fate of the famous Kazakh oppositionist should be resolved in strict compliance with EU law and should not be a subject of political agreements with any country.

The Open Dialog Foundation hereby expresses the hope that, when making a decision in the case of Mukhtar Ablyazov, the French Government will take into account the position of the most prominent human rights organisations, and approx. 50 MEPs, who for the past two years, have underlined the political context of the case of Ablyazov and the inadmissibility of his extradition. The European Convention on Extradition and the UN Convention against Torture prohibits the extradition of persons in cases which have a political context or where there exists a threat of torture.

We insist that the EU countries who act in defence of the values of democracy and human rights, should not flout these values in practice by engaging in corrupt ties with dictatorial regimes. Therefore, we hereby appeal to Eurojust as an EU institution, designed to coordinate investigations between EU Member States, to request that the French authorities carry out a proper public investigation into Kazakhstan's undue influence on the officials of ministries and law enforcement agencies of France in Mukhtar Ablyazov's case. These actions bear signs of corruption, and so Eurojust should verify the impartiality and comprehensive nature of the investigation.

All those wishing to support our demands are welcome to address the following persons and institutions:

- President of France Francois Hollande - 55 Rue du Faubourg Saint-Honoré 75008 Paris, fax: +33 1 47 42 24 65;
- French Prime Minister Manuel Waltz - Hôtel Matignon 57, rue de Varenne, 75007 Paris;
- French Justice Minister Christiane Taubira - Ministère de la Justice 13, Place Vendôme, 75042 Paris Cedex 01;
- French Foreign Minister Laurent Fabius - Paris 37, Quai d'Orsay F - 75351 PARIS, tel.: 33 1 43 17 53 53;
- President of The European Union's Judicial Cooperation Unit Michele Coninx - The Netherlands, The Hague, Maanweg 174, 2516 AB, tel.: +31 70 412 5000; fax: +31 70 412 5005, e-mail: info@eurojust.europa.eu;
- High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini - 1049 Brussels, Rue de la Loi / Wetstraat 200, tel.: +32 2 584 11 11; +32 (0) 2 295 71 69;
- Chairman of the European Parliament Committee on Foreign Affairs Elmar Brok - Rue Wiertz 60, 1047 Bruxelles, Belgique, tel.: +32 2 28 49013 (Brussels), +33 3 881 76902 (Strasbourg);
- United Nations High Commissioner for Refugees Antonio Guterres - Case Postale 2500, CH-1211 Genève 2 Dépôt, Suisse, tel.: +41 22 739 8111, fax: +41 22 739 7377. Application form: http://www.unhcr.org/cgi-bin/texis/vtx/contact_hq;
- British Home Secretary Theresa May: 2 Marsham Street, London, SW1P 4DF; 020 7035 4848; e-mail: public.enquiries@homeoffice.gsi.gov.uk;
- House of Commons: St Margarets Street, London SW1A 0AA, United Kingdom, tel.: +44 20 7219 4272, e-mail: hcinfo@parliament.uk;
- Prime-Minister of Great Britain - 10 Downing Street, London, SW1A 2AA, tel.: +44 20 7925 0918, e-mail: <https://email.number10.gov.uk>.

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