

## DECISION

### on the qualification of the offences committed by the suspect

Almaty

15 November 2017

Head of the investigative and operational group, Head of the Investigative Department of the National Anti-Corruption Bureau (Anticorruption Service) of the Agency of the Republic of Kazakhstan for Civil Service and Anti-Corruption S.N. Perov, having examined the materials of the criminal case No. 1700000131000012,

#### HAS ESTABLISHED AS FOLLOWS:

The citizen of the Republic of Kazakhstan (**hereinafter referred to as the 'RK'**) Iskander Myrzakhanovich Erimbetov (**hereinafter referred to as I. M. Erimbetov**), born 4 May 1971, a native of the city of Almaty, committed crimes in the sphere of economic activity under the following circumstances.

JSC 'BankTuranAlem' (**subsequently renamed to JSC 'BTA Bank', hereinafter referred to as the 'Bank'**) was the core bank of the Republic of Kazakhstan (**hereinafter referred to as the 'RK'**) and carried out its activities in accordance with the Law 'On Banks and Banking Activity in the RK' No. 2444 of 31 August 1995, the Bank's Charter and its internal regulations, as well as other normative and legal acts of the RK.

Based on the decision of the Board of Directors of the Bank dated 20 May 2005, and pursuant to Order No. 3-k dated 23 May 2005, Mukhtar Kabulovich Ablyazov (**hereinafter referred to as M.K. Ablyazov**) was appointed to the position of Chairman of the Board of Directors of the Bank.

The Bank owned a license for all types of banking operations issued by the Agency of the RK on Regulation and Supervision of the Financial Market and Financial Organisations.

The main direction of its activities was lending, accompanied by the need to take risks and manage the risks (**general provisions of the Lending Policy of JSC 'BankTuranAlem' No. 23 dated 17 June 2004**).

One of the principles of effective management of credit risks of the Bank was optimisation of the credit process in the ratio of potential opportunities, risks and the size of equity.

The development strategy of BTA Bank JSC was aimed at the formation of a universal bank with wide opportunities for conducting active operations on the financial market with attractive financing conditions for the clients and with firm guarantees for all types of obligations.

'BTA Bank' JSC carried out normal banking activities **in compliance** with the aforementioned requirements of the law until the appointment of M. K. Ablyazov. Following the appointment of

M. K. Ablyazov to the position of Chairman of the Board of Directors, a criminal plan, aimed at stealing the Bank's money, was initiated.

In order to implement his illegal scheme, M.K. Ablyazov, acting out of mercenary motives, established a criminal group from among his close associates, namely: Zh.D. Zharimbetov, R.V. Solodchenko, S.Kh. Mamesh, K.K. Sadykov, B.M. Dzhardemali, V.V. Efimova., S.B. Shalabayeva, F.F. Udovenko and other persons who have been endowed with authority and administration powers, necessary for the execution of the criminal plan.

M.K. Ablyazov was aware of the fact that the theft of such a huge amount of money would significantly violate the legitimate rights and interests of the entities of the RK, who were depositors of the Bank, foreign investors (creditors), and would create a threat to the financial stability of not only the Bank, but also the entire economy of Kazakhstan.

He knew for certain that deposits belonged to citizens of Kazakhstan, including pensioners, poor citizens and other socially vulnerable groups of the population, who trusted the stability of the Bank and deposited their last savings in order to keep and multiply them, and receive profit.

Realising the magnitude of the consequences, foreseeing the inevitability of their coming and wishing for it, the head of the OCG [organised criminal group], M.K. Ablyazov did not abandon the conceived criminal plan, but continued his illegal actions, aimed at stealing the Bank's money, as a result of which the Bank's funds were illegally withdrawn and, subsequently, appropriated.

Thus, the clear division of roles between all participants of the organised criminal group, the stability and cohesion of its composition, allowed M.K. Ablyazov and other persons to commit embezzlement of the Bank's financial means in large amounts, i.e. **more than 1 trillion 57 billion KZT**. The embezzlement has been committed repeatedly and over a long period of time, i.e. during the period from May 2005 to February 2009 in Almaty and it was possible due to the use of the official position by the participants.

Subsequently, the criminal activities of the OCG continued in the form of legalisation of the stolen financial means, both on the territory of the Republic of Kazakhstan and abroad.

M.K. Ablyazov, the leader of the organised criminal community, developed and implemented a criminal scheme involving a number of individuals, including from among the leaders of the controlled companies, used in order to legalise the financial means, previously stolen from the Bank.

In accordance with the developed criminal plan, the head of the OCG, M.K. Ablyazov, in order to implement criminal plans on the legalisation of the stolen property, as well as to create the appearance of his persecution for political reasons and use this image in order to protect himself against criminal prosecution, deliberately engaged persons, carrying out entrepreneurial activity in the territory of the Republic of Kazakhstan, in the OCG and financed their activities.

This allowed M.K. Ablyazov to carry out the legalisation (laundering) of the stolen financial means on the territory of the Republic of Kazakhstan and use them at his own discretion.

And so, in 2005, M.K. Ablyazov and B.M. Dzhardemali along with their trusted associates, involved a citizen of the Republic of Kazakhstan, I.M. Erimbetov (who, at that time, positioned himself as a successful businessman) in the legalisation of the funds, embezzled from the BTA Bank.

According to the assigned criminal role, I.M. Erimbetov was to act as the head and founder of various Kazakhstani and offshore companies, to which the funds, embezzled from the BTA Bank, were transferred under the leadership of Ablyazov.

In order to conceal their illegal origin and to create the appearance of their legality, the money received by Erimbetov was used by him in financial operations and transactions, carried out by companies under his control; through the financing of the companies, the legalisation (laundering) of the criminally obtained financial means was carried out.

To this end, Erimbetov organised the opening (registration) of the following companies in the Republic of Kazakhstan, or established control over them, and by financing of these companies, laundering of the money of criminal origin was carried out:

- ‘Konfety Karagandy’ JSC;
- ‘SKY SERVICE’ JSC;
- ‘Jet ONE’ JSC;
- ‘Motherland’ LLP;
- ‘SKY GATE’ LLP;
- ‘Kinetika Air’ JSC;
- ‘Kinetika Investments JSC;
- ‘KazIntel’ LLP;
- ‘Alatau Property LTD’ LLP
- ‘Bleiz Management’ LLP and others.

For the convenience of attracting criminal funds by M.K. Ablyazov’s OCG from abroad, the founders of Kazakhstani companies appointed the following offshore companies associated with the Ablyazov’s criminal group, which, under the guise of capital contributions, systematically transferred large sums of money from foreign banks to the accounts of resident companies of the RK.

- ‘Health and Wealth Holdings Foundation’ (Panama);
- ‘Dadino S.A.’ (British Virgin Islands);
- ‘Alatay Investments Ltd.’ (British Virgin Islands);
- ‘Helimarket Limited’ (British Virgin Islands);
- ‘Golden Trinity Assets Limited’ (British Virgin Islands);
- ‘Worldwide Aircraft Leasing Limited’ (British Virgin Islands);
- ‘Narlow Overseas Limited’ (British Virgin Islands);
- ‘Frayward Overseas S.A.’ (Panama);

- ‘Almaty Resources Ltd.’ (British Virgin Islands);
- ‘Sherkland Finance Limited’ (British Virgin Islands);
- ‘SHG Mineral PTE Limited’ (Singapore);
- ‘Centis International Limited’ (British Virgin Islands);
- ‘Digital Services’ (International) Limited’;
- ‘Golden Temple Capital Management Ltd.’ (Cayman Islands);
- ‘EDG Group’;
- ‘Ronald Management Corp.’ and others;

For the subsequent legalisation of the funds, obtained illegally, Erimbetov selected for the positions of heads of companies controlled by him, the closest and most trusted persons, including:

- **Dmitriy Valeryevich Pestov** (hereinafter referred to as D.V. Pestov), who was appointed to the post of the president of ‘Kinetika Investments’ LLP and financial director of ‘Motherland’ LLP;
- **Vasilina Vasilievna Sokolenko** (hereinafter referred to as V.V. Sokolenko), who was appointed to the post of the head of the ‘Motherland’ LLP;
- **Mikhail Gennadievich Zorov** (hereinafter referred to as M.G. Zorov), who was appointed to the post of the head of ‘Sky Service’ JSC.

The aforementioned persons, acting on instructions and in agreement with I.M. Erimbetov, fulfilling the criminal role assigned to them, prepared and signed documents on the activities of the companies controlled by Erimbetov, on the basis of which the legalisation of the funds, obtained illegally, was carried out by the means of:

- reation (registration) and management of Kazakhstani and foreign companies, including registered in off-shores, controlled by I.M. Erimbetov; preparation of founding documents;
- opening of bank accounts in second-tier banks of the RK and management of incoming funds;
- conducting operations for transfers of funds between the controlled companies; preparation and signing documents on the basis of which settlements were made;
- drawdown and use of funds received from offshore companies under the guise of temporary financial assistance or contributions from foreign founders;
- siphoning off from the RK, of the funds and other profits received from entrepreneurial activities of the companies, controlled by I.M. Erimbetov, under the guise of the return of previously received temporary financial assistance or distribution of the net profit to the founders;
- purchase of equipment and other components in order to carry out business activities and, by doing so, to create the appearance of ordinary business activities;
- creating an ostensible documentary justification for international transfers of funds, etc.

The funds were transferred to Erimbetov by the OCG members in accordance with the criminal

scheme, previously developed and coordinated by Ablyazov, by repeated transfers between bank accounts of offshore companies controlled by the OCG; eventually, they were credited to the accounts of resident companies of the RK, fully controlled by I.M. Erimbetov.

In turn, I.M. Erimbetov distributed the funds received between his trusted persons and the heads of the last companies who used them to carry out business activities.

And so, the funds owned by Ablyazov's OCG, having a criminal origin, were used by I.M. Erimbetov to run his business in the field of civil aviation for the provision of air services through the leasing and operation of helicopters and other aircraft registered for 'Sky Service' JSC.

Also, on 18 December 2013, Erimbetov acquired 'Konfety Karagandy' JSC for **\$ 5.4 million**; the funds for the purchase were transferred from Ablyazov's offshore companies to the bank account of Erimbetov's company '**Golden Trinity Assets Limited**' registered in the British Virgin Islands. The bank account was opened in the Swiss bank '**Bank Julius Baer**'.

Since the day of the purchase, the sole owner of the Factory has been the offshore company '**Centis Internationale Limited**', registered in the British Virgin Islands, whose ultimate beneficiary is I.M. Erimbetov.

Since 2005, Erimbetov and his trusted associates, namely: D.V. Pestov, M.G. Zorov, V.V. Sokolenko and others, acting at his instruction, have transferred the laundered funds abroad under the guise of a return of previously received temporary financial assistance.

In addition, during the aforementioned period, these persons took active measures to legalise (launder) the funds stolen from the BTA Bank by the OCG under the leadership of Ablyazov, through the sale and purchase of high-value assets (real estate, shares and stocks in various companies), including those located in foreign jurisdictions.

Thus, as a result of criminal actions by I.M. Erimbetov, the legalisation of the funds embezzled from the bank on a large scale in the total amount exceeding \$5,400,000, which is equivalent to the rate of the NB of the RK as of 18 December 2013 (the rate of 1 US dollar is 154.11 tenge) and amounts to 832,194,000 tenge.

**Thus, Iskander Myrzakhanovich Erimbetov, born 4 May 1971, committed a crime punishable under Article 194, section 3, letters 'b' and 'v' of the CC of the Republic of Kazakhstan (as in force in 1997) - legalisation of money acquired illegally, i.e., carrying out financial operations and other transactions with funds acquired knowingly illegally, as well as using these funds for entrepreneurial and other economic activities, committed repeatedly, on a large scale and by an organised group.**

Taking into account that sufficient evidence has been collected in the criminal case, confirming the suspicion of committing by I.M. Erimbetov, the crimes punishable under Article 193, section 3, letters 'b' and 'v' of the CC of the Republic of Kazakhstan, being guided by Art. 60, 195, 198, 203, 204 -207 of the CCP of the RK, -

**IT WAS DECIDED:**

1. To qualify the deed of Iskander Myrzakhanovich Erimbetov, born 4 May 1971, a native of the city of Almaty, as a crime, punishable under Art. 193 under Article 193, section 3, letters 'b' and 'v' of the CC of the Republic of Kazakhstan (as in force in in 1997).
2. To notify the parties concerned of the decision.
3. To send a copy of the decision to the prosecutor.
4. To inform the defendant about his rights and obligations under Art. 69 of the CCP of the RK.

**Head of the Investigative and Operational Group, Head of the  
Investigative Department of the National Anti-Corruption Bureau  
(Anticorruption Service) of the Agency of the Republic of Kazakhstan  
for Civil Service and Anti-Corruption**

**S. Perov**