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A step back in the field of human rights: Kazakhstan refused to alleviate the plight of political prisoners Vladimir Kozlov and Roza Tuletayeva

Vladimir Kozlov was denied a transfer to softer regime conditions due to penalties which he had not been informed of. Roza Tuletayeva was not released on parole, as the court found that she "has not demonstrated that she has embarked on the path of correction". At the same time, the court in its previous decision, gave a positive description of the convict and stated that she has "embarked on the path of correction". Kazakh authorities have ignored the voice of civil society and the demands of international human rights organisations, as well as violating the guarantees given to the EU, the United States and the OSCE

VLADIMIR KOZLOV WAS DENIED A TRANSFER TO LESS STRICT CONDITIONS OF DETENTION

On **12 August, 2014**, a prison administration refused to transfer Vladimir Kozlov to a softer regime of detention. Since 20 March, 2014, the political prisoner has been serving a part of his sentence (the full term is 7.5 years) in the penal colony No. LA 155/14 in Almaty Province. If Kozlov were to be granted less strict conditions of incarceration, he would obtain the right to be further transferred to a penal settlement (according to Art. 73 of the PEC of the RK). **Thus, for the time being, the prison authorities have prevented Vladimir Kozlov's transfer to another colony with softer conditions of detention.**

In order to decide about the transfer to a softer detention regime, the prison commission evaluates the behaviour of the prisoner. The grounds for refusal to soften Vladimir Kozlov's regime of incarceration was allegedly the fact that he has been attributed four admonitions. **However, the political prisoner did not know anything about the admonitions.** Human rights activist Yevgeniy Zhovtis labels the actions of the prison administration as illegal, as the convict must be notified of any admonition and has the right to appeal against it.

The wife of the political prisoner, Aliya Turusbekova, believes that **the admonitions were undeservedly issued to Vladimir Kozlov as a reason for refusing to soften the conditions of his detention.** Zhovtis labels this technique as typical of the Kazakh prison system: *"Alas, I have often come across situations when the administration of the colony used admonitions as a way of depriving a person of his or her right to be transferred to a softer regime of detention. Sometimes this happens for the purpose of corruption, sometimes - to punish the inconvenient person. Therefore, I personally have no doubt that in the case of Vladimir Kozlov, admonitions appeared for a purpose."*¹

The refusal to soften the conditions of detention is not the only case involving exertion of pressure on Vladimir Kozlov and his family by the Kazakh authorities recently. In June and August 2014, Aliya Turusbekova reported that **she had been shadowed by unknown people and her phone had been tapped.**² The wife of the political prisoner suspects that Kazakh special services are engaged in these actions.

¹ <http://www.respublika-kaz.info/news/politics/37719/>

² <https://www.facebook.com/aliya.alga/posts/731675056896302> ; <https://www.facebook.com/aliya.alga/posts/755721517824989>

In addition, on 11 May, 2014, the Almalinskiy District Court №2 of Almaty **refused to remove the attachment from Kozlov's apartment, which is the only shelter for his wife and their newborn son.** On 3 July, 2014, the Appellate Court upheld the decision. According to the verdict³, Vladimir Kozlov's property is subject to forfeiture. However, Art. 161, section 5 of the Code of Criminal Procedure states that a "residential house, apartment, or parts thereof, are not subject to forfeiture if the convict and his or her family permanently reside therein".⁴ Currently, Aliya Turusbekova lives in Vladimir Kozlov's apartment. But if the executive bodies comply with the decision of the court and confiscate the premises, Aliya and her 1 year-old son will be left to live on the street.

On 10 August, 2014, Vladimir Kozlov celebrated his third birthday in the colony.

ROZA TULETAYEVA WAS DENIED RELEASE ON PAROLE

On **30 July, 2014**, the Mangistau Regional Court refused to release Roza Tuletayeva on parole, the activist of the strike of the Zhanaozen oil workers. Since 4 June, 2012, she has been serving a five-year prison term on charges of organising mass riots in Zhanaozen. During the preliminary investigation, policemen hung her by her hair, strangled her with a refuse bag, violated her colon with a metal rod and threatened to kill her family. The court ignored Tuletayeva's allegations of torture. On 9 January, 2014, she was transferred to colony-settlement No. GM 172/8 with less stringent conditions of detention in the Mangistau Province.

According to Art. 70 of the CC of the RK, Roza Tuletayeva qualified for release on parole. ***The prosecutor and the administration of the colony-settlement supported the early release of the activist, but, despite this, the court refused to release her.*** The motivational part of the court's judgement reads as follows: *"As shown in the case file, Roza Tuletayeva, despite the fact that she has served a certain part of the punishment, has not fully proved that she has embarked on the path of correction. During the period of serving the sentence, Tuletayeva received 2 commendations and 2 admonitions, and this can be considered as proof that she has not fully declared herself"*.⁵

At the same time, the previous court, which ruled to transfer Tuletayeva to a colony-settlement, in its decision of 9 January, 2014, stated the opposite: *"The Court, having examined the behaviour of the convicted Tuletayeva while serving her sentence, given the loss of effect of the admonitions issued and the fact that she has embarked on the path of correction, taking into account the commendations and the positive opinion issued by the management of the institution, and also taking into consideration that the convict has served one third of her sentence and sustains her minor children, the court held: R. Tuletayeva may be transferred to a colony-settlement for further service of her punishment"*. ***Thus, the presence of two admonitions could not have been the grounds for the denial of release on parole, as these admonitions ceased to have effect back in January 2014.***

Human rights activist Yevgeniy Zhovtis labels as 'nonsense' the fact that the court declined to release Tuletayeva on parole without regard to the views of the prosecutor and the prison administration.⁶ Roza Tuletayeva's daughter, Aliya reported that the trial lasted about 2 minutes, at the same time, her mother was not given the opportunity to speak: *"The judge passed the sentence without even going to the jury room first"*.

³ On 8 October, 2012, Vladimir Kozlov was sentenced to 7.5 years' imprisonment with confiscation of property, having been convicted on accusations of inciting social discord, calling to overthrow of the constitutional order, establishment and management of a criminal organisation.

⁴ Full list of property that is not subject to forfeiture upon court's conviction, is annexed to the Code of Criminal Procedure of the Republic of Kazakhstan. - http://online.zakon.kz/Document/?doc_id=1008443&sublink=1

⁵ Translation from Kazakh to Russian [and subsequently to English – Ed.]

⁶ <http://www.respublika-kaz.info/news/politics/37659/>

Chairman of the Committee on Democracy, Human Rights and Humanitarian Affairs of the OSCE PA, Isabel Santos, stated: *"I regret that the court decided to leave Roza behind bars, which is due, most likely, to her activity in the struggle for the rights of oil workers. This decision was a real surprise for me, considering that during meetings with officials of Kazakhstan I was led to understand that Roza would be released in the near future"*.⁷ On 11 June, 2014, in the framework of the official visit to Kazakhstan, Isabel Santos met with Vladimir Kozlov, but was not able to meet with Roza Tuletayeva as Kazakh authorities had not considered her request in time.

KAZAKHSTAN TRAMPLES PUBLIC GUARANTEES GIVEN TO THE INTERNATIONAL COMMUNITY

The European Parliament calls for the release of Roza Tuletayeva and Vladimir Kozlov, convicted on the basis of contrived charges that could be considered politically motivated.⁸ Human rights organisations and the governments of democratic states have recognised Vladimir Kozlov as a political prisoner and have repeatedly urged the Kazakh authorities to reconsider his sentence.⁹ The release of Roza Tuletayeva was the subject of appeals of Amnesty International, Human Rights Watch, Front Line Defenders and the Polish Bar Council¹⁰

In early 2014, the Kazakh authorities, striving to maintain their image in their relations with the West, made minor concessions and permitted the transfer of Vladimir Kozlov to a colony in close proximity to his place of residence, and the transfer of Roza Tuletayeva to a colony-settlement. ***However, after the step forward, a few steps back have been taken; as a result, all of the recommendations of human rights organisations and foreign partners were ignored.***

This autumn, the final round of negotiations on a new enhanced Agreement on Partnership and Cooperation between the European Union and Kazakhstan shall be held. Kazakh authorities widely circulate the statements about "the increased strategic interest with Kazakhstan", which is "the only country in Central Asia, with which the European Union is negotiating an agreement of the second generation".¹¹ It should be noted that the Agreement on Partnership and Cooperation means that the signatory country shares common values of democracy and human rights with the countries of the EU, and seeks to strengthen political and economic freedoms. ***However, the statements of the Kazakh authorities on the democratic course of development of the state are merely declarative, and democratic institutions exist only formally.***

In July 2013, President Nazarbayev announced to European reporters that in Kazakhstan "there is no political persecution".¹² ***However, in practice, Nazarbayev has monopolised power and cracked down on dissent and political pluralism in the country.*** Kazakhstan violates the requirements of the EU and the OSCE on the inadmissibility of the prosecution on politically motivated charges.¹³

Apart from Vladimir Kozlov and Roza Tuletayeva, other political prisoners are: civic activist Aron Atabek, politician and manager Mukhtar Dzhakishev and human rights activist Vadim Kuramshin. Those who

⁷ <http://www.oscepa.org/news-a-media/press-releases/1901-osce-pa-human-rights-chair-regrets-tuletayeva-ruling-in-kazakhstan>

⁸ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0190&language=EN>

⁹ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0190&language=EN> ;

<http://www.state.gov/j/drl/rls/hrrpt/2012/sca/204402.htm> ; <http://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed> ;

<http://www.freedomhouse.org/article/kozlov-conviction-kazakhstan-miscarriage-justice> ;

http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf

¹⁰ <http://www.amnesty.org/en/news/kazakhstan-no-accountability-entrenched-torture-2013-07-11> ; <http://www.hrw.org/news/2013/06/27/uk-raise-rights-during-kazakhstan-visit> ;

<http://www.frontlinedefenders.org/node/22913> ; http://adwokatura.pl/wp-content/uploads/2013/07/NRA_Report_on_Mission_in_Kazakhstan-amended_all.pdf

¹¹ http://tengrinews.kz/kazakhstan_news/kazakhstan-i-es-soglasoval-i-soderjatelnyu-chast-soglasheniya-o-partnerstve-258101/ ;

<http://en.trend.az/regions/casia/kazakhstan/2291068.html>

¹² <http://www.uralskweek.kz/2013/07/01/nazarbaev-otvetil-britanskomu-zhurnalistu-na-vopros-o-soblyudenii-prav-cheloveka-v-rk/>

¹³ According to the Monaco and the Istanbul Declarations of the OSCE Parliamentary Assembly, there should be no political prisoners within the OSCE region.

have been persecuted for political reasons: Pastor Bakhtzhan Kashkumbayev, civic activist Alexandr Kharlamov, human rights activist Zinaida Mukhortova. In addition, the ban on the activities of the opposition party 'Alga!' and the closure of a number of independent media outlets dealt a severe blow to the opposition movement in Kazakhstan, which has found itself on the verge of annihilation. The adopted new criminal code significantly reduces freedom of speech and freedom of assembly in the country. ***The Republic of Kazakhstan is coming close to being on a par with other authoritarian states of Central Asia.***

The refusal to transfer Kozlov to less stringent conditions of detention, refusal to release Tuletayeva on parole and refusal to remove the attachment from the only housing of the Kozlov family – all of these decisions have been rendered with gross violations of national Kazakh legislation. Therefore there is every reason to believe that the administrative and judicial authorities, who issued the decisions, were biased and only fulfilled the political will of the Kazakh authorities. Vladimir Kozlov was not notified of the admonitions he had allegedly received. The only housing of Kozlov's wife was seized, although the law expressly forbids it. Roza Tuletayeva received no opportunity to speak at the hearing, which also contradicts the law.¹⁴ At the same time, it remains unclear what legal provisions the court referred to in the ruling regarding Roza Tuletayeva.

The deepening of economic cooperation between the EU and Kazakhstan cannot be implemented without imposing demands of democratic reforms in Kazakhstan. It is essential that the EU, the OSCE and the UN strongly react to Kazakhstan's failure to comply with the guarantees and commitments in the field of human rights, and use all possible leverage to bring about the release of political prisoners and to stop the oppression of opposition politicians, activists and journalists.

We hereby call for support for the following demands directed to the Kazakh authorities:

- taking into account procedural irregularities in handing down the rulings against Vladimir Kozlov (in particular, a failure to inform the prisoner of the issued admonitions), we demand that a clarification on the legality of the denial to transfer Vladimir Kozlov to less stringent conditions of detention be issued.
- according to legal procedure, the denial to transfer Vladimir Kozlov to less stringent conditions of detention must be reconsidered.
- given that under Kazakh law, the court's decision with respect to release on parole should be grounded and provide a detailed justification of the conclusions of arguments¹⁵, it must be explained on the basis of which act of Kazakh national legislation was Roza Tuletayeva denied release on parole.
- a justification should be provided as to why the rulings of Atyrau Court of 9 January, 2014, and Mangistau Regional court of Aktau of 30 July, 2014, include conflicting findings on the description of Roza Tuletayeva.
- the decision regarding the refusal to release Roza Tuletayeva on parole must be reconsidered.
- taking into account Roza Tuletayeva's serious health condition, also caused by exertion of brutal torture on her by the investigating authorities, as well as Vladimir Kozlov's health problems

¹⁴ The normative ruling of the Supreme Court of the Republic of Kazakhstan dated 25 December, 2007 No. 10 'On parole from punishment and replacing the unserved part of the punishment with a milder form of punishment': "The convict has the right to become acquainted with the materials submitted to the court, to participate in their consideration, file petitions and challenges, give explanations, present evidence". - <http://adilet.zan.kz/rus/docs/P07000010S>

¹⁵ <http://adilet.zan.kz/rus/docs/P07000010S>

(cardiovascular disorders, headaches, polyps in the stomach, osteochondrosis),¹⁶ proper medical treatment of the prisoners and appropriate conditions of detention in accordance with the recommendations of doctors must be ensured.

The declarative character of compliance with the obligations assumed by Kazakhstan in the sphere of human rights cannot be left unattended during the coming 20th session of the Working Group on the Universal Periodic Review (UPR) of the United Nations. Kazakh authorities have ignored the recommendations of the UN UPR, in particular:¹⁷

- *to take measures to strengthen the independence of the judiciary, to apply the existing legal procedures and to solve the problem of corruption in the courts;*
- *continue efforts to eliminate torture and improve the conditions of detention and the protection of the rights of prisoners;*
- *continue to strengthen the rule of law, including judicial independence and impartiality of the judicial process in order to provide even greater compliance of law and practice with the principles of the international legal system;*
- *take specific measures in order to ensure that the courts carry out their duties in accordance with the ratified international treaties;*
- *continue to improve the judicial system in order to guarantee the rights of detainees and inmates.*

You are welcome to support our appeals by addressing the following persons and institutions:

- President of Kazakhstan, Nursultan Nazarbayev - the Presidential Administration, the 'Akorda' building, Left Bank, Astana, 010000, Kazakhstan, fax +7 7172 72 05 16;
- State institution LA 155/14: Almaty Province, Illiyskiy Province, the village of Zarechnyi, 040805;
- Commissioner for Human Rights in the Republic of Kazakhstan, Askar Shakirov - 010000, Astana, Left Bank, House of Ministries, entrance No. 15; e-mail: ombudsman-kz@mail.ru; fax: +7 (7172) 740548;
- Chairman of the Committee of Criminal and Executive System of Kazakhstan's Ministry of Internal Affairs, Baurzhan Berdalın - 010000, Astana, 2 B. Maylina Street, tel. +7 7172 72-30-26, +7 7172 72-30-37. A blank for appeals: <http://kuis.kz/kz/otinishter>;
- Minister of Internal Affairs, Kalmukhanbet Kasymov - 010000, Astana, 1 Tauelsizdik Prospekt. Tel. +7 7172 72 24 93, +7 7172 71-51-89, e-mail: : oraz-n@mvd.kz;
- General Prosecutor of the Republic of Kazakhstan, Askhat Daulbayev, - 010000, Astana, House of Ministries, entrance No.2, 8 Orynbor Street, tel: +7 7172 71-26-20, +7 7172 71-28-68;
- Minister of Foreign Affairs of the Republic of Kazakhstan, Erlan Idrisov, - 010000, Astana, Left Bank, 31 Kunayeva Street. Tel: +7 7172 72-05-18, +7 7172 72-05-16, e-mail: midrk@mfa.kz;

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The Open Dialog Foundation

¹⁶ <http://rus.azattyq.org/content/interview-alia-turusbekova-o-vladimire-kozlove/25399490.html>

¹⁷ <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KZSession7.aspx>