



OPEN DIALOG

Violation of the right to a fair trial in Kazakhstan



Kazakhstan does not comply with fair trial guarantees

By persecuting political opponents, the Kazakh authorities openly flout public assurances given to the international community

By persecuting political opponents, the Kazakh authorities openly flout public assurances, given to the international community. Kazakhstan declares that the right to a fair trial will be observed with respect to opposition politicians, journalists and activists. However, court trials are held with a clear bias and bear signs of a political order. Human rights organisations and the governments of democratic states demand from Kazakhstan that it stops the illegal prosecution of political opponents and ensures the independence of the judiciary. However, the authorities do not heed the position of the international community, and the president states that in Kazakhstan "there is no political persecution". The declarative nature of the performance of obligations by Kazakhstan in the sphere of human rights cannot be left unattended at the impending 20th session of the Universal Periodic Review Working Group of the UN.

1. CASE OF GALYMZHAN ZHAKIYANOV

1.1. Base for persecution:

Galymzhan Zhakiyanov was the governor of Semipalatinsk province (in 1994-1997) and akim of Pavlodar province (in 1997-2001). In 2001, he criticized the policy of President Nursultan Nazarbayev, and was dismissed. He is one of the founders of the opposition party "Democratic Choice of Kazakhstan". The Kazakh authorities have accused Galymzhan Zhakiyanov of corruption and excess of official powers. He was hiding from arrest in the home, where were the Embassies of the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Federative Republic of Germany in the Republic of Kazakhstan.

1.2. Comment of official authorities:

After five days of negotiations, on 3 April, 2002, the embassies of the three European countries and the Kazakh Ministry of Foreign Affairs signed a memorandum *"in order to allow Mr. G. Zhakiyanov to voluntarily leave the building"*. Kazakh authorities guaranteed Galymzhan Zhakiyanov an open and transparent trial, house arrest during the period of pre-trial investigation and access to diplomatic representatives of the European Union during the judicial process.

1.3. Result:

However, on 10 April, 2002, **the Kazakh authorities violated the terms of the memorandum**: Zhakiyanov was forcibly taken by military aircraft to Pavlodar, where during the pre-trial period, until 15 July, 2002, he was held in barracks of the 'Pavlodarsol' Company under armed guard. [\[1\]](#)

During the interrogation, investigators ignored the health condition of Galimzhan Zhakiyanov, who on 18 May, 2002, suffered a heart attack after two long days of questioning by the investigator I.K. Kusainov. ***In order to obtain incriminating testimonial evidence against Galimzhan Zhakiyanov, two of his subordinates were beaten at the police station.*** [\[2\]](#) On 2 August, 2002, Zhakiyanov was sentenced to seven years' imprisonment for abuse of power and official authority. The European Parliament labelled the indictment politically motivated. [\[3\]](#) ***International organisations: Amnesty International*** [\[4\]](#) ***and Human Rights Watch*** [\[5\]](#) ***recognised Galimzhan Zhakiyanov as a political prisoner.*** On 14 January, 2006, Galymzhan Zhakiyanov was released on parole, [\[6\]](#) he currently resides outside the territory of Kazakhstan. [\[7\]](#)

2. CASE OF ZHANAOPEN OILMEN

2.1. Base for persecution:

On 16 December, 2011, in the town of Zhanaopen (Mangistau Province), the police dispersed a peaceful demonstration by oil workers of the 'OzenMunaiGaz' company and their family members, with the use of firearms. The police fired on unarmed citizens and minors, amongst others, with the use of automatic weapons (AKM-47). On 17 December, 2011, at the railway station of the village of Shetpe, oil workers halted a passenger train and demanded that the authorities put an end to the shooting of civilians in Zhanaopen, the withdrawal of troops from the town and the restoration of electricity and cellular communication. The police also used firearms against demonstrators in the village of Shetpe. **37 oil workers were brought to criminal responsibility on charges of organising and participating in mass disorder.** [8]

2.2. Comment of official authorities:

In December 2011, Nursultan Nazarbayev asked the General Prosecutor to pay attention to *"the need for a transparent, fair consideration of the criminal case and prosecution of all organisers and instigators of the riots to the full extent of the law"*. [9]

In October 2012, Nursultan Nazarbayev commented on the trial of oil workers as follows: *"There was an absolutely open, public and transparent investigation and a fair trial, open to all media, to all those wishing to participate. Everyone who has been convicted, was condemned for a specific crime, and not for just anything. Also, those law enforcement officers who exceeded their authority and shot people, were convicted, as well as those who instigated it and were the reason behind the developments"*. [10]

2.3. Result:

Only 3 of 37 prosecuted oil workers were acquitted. 13 oil workers were sentenced to prison terms ranging from 3 to 7 years, 16 persons were given suspended sentences of 2 to 3 years, and 5 were released under amnesty. The Supreme Court of the Republic of Kazakhstan released 6 oil workers from custody, but upheld the sentences of the remaining 7 prisoners, especially those who testified about the use of torture and ill-treatment by the investigating bodies (battery, suffocation, threats of rape or harm caused to relatives). At the Aktau trial, witnesses, one after another, renounced their testimonies given during the investigation, and stated that they had been subjected to physical as well as psychological abuse, but such statements were ignored by the court. [11] Also, according to the Ukrainian Helsinki Human Rights Union, the trial on the case of Zhanaopen oilmen started without a full and objective investigation of the events which took place on December 16, 2011 and the following days; many witnesses (about 40 people) called in by the prosecution were policemen. [12]

3. CASE OF VLADIMIR KOZLOV

3.1. Base for persecution:

Vladimir Kozlov is Kazakhstan opposition politician. From 2007, he served as Chairman of the Coordination Committee of the People's Party 'Alga!'. During the strike of oil workers in Zhanaopen, in 2011, Vladimir Kozlov spoke in support of the strikers, held meetings with them, issued official statements, ensured the delivery of drinking water, tents and legal literature. In addition, politician engaged economists, lawyers and human rights activists in order to bring about a peaceful settlement to the conflict. Vladimir Kozlov pointed to the inaction of the management of the OzenMunaiGaz company and local and central government as the factor which led to the

situation, and represented the interests of the strikers in the European Parliament, the European Commission and the OSCE. Upon his return from Brussels, on 23 January, 2012, Vladimir Kozlov was arrested immediately. **According to the prosecution, Vladimir Kozlov joined an organised criminal group, established and financed from abroad by the former head of BTA Bank, Mukhtar Ablyazov, with the aim of undermining and destructing the social and political foundations of the constitutional system of Kazakhstan.** [13] Vladimir Kozlov was presented with charges of: incitement of social discord, calls for an overthrow of the constitutional order, the establishment and leadership of a criminal organisation.

3.2. Comment of official authorities:

Many government representatives reacted with bewilderment to the negative reaction of the international community to the judicial prosecution of Vladimir Kozlov; they insisted that the prosecution was lawful and just. For example, on 10 October, 2012, Nurdaulet Suindikov, a spokesman for the General Prosecutor's Office of Kazakhstan, stated that *"the trial was held in the conditions of maximum transparency, in compliance with the principle of full consideration of the case and equality of the parties," "the trial was attended by representatives of various non-governmental organisations, the media, international observers", "the court examined all evidence, presented by the prosecution and defence"*. [14]

3.3. Result:

On 8 October, 2012, the Mangistau City Court found Vladimir Kozlov guilty of committing deeds and sentenced him to 7 and a half years' imprisonment with confiscation of property. Despite the statements of Kazakh public servants, **numerous violations of the right to a fair trial were noted.** For example, some witnesses' testimonies were falsified; the court completely ignored the testimony of witnesses confirming the innocence of the defendant. Also, the court sessions were held entirely in the Kazakh language, which Vladimir Kozlov doesn't speak; at the same time, observers present at the trial highlighted the poor quality of translation from Kazakh to Russian, and other. Catherine Ashton (High Representative for Foreign Affairs and Security Policy of the European Union), Riccardo Migliori (Chairman of the Parliamentary Assembly of the OSCE), organisations Freedom House and Human Rights Watch, sharply criticised the verdict and called on the Kazakh authorities to stop using the criminal law in order to fight political opponents. **Human rights organisations and governments of democratic countries recognised Vladimir Kozlov as a political prisoner, and repeatedly urged the Kazakh authorities to reconsider the verdict.**

4. CASE OF INDEPENDENT AND OPPOSITION MEDIA

4.1. Base for persecution:

In December 2012, Kazakhstan courts brought charges against the most influential independent media based on the politically motivated court judgement against oppositionist Vladimir Kozlov: the *Vzglyad* newspaper, the online news portal *Stan.tv*, the TV channel *K+*, 'one media outlet *'Respublika'* (the prosecutors applied that name in reference to 8 newspapers and 23 online news portals).

Independent media outlets and opposition associations, which had been covering the tragic events in Zhanaozen in the most comprehensive way, were accused by the authorities of extremism and inciting social discord. The trials against a number of media outlets in Kazakhstan were initiated by the Prosecutor's Office of Almaty on 20 November, 2012. The Prosecutor's Office motivated its actions by the content of the valid court sentence, handed down in respect of an

opposition politician Vladimir Kozlov on 8 October, 2012. The judgment clearly states that "*the conceptual content of the materials of the 'K+' TV channel, the internet portals: 'stan.tv' and 'Respublika', the newspapers: 'Golos Respubliki', 'Respublika' and 'Vzglyad' "is aimed at inciting social discord". According to the Prosecutor's Office, the court's conclusions were based on the findings of a number of forensic examinations. [\[15\]](#)*

4.2. Comment of official authorities:

Advisor to the President of Kazakhstan, Ermukhamet Ertysbayev noted that the court had not gathered a sufficient evidence base to ban the media outlets, but that does not mean that they should not have been banned. For example, he commented as follows, "*I personally think that during the closure of the Vzglyad newspaper, the Institute of forensic science and linguistic experts should have been involved, and all the content of the newspaper should have been carefully analysed. If desired, several articles could have been found and it could have been proven that the newspaper directly or indirectly called for social discord. I have personally seen such materials in this paper, but the court has not fully used its competence and evidence is now being criticised. But I did read on the 'Respublika' website material which indirectly called for the territorial division of the country, raised international problems and in between the lines you could read the question about a latent separatism in the north of Kazakhstan*". [\[16\]](#)

4.3. Result:

The trials bore traits of a political order and were carried out with an apparent bias towards the prosecution.

The decision to ban the media outlets was a blow not only to the journalistic community, but also to the entire civil society in Kazakhstan.

The European Parliament, organisation "Amnesty International", Committee to Protect Journalists, Markus Loening (the German Federal Government Commissioner for Human Rights Policy and Humanitarian Aid), Dunja Mijatovic (the OSCE Representative on Freedom of the Media), and many other representatives of international community condemned the closure of independent media outlets in 2012, claiming that it harms pluralism and media freedom in Kazakhstan. Despite these comments, ***the Kazakh authorities continue to restrict the activities of independent media through judicial decisions.*** Some recent examples include: restricting the activities of the newspapers 'Pravda Kazakhstana' ['The Truth of Kazakhstan'], 'Pravdivaya Gazeta' ['The Truthful Newspaper'] and 'Tribuna' ['Tribune']. [\[17\]](#) Also, independent journalists face accusations of libel; some of them were forced to leave the country and seek refuge abroad (e.g. Aidos and Natalia Sadykovy [\[18\]](#)).

5. THE USE OF THE JUDICIARY TO PERSECUTE POLITICAL OPPONENTS

In its resolution on Kazakhstan dated 18 April, 2013, **the European Parliament** expressed concern that in Kazakhstan, based on trials that did not meet international standards, opposition leaders, trade unionists and human rights activists were sentenced, including Vladimir Kozlov, Roza Tuletaeva, and Vadim Kuramshin. [\[19\]](#)

In July 2013, Nursultan Nazarbayev stated: "*With regard to human rights and freedoms, I believe that Kazakhstan provides basic rights. (...) We do not have political persecution, and if someone, as you say, is in prison, and so on – please cite such names. (For now) it is just general talk (...)*". [\[20\]](#)

It should be noted that many cases of unjust court prosecution attracted attention of the international community, but the Kazakh authorities have not commented on them. For example, the cases of **Vadim Kuramshin**, [21] **Bahtzhan Kashkumbayev**, [22] **Alexandr Kharlamov**, [23] **Zinaida Mukhortova**, [24] **Aron Atabek** [25] and **Mukhtar Dzhakishev**. [26] The Azattyk radio station notes that the resonant case of Mukhtar Dzhakishev, who was sentenced to 14 years' in prison, is not commented on by Kazakh officials. Kazakh pro-government politicians (political party leaders) stated that they did not follow the case, and so they cannot comment on it. [27]

In its recent report on human rights in the world, **the U.S. State Department** noted that one of the most significant problems in the field of human rights abuses in Kazakhstan is *"the lack of an independent judiciary and due process, especially in dealing with pervasive corruption and abuses by law enforcement and judicial officials. ... The executive branch sharply limited judicial independence. ... Corruption was evident at every stage of the judicial process."* [28]

The corruption of Kazakhstan's courts have been noted by the members of **the Polish Bar Council** following their observation mission in Kazakhstan. [29]

Also, the **Freedom House** organisation in its latest report noted that judges in Kazakhstan are appointed by the President of Kazakhstan and have no political independence; on the contrary – they serve the interests of the authorities. So when the case is politically motivated, the courts rule in favour of the ruling regime. [30]

This situation completely contravenes the statements of the Kazakh delegation on the results of the Universal Periodic Review of Human Rights in 2010. [31] The Kazakh authorities ignore the recommendations of the UN countries within the UPR, in particular:

- To take measures to strengthen the independence of the judiciary, to implement existing judicial procedures and to tackle the issue of corruption in its courts;
- To take measures to prevent any interference in the exercise by defence lawyers of their functions, in accordance with the International Covenant on Civil and Political Rights;
- To take measures to limit the powers of public prosecutors and bring criminal procedure into greater conformity with article 14 of the International Covenant on Civil and Political Rights;
- To continue to develop the rule of law, including the independence of the judiciary and the impartiality of court processes, in order to bring legislation and practices further into line with the principles of the international legal system;
- To impose concrete measures to ensure that courts carry out their functions in accordance with ratified international treaties;
- To continue to improve the judicial system to guarantee the rights of those in detention or in prison.

We draw attention to the fact that the statements of the Kazakh authorities on the democratic direction of development of the state do not correspond to reality. Kazakhstan's gross violations of international obligations in the field of human rights bring about tragic consequences: the oppression of opposition activists and journalists; destroyed lives of political prisoners; ill-treatment in places of detention.

The list of sources:

1. Novaya Gazeta.// Being a Caesar or being a nothing. A specific instance of reprisal against the opposition. - <http://2002.novayagazeta.ru/nomer/2002/48n/n48n-s13.shtml>
2. Human Rights Watch // Political freedoms in Kazakhstan. - <http://www.hrw.org/sites/default/files/reports/kazakhstan0404.pdf>
3. European Parliament // European Parliament resolution on Kazakhstan. - <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0064+0+DOC+XML+V0//EN&language=CS>
4. Amnesty International // Europe and Central Asia: Concerns in Europe and Central Asia. - [http://www.amnesty.org/en/library/asset/EUR01/001/2004/en/7ff8510f-d60a-11dd-bb24-1fb85fe8fa05/eur010012004en.html#17.3.Political%20prisoners%20\(update%20to%20AI%20Index:%20EUR%2001/002/2003\)|outline](http://www.amnesty.org/en/library/asset/EUR01/001/2004/en/7ff8510f-d60a-11dd-bb24-1fb85fe8fa05/eur010012004en.html#17.3.Political%20prisoners%20(update%20to%20AI%20Index:%20EUR%2001/002/2003)|outline)
5. Human Rights Watch // Political freedoms in Kazakhstan. - <http://www.hrw.org/sites/default/files/reports/kazakhstan0404.pdf>
6. Fergana.news // Galymzhan Zhakiyanov was released and returned triumphantly to Almaty. - <http://www.fergananews.com/articles/4183>
7. Forbes // Galymzhan Zhaliyanov: 'Now we have a whole family of students'. - http://forbes.kz/process/businessmen/galyimjan_jakiyanov_teper_u_nas_vsya_semya_-_studentyi
8. Open Dialog Foundation // Court proceedings in the case of Vladimir Kozlov. - <http://en.odfoundation.eu/a/1297,court-proceedings-in-the-case-of-vladimir-kozlov>
9. RiaNovosti // Nazarbayev explained who is the mastermind behind the developments in Zhanaozen. - <http://ria.ru/world/20111226/526962508.html#14055997845333&message=resize&relto=register&action=addClass&value=registration>
10. TengriNews //Nazarbayev: The trial on the riots in Zhanaozen was open and fair. - http://tengrinews.kz/kazakhstan_news/nazarbaev-sud-po-besporjadkam-v-janaozene-proshel-otkryito-i-chestno-222264/
11. Open Dialog Foundation // Aktau judicial proceedings and defendants' testimonies of torture, inflicted upon them during investigation. - <http://en.odfoundation.eu/i/fmfiles//odf-courts-zhanaozen-maket-en-final.pdf?download>
12. Ukrainian Helsinki Human Rights Union // Statement on the right to a fair trial for oil industry workers from Zhanaozen. - <http://helsinki.org.ua/en/index.php?id=1335377288>
13. Open Dialog Foundation // Court proceedings in the case of Vladimir Kozlov. - <http://en.odfoundation.eu/a/1297,court-proceedings-in-the-case-of-vladimir-kozlov>
14. Kazpravda // Deemed guilty. - <http://newsite.kazpravda.kz/print/1349831869>
15. Open Dialog Foundation // Court hearings in the case against the following mass media outlets: the newspapers 'Vzglyad', 'Respublika' as one mass media outlet, the 'stan.tv' internet portal, the 'K+' TV channel as well as the unregistered party 'Alga!'. - <http://en.odfoundation.eu/i/fmfiles/raporty/odf-mission-report-dec2012-en.pdf>
16. Spik.kz //Ermukhamet Ertysbayev: Without opposition press I personally will be bored. - <http://www.spik.kz/?lan=ru&id=104&pub=2776>
17. Open Dialog Foundation // Court hearings in the case against the following mass media outlets: the newspapers 'Vzglyad', 'Respublika' as one mass media outlet, the 'stan.tv' internet portal, the 'K+' TV channel as well as the unregistered party 'Alga!'. - <http://en.odfoundation.eu/i/fmfiles/raporty/odf-mission-report-dec2012-en.pdf>
18. Open Dialog Foundation // Journalists request Ukraine and the European Union's protection from the oppression of Kazakh authorities. - <http://en.odfoundation.eu/a/3319,journalists-request-ukraine-and-the-european-union-s-protection-from-the-oppression-of-kazakh-authorities>
19. European Parliament // European Parliament resolution of 18 April 2013 on the human rights situation in Kazakhstan. - <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-190>
20. Uralskaya nedelya // NAzarbayev responded to British journalist to his question regarding the observance of human rights in the RK. - <http://www.uralskweek.kz/2013/07/01/nazarbaev-otvetil-britanskomu-zhurnalistu-na-vopros-o-soblyudenii-pravcheloveka-v-rk/>
21. Open Dialog Foundation // Vadim Kuramshin goes on hunger strike. - <http://en.odfoundation.eu/a/3784,vadim-kuramshin-goes-on-hunger-strike>
22. Open Dialog Foundation // The case of Bakhtyzhan Kashkumbayev: Kazakh authorities accused a Christian pastor of extremism and incitement of religious hatred
23. Open Dialog Foundation // The case of Aleksandr Kharlamov: the civic activist has been released, but is still under investigation <http://en.odfoundation.eu/a/1261,the-case-of-aleksandr-kharlamov-the-civic-activist-has-been-released-but-is-still-under-investigation>

24. Open Dialog Foundation // Second psychiatric examination appointed for Zinaida Mukhortova. - <http://en.odfoundation.eu/a/1270,second-psychiatric-examination-appointed-for-zinaida-mukhortova>
25. Open Dialog Foundation // Kazakh authorities refuse to provide treatment for Aron Atabek. - <http://en.odfoundation.eu/a/3937,kazakh-authorities-refuse-to-provide-treatment-for-aron-atabek>
26. Dzhakishev.org // Overview Of The First Trial. - <http://www.dzhakishev.org/overview-of-mukhtar-dzhakishevs-first-trial-2009-2011/>
27. Azattyk radio station // Politicians in Astana do not comment on Dzhakishev's conviction. - <http://rus.azattyq.org/content/kazatomprom-mukhtar-dzhakishev/24621608.html>
28. U. S. Department of State // Country Reports on Human Rights Practices for 2013. - <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220395#wrapper>
29. Adwokatura Polska // Report on monitoring mission in Kazakhstan performed by the Polish Bar Council. - http://adwokatura.pl/wp-content/uploads/2013/07/NRA_Report_on_Mission_in_Kazakhstan-amended_all.pdf
30. Freedom House // Kazakhstan: Cunning Democracy. - <http://www.freedomhouse.org/report/special-reports/kazakhstan-cunning-democracy>
31. United Nations Human Rights // Universal Periodic Review – Kazakhstan. - <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KZSession7.aspx>

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, with particular attention devoted to the biggest CIS countries: Russia, Kazakhstan and Ukraine.

The Foundation pursues its goals through the organisation of observation missions, including election observation and monitoring of the human rights situation in the CIS countries. Based on these activities, the Foundation creates its reports and distributes them among the institutions of the EU, the OSCE and other international organisations, foreign ministries and parliaments of EU countries, analytical centres and media.

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 CIS countries, in order to support the process of democratisation and liberalisation of internal policies in the post-Soviet area. Significant areas of the Foundation's activities also include support programmes for political prisoners and refugees.

00-580 Warsaw

11a Szucha Avenue, office 21

E-mail: odfoundation@odfoundation.eu

www.odfoundation.eu

+48 22 307 11 22

The report was published on 18 September, 2014

Printed by: OPEN DIALOG FOUNDATION

Cover photos by vladimirkozlov.org и rus.azattyq.org

For more detailed information, please address:

Katerina Savchenko - katerina.savchenko@odfoundation.eu

Igor Savchenko - igor.savchenko@odfoundation.eu