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## REFUTATION OF INFORMATION OF THE KAZAKHSTANI AUTHORITIES REGARDING MUKHTAR ABLYAZOV, BOTAGOZ JARDEMALIE AND ISKANDER YERIMBETOV

On 14 February, 2018 on the eve of the event 'Persecution of lawyers: selected cases from Moldova, Ukraine, Russia and Kazakhstan',<sup>1</sup> the Embassy of Kazakhstan in Belgium sent propaganda materials to Members of the European Parliament Julia Ward and Jaromír Štětina. The materials contain defamatory information regarding the Open Dialog Foundation and persons whose defence is being advocated by our organisation – Mukhtar Ablyazov, Botagoz Jardemalie and Iskander Yerimbetov.

The EU member states, as well as Interpol, acknowledge that the persecution of Mukhtar Ablyazov and Botagoz Jardemalie is politically motivated. However, the authorities of Kazakhstan continue to appeal on the basis of excerpts of materials from criminal cases and decisions of the Kazakhstani courts.

Independent human rights activists declare that torture has been used on Iskander Yerimbetov. The Kazakhstani authorities deny this, citing statements by observers and doctors controlled by the authorities.

### THE CASE OF MUKHTAR ABLYAZOV

The Embassy of Kazakhstan is spreading the information that in June 2017, the Kazakhstani court sentenced Mr Ablyazov to 20 years' imprisonment *in absentia*. But it is well known that Ablyazov's case (the case of BTA Bank) was built **on the basis of 'confessions' obtained through torture<sup>2</sup>, blackmail, threats, exerting pressure on counsels, and oppressing relatives.<sup>3</sup>**

It is noteworthy that the letter of the Embassy of Kazakhstan does not say anything about the motivation of the decision of France's Council of State. On 9 December, 2016, **France's Council of State refused to extradite Ablyazov to Russia and recognised his case as politically motivated.** The Council of State stressed that Kazakhstan had exerted pressure on Ukrainian and Russian authorities, demanding that they issue extradition requests.<sup>4</sup>

**INTERPOL removed from the wanted list** the name of Ablyazov and several other defendants in the case of BTA Bank (T. Paraskevich, A. Trofimov, K. Nurgazin, A. Pavlov, M. Ketebayev, B. Jardemalie) in connection with the political overtones of the criminal charges. Ablyazov's 13 colleagues and relatives have been granted asylum or additional protection in the EU and the US. The decisions of Interpol and the EU member states have confirmed that **it is impossible to trust the decisions of the Kazakhstani courts and law enforcement agencies in the case against Ablyazov.**

<sup>1</sup> The event was organised jointly by the Open Dialog Foundation and Members of the European Parliament, Julia Ward and Jaroslav Štětina.

<sup>2</sup> <http://en.odfoundation.eu/a/8486,on-the-anniversary-of-the-zhanaozen-tragedy-the-odf-presents-the-most-high-profile-cases-of-politically-motivated-prosecution-in-contemporary-kazakhstan>

<sup>3</sup> <http://en.odfoundation.eu/a/8092,report-kazakhstan-pursues-former-top-managers-of-bta-bank-in-order-to-obtain-their-testimonies-against-mukhtar-ablyazov>

<sup>4</sup> <http://www.conseil-etat.fr/Actualites/Communiqués/Decision-d-extradition>

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When speaking about the trials in Great Britain, the authorities of Kazakhstan provided incomplete information, as well as attempting to manipulate this information. In 2009, Kazakhstan's BTA Bank filed civil lawsuits against Mukhtar Ablyazov in Great Britain, claiming damages of approx. \$4.5 billion. The processes were civil, not criminal. **BTA Bank misled the British court, claiming that the civil lawsuits have no political motivation.** British counsels who formally represented BTA Bank in court, were, in fact, working for the government of Kazakhstan. The Kazakhstani state bodies (the National Welfare Fund 'Samruk-Kazyna', General Prosecutor's Office, Ministry of Justice) developed the strategy of prosecuting Ablyazov in Great Britain and monitored its implementation.<sup>5</sup>

In the process of preparing for the consideration of the lawsuits, Ablyazov refused to give full information about his assets to the London Court, citing the risk of his associates being persecuted by the Nazarbayev regime. In this regard, on 16 February, 2012, Ablyazov was sentenced to 22 months' imprisonment for 'contempt of court'. The London Court deprived him of the right to a defence in the civil cases until he has served his term.

Ablyazov received warnings from British police about the threat of assassination or kidnap against him for political reasons. Fearing for his life, he left Great Britain in 2012. After a year, Ablyazov's wife, Alma Shalabayeva, and his 6-year-old daughter were kidnapped in Italy. When Ablyazov left Great Britain, **the London Court issued decisions on the civil suits without conducting the examination of the merits of the cases and failing to take into account the arguments of the defence (default judgment).**

The case against Ablyazov in a British court was run by the law firm 'Hogan Lovells'. Another lobbyist was the London firm 'Reed Smith', working at the Ministry of Justice of Kazakhstan. According to documents owned by the Financial Times, the legal company 'Reed Smith' and 'Ronald Fletcher Baker' **lobbied for the decision to cancel the refugee status** granted to Ablyazov on 7 July, 2011. According to Ablyazov's counsels, the correspondence on this subject was carried out between Ronald Fletcher Baker and the British Ministry of Internal Affairs, as well as between the Government of Kazakhstan and the Government of the United Kingdom, which was illegal.<sup>6</sup>

## THE CASE OF BOTAGOZ JARDEMALIE

In its letter, the Embassy of Kazakhstan quotes the criminal charges that were brought against Botagoz Jardemalie within the framework of the case against Ablyazov. **However, in October 2013, Belgium granted Jardemalie political asylum. In 2016, INTERPOL removed her name from its wanted list.**

Thus, **the authorities of Belgium, as well as the bodies of Interpol, have thoroughly investigated the case** and decided on its political nature. Therefore, any appeals by the authorities of Kazakhstan regarding the details of the criminal prosecution of Jardemalie are untenable.

## THE CASE OF ISKANDER YERIMBETOV

The Kazakhstani authorities deny the facts of torture and illegal methods of investigation against Iskander Yerimbetov. In their findings, they refer to the observers and doctors loyal to the authorities, whose conclusions cannot be considered objective.

On 13 November 2017, Yerimbetov was detained in Almaty, and on 15 November 2017 he was arrested. Iskander Yerimbetov's defender has claimed that her client has continually been subjected to torture in the detention facility. **For more than two months, independent human rights activists could not meet**

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<sup>5</sup> <http://en.odfoundation.eu/a/8092,report-kazakhstan-pursues-former-top-managers-of-bta-bank-in-order-to-obtain-their-testimonies-against-mukhtar-ablyazov>

<sup>6</sup> <https://www.ft.com/content/c22e50d0-c53e-11e3-89a9-00144feabdc0>

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**with Iskander Yerimbetov in order to assess his health and conditions of detention in the pre-trial detention centre.** Only observers loyal to the authorities (in particular, the head of the National Center for Human Rights in the Republic of Kazakhstan S. Ospanov), were allowed to visit Iskander.

Independent human rights defenders were able to meet with Iskander Yerimbetov only on 1 February 2018, after the UN Special Rapporteur on Torture Nils Melzer addressed the Government of the Republic of Kazakhstan with a request. The request, quoting the defenders of Iskander Yerimbetov, expresses the fear that the arrestee may be being subjected to torture and other cruel or degrading treatment. In connection with this, human rights defenders Zhemis Turmagambetova (the executive director of the Civic Foundation 'Charter for Human Rights') and Yevgeniy Zhovtis (the director of the Kazakhstani International Bureau for Human Rights and Rule of Law) were permitted to visit Yerimbetov in the detention facility.

Following the meeting with Iskander Yerimbetov, human rights activists noted that he **'basically confirms the information contained in the request of the Special Rapporteur'**. According to the human rights activists, Yerimbetov is in a depressed state, seems intimidated and seriously fears for his safety. He also looks ill; he has a fever, dry cough, and reddened eyes.<sup>7</sup>

**Iskander Yerimbetov hasn't received the necessary medical care at the detention facility.** During his detention in the pre-trial detention centre, Iskander Yerimbetov has repeatedly complained to medical doctors about pains in the area of the chest and left hypochondrium, headache, dizziness, and general malaise. Iskander Yerimbetov was examined by doctors several times, and in particular underwent an X-ray examination of the chest organs, as well as an ultrasound examination to check the abdominal organs. His general condition during the examinations was assessed as 'satisfactory' or 'relatively satisfactory'. Despite several medical examinations Iskander Yerimbetov continues to suffer from severe pain in the area of the left hypochondrium. At the same time, the administration of the detention facility claims that he is receiving the necessary treatment and does not need to be hospitalised.

**Law enforcement agencies have failed to conduct an objective investigation into the alleged incidents of torture.** According to the Embassy of Kazakhstan in Belgium, Iskander Yerimbetov was interrogated in the presence of his lawyer and public defenders. He allegedly did not complain about being subjected to torture. It has become known that the complaint of torture was considered by Investigator Erik Valiyev who is running the criminal case against Yerimbetov. According to the international practice and legislation of Kazakhstan, such cases may indicate that investigations into the incidents of torture are biased. The authorities claim that the wounds on Yerimbetov's body appeared as a result of a 'domestic accident' – he allegedly hit himself against the bedside table and the bed.

According to the Prosecutor's Office of Almaty, on 12 February, 2018, British experts intended to conduct a study on the use of torture against Iskander Yerimbetov. The experts were invited by the Prosecutor's Office of Almaty. Iskander Yerimbetov refused to participate in the examination, because it was not attended by his lawyer and public defenders. This is not the first time when investigative actions against Yerimbetov were conducted without the presence of his lawyer. Thus, his right to defence is being violated.

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<sup>7</sup> [https://bureau.kz/novosti/sobstvennaya\\_informaciya/press-reliz\\_o\\_poseshenii\\_sledstvenno\\_arestovannogo\\_iskandera\\_erimbetova/](https://bureau.kz/novosti/sobstvennaya_informaciya/press-reliz_o_poseshenii_sledstvenno_arestovannogo_iskandera_erimbetova/)