



OPEN DIALOG

## Human rights violation in the Republic of Kazakhstan



### **The case of Andrey Derkunskiy: a witness has testified about the assassination of the lawyer in a Kazakh prison**

*In Kazakhstan, not only is the right to a fair trial not guaranteed, but the adequate treatment of detainees and prisoners in jails is also not observed.*

## Contents

1. Introduction: Oppressive nature of the judicial and correctional systems.....	p. 3
2. Persons involved in the case of Andrey Derkunskiy.....	p. 5
3. Chronology of events.....	p. 6
4. The essence of the charges against Andrey Derkunskiy.....	p. 7
5. Relatives and lawyers of the defendants cite incidents of blatant violations of fair trial standards.....	p. 8
6. A witness testified that Derkunskiy was assassinated with the assistance of the administration of the detention facility.....	p. 9
7. Conclusions: threats from the security forces and the danger of reprisals against the witness.....	p. 11
Appendix 1.....	p. 13
Appendix 2.....	p. 14
References.....	p. 22

## 1. INTRODUCTION: OPPRESSIVE NATURE OF THE JUDICIAL AND CORRECTIONAL SYSTEMS

Convicted lawyer Andrey Derkunskiy, who allegedly had evidence to prove his innocence, was found dead in his cell on 22 January, 2014. The cellmate of the deceased, Daniar Tolendinov reported that he had witnessed the authorities of the detention facility cooperating with the murderers. Soon after, the witness recanted his testimony due to the threat of vengeance being taken by the detention centre workers. Sources in the National Security Committee reported to journalists of the media group 'Respublika' that the security forces are striving to 'shut the mouth' of the victim's relatives and counsels.

The case of Andrey Derkunskiy is further confirmation of the serious problems in the judicial and penal systems of Kazakhstan. In the recent report on human rights observation in the world in 2013, the U.S. State Department noted that the most important problems in the field of human rights in Kazakhstan include *"The lack of an independent judicial system and due process of law, particularly in cases regarding widespread corruption and abuse in law enforcement and judicial systems.(...) The executive branch of power has severely limited judicial independence. Corruption occurs at all stages of proceedings"*.<sup>[1]</sup> Corruption in Kazakh courts was reported by the members of the Polish Bar Council in the document presenting the results of their observation mission to Kazakhstan <sup>[2], [3]</sup>.

In addition, conditions in detention centres in Kazakhstan are often life-threatening. In view of the closeness of the penitentiary system, an 'inconvenient' prisoner may transpire to be deprived of all his rights and his life –may entirely depend on the administration of the colony. In recent years, the number of cases where prisoners have caused physical injury to themselves in protest against the cruel prison conditions and abuse has significantly increased. According to recent statistics, in 2012, 340 such acts of self-mutilation were recorded. <sup>[4]</sup> Information was spread about numerous incidents in which prisoners died, unable to endure inhumane treatment.

Within six months of 2013, the Kazakhstan Coalition of NGOs Against Torture received 201 complaints of torture and other forms of cruel treatment. Official statistics show that the number of criminal cases, instituted against law enforcement officers on charges of torture, is negligibly small compared to the number of statements on the use of torture. At the same time, law enforcement officials who exert torture do not face charges of torture, but of abuse of power and official authority. <sup>[5]</sup>

Thus far, Kazakh authorities have given the appearance that they are trying to combat torture. Formal changes in laws and regulations are not implemented in practice. In 2010, the General Prosecutor of Kazakhstan approved the Regulations on verification of allegations of torture and ill-treatment. On 2 July, 2013, Kazakhstan's President signed a law aimed at introducing legislative changes in order to establish a nationwide mechanism for the prevention of torture. However, these measures only exist on paper. The number of statements regarding the use of torture in police stations and prisons is growing. Despite the statements of eyewitnesses and international observers regarding the shocking beatings of prisoners, the authorities do not respond adequately to the incidents of torture and human rights organisations face serious restrictions on admission to the penal colonies.

Such a situation is contrary to the statements of the Kazakh delegation regarding the results of the Universal Periodic Review of Human Rights of 2010. At that time, Deputy Prime Minister of Kazakhstan, Yerbol Orynbayev, assured that "the government will make every effort to ensure that all manifestations of torture be entirely eliminated". The Kazakh government is obliged to ensure the effective implementation of the recommendations within the framework of the Universal

Periodic Review of Human Rights. In particular, in 2010, the delegation of Kazakhstan to the countries of the United Nations made the following commitments:

- to continue efforts aimed at eliminating torture and improving conditions of detention, as well as to ensure the protection of the rights of prisoners;
- to continue to be guided by the principle of zero tolerance for torture and cruel, inhumane or degrading treatment or punishment;
- to improve the conditions and the situation surrounding human rights in prisons, as well as to carry out independent investigations into incidents of violence in prisons;
- to establish a mechanism for independent monitoring of all places of detention in accordance with the provisions of the Optional Protocol to the Convention against Torture in order to effectively prevent torture;
- to continue to improve the judicial system in order to guarantee the rights of detainees and prisoners;
- to take measures designed at strengthening the independence of the judiciary, to apply the existing legal procedures and solve the problem of corruption in the courts. [\[6\]](#)

The Open Dialog Foundation has not carried out an assessment of the legality of the accusations made in the criminal proceedings against Andrey Derkunskiy. However, we wish to draw attention to the fact that the statements of the Kazakh authorities on the democratic course of development of the state do not correspond with reality. Kazakhstan's gross violations of international obligations in the field of human rights have led to tragic consequences: the oppression of opposition journalists and activists; warped lives of political prisoners; convicts maimed and killed in prisons.

## 2. PERSONS INVOLVED IN THE CASE OF ANDREY DERKUNSKIY

### **Vyacheslav Kim:**

- one of the wealthiest and most influential people in Kazakhstan [7]; since November 2006, the chairman of the Board of Directors of Kaspi Bank, chairman of the Board of the Caspian Financial Group (which owns 89.54% of the bank's shares). Vyacheslav Kim himself owns 67.15% of the shares in the bank. From 2001 to 2005 - the owner of the chain of shops 'Planet of electronics' [8];
- instituted the case against Andrey Derkunskiy, Vladimir Tsoi and Alexey Scherba and was a victim in this case.

### **Andrey Derkunskiy:**

- from 1992 - member of the Almaty Regional Bar Association, worked in the 'Ansat' law office in Almaty. [9] Former shareholder of Kaspi Bank - owned 7.23% of the share capital. From 10 January, 2006 to 29 May, 2006 - Member of the Board of Directors of Kaspi Bank. [10] Former law enforcement officer;
- in 2012, a criminal case was instituted against Andrey Derkunskiy on charges of extortion and arbitrariness. On 22 January, 2014, he was found dead in his cell in the detention facility No.1 in Almaty (LA-155/1).

### **Vladimir Tsoy:**

- businessman, from 1998 to 2009 he was the financial adviser of Vyacheslav Kim; Andrey Derkunskiy called Vladimir Tsoy his friend;
- in 2012, a criminal case was instituted against Vladimir Tsoy on charges of extortion and arbitrariness. At the time of the trial, he was registered as temporarily unemployed. Currently, he is serving a sentence in a strict regime penal colony;

### **Alexey Scherba:**

- founder of Limited Liability Partnership (TOO) 'Fantasiya' ['The Fantasy'], which in 2003 acquired 754,400 shares of Kaspi Bank. Between the years 2003-2005, these shares were resold to Vyacheslav Kim. [11] From late 2011, Andrey Derkunskiy was a legal adviser to Alexey Scherba;
- within the framework of the case against Derkunskiy and Tsoi, he was found guilty of failure to report the crime and sentenced to pay a fine.

**Farida Ismailova and Nurlan Rakhmanov** – the counsels of Andrey Derkunskiy and Vladimir Tsoy; they defended their interests during litigation.

**Natalia Tskhai** – the wife of Vladimir Tsoy, a lawyer; she represented her husband in court.

**Daniar Tolendinov** - cellmate and witness of the death of Andrey Derkunskiy.

### **Tokbergen Abiyev:**

- journalist who engages in human rights defence. He phoned Daniar Tolendinov and reported the murder of Andrey Derkunskiy;
- Tokbergen Abiyev has gained notoriety among Kazakh journalists. He was engaged in anti-corruption investigations, and in December 2012, he staged his own kidnapping in order to, as he said, 'draw the attention' of the government to the problem of corruption in Kazakhstan. On 20 December, 2012, Abiyev announced a press conference on the problems

of corruption, and fled. Journalists and human rights organisations launched a campaign for his search. As a result of investigative activities, on 31 December, 2012, Abiyev was found by police in a rented apartment. (...) "through my actions, I intended to gain the president's attention, so that he would agree to have a meeting with me and listen to me" - Tokbergen Abiyev explained. [\[12\]](#) The leader of the Kazakh organisation for the protection of journalists 'Adil Soz', Tamara Kaleyeva and the chairman of the Union of Journalists of Kazakhstan, Seitkazy Matayev, condemned Tokbergen Abiyev's actions, in response to which, the latter gave an unprintable comment. [\[13\]](#) Shortly after, Abiyev apologised to journalists for the insult and the trouble caused. [\[14\]](#)

- according to the editor-in-chief of the media group 'Respublika', Irina Petrushova, sources within law enforcement bodies confirmed the information, spread by Abiyev, regarding the case of Derkunskiy.

### 3. CHRONOLOGY OF EVENTS

The reason behind the imprisonment of Andrey Derkunskiy was a business conflict. As reported by Derkunskiy, during the period from 2003 to 2005, the current chairman of the Board of Directors of Kaspi Bank, Vyacheslav Kim, bought from TOO 'Fantasiya' shares of Kaspi Bank, yet paid 5 times less for them than their actual value, and subsequently, made unilateral changes to the terms of the contract and refused to pay the balance of the debt – approx. 2 billion tenge (\$ 15 million). [\[15\]](#)

***In May 2012, Andrey Derkunsky prepared five civil lawsuits against Vyacheslav Kim***, but has not filed them, since both parties have agreed to settle the dispute amicably. ***On 27 June, 2012***, a conciliation agreement was concluded between them. ***And on the same day, Andrey Derkunskiy along with the founder of LLP 'Fantasiya', Alexey Scherba and businessman, Vladimir Tsoy was detained by financial police*** before being sent to detention centre № 1 in Almaty (LA-155/1). The reason behind the arrest was the fact that Vyacheslav Kim had accused Derkunskiy and Tsoy of 'extortion'. Several months later, in December, 2012, Andrey Derkunskiy and Vladimir Tsoy were unexpectedly presented with another charge: 'arbitrariness'. [\[16\]](#)

The two cases were amalgamated into one legal action, which was run by the Specialised Interdistrict Criminal Court in Almaty, chaired by Judge Yerlan Gabbasov and with the participation of a jury.

**On 16 October, 2013**, the court sentenced Andrey Derkunskiy and Vladimir Tsoy, to 7 and 8 years' imprisonment respectively, to be served in a penal colony with confiscation of property under the following articles:

- Article 327, section 3 of the Criminal Code of the RK: 'Arbitrariness, committed by a group of persons upon prior agreement'.
- Article 181, section 4 of the Criminal Code of the RK: 'Extortion committed by an organised group.'
- Andrey Derkunskiy faced additional charges under Article 251, section 1 of the Criminal Code of the RK ('Illegal possession of firearms').

Alexey Scherba was sentenced to a fine having been found guilty of 'failure to report the crime' (Article 364 of the Criminal Code of the RK). [\[17\]](#)

**On 21 January, 2014**, the Appellate Court upheld the verdict of the first instance court.

The next morning, after the handing down of the judgement by the Appellate Court, on **22 January, 2014**, Andrey Derkunskiy was found dead in his cell in detention centre No. LA 155/1. According to official statements, he committed suicide by hanging himself.

Journalist, Tokbergen Abiyev finds it strange that as soon as on **23 January, 2014**, choosing not to wait for the results of the autopsy, the investigator issued a decision not to institute criminal proceedings due to an 'absence of evidence of a crime'. The prosecutor's office supported the decision. [\[18\]](#)

On **24 January, 2014**, Daniar Tolendinov [\[19\]](#), who had been imprisoned alongside Andrey Derkunskiy for half a year and had been present in the cell during his death, phoned journalist, Tokbergen Abiyev on a cell phone and reported that Derkunskiy had been killed by two prisoners with the assistance of the prison administration, but shortly after, he recanted his statement.

#### **4. THE ESSENCE OF CHARGES AGAINST ANDREY DERKUNSKIY**

The court's version coincided with the prosecution's, according to which Andrey Derkunskiy devised a 'criminal plan' in order to 'derive material benefit'. ***In the opinion of the court, in order to implement this plan, he teamed up with Vladimir Tsoy:***

- Tsoy worked for some time with the directors of the chain of retail stores 'Planet of electronics'; subsequently, he demanded that they pay the arrears owed for his services, rendered during the cooperation. However, at the same time, by means of threats and stating that he had allegedly sold his debt to 'Russian gangsters, he forced the directors of the chain of shops to pay him \$5.8 million. Andrey Derkunskiy 'was acting in 'collusion' with Vladimir Tsoy and represented him, acting as his counsel at meetings.
- Andrey Derkunskiy 'repeatedly threatened' Vyacheslav Kim.
- Andrey Derkunskiy disseminated information that the chairman of the Board of Directors of Kaspi Bank, Vyacheslav Kim, illegally acquired a stake in the bank. This information 'defamed' Kim, and the announcement could 'cause substantial damage to his reputation and business". [\[20\]](#)
- In addition, Andrey Derkunskiy 'forced' Alexey Scherba to grant him unlimited authority in the management of LLP 'Fantasiya' and leave Kazakhstan with his family. This situation was used by Derkunskiy in order to extort money from Kim under the pretext of collecting debts for the acquired shares of LLP 'Fantasiya'.

However, Andrey Derkunskiy, Vladimir Tsoy and their counsels denied the allegations. Andrey Derkunskiy stated that he had nothing to do with Vyacheslav Kim: he did not call him, he never met him, and was only engaged in the business of debt collection. According to Derkunskiy, the reason given by Kim for his criminal prosecution was the fact that the banker himself was afraid that he would face lawsuits. [\[21\]](#) Farida Ismailova also argues that the criminal case against Vladimir Tsoy and Andrey Derkunskiy was instituted because Vyacheslav Kim fears an investigation into the legality of the acquisition of shares of Kaspi Bank by him. According to her, "Kim bought shares of the bank using the bank's own money". [\[22\]](#)

***The version of the court contains logical contradictions.*** Thus, according to the verdict, Andrey Derkunskiy threatened to file a lawsuit against Vyacheslav Kim, which would lead to 'serious consequences', including an audit of the bank by the Committee for Financial Supervision and the National Bank of Kazakhstan. However, under the law of the Republic of Kazakhstan, verification of the activities of financial institutions forms part of the functions of the National Bank and the

Committee for Financial Supervision. [23] Therefore, it seems illogical that the court considers such an inspection a 'threat'.

As regards the allegations against Vladimir Tsoy, Farida Ismailova stated: 'Since on the day of detention Volodya was there, he brought the stamp, for which Andrey had asked, hence, he was allegedly in collusion with Andrey'. [24] Andrew Derkunsky commented on the accusations against Tsoy as follows: "All his 'guilt' consists of the fact that he's my friend, and that he, at my request, provided me with the bank account to which Kim was supposed to transfer money to pay off his liabilities to me and LLP 'Fantasiya'. (...) Also, between the period of 1998 and 2009, he was the financial advisor of Kim and his group of companies. Hence, Tsoy is a source of information, and the information he has is highly detrimental to Kim. [25]

## 5. RELATIVES AND LAWYERS OF THE DEFENDANTS CITE INCIDENTS OF BLATANT VIOLATIONS OF FAIR TRIAL STANDARDS

***The defence, represented by Farida Ismailova and Nurlan Rakhmanov pointed to numerous procedural violations:***

- Former police officer Andrey Derkunskiy was arrested and placed in a cell with defendants facing civil charges, which is strictly prohibited by the rules of the detention centre.
- The defendants have repeatedly stated that they were being pressured by Vyacheslav Kim who demanded that they transferred their property or give confessionary statements. Thus, according to the defence, Vladimir Tsoy was forced to sign statements that he had been associated with criminal authority 'Grandfather Hassan'. [26]
- Vladimir Tsoy's wife, Natalia Tskhay and counsel Farida Ismailova pointed out that pressure had also been exerted on the jury (including by the judge); due to a change of the jury, the trial began anew. [27] And so, Farida Ismailov stated: "*As a result of three days' consultation, Judge Gabassov dismissed the jury. On the street, we were told by the jury members that with 9 of 10 voices, they found the defendants not guilty. And we believe that only lobbying by B. Kim led to the jury being dismissed. We are very grateful to the jury that they withstood the pressure and did not succumb.*" [28]
- When alive, Andrey Derkunskiy repeatedly pointed out that Vyacheslav Kim had himself violated the law, when he acquired the shares; still, the court did not pay attention to this fact.
- Testimonies of the victims - Vyacheslav Kim and directors of the company 'Planet of electronics' were changed several times during the investigation, although giving false testimony gives rise to criminal liability. [29]

Referring to the relatively disproportionate punishment for the participants in the case, counsel Farida Ismailova explained that Alexey Scherba agreed to the conditions of the prosecution and thus escaped imprisonment: "*He [Alexey Scherba] transferred all his property to Kim. During the investigation, he signed all documents brought by notaries to the police station. And the head of the detention facility himself confirmed the authenticity of Scherba's signature. He did not conceal the fact that he was under a lot of pressure. And for the safety of his family, he was forced to sign documents*" [30]. The defence contends that the court has not provided any evidence of the guilt of the defendants.



## 6. A WITNESS TESTIFIED THAT DERKUNSKIY WAS ASSASSINATED WITH THE ASSISTANCE OF THE ADMINISTRATION OF THE DETENTION FACILITY

On 24 January, 2014, Daniar Tolendinov, Andrey Derkunskiy's cellmate, told reporter Tokbergen Abiyev that he had witnessed the assassination of Derkunskiy:

- In his commentary for the Open Dialog Foundation, journalist Abiyev noted that, ***according to Daniar Tolendinov, at approx. 6:00 a.m., two prisoners entered the cell. The door to the cell was opened by detective officer Askhat and inspector Talgat (their surnames remain unknown). Daniar Tolendinov pretended to be asleep, and saw the prisoners strangle Andrey Derkunskiy and hang him on a pipe. Derkunskiy's cellmate claims that the head of the detention facility, Alexey Orischenko who had previously threatened the deceased, was also involved in the murder. [31]***
- On the eve of his death, Andrey Derkunskiy was visited and threatened due to the fact that the defendant allegedly had documents proving his innocence and pointing to the contrived nature of the case. On the basis of what he had heard, witness Daniar Tolendinov suggested that Derkunskiy had been threatened by Vyacheslav Kim's associates. Derkunskiy refused to hand his documents over to these people. Later, an Interior Ministry source told reporters of the Respublika online portal that not only did Andrey Derkunskiy not plan to commit suicide, but he also had plans to publish documents proving his innocence after his release.
- Daniar Tolendinov sent to journalist, Abiyev photos of the cell in the detention facility which show that ***it was not possible to voluntarily hang oneself on the pipe, since it is situated lower than human height (see Appendix 1).***

Witness, Daniar Tolendinov explained that previously he had not been able to tell the truth, as among the employees of the detention facility who had questioned him with regard to the death of Andrey Derkunskiy was detective officer Askhat. Daniar Tolendinov addressed journalist Tokbergen Abiyev, as he feared for his safety: they could accuse him of murder or later just get rid of him as an unnecessary witness. The journalist reported this information to the investigation committee of the Ministry of Internal Affairs, the General Prosecutor of Kazakhstan and President Nursultan Nazarbayev. [32] According to Abiyev, ***the Almalinsky District Prosecutor's Office of Almaty opened a criminal case, but under Article 102 of the Criminal Code ('incitement to suicide')***. Moreover, as confirmed by Tokbergen Abiyev, no one from among the employees of detention facility No. 1, involved (according to the witness) in the assassination of Derkunskiy was suspended from their job.

***Following the opening of the criminal case, the prosecutor's office began to question Daniar Tolendinov, but he suddenly withdrew his previous testimony.*** On 3 March, 2014, during a confrontation with journalist Abiyev, Daniar Tolendinov stated he did not remember his previous statements, or the item (a rope or sheet) with which his cellmate had been hanged. Still, Tokbergen Abiyev did not believe the witness and claims that pressure has been exerted on him. Firstly, according to the journalist, Daniar Tolendinov looked very scared during the interrogation. Secondly, the journalist indicates that Daniar Tolendinov was showing signs, unbeknown to the investigator, that he had been subjected to pressure. In addition, detective officer Askhat and inspector Talgat against whom Daniar Tolendinov had testified previously, continue to work in the detention centre.

The next day, after the confrontation, Daniar reiterated in a statement addressed to the investigator that all his previous statements had been contrived. *"In prison, people will sign anything"*, - journalist Abiyev noted, believing that the life of Daniar Tolendinov is endangered. The journalist filed his inquiries with law enforcement agencies with a request to institute a

criminal case under the article relating to murder. Thus far, the Interior Ministry has claimed that 'necessary investigative actions are being conducted (Appendix 2).

***On 20 March, 2014, an Interior Ministry source told reporters of the 'Respublika' online portal that the administration of the detention facility repeatedly sent criminals to Daniar Tolendinov's cell who beat the witness severely.*** Now, according to the source, there is a plan to create intolerable conditions for Tolendinov during his transfer and further stay in the colony: *"The source mentioned that an order had been given by the upper echelons of power to render this convict incapable of ever saying anything again".* [\[33\]](#)

## 7. CONCLUSIONS: THREATS FROM THE SECURITY FORCES AND THE DANGER OF REPRISALS AGAINST THE WITNESS

An important factor that could have affected the case of the deceased, Andrey Derkunskiy, is information about Vyacheslav Kim's close cooperation with Nursultan Nazarbayev's nephew, Kairat Satylbaldy. According to the 'Respublika' online portal, Satylbaldy patronises Kaspi Bank and is its secret shareholder. [34] In his final statement at the hearing, Andrey Derkunskiy himself claimed that during the conversations with him, Kim's people threatened him and insisted that he testify against businessman Yakov Tskhay and Timur Kulibayev, the son-in-law of the President, giving the impression that at their instruction, Derkunskiy was "trying to take the shares of the bank": *"I refused. That did not happen... The point was that a 30-per-cent stake did not belong to him (Kim - ed.) That was the part of the shares, which he had taken from me. These shares belong to Kairat Satylbaldy. And Kim – and this was the real underlying reason – was trying to cause a disagreement between two members of the president's family, while he himself remained on the sidelines. This is the real reason behind this criminal case and there is no other".* [35]

It is noteworthy that after the death of Derkunskiy, his relatives and counsels stopped communicating with reporters for some time. Derkunskiy's former defender, Farida Ismailova did not respond to the request of the Open Dialog Foundation to comment on the case. According to the editor-in-chief of the media group 'Respublika', Irina Petrushova, ***sources in the National Security Committee argued that the authorities issued an order to conduct an investigation 'without fanfare' in the media***, as the president's nephew was involved in the case. According to the source in the NSC, representatives of law enforcement bodies threatened the relatives and counsels with 'problems if they are to speak publicly about the case of Derkunskiy'. *"This in itself is a proof that the result of the investigation, carried out in this case, was not impartial. If it had been a simple suicide – people would not have had to be silenced"*, - Petrushova stated.

***There is every reason to believe that Daniar Tolendinov recanted his previous testimony due to intimidation or physical violence, exerted on him by the administration of the detention facility.***

In order to conduct an objective investigation, investigating authorities are obliged to ensure the safety of witness thus protect him from the pressure of the prison administration. The Open Dialog Foundation fears reprisals against the prisoner in the colony. In case of attacks against the well-being and life of the witness Daniar Tolendinov, involvement of the prison administration in the assassination will be of no doubt. We are also concerned about the information regarding potential pressure on relatives and counsels of the deceased and therefore, we hereby demand that the authorities ensure an objective investigation into the circumstances of Derkunskiy's death.

**Kazakh authorities should confirm not only in words, but through action, their statements about democratic reform and their adherence to international obligations. The Open Dialog Foundation demands that competent authorities of the Republic of Kazakhstan:**

- Ensure the safety of the witness Daniar Tolendinov and Vladimir Tsoy, who had been Derkunskiy's close friend and reported that he was subjected to pressure.
- With regard to Andrey Derkunskiy's death, fully conduct a criminal investigation, based on the content of the testimony of the witness.
- For the duration of the investigation, suspend the detention facility employees, who, according to the witnesses, were involved in Derkunskiy's death (namely, the head of the detention facility Alexey Orischenko, detective officer Askhat and inspector Talgat) from their duties.

- Investigate into the repeated statements about the pressure applied to the judge and the defendants during the trial; identify performers and, possibly, masterminds behind these illegal activities. Verify the statements about the pressure on the jury, as well as the legality and the grounds for the dissolution of the jury.

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

- President of Kazakhstan, Nursultan Nazarbayev - the Presidential Administration, the 'Akorda' building, Left Bank, Astana, 010000, Kazakhstan, fax +7 7172 72 05 16;
- 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](mailto:oraz-n@mvd.kz);
- Almalinsky District Directorate of Internal Affairs in Almaty - 050012, Almaty, 109 Karasay Batyra, tel. +7 727 254-20-04, +7 727 254-46-12;
- 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;
- Chairman of the Committee of Criminal and Executive System of Kazakhstan's Ministry of Internal Affairs, Baurzhan Berdalin - 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 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](mailto:midrk@mfa.kz);
- Executive Secretary of the Ministry of Culture and Information of the Republic of Kazakhstan, Zhanna Kurmangaliyeva - Astana, 8 Orynbor Street, House of Ministries, entrance No. 15, 3rd floor, office No. 317. Tel.: +7 7172 74-01-14, +7 7172 74-01-16; e-mail: [zh.kurmangaliyeva@mki.gov.kz](mailto:zh.kurmangaliyeva@mki.gov.kz);
- 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](mailto:ombudsman-kz@mail.ru); fax: +7 (7172) 740548;
- 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](mailto:midrk@mfa.kz).

**Appendix 1.** The photos, sent by the witness of the assassination of Andrey Derkunskiy, Daniar Toledinov to journalist Tokbergen Abiyev



**Appendix 2.** Responses of the Ministry of Internal Affairs and Prosecutor's Office to the statements of journalists Tokbergen Abiyev and Zhanna Baytelova

**КАЗАҚСТАН  
РЕСПУБЛИКАСЫНЫҢ  
ІШКІ ІСТЕР МИНИСТРЛІГІ  
ТЕРГЕУ КОМИТЕТІ**

**МИНИСТЕРСТВО  
ВНУТРЕННИХ ДЕЛ  
РЕСПУБЛИКИ КАЗАХСТАН  
СЛЕДСТВЕННЫЙ КОМИТЕТ**

010010, Астана, Тәуелсіздік көшесі, 4

010010, Астана, ул. Тәуелсіздік, 4

№ 44-2-84/3м- «29» 01

2013 года

A-325/1

**Абиеву Т.**

г. Астана, 010000

ул. Кенесары, 40

БЦ «7 Континент».

Офис № 1005

Тел. 87029369807

Ваше обращение об имевшем место в СИ-1 г. Алматы убийства Деркунского А. 29.01.2014 г. зарегистрировано в КУЗИ (книга учета заявлений и информации о преступлениях) МВД РК за № 283.

Проведение доследственной проверки и принятие процессуального решения поручено ДВД г. Алматы.

О результатах рассмотрения Вы будете уведомлены указанным органом.

В случае несогласия с принятым решением, Вы вправе обжаловать его в установленном законом порядке.

Заместитель председателя

 **Б. Кожамбердиев**

исп. Тлеукулова А.С.  
тел. 2722624

**MINISTRY OF INTERNAL AFFAIRS  
OF THE REPUBLIC OF KAZAKHSTAN  
INVESTIGATIVE COMMITTEE**

010010 Astana, 1 Tauelsizdik

No. 4-4-2-84/3t A-325/1  
of 29 January, 2013

Abiyev T.  
Astana 010000  
40 Kenesary Street  
Business Centre '7 Kontinent'  
office No. 1005  
tel. 87029369807

Your letter regarding the murder of Andrey Derkunskiy, which took place in the Detention Centre No. 1 in Almaty on 29 January, 2014, was registered in the Register of Official Correspondence and Information on Offences of Kazakhstan's Ministry of Interior under number 283.

The conduct of preparatory proceedings and issuance of the proceeding decision was commissioned to the Department of Internal Affairs in Almaty.

The above-named body will notify you of the results of the consideration.

Should you disagree with the decision issued, you have the right to file a complaint in accordance with applicable regulations.

Vice President

[illegible signature]

(-) B. Kozhamberdiyev

Action by: Tleukulova A.S.

Tel. 722624

ҚАЗАҚСТАН  
РЕСПУБЛИКАСЫНЫҢ  
БАС ПРОКУРАТУРАСЫ



ГЕНЕРАЛЬНАЯ  
ПРОКУРАТУРА  
РЕСПУБЛИКИ КАЗАХСТАН

010000, Астана қаласы, Орынбор көшесі, 14  
www.115.kz  
тел.: 8 (7172) 71 28 68, факс: 8 (7172) 30 18 65

010000, город Астана, ул. Орынбор, 14  
www.115.kz  
тел.: 8 (7172) 71 28 68, факс: 8 (7172) 30 18 65

05.02.14 № 2-011800-14-06083

Прокурору г.Алматы  
Асылуову Б.Н.

Абиеву Т.  
г.Астана,  
ул.Кенесары, 40

Для рассмотрения по существу направляется обращение руководителя Информационно-правового портала WWW «ABIYEV.KZ» Абиева Т., поступившее из Администрации Президента РК, по факту смерти Деркунского А. и принятия мер безопасности к осужденному Төлендинову Д.

Необходимо проверить доводы заявителя в полном объеме, в случае выявленных нарушений принять меры прокурорского реагирования.

О результатах рассмотрения прошу сообщить автору обращения, а также направить за своей подписью подробную информацию в Генеральную прокуратуру **в срок не позднее 17 февраля 2014 года.**

Второму адресату для сведения.

Приложение: на \_\_\_ листах.

Начальник  
2-го Департамента

Т. Жангарашев

Исп. Махметов М.  
т. 712849

059239



**THE GENERAL PROSECUTOR'S OFFICE  
OF THE REPUBLIC OF KAZAKHSTAN**

010000 Astana, 14. Orynborg Street

[www.115.kz](http://www.115.kz)

tel.8 (7172) 71 28 08, fax 8 (7172) 3018 65

05.02.14 r. Nr 2-011800-14-06089

**Prosecutor of Almaty**

**Asylov B.N.**

**Abiyev T.**

*Astana*

*40 Kenesary Street*

For the review on the merits of the case, we enclose the statement of head of the Information and Legal Online Portal [www.abiyev.kz](http://www.abiyev.kz), T. Abiyev, transferred from Kazakhstan's Presidential Administration, regarding the death of A. Derkunskiy and taking security measures with regard to convict, D. Tolendinov.

The full scope of arguments presented by the applicant should be inspected, and, should any failures be revealed, measures of a prosecutorial nature must be undertaken.

The author of the letter should be notified of the results of the inspection activities, and detailed information should be sent to the General Prosecutor's Office upon acknowledgement of receipt no later than on 17 February 2014.

Attachments on (–) sheets.

**Head of the Second Department**

[illegible signature]

**T. Zhaigarshev (-)**

Action by: Makhmetov M.

Tel.712549

**059239**

OT:

НОМЕР ТЕЛЕФОНА:

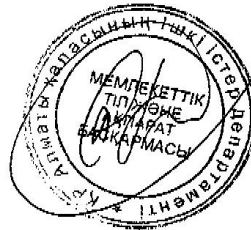
11 ФЕВ. 2014 10:08 СТР1

**Исх: 30/37  
от 10.02.2014 года**

**Корреспонденту еженедельной газеты  
«Assandi-Times»  
г-же Байтеловой Ж.**

На Ваш запрос №09 от 05.02.2014 года сообщаем, что факт обнаружения тела гражданина Деркунского А. имело место в камере учреждения ЛА-155/1. В этой связи Вам необходимо переадресовать письмо в КУИС МВД РК или ДУИС по городу Алматы, компетентные ответить на поставленные Вами вопросы.

**И.о. начальника УГЯИ  
ДВД города Алматы  
майор полиции**



**С. Азирбек**

Letter No 30/37

Of 10 February, 2014

**The correspondent of the weekly**

**'Assandi-Times'**

**Ms. Baytelova Zh.**

In response to your question (No. 9) of 5 February, 2014, we hereby announce that the body of citizen A. Derkunskiy was found in his cell in the facility LA-155/1/.Therefore, you must redirect the letter and transfer it to the Committee of the Criminal and Executive System of the Ministry of Interior of the RK in Almaty, which is the competent body that will respond to the questions you posed.

Acting head of UGAI

DIA of Almaty

Police major

A.Azirkbek (-)

[a round seal and illegible signature]

**ҚАЗАҚСТАН  
РЕСПУБЛИКАСЫНЫҢ  
ІШКІ ІСТЕР МИНИСТРЛІГІ  
ТЕРГЕУ КОМИТЕТІ**

010010, Астана, Тәуелсіздік даңғылы, 1  
2014ж. 03 31  
Мына

**МИНИСТЕРСТВО  
ВНУТРЕННИХ ДЕЛ  
РЕСПУБЛИКИ КАЗАХСТАН  
СЛЕДСТВЕННЫЙ КОМИТЕТ**

010010, Астана, пр.Тәуелсіздік, 1  
№ 4-4-д-84/3м-А - 325, 1  
На № \_\_\_\_\_

Абиеву Т.  
г. Астана, 010000  
ул. Кенесары, 40  
БЦ «7 континент»  
офис № 1005

968 160

Ваше обращение на ход расследования уголовного дела, возбужденного по факту смерти Деркунского А.Ю., рассмотрено.

В настоящее время расследование по делу продолжается, проводятся необходимые следственные действия, направленные на обеспечение полноты, всесторонности и объективности исследования всех обстоятельств дела.

Ход расследования дела находится на контроле.

О результатах расследования заинтересованные стороны будут уведомлены в установленном законом порядке.

Заместитель председателя



Р. Досанов

исп. Глеукулова А.  
722624



**MINISTRY OF INTERNAL AFFAIRS  
OF THE REPUBLIC OF KAZAKHSTAN  
INVESTIGATIVE COMMITTEE**

010010 Astana, 1 Tauelsizdik  
No. 4-4-2-84/3t of 29 January, 2013

No. 4-4-2-84/3t A-325/1  
of 31 March, 2013

Abiyev T.  
Astana 010000  
40 Kenesary Street  
Business Centre '7 Kontinent'  
office No. 1005  
968 160

Your letter concerning the course of the investigation of the criminal case initiated in connection with the death of A. Derkunskiy has been considered.

Currently, the proceedings in this case are ongoing, necessary investigative measures are being undertaken in order to provide a full, comprehensive and objective examination of the circumstances of the case.

The course of the investigation is subjected to monitoring.

The results of the investigation will be communicated to the interested parties in accordance with the law.

Deputy chairman

[illegible signature]

R. Dosanov (-)

Action by: Tleukulova A.S.

722624

[illegible signature]

## References:

1. U.S. Department of State // Country Reports on Human Rights Practices for 2013: Kazakhstan. - <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220395#wrapper>
2. Adwokatura Polska // Report on the 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](http://adwokatura.pl/wp-content/uploads/2013/07/NRA_Report_on_Mission_in_Kazakhstan-amended_all.pdf)
3. The high-profile trial of opposition politician Vladimir Kozlov, and the case of the closure of the most influential independent media outlets in December 2012 and small-circulation non-state media in February and April 2014 constituted confirmation of gross violations of the right to a fair trial. - <http://en.odfoundation.eu/i/fmfiles/raporty/odf-report-kozlov-eng.pdf>; <http://en.odfoundation.eu/i/fmfiles/pdf/odf-report-media-repression-kazakhstan-eng.pdf>
4. U.S. Department of State // Country Reports on Human Rights Practices for 2013: Kazakhstan. - <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220395#wrapper>
5. Open Dialog Foundation // Report: torture in Kazakhstan. - <http://en.odfoundation.eu/i/fmfiles/pdf/odf-report-torture-in-kazakhstan-eng.pdf>
6. United Nation Human Rights // Universal Periodic Review - Kazakhstan. - <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/KZSession7.aspx>
7. Forbes Kazakhstan // Forbes Rating: Vyacheslav Kim. - <http://forbes.kz/ranking/object/54>
8. Kaspi Bank // Vyacheslav Kim. - <http://www.kaspibank.kz/?type=343&ft=237>
9. The Ministry of Justice of the Republic of Kazakhstan // list of attorneys of the Almaty Province. - <http://www.adilet.gov.kz/ru/node/15977>
10. Kazakhstan Stock Exchange // Kaspi Bank (Kazakhstan) provided KASE with an extract as of January 1, 2006 from the shareholder's register system. - <http://www.kase.kz/news/show/188486>
11. Headline.kz // Filing a lawsuit could result in the seizure of the Kaspi Bank's portfolio of shares. - [http://finance.headline.kz/novosti/sudebnyiy\\_isk\\_grozil\\_nalojeniem\\_aresta\\_na\\_paket\\_aksiy\\_kaspi\\_bank.html](http://finance.headline.kz/novosti/sudebnyiy_isk_grozil_nalojeniem_aresta_na_paket_aksiy_kaspi_bank.html)
12. Tengri News // With his 'abduction, Abiyev intended to spoil the corruptionists' New Year's eve. - [http://tengrinews.kz/kazakhstan\\_news/abiev-svoim-pohischeniem-hotel-isportit-noviy-god-korrupsioneram-226167/](http://tengrinews.kz/kazakhstan_news/abiev-svoim-pohischeniem-hotel-isportit-noviy-god-korrupsioneram-226167/)
13. Tengri News // Journalist Abiyev shouted obscenities to those who consider his deed unacceptable. - <http://tengrinews.kz/video/825/>
14. You Tube // Tokbergen Abiyev: „I apologise, but I don't regret". - <https://www.youtube.com/watch?v=okFSV1XFW7w>
15. ARKZ.info // Counsel Andrey Derkunskiy: shareholder of Kaspi Bank, Vyacheslav Kim "paid so much dough to everyone in this country, that he has nothing to fear here". - <http://arkz.info/news/advokat-andrey-derkunskiy-akcioner-kaspi-bank-vyacheslav-kim-stolko-babla-zaplatil-vsem-v-etoy>
16. The charge was filed by directors of TOO 'Planet of electronics': T. Kadyrov, A. Panchenko, L. Ratochka and A. Volkov regarding the events that allegedly took place in 2009. At the same time, Farida Ismailova, Andrey Derkunskiy's counsel, noted that during the interrogation, attempts were undertaken to force her client to sign a document which stated that he had allegedly sought help from a crime boss in order to deal with T. Kadyrov. This episode was also included in the main version of the prosecution and connected to the case of Vyacheslav Kim. - <http://www.respublika-kz.info/news/society/32246/>
17. Online.zakon.kz // The verdict No. 66/1.1-2, issued on 16 October, 2013 by the Specialised Interdistrict Criminal Court of Almaty. - [http://online.zakon.kz/Document/?doc\\_id=31496283](http://online.zakon.kz/Document/?doc_id=31496283)
18. Information and analytical portal 'Respublika' //He was bored and so he made everything up? - <http://www.respublika-kz.info/news/society/35745/>
19. Convicted under Article 177, section 1 of the CC of the RK, and Article 175, section 1 of the CC of the RK to 2 years' imprisonment in a general regime penal colony.
20. Online.zakon.kz // verdict No. 66/1.1-2, issued on 16 October, 2013 by the Specialised Interdistrict Criminal Court of Almaty. - [http://online.zakon.kz/Document/?doc\\_id=31496283](http://online.zakon.kz/Document/?doc_id=31496283)

21. ARKZ.info // Counsel Andrey Derkunskiy: shareholder of Kaspi Bank, Vyacheslav Kim “paid so much dough to everyone in this country, that he has nothing to fear here”. - <http://arkz.info/news/advokat-andrey-derkunskiy-akcioner-kaspi-bank-vyacheslav-kim-stolko-babla-zaplatil-vsem-v-etoy>
22. Headline.kz // The jury, dissolved by the court, acquitted the Kaspi Bank shareholder. - [http://finance.headline.kz/novosti/raspuschennyye\\_sudom\\_prisyajnyie\\_opravdali\\_aktionera\\_kaspi\\_bank.html](http://finance.headline.kz/novosti/raspuschennyye_sudom_prisyajnyie_opravdali_aktionera_kaspi_bank.html)
23. Online.zakon.kz // Law of the Republic of Kazakhstan ‘On the National Bank of the Republic of Kazakhstan’.- [http://online.zakon.kz/Document/?doc\\_id=1003548](http://online.zakon.kz/Document/?doc_id=1003548)
24. Information and analytical portal ‘Respublika’// Natalia Tskhai: “My husband will be kept behind bars for 15 years”. - <http://www.respublika-kz.info/news/finance/32375/>
25. ARKZ.info // Counsel Andrey Derkunskiy: shareholder of Kaspi Bank, Vyacheslav Kim “paid so much dough to everyone in this country, that he has nothing to fear here”. - <http://arkz.info/news/advokat-andrey-derkunskiy-akcioner-kaspi-bank-vyacheslav-kim-stolko-babla-zaplatil-vsem-v-etoy>
26. Information and analytical portal ‘Respublika’ // Natalia Tskhai: “My husband will be kept behind bars for 15 years”. - <http://www.respublika-kz.info/news/finance/32375/>
27. Information and analytical portal ‘Respublika’// Derkunskiy was found hanged in a detention centre cell. - <http://www.respublika-kz.info/news/society/34928/print/>
28. Headline.kz // The jury, dissolved by the court, acquitted the Kaspi Bank shareholder. - [http://finance.headline.kz/novosti/raspuschennyye\\_sudom\\_prisyajnyie\\_opravdali\\_aktionera\\_kaspi\\_bank.html](http://finance.headline.kz/novosti/raspuschennyye_sudom_prisyajnyie_opravdali_aktionera_kaspi_bank.html)
29. Information and legal portal Abiyev.kz // Kaspi Bank met its match. - <http://abiyev.kz/7538-nashla-kosa-na-kaspi-bank.html>
30. Information and analytical portal ‘Respublika’// ‘We fear for the life of Vladimir Tsoy’. - <http://www.respublika-kz.info/news/society/34934/>
31. Information and legal portal Abiyev.kz // Who will stay in such a country? - <http://abiyev.kz/9440-kto-ostanetsya-zhit-v-takoy-strane.html>
32. Information and legal portal Abiyev.kz // Is it murder or crazy fantasy? - <http://abiyev.kz/9581-eto-ubiystvo-ili-bezumnaya-fantaziya.html>
33. Information and analytical portal ‘Respublika’ // The life of Derkunskiy’s former cellmate now hangs by a thread. - <http://www.respublika-kaz.info/news/sluhi/35910/>
34. Information and analytical portal ‘Respublika’ // Trail leads to Vyacheslav Kim and Kairat Satybaldy. - <http://respublika-kz.info/news/politics/34948/>
35. YouTube // The last words of Vladimir Tsoy and Andrey Derkunskiy. - <https://www.youtube.com/watch?v=yXOxgOHbhPI>

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](mailto:odfoundation@odfoundation.eu)

[www.odfoundation.eu](http://www.odfoundation.eu)

+48 22 307 11 22

The report was published on 20 June, 2014

Printed by: OPEN DIALOG FOUNDATION

Cover photo: Print Screen from the recorded statement of Andrey Derkunskiy at the trial. The recorded material is available on YouTube: <https://www.youtube.com/watch?v=yXOxgOHbhPI>

**For more detailed information, please contact:**

Igor Savchenko - [igor.savchenko@odfoundation.eu](mailto:igor.savchenko@odfoundation.eu)

Katerina Savchenko - [katerina.savchenko@odfoundation.eu](mailto:katerina.savchenko@odfoundation.eu)

Lyudmyla Kozlovska - [lyudmylakozylovska@odfoundation.eu](mailto:lyudmylakozylovska@odfoundation.eu)

*The Open Dialog Foundation*