



Warsaw, 22 February 2019

**KAZAKHSTAN ILLEGALLY EXPELLED FIDU HUMAN RIGHTS DEFENDERS IN RETALIATION FOR PUBLICISING THE POLITICALLY MOTIVATED CASE OF JUDGE KENZHALIYEV**

The Aktau City Court acquitted the victim of political prosecution, Aigul Akberdiyeva, after which the Chairman of the Court, Malik Kenzhaliyev, was dismissed. Kenzhaliyev said that a special services officer tried to hit him with a car. The judge also provided audio recordings of conversations, during which he was required to pass a guilty verdict in the case of activist Aigul Akberdiyeva. He also sent these audio recordings to the members of the human rights mission of the Italian Federation for Human Rights (FIDU), Liudmyla Voloshyna and Valerii Iavtushenko. On 14 February 2019, the judge flew with them to Astana to meet with EU diplomats.

The judge was summoned to the Supreme Court, and a few hours later he declared that he 'supported the judicial system' and 'refused the assistance of human rights defenders'. At this time, the police and security services began to detain the FIDU human rights defenders. The consul was not allowed to see Voloshyna and Iavtushenko. They were denied the right to call and the right to an attorney. After a night trial, they were immediately expelled from Kazakhstan, without the ability to appeal the decision. The prosecutor's office now demands that the acquittal of activist Aigul Akberdiyeva be annulled.

On 7 February 2019, the chairman of the Aktau City Court, Malik Kenzhaliyev, was dismissed from his post. Formally, Kenzhaliyev was dismissed for the fact that two years ago, he allegedly failed to completely pay off the workers who built his house. The Kazakhstani authorities assure the EU representative that Judge Kenzhaliyev's rights have not been violated and that there is no political motivation in this case. **However, the evidence suggests the opposite.**

**On 11 February 2019**, unidentified persons disrupted Kenzhaliyev's press conference in Aktau. He began to speak out on the street, but the police detained everyone who listened to him, including journalists and observers from the Italian Federation for Human Rights<sup>1</sup>. At the police station, the detainees were asked 'what was the reason for their gathering', after which they were released.

Near the police station, Kenzhaliyev said that he was being persecuted in connection with the acquittal of Aigul Akberdiyeva. He reported that the special services as well as the leadership of the regional and Supreme Court put pressure on him<sup>2</sup>.

All these events were covered live by **the observers of the Italian Federation for Human Rights (FIDU) – citizens of Ukraine Liudmyla Voloshyna and Valerii Iavtushenko**. The FIDU mission began in Kazakhstan in April 2018<sup>3</sup> and focused on monitoring human rights violations and politically motivated trials<sup>4</sup>.

<sup>1</sup> <https://www.facebook.com/voloshinaluda/videos/2517440971619366/>

<sup>2</sup> <https://en.odfoundation.eu/a/9092,kazakhstani-judges-subjected-to-persecution-following-the-acquittal-of-a-victim-of-a-politically-motivated-case>

<sup>3</sup> <https://fidu.it/en/kazakhstan-the-final-report-of-fidus-april-mission/>

<sup>4</sup> <https://fidu.it/en/kazakhstan-report-on-august-2018-human-rights-monitoring-mission/>

---

## JUDGE KENZHALIYEV PROVIDED AUDIO RECORDINGS OF HOW HE WAS PRESSURED IN THE CASE OF AIGUL AKBERDIYEVA

On 11 February 2019, Judge Kenzhaliyev met with representatives of FIDU, Voloshyna and Iavtushenko, in Aktau. The judge stated that he was under constant surveillance and that he feared for the safety of his family. He asked the international community to protect him and Judge of the Aktau City Court Gulnara Baiturova, who acquitted Akberdiyeva<sup>5</sup>.

Judge Kenzhaliyev handed over to his lawyer audio recordings, which, according to him, included his and Judge Gulnara Baiturova's conversations with the chairman of the Mangystau Regional Court, Yerzhan Dauliyev. Also in the evening of 11 February 2019, Kenzhaliyev sent these audio recordings to FIDU observers via Telegram. The recordings were posted on YouTube<sup>6</sup>. Kazakhstani human rights activist Maigul Sadykova transcribed these records and translated them into Russian and English<sup>7</sup>.

These audio recordings became **another demonstration of the absence of an independent judiciary in Kazakhstan**. Human rights organisations<sup>8</sup>, UN bodies<sup>9</sup> and international observation missions<sup>10</sup> have repeatedly pointed to Kazakhstan's failure to comply with guarantees to ensure a fair trial. In Kazakhstan, there are more than 15 political prisoners, and more than 99.8% of sentences are convictions.

Politically motivated trials are conducted with a clear accusatory bias. In almost all cases, defendants are given the terms requested by prosecutors. Special services officers force the defendants to 'plead guilty' as 'the outcome of the case is predetermined'. **In such cases, decisions, as a rule, 'come from above'**. A judge cannot make a decision alone, but rather agrees it with the chairman of the court, who, in turn, has to cooperate with the highest courts. Members of the European Parliament stressed that the judicial system in Kazakhstan is under political influence<sup>11</sup>. There is every reason to believe that the judiciary receives direct instructions from the Presidential Administration, the National Security Committee and the General Prosecutor's Office.

According to the audio recordings, the chairman of the regional court, **Yerzhan Dauliyev**, persuaded the judges of the city court, **Kenzhaliyev** and **Baiturova** to pass a guilty verdict in the case of activist Akberdiyeva. She was accused of 'calling for the seizure of power' for critical comments in social media. Judges Kenzhaliyev and Baiturova insisted on an acquittal. Below are a few quotes from audio recordings:

**Malik Kenzhaliyev:** *There's no violation here! There's video footage and all the evidence that she's not guilty. And there are expert opinions as evidence. (...) Yerzhan Kokenovich, (...) She said in the pre-trial investigation: "Now I can't feed my four children. Why can't I say what I think? I will be doing it". She was just giving her opinion.*

**Yerzhan Dauliyev:** *It is about promoting a violent overthrow and retention of power. (...) You see, she's using a social network, stating her views and agitating. You see that she finds support and attracts people to it. (...) I'm telling you, we can't just close the case. It's not because I'm afraid for myself or of the responsibility, but there's gonna be a big conversation tomorrow (...).*

---

<sup>5</sup> <https://www.facebook.com/voloshinaluda/videos/2517540348276095/>; <https://www.facebook.com/voloshinaluda/videos/2517564161607047/>

<sup>6</sup> <https://www.youtube.com/watch?v=NPO7vrFuRWY&t=8s>; <https://www.youtube.com/watch?v=QpYLDLAKOo8>

<sup>7</sup> [https://www.facebook.com/permalink.php?story\\_fbid=10114164092556794&id=2364618](https://www.facebook.com/permalink.php?story_fbid=10114164092556794&id=2364618);

[https://www.facebook.com/permalink.php?story\\_fbid=10114164095421054&id=2364618](https://www.facebook.com/permalink.php?story_fbid=10114164095421054&id=2364618)

<sup>8</sup> <https://iphronline.org/wp-content/uploads/2018/03/The-danger-of-standing-up-for-justice-and-human-rights-in-Central-Asia-March-2018.pdf>;

[https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf)

<sup>9</sup> [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2012%2F2&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2012%2F2&Lang=en)

<sup>10</sup> <https://fidu.it/en/kazakhstan-report-on-august-2018-human-rights-monitoring-mission/>

<sup>11</sup> <https://www.facebook.com/lyudmyla.kozlovska/posts/10213792550710424>

**Gulnara Baiturova:** *I'll close the case myself. There is no reason to put the person in jail. (...) She also pointed out in her testimony: "I am being hunted, followed, wiretapped, and cars follow me every day." This is the NSC [National Security Committee – note]. That's not normal behaviour. (...) Besides, I have my doubts whether there is any crime at all. (...)*

**Malik Kenzhaliyev:** *(...) Now the European Union is watching, they have also recorded all the materials. (...) Now the whole country is watching... Tomorrow there will be a big international scandal. And people will curse us. (...) If you put the mother of four children in jail, it'll be the beginning of the end...*

**Yerzhan Dauliyev:** *She stated in the notes that it is necessary to destroy the power... Does this seem like everyday language? (...) So what are the grounds for finding her innocent?*

**Gulnara Baiturova:** *(...) But she did not call for a change in the constitutional order or for the overthrow of power — on the contrary, she talked about the social situation. (...) Pages from 6 to 96 are all photocopies. This seem doubtful to me.*

**Yerzhan Dauliyev:** *(...) Point out that those materials are present in another case and that's all!*

**Gulnara Baiturova:** *So I am supposed to write that the materials are in another case? Then they'll say the judge is illiterate.*

The prosecutor asked to sentence activist Aigul Akberdiyeva to 5 years of restriction of freedom. However, on 6 February 2019, Judge Gulnara Baiturova acquitted Akberdiyeva. The prosecutor's office appealed against this decision.

## **ILLEGAL EXPULSION OF INTERNATIONAL OBSERVERS WHO ARRIVED WITH JUDGE KENZHALIYEV AT MEETINGS WITH EU DIPLOMATS**

**On 13 February 2019, Judge Malik Kenzhaliyev reported an attempt on his life.** He said that he was driving with his son in a car and noticed being followed by the National Security Committee. The judge got out of the car to stop the pursuers. However, they tried to run him over<sup>12</sup>.

**Judge Kenzhaliyev confirmed his readiness to meet with EU diplomats in Astana.** On the night of 14 February 2019, Kenzhaliyev flew to Astana on a single flight with members of the FIDU human rights mission, Liudmyla Voloshyna and Valerii Iavtushenko.

**On 14 February 2019, in the afternoon, Kenzhaliyev told the FIDU representatives that he was summoned to speak about his case before the Supreme Court. A few hours later, at 7:19 P.M. Astana time, Kenzhaliyev published a new video message on Facebook, in which he retracted his previous statements.**

Now Kenzhaliyev started declaring that he “misunderstood the situation around the acquittal verdict in the case of Aigul Akberdiyeva”. *“This false assumption was formed as a result of a conversation with individual human rights defenders (...). I see what reforms are being carried out in the judicial system under the leadership of the Head of the State, the independence of judges is being strengthened (...). I am a patriot of my country and the judicial system. I do not need any legal protection from international organisations or states”*<sup>13</sup>. A few days later, on 20 February 2019, President Nazarbayev signed a decree on the dismissal and termination of powers of Judge Malik Kenzhaliyev ‘at his own will’.

<sup>12</sup> <https://www.facebook.com/100033790851203/videos/111359166667111/>

<sup>13</sup> <https://www.facebook.com/100033790851203/videos/112324573237237/>

---

At the time of publication of Judge Kenzhaliyev's video message, **the authorities had already begun detaining members of the FIDU human rights mission:**

- At 5:16 P.M. Astana time, unknown persons broke into the hotel room where Liudmyla Voloshyna stayed. One of them introduced himself as an employee of the migration service and quickly showed his ID card — in a way that it was impossible to read it. Voloshyna tried to make a phone call, but these persons took away her phone.
- At 8:40 P.M. Astana time, her colleague Valerii Iavtushenko was detained. He met with his lawyer Tolegen Shaikov, after which they decided to go to the Ukrainian Embassy. But as soon as the car started moving, the police stopped them. Iavtushenko was forced into a police car and forbidden to use his phone<sup>14</sup>.

For 14 hours, Voloshyna was not allowed to make a call and inform anyone of her whereabouts. Iavtushenko was out of reach for about 10 hours. Later it became known that Voloshyna and Iavtushenko were taken to the Migration Service in Astana. **They were denied the right to call and the right to an attorney.**

**The Ukrainian consul Ivan Almashi was unable to see them.** He was not allowed into the premises of the Migration Service. At that time, several law enforcement officers arrived at the building. Inside the room, there were people who looked at the consul for some time, but ignored his demands to open the door<sup>15</sup>. The consul called it a flagrant violation of the Vienna Convention on Diplomatic Relations and reported that a special note on the incident will be prepared<sup>16</sup>.

**Around midnight** Voloshyna and Iavtushenko were taken to the Specialised Inter-district Administrative Court of Astana. The Ukrainian consul was not allowed to attend the trial. He was given false information that 'the cases of Ukrainian citizens are not being considered at the moment'.

FIDU observers were only allowed access to a public defender, although they demanded contact with their trusted lawyers. The judge asked FIDU representatives about the details of their mission. In particular, Voloshyna was asked 'at which trials she was present', 'with whom she spoke' and 'why she accompanied the judge'.

The Kazakhstani court concluded that the activities of the FIDU representatives did not correspond to the purpose of their visit. At the airport, **when filling out the migration card, Voloshyna and Iavtushenko clearly indicated that the purpose of their visit was the human rights mission of the FIDU** (as evidenced by a photocopy of the card made by Voloshyna)<sup>17</sup>. However, the court claimed that the information system for controlling the entry and exit of foreigners indicated the purpose of the trip as 'private', not 'business'.

The court ignored the fact that this information system is accessible only to the employees of the Ministry of Internal Affairs and the National Security Committee. Thus, **questions should not be asked to FIDU observers, but to the border guards who entered their data into the system**<sup>18</sup>.

There is also **another contradiction** in the court decision. At first, the court said that Voloshyna and Iavtushenko 'failed to provide the authorised body' with supporting documents about the activities of the mission. But then the court admitted that Voloshyna and Iavtushenko had an appropriate letter from President of the FIDU, Antonio Stango.

---

<sup>14</sup> <https://www.facebook.com/kazakadvocate/videos/2207970776120688/>

<sup>15</sup> <https://www.facebook.com/kazakadvocate/videos/2208047849446314/>

<sup>16</sup> <https://rus.azattyq.org/a/kazakhstan-deportation-voloshina-yavtushenko/29771261.html>

<sup>17</sup> [http://zmist.pl.ua/blogs/s-nazarbaevym-heppi-endov-ne-budet?fbclid=IwAR17yb-7arMovGWR51WJxky2Y1Zozx2Lpv3m0t-vO1oAP2HW7D\\_7UiNR8g](http://zmist.pl.ua/blogs/s-nazarbaevym-heppi-endov-ne-budet?fbclid=IwAR17yb-7arMovGWR51WJxky2Y1Zozx2Lpv3m0t-vO1oAP2HW7D_7UiNR8g)

<sup>18</sup> [https://bureau.kz/novosti/sobstvennaya\\_informaciya/dvukh\\_inostrannykh\\_pravozashitnikov\\_deportiruyut/](https://bureau.kz/novosti/sobstvennaya_informaciya/dvukh_inostrannykh_pravozashitnikov_deportiruyut/)

---

On 15 February 2019 at about 4:00 A.M. Astana time, the mission members were brought from the court to the hotel, where they were ordered to pack their bags. **For about 12 hours, Iavtushenko was deprived of water and food**, which made him feel unwell. Voloshyna was given food at the night trial.

At 7:00 A.M., they were put on a plane, and it was only at the door of the plane that they were given back their phones. According to the observers, the migration officials asked them *'not to feel offended' and 'not to come back with any more missions'*.

The EU allocated funds for justice reform, which is one of the top priorities in Kazakhstan. However, the above facts show the real state of 'reforms' in the judicial system. According to the audio recordings, judges Kenzhaliyev and Baiturova mentioned the lack of corpus delicti, pointed out the EU's attention to Akberdiyeva's case, and also feared widespread public discontent. Yet in response, they were required to fabricate evidence.

**Wishing to silence the facts of pressure on judges, the authorities resorted to the illegal expulsion of FIDU human rights defenders. Thus, the authorities are trying to prevent the dissemination of information about human rights violations. The FIDU observers noticed that people in civilian clothes accompanied them during their detention and subsequent expulsion (most likely, the National Security Committee officers). The surveillance by the security services, the detention and the non-admission of the consul mean that the Kazakhstani authorities deprive members of international missions of security guarantees. Any subsequent FIDU missions to Kazakhstan are at risk.**

**We call on the international community to demand that Kazakhstan provide conditions for the free and safe work of members of international human rights missions. We stress the importance of meetings between EU representatives and victims of political persecution in order to obtain more objective information on the situation in Kazakhstan. The authorities of Kazakhstan often distribute incomplete and propaganda information, so it must be carefully checked.**

**We also note facts that indicate the obvious political nature of Judge Kenzhaliyev's case. On 19 February 2019, eight MEPs drew the attention of the Vice President of the European Commission to the fact that such political pressure on judges, as in Kenzhaliyev's case, will lead to further unfair verdicts, especially in political cases<sup>19</sup>. In addition, on 20 February 2019, it became known that the prosecutor's office called the acquittal verdict in Akberdiyeva's case 'unjust' and appealed to the Mangystau Regional Court (according to the audio recordings, the head of this court demanded a conviction for the activist). Now there is a risk of cancellation of the acquittal, which should not be allowed.**

**For more information, please contact:**

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

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

---

<sup>19</sup> <https://www.facebook.com/lyudmyla.kozlovska/posts/10213792550710424>