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Unprecedented and unacceptable cooperation between Belgian authorities and Kazakhstan's authoritarian regime

On October 1, 2019, at Kazakhstan's mutual assistance request, Belgian police conducted **a warrantless search** (sic!) of Kazakh political refugee and lawyer, Botagoz Jardemalie's apartment in Brussels.

The officials seized numerous electronic devices and documents, which included privileged and confidential work relating to her advocacy as a human rights lawyer. One of the most worrying facts is that - despite Jardemalie having been granted asylum due to persecution by the Kazakhstani regime - the Belgian police brought **two unidentified Kazakh agents** along for the raid, and they were allowed to conduct their own search of Jardemalie's apartment, including documents she had there, without supervision. Soon after the search, **Jardemalie's email accounts were accessed by unknown and unauthorized users**. They contained privileged and confidential communications (protected by lawyer's professional secrecy) and sensitive information related to her clients.

Jardemalie was not present during the search - she was at the Council of Europe in Strasbourg at that time, advocating for human rights in Kazakhstan.

As described by witnesses, **the police officers did not knock or ring the doorbell**. The door was locked and there were no signs of forced entry, indicating that they used unknown technical means to open it. Jardemalie's elderly mother, son (who is a an asylant in Belgium alongside his mother) and nephew were sleeping inside and woke up when the police entered their bedrooms, potentially causing them psychological trauma.

Jardemalie's nephew is her brother, political prisoner Iskander Yerimbetov's, son. Previously the Kazakh officials in charge of his investigation had threatened Yerimbetov that his son would be detained and tortured (specifically, raped) if Yerimbetov did not cooperate with the authorities in getting Jardemalie to return to Kazakhstan. The family had been protecting Jardemalie's nephew by sheltering him outside of Kazakhstan. Moreover, Jardemalie's mother has gained national and international prominence as a civic activist in Kazakhstan who has spoken out for the release of her son Iskander Yerimbetov and on behalf of other victims of the regime's political repressions.

Threatening arrest, the police officers forced Jardemalie's son to countersign a (very general) list of items they were seizing, while at the same time **refusing to enter his actual surname into the document** – putting the nephew's surname (Yerimbetov, corresponding to his father Iskander's) instead.

At no point during the search did the Belgian police provide a search warrant, despite being asked for one by Jardemalie's family. The search continued for around two hours, **without the presence of a lawyer**. When two of Jardemalie's lawyers, Ronit Knaller and Antoine Matz, finally reached the apartment, **the police tried to prevent the attorneys from entering**.

No information was provided to Jardemalie's lawyers regarding the grounds for the raid. In fact, Ronit Knaller was told that the grounds for the search were "secret".

Later on, it became apparent that these actions were the result of a Kazakhstani mutual legal assistance request, directed to the Belgian authorities (although, as of now, no official, written information regarding the matter has been provided to Jardemalie).

By providing Kazakh officials access to Jardemalie's work and email accounts, **Belgium has put numerous individuals in Kazakhstan – including human rights activists, lawyers, and regime opponents – at risk of detention and torture.** Furthermore, considering Kazakhstan is trying to use highly doubtful, criminal charges to have Jardemalie extradited – as it has tried before – she is also herself at risk of arbitrary detention and torture.

In a further act of violation of the protective rights Jardemalie is supposed to enjoy as a political refugee, **she was requested to appear before the Belgian Federal Police to answer questions provided by Kazakhstani authorities.** In spite of the doubtful legality of the procedure, Jardemalie voluntarily appeared before the police and provided detailed answers to Kazakhstan's questions in order to demonstrate her good faith and expose their absurdity. Despite that, a temporary arrest for purposes of answering questions was placed on her. Furthermore, according to Belgian regulations, **being a lawyer, she should not have been questioned by the police but rather by a judge.**

Jardemalie further learned from the police that **Belgian authorities had already collected and provided information to Kazakhstan regarding her banking history.** This provided the Kazakh authorities with a raft of information about Jardemalie's daily life, whereabouts, movements and so on, as well as the same information about her son (also a refugee) and other members of her family. Considering the context, **there seems to be an astonishing and a worrying lack of any checks in place** that - under normal circumstances - should have prevented the branch of Belgian authorities responsible for international legal cooperation from providing such private, sensitive information to Jardemalie's persecuting state - the same regime Belgium has granted her asylum from.

On October 7, attorney Ronit Knaller filed a criminal complaint on Jardemalie's behalf for unauthorized access to a computer system, theft of electronic data, violation of privacy and other infractions, some of them still requiring investigation. In the week following the search, the investigative judge in charge of the Kazakhstani request, Ludivine Kerzmann, **had refused to freeze the cooperation procedure, despite being informed in detail by Knaller on the political context of the case and numerous accompanying irregularities.**

These events raise fundamental questions regarding Belgium's failures both to protect a refugee and to respect the rights of a lawyer and the legal profession. They also raise alarm about Kazakhstan's ongoing abuses of international legal cooperation mechanisms, including using them to circumvent the protection of political asylum granted to its citizens abroad. It is of grave concern that **the regime is able to carry out its relentless campaign, repressing any dissent or opposition, in Belgium, in the very heart of the European Union.**

Background: political persecution of Bota Jardemalie, her family and political refugees from Kazakhstan

Botagoz (Bota) Jardemalie, a Kazakh citizen, is an active human rights lawyer of the New York Bar who has, for many years, defended a broad range of victims of political repression in Kazakhstan and other countries of the former Soviet Union.

Amongst others, she defended the Zhanaozen oil workers and their families, imprisoned and persecuted after their strike in December 2011, where at least 16 protesters were killed by police. Her work included, among others, lodging complaints against the government of Kazakhstan before the United Nations bodies in the following years.

She has also advised numerous opponents of the Kazakh regime, including, among others, Mukhtar Ablyazov, the exiled leader of the Democratic Choice of Kazakhstan (DCK) opposition movement¹. She has been an outspoken critic of the government's increasing repression against any opposition or dissent. This has included providing testimony on Kazakhstan's human rights abuses to international bodies such as the European Parliament and the Council of Europe as well as briefing MPs and government officials in numerous EU states.

¹ <https://en.odfoundation.eu/a/8606,report-the-persecution-of-the-dck-activists-in-kazakhstan>

Due to her activity, in 2013 she has become a victim of politically motivated prosecution herself when Kazakhstan issued an Interpol arrest warrant (Red Notice)², accusing her of multiple financial crimes. It was later deemed political and was therefore cancelled as a clear abuse of INTERPOL's rules and mechanisms.

In October 2013 Jardemalie was granted political refugee status in Belgium. However, despite the protection stemming from asylum status, attempts to undermine her efforts have not ceased to be orchestrated by the Kazakhstani government.³

Despite being a target of a defamatory propaganda campaign (alongside other critics of the Kazakhstani regime and human rights groups), in 2014 - 2015 Jardemalie was the subject of a complex international kidnapping/assassination plot⁴. The attempt triggered a criminal investigation, carried out by the Belgian prosecutor's office, against its perpetrators, acting under the guise of journalists and private detectives. The trial, which began in October 2019, involves the suspicion of hostile foreign interference and espionage conducted on Belgian soil.

In 2017, the Kazakhstani authorities adopted another strategy to exert pressure on Bota Jardemalie: her brother, Iskander Yerimbetov, a Kazakh businessman, was arrested on fabricated charges in November 2017. During pre-trial detention he was severely beaten and tortured, all with the aim of pressuring his sister to return to Kazakhstan and provide false testimony against the mentioned leading political opponent of Nursultan Nazarbayev, Mukhtar Ablyazov (as expressly admitted by the interrogators). Yerimbetov - de facto the government's hostage, accused of obscure fraud - was sentenced to seven years of imprisonment. Multiple international appeals demanding his release have been ignored by the authorities.^{5,6,7,8,9} Currently, his health condition is rapidly deteriorating as proper medical assistance is not granted to him (despite medical examination proving the need for treatment¹⁰).

On November 20, 2018, the UN Working Group on Arbitrary Detention found that Yerimbetov's detention is arbitrary and unlawful, in violation of ICCPR Articles 9 (right to liberty and security of person) and 14 (right to fair trial), and called for his immediate release. Yerimbetov has also been internationally recognized as a political prisoner, including by the European Parliament and the US State Department.

In December 2016 the French Conseil d'Etat (Council of State, supreme court for administrative justice) cancelled the extradition of Mukhtar Ablyazov as politically motivated, as urged by the UN High Commissioner for Human Rights¹¹. In 2017, while living in exile, Ablyazov relaunched the Democratic Choice of Kazakhstan opposition movement, leading to an unprecedented, massive wave of civil, peaceful protests against the oppressive and corrupt authorities in the country¹².

Regarding other, connected cases of political persecution and abuse of international mechanisms, it is worth

² <http://www.protect-lawyers.com/oiad-content/uploads/2018/05/17-05-2018-appeal-iol-jardemalie-case-en.pdf>

³ https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Kazakhstan_-_Kazakhstan/2018/EN_HRL_20180423_Kazakhstan_Concerns-over-lawyer-Botagoz-Jardemalie.pdf

⁴ <https://www.levif.be/actualite/belgique/comment-le-kazakhstan-traque-les-dissidents-politiques-en-exil-aussi-en-belgique/article-normal-781657.html>

⁵ Opinions adopted by the Working Group on Arbitrary, Opinion No. 67/2018 concerning Iskander Yerimbetov (Kazakhstan) https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_67.pdf.

⁶ EP resolution https://www.europarl.europa.eu/doceo/document/TA-8-2019-0203_EN.html

⁷ Statement of the US Mission to OSCE <https://www.osce.org/permanent-council/403400?download=true>

⁸ Appeal signed by 17 US senators https://www.rubio.senate.gov/public/_cache/files/9b633465-8854-445f-a677-69a7f628505f/7DC6415F07E32C5C0BF1D3273EBBB27F.07-29-19-bipartisan-letter-on-kazakhstan-political-prisoner.pdf

⁹ Appeal of the Norwegian Helsinki Committee <https://www.nhc.no/en/kazakhstan-must-release-iskander-yerimbetov-and-co-defendants>

¹⁰ <https://en.odfoundation.eu/a/9573.iskander-yerimbetov-s-health-now-critical-in-detention-facility>

¹¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20997&LangID=F>

¹² <https://www.rferl.org/a/kazakh-authorities-forcibly-detain-dozens-near-planned-anti-government-protests/30237675.html>

mentioning Alma Shalabayeva, Ablyazov's wife, who was abducted and illegally deported from Italy in May 2013¹³, in a vocal case that sparked political turmoil in the country, as well as a diplomatic crisis between Italy and Kazakhstan. Italian police, following a dubious Interpol request (introduced by Kazakhstan) and accompanied by the then-Kazakhstan's ambassador to Italy, detained, isolated and within a few dozen hours deported Shalabayeva and her 6-year old daughter back to Kazakhstan on board a plane chartered by the Kazakhs¹⁴.

A 2019 study, conducted by the European Parliament on the request of its Subcommittee on Human Rights (DROI) on the "Misuse of Interpol's Red Notices and impact on human rights", listed numerous other cases of abuse on the part of Kazakhstan, including political prisoners (like civic activists and journalists) and victims of the misuse of INTERPOL. It also mentions Mukhtar Ablyazov, his family members and former associates, like Roman Solodchenko. Several other former associates of Ablyazov and political refugees (like Tatyana Paraskevich) found themselves in similar trouble, as listed by human rights watchdogs¹⁵ and international press.¹⁶ Most recent cases from Kazakhstan and other regimes, including that of Bota Jardemalie, are analysed in detail in ODF's newly-published report, "They've Come For You: Misuse of Extradition Procedures and Interstate Legal Assistance".¹⁷

What should Belgium do?

Considering that all forms of harassment and intimidation against Bota Jardemalie are clearly and solely motivated by her activity as a lawyer and human rights defender, we urge the following:

- **The Belgian state should, first of all, immediately cease any further transmission of privileged and confidential materials to Kazakh authorities**, considering the risk of reprisals against numerous individuals abroad (incl. torture and arbitrary detention). The judge handling the case should halt any mutual assistance provided to Kazakhstan, considering the clearly political nature of the case;
- The authorities should thoroughly investigate the worrying events that saw the cooperation of Belgian police with the authorities of a non-democratic regime, in violation of the protection of the fundamental rights of an individual, a lawyer and a political refugee;
- Belgium should respect the provisions concerning cases of searches at lawyers' premises, according to the precedents of the European Court of Human Rights: these include the obligations, for a state party to the European Convention on Human Rights, as Belgium is, to ensure strict measures when searching the premises of a lawyer;¹⁸ Furthermore, the UN Basic Principles on the Role of Lawyers state that

¹³ <https://en.odfoundation.eu/a/1251,the-unlawful-deportation-of-alma-shalabayeva-was-the-result-of-a-targeted-special-operation-carried-out-by-kazakh-and-italian-security-forces>

¹⁴ <https://www.ft.com/content/0d35c07c-e57f-11e2-ad1a-00144feabdc0>

¹⁵ <https://www.statewatch.org/news/2019/feb/ep-study-interpol-red-notices.pdf.pdf>

¹⁶ <https://www.ft.com/content/0d35c07c-e57f-11e2-ad1a-00144feabdc0>

¹⁷ <https://en.odfoundation.eu/a/9579,they-ve-come-for-you-misuse-of-extradition-procedures-and-interstate-legal-assistance>

¹⁸ Interpreting the right to privacy, the European Court of Human Rights has repeatedly held that "searches of lawyers' premises must be subject to a very strict examination." In particular, there must be "independent observers" present for the search, and those observers must both "have legal qualifications in order to participate effectively" and "be vested with the power to prevent any possible interference with the solicitor-client privilege of the firm being searched." The Court has applied a heightened standard to searches of lawyers' homes as well. As Belgium is a party to the European Convention on Human Rights, these cases governing searches of lawyers' premises are binding on the Belgian government. These cases further serve as persuasive authority regarding how the Human Rights Committee would interpret the right to privacy (Article 17) in the ICCPR.

“Governments shall ensure that lawyers (...) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”

- Looking further, Belgium should implement effective measures for preventing irresponsible, potentially dangerous and life-threatening, cooperation with authoritarian regimes. Communication between specific cells of the government should be tightened to ensure that the authorities, which have granted political asylum, are aware of the actions of the judiciary and police, which cooperate with the state that the asylum was granted against. Likewise, the judicial authorities should first fully investigate the context of the case, liaising with the department and officials handling the asylum dossier, to avoid any misconduct which could possibly enable gross human rights abuse and cause political/reputational harm to the state.

The sudden search of Bota Jardemalie’s apartment – without a warrant, with Kazakh officials present, and during a time when she is working with European institutions – is clearly an attempt to intimidate and harass her and impede her work as a lawyer and human rights defender. This attack, enabled and facilitated by the Belgian government, which places Jardemalie and numerous individuals in Kazakhstan at risk of torture, must not be allowed to stand.

For further and more detailed information see attached:

- 1) A legal analysis listing the specific provisions of international law broken in this case (*List of international law violations.pdf*);
- 2) Open Dialogue Foundation’s statement on Iskander Yerimbetov’s health being critical in detention facility (*ODF statement Yerimbetov.pdf*);
- 3) Article about the actions of the Belgian police from Le Soir (*Le Soir - La Belgique prête main-forte à la police kazakhe.pdf* and English translation, *Le Soir EN.pdf*);
- 4) Article from Financial Times about the deportation of Alma Shalabayeva and her daughter (*FT - Deportation of Kazakh mother and child shakes Italy.pdf*);
- 5) Article from Le Vif on the earlier attempts of the Kazakhstani regime on Jardemalie in Belgium (*Le Vif - Comment le Kazakhstan traque les dissidents politiques en exil, aussi en Belgique.pdf*);
- 6) Verdict of the French Conseil d’État stating that the case of Mukhtar Ablyazov is politically motivated (*Ablyazov Conseil d'Etat highlighted.pdf*);

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