



OPEN DIALOG

Court proceedings in the case of Vladimir Kozlov



**Report on the findings
of the monitoring missions**

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1. INTRODUCTION

The trial of the Kazakh opposition leader Vladimir Kozlov who faced charges of ‘inciting social discord’, ‘calling for an overthrow of the constitutional order’ and ‘leadership of a criminal organisation’ quite predictably, concluded with a long prison sentence for the politician. Despite numerous statements by local and international observers regarding the injustice and political nature of the criminal charges, all court instances of Kazakhstan refused to mitigate the sentence of Vladimir Kozlov. The oppositionist should serve a sentence of 7 and a half years in prison. Thus, the Kazakh authorities have demonstrated their decisiveness in the fight against political pluralism and dissent in the country.

On 16 December, 2011, in the town of Zhanaozen (Mangistau Province), the police dispersed a peaceful demonstration by oil workers of the ‘OzenMunaiGaz’ company [1] and their family members, with the use of firearms. [2] The police fired on unarmed citizens and minors [3], amongst others, with the use of automatic weapons (AKM-47). On 17 December, 2011, at the railway station of the village of Shetpe, oil workers halted a passenger train and demanded that the authorities put an end to the shooting of civilians in Zhanaozen, the withdrawal of troops from the town and the restoration of electricity and cellular communication. The police also used firearms against demonstrators in the village of Shetpe. As a result of these events, according to official data, at least 17 people were killed and 108 were wounded. Civil society activists and independent journalists estimate the death toll to be around 70, with 500-800 people having been injured. [4] On 4 May, 2012, the police officers reported that during the unrest [5] in Zhanaozen, unregistered weapons were issued to them without confirmation of receipt. Half of the weapons have not been returned to the armoury. [6] On 28 May, 2013, the General Prosecutor of Kazakhstan, Askhat Daulbayev confirmed that no weapons, seized during the riots in Zhanaozen, were registered in the cartridge case repository of the Ministry of Internal Affairs (MIA). [7]

The Kazakh Prosecutor’s Office accused Vladimir Kozlov of, along with the opposition politicians Mukhtar Ablyazov and Muratbek Ketebayev, establishing an organised criminal group in order to support the striking oil workers and thusly, provoking the tragedy. 37 oil workers were brought to criminal responsibility on charges of organising and participating in mass disorder, and only 3 of them were acquitted. 13 oil workers were sentenced to prison terms ranging from 3 to 7 years, 16 persons were given suspended sentences of 2 to 3 years, and 5 were released under amnesty. The Supreme Court of the Republic of Kazakhstan released 6 oil workers from custody, but upheld the sentences of the remaining 7 prisoners, especially those who testified about the use of torture and ill-treatment by the investigating bodies (battery, suffocation, threats of rape or harm caused to relatives). [8] Numerous reports of torture, exerted by the investigating authorities on the convicted oil workers and witnesses in the case of the Zhanaozen tragedy, were ignored by the court.

Contrary to the calls of the European Parliament and of the United Nations High Commissioner for Human Rights, Navi Pillay, the Kazakh government failed to provide a full and objective investigation into the Zhanaozen events. On 28 May, 2012, five police officers were convicted under Article 308, section 4 of the Criminal Code on ‘abuse of power or official authority’ without further qualification of the deed under Article 100 ‘homicide committed using force in excess of that necessary to apprehend a perpetrator’. In this case, as stated by *Amnesty International*, the number of police officers who shot at civilians in order to kill, was far greater. [9]

Instead, Vladimir Kozlov, the opposition party ‘Alga!’ and 34 non-state media outlets [10], which had provided the most comprehensive coverage of the Zhanaozen events, were labelled as ‘main perpetrators of the tragedy’ by the authorities. On the basis of the judgement against Vladimir

Kozlov, their activities were banned as they had allegedly ‘incited social discord’. In their statements made to their European colleagues, Kazakh Embassies noted: *“The investigation revealed that labour disputes had been caused by external forces; there is evidence to suggest that this tragedy resulted from deliberate action... We may be accused of limiting the freedom of the media outlets and muzzling them, but the court handed down its decision based on a fair and transparent judicial hearing. There is clear evidence of guilt”*. [\[11\]](#)

Vladimir Kozlov’s imprisonment, the banning of the opposition party ‘Alga!, as well as the closure of a number of independent media outlets dealt a severe blow to the opposition movement in Kazakhstan, forcing it to the verge of extinction. The Republic of Kazakhstan, which previously, had repeatedly declared its commitment to democratic principles and freedoms, is today on a par with other authoritarian states of Central Asia.

The report is based on information collected by members of the monitoring missions, who were present at Vladimir Kozlov’s trial as international observers. The observers visited Kazakhstan from 16 August, 2012 to 5 August, 2013. The missions included representatives of the Open Dialog Foundation: Igor Savchenko, Katerina Savchenko and Jędrzej Czerep. In addition, with the support of the Open Dialog Foundation, the hearings on the case of Vladimir Kozlov were attended by MEP Piotr Borys, who acted as a witness, and by members of the Polish Sejm: Tadeusz Woźniak, Tomasz Makowski, Marcin Świącicki, Adam Rybakowicz and Piotr Cieśliński; members of the Italian Parliament: Daniel Del Grosso, Alessandro Di Battista, Manlio Di Stefano, Skalyusi Emanuele, Sibilgia Carlo, who acted as observers. The hearing regarding the supervisory appeal in the Supreme Court was attended by representatives of the EU embassies, Belgium, the USA, Finland, France and Great Britain.

Independent observers of the trials included representatives of Kazakh civil society: the human rights activist Yevgeniy Zhovtis, Zhemis Turmagambetova, Galym Ageleuov, Zauresh Battalova; the freelance journalist Zhanar Kasymbekova, the representative of the Communist Party of Kazakhstan, Aktota Elyubayeva; Vladimir Kozlov’s associates from the party ‘Alga!’: Mikhail Sizov, Marat Zhanuzakov, Erlan Kaliyev, Valentina Makhotina.

The report is based on international pacts on human rights, which Kazakhstan has ratified, namely: the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Also, the report refers to the legislative acts of the Republic of Kazakhstan: the Constitution of the Republic of Kazakhstan, the Criminal Code of the Republic of Kazakhstan (the CC of the RK), the Criminal Procedure Code of the Republic of Kazakhstan (the CPC of the RK) and the Criminal Executive Code of the Republic of Kazakhstan (the CEC of the RK).

References:

1. ‘OzenMunaiGaz’ is a company that is a subsidiary of ‘Razvedka Dobycha KazMunaiGas’ JSC. All the shares of ‘KazMunaiGaz’ are owned by the National Welfare Fund ‘Samruk-Kazyna’ – a holding company for the management of state assets in Kazakhstan. The head of the Fund is Prime Minister Serik Akhmetov. The former head of the Fund, the President’s son-in-law, Timur Kulibayev, was dismissed following the events of 16-17.December, 2011.
2. The strike commenced on 11 May, 2011 and was the longest in the history of Kazakhstan.
3. According to the General Prosecutor's Office, Rakhat Kusherov, born on 11 March, 1995, was killed in Zhanaozen. As a result of force used by the police, Yergali Amanov (born in 1995), Zhubandyk Begimbetov (born in 1995), Nurzhau Ongarov (born in 1998), Nurlan Isayev (born in 1997), Nurzhan Zhadykbayev (born in 1995) were injured.

4. Human Rights Foundation // An Open Letter to the Leaders of the U.S. and its Civil Society. - [http://humanrightsfoundation.org/uploads/Open letter to US leaders about Nazarbayev 10:17:2012.pdf](http://humanrightsfoundation.org/uploads/Open_letter_to_US_leaders_about_Nazarbayev_10:17:2012.pdf)
5. Based on the testimony of the Prosecutor's Office, it can be argued that oil workers didn't participate in the massacre. In its official statement, the General Prosecutor's Office announced that the riots began with 'hooligan acts of a group of young people, and those who succumbed to the influence of the dismissed oil workers. Also, 'hooligans used the strikers as a battering ram and broke through a police cordon'. - <http://newskaz.ru/society/20111217/2306121.html>
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10. The 'Vzglyad' newspaper, the online video portal Stan.tv, the TV channel 'K +', 'one media outlet 'Respublika' (8 newspapers and 23 online sources) - [http://odfoundation.eu/files/pdf/ODF mission report Dec2012 EN.pdf](http://odfoundation.eu/files/pdf/ODF_mission_report_Dec2012_EN.pdf)
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2. VLADIMIR KOZLOV: A BRIEF BIOGRAPHY AND HISTORY OF HIS PERSECUTION

Vladimir Ivanovich Kozlov (born in 1960) – Kazakh opposition politician. Prior to entering politics, Kozlov worked in television – he progressed all the way from cameraman’s assistant to president of the television company.

In 1991, he established a private cable television channel named “AKTiVi”. Following the merger of two television stations, he became the chief editor of the private broadcasting television company “Aktau-Lada” in whose employ he stayed until 1998. During the years 1998 -2001, he was the Public Relations assistant to the President of the Mangyshlak nuclear power complex (MAEK).

In January 2001, Vladimir Kozlov was invited by the leaders of the NGO “Democratic Choice of Kazakhstan” in Almaty to organise press services and PR-activities for this social association. In 2004, following the transformation of the civic organisation into a political party, Vladimir Kozlov became a member of the Political Council of the Bureau of People's Party “Democratic Choice of Kazakhstan” (PP DCK).

In 2005, following the banning of the PP DCK, Vladimir Kozlov became a member of the Presidium of the Political Council of the People's Party ‘Alga!’, which was the successor to the PP ‘DCK’. From 2007, he served as Chairman of the Coordination Committee of the People's Party ‘Alga!’. The ‘Alga!’ party was banned in Kazakhstan in December 2012, as on the basis of the conviction of Vladimir Kozlov, the party was deemed to be extremist. During his tenure as the leader of the ‘Alga!’ party, Vladimir Kozlov was **repeatedly oppressed** by Kazakh authorities **for political reasons**.

On 28 October, 2010, a few days after the announcement of Vladimir Kozlov 's intention to run in the 2012 presidential elections in Kazakhstan, Kazakh financial police accused the politician of evading taxes to the tune of over 3.3 million tenge [\[1\]](#) (approximately 15,800 euros). Vladimir Kozlov lost the case in court. As a consequence, some of his property was outlawed. For example, the court ruled to demolish his house and build on the land, previously owned by Vladimir Kozlov. The house remained in the ownership of his mother-in-law, Gulnar Baytukenova, but this did not constitute a valid argument for the court, nor the bailiffs. On 23 February, 2011, the house was destroyed before the very eyes of the opposition politician and his family. As a result, video footage, which captured a bulldozer destroying the house, was aired on all state TV channels. Vladimir Kozlov labelled the accusations of tax evasion and the demolition of a house, owned by his mother-in-law, as ‘politically motivated’ [\[2\]](#), [\[3\]](#).

Vladimir Kozlov also frequently became a victim of a variety of provocations, such as on 27 October, 2010, when the press conference of opposition politicians: Vladimir Kozlov, Serikbolsyn Abdildin and Gaziz Aldamzharov was disrupted. Representatives of the nationalist movement ‘Zheltoksan-86” organised a riot, and threw eggs and plastic bottles filled with water at the speakers of the press conference. [\[4\]](#)

Vladimir Kozlov has repeatedly stated that he was being followed by the security services of Kazakhstan.

Not only did Vladimir Kozlov suffer persecution, but also his wife, Aliya Turusbekova. It is worth mentioning that she was the only defendant at the trial in in which the ‘Alga!’ party was outlawed. At that time, she worked as a lawyer for the party and had never occupied a leadership position. The Prosecutor’s Office served Aliya Turusbekova with a warning that she would be brought to justice in the event that the ‘Alga!’ party conducted any activities.

On 19 December, 2012, in connection with the criminal case against the opposition politician Muratbek Ketebayev, workers of the National Security Committee of Kazakhstan confiscated Alia Turusbekova's private property and sealed the house, as the latter belonged to Muratbek Ketebayev.

In March 2013, the Kazakh press reported that provocations may potentially be carried out by the security services of the Republic of Kazakhstan in relation to Aliya Turusbekova due to her political and civic activity. [\[5\]](#)

During the strike of oil workers in Zhanaozen, in 2011, Vladimir Kozlov spoke in support of the strikers, held meetings with them, issued official statements, ensured the delivery of drinking water, tents and legal literature. In addition, Kozlov engaged economists, lawyers and human rights activists in order to bring about a peaceful settlement to the conflict. Subsequently, these very facts became the basis of accusations of the organisation of the Zhanaozen events, presented by the authorities, and served as a pretext for the prosecution of the opposition politician. Vladimir Kozlov pointed to the inaction of the management of the OzenMunayGaz company and local and central government as the factor which led to the situation, and represented the interests of the strikers in the European Parliament, the European Commission and the OSCE. Upon his return from Brussels, on 23 January, 2012, Vladimir Kozlov was arrested immediately. According to the prosecution, Vladimir Kozlov joined an organised criminal group (OCG), established and financed from abroad by the former head of BTA Bank, Mukhtar Ablyazov, with the aim of undermining and destructing the social and political foundations of the constitutional system of Kazakhstan.

"As a result, Kozlov's criminal actions led to a systematic disruption of the negotiation processes, initiated by the employer and government bodies, bringing the dismissed oil workers, retained on the Zhanaozen square by means of deception, to an artificial state of despair, which, in turn, led to a long and pointless protest rally, unprecedented in the history of the enterprise and eventually, to the grave consequences that occurred on 16 December, 2011 ..." (excerpt from the court verdict).

On 8 October, 2012, the Mangistau City Court found Vladimir Kozlov guilty of committing deeds under the following articles of the Criminal Code of the Republic of Kazakhstan:

- incitement of social discord which led to grave consequences (Article 164, section 3 of the CC of the RK);
- calls for an overthrow of the constitutional order, committed with the use of the media outlets or by an organised group (Article 170, section 2 of the CC of the RK);
- the establishment and leadership of a criminal organisation with the aim of committing one or more offences (Article 235, section 1 of the CC of the RK).

Vladimir Kozlov was sentenced to 7 and a half years' imprisonment with confiscation of property. Along with Kozlov, Civil society activists: Akzhanat Aminov and Serik Sapargali were also sentenced, they however, received suspended sentences, as they had pleaded guilty. Akzhanat Aminov pleaded guilty of committing deeds under all articles, incriminated to Vladimir Kozlov, and repented. He received a conditional sentence of 5 years' imprisonment with a probation period of 3 years and was released straight from the courtroom. Serik Sapargali was found guilty by the court under Article 170, section 2. At the same time, the charge under Article 164, section 3 was withdrawn. Serik Sapargali pleaded partial guilt and received a suspended sentence of 4 years' imprisonment with a probation period of 3 years and was released straight from the courtroom. [\[6\]](#)

Vladimir Kozlov and his counsels' endeavours to appeal against the judgment failed. On 19 November, 2012, the Mangistau Regional Court rejected the appeal, and on 13 March, 2013 – the cassation appeal of Vladimir Kozlov. On 5 August, 2013, the Supreme Court refused to institute review proceedings, citing the fact that “there is no basis for a review of judicial acts”. [7] At the same time, the Supreme Court has twice postponed the hearing regarding the consideration of the supervisory complaint which caused concern among international observers who attended the hearing, and on 1 July, 2013, they were not admitted to the session. [8]

The consideration of the case in the appeal courts was a formality: the trials were conducted very promptly and without taking into account the position of the defence. Prosecutors did not respond to the specific arguments of the counsel, but merely read out pre-prepared speeches, in which they referred to the testimony of witnesses who labelled Vladimir Kozlov guilty. Following the review of the appellate complaint, the human rights activist, Yevgeniy Zhovtis, stated: “*The Criminal Procedure Code contains a requirement that the appellate court give reasons for its judgement. The court did not do so. Here, one is particularly interested in any debate, discussion, arguments or reasoning.*” [9]

The sentence handed down by the court of first instance has not been mitigated even slightly, which calls into question the independence and impartiality of the judicial system in the Republic of Kazakhstan. Now, Vladimir Kozlov's counsels intend to file a complaint with the UN Committee on Human Rights against the violation of the right to a fair trial.

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3. CONTRIVED ALLEGATIONS AGAINST VLADIMIR KOZLOV

The evidence presented by the prosecution was based on the testimony of witnesses, transcripts of interrogations held by the NSC and results of psycholinguistic examinations.

A) Dubiousness of witnesses' testimonies

Most witnesses were former associates of the accused. A criminal case was instituted against them, but subsequently Article 65 of the CC of the RK - "exemption from criminal liability in connection with the active repentance" was applied [1] At the same time, the testimonies of witnesses prior to and following the application of Article 65 of the CC of the RK vary greatly. On 5 August, 2013, the Supreme Court deemed such testimonies to be lawful, as the witnesses themselves, had not challenged them. [2] The sentence against Vladimir Kozlov was also substantiated by the testimonies of witnesses who had been previously convicted or were connected to the investigation. [3] The Court also took into account the testimony of Roza Tuletayeva and Talgat Saktaganov who are currently serving sentences of imprisonment having been found guilty of organising and participating in mass riots in Zhanaozen.

During hearings in courts of first instance, Kazakhstani and international observers noted that all witnesses of the prosecution relied on word of mouth and third parties, made inconsistent statements, changed their testimonies, and sometimes neglected to recall their own words, recorded in the minutes of the preliminary investigation.

At the hearing held on 17 August, 2012, Kikbayya Eshmanov, a former president of 'OzenMunayGaz' JSC, stated that at the instruction of the local administration, 200 police officers were ready to mop the strikers up from the square (the 'Alan' Square) . But two days later, he renounced his own words.

Excerpt from the transcript of the hearings:

Venera Sarsembina (counsel): *"First Deputy Akim of Mangistau Region, Amangeldi Aytkulov, told you that there is nothing to be afraid of, there are approximately 200 police officers in the square and Alan needs to be 'taken'?"*

Kikbayya Yeshmanov: *"Yes, I phoned Aytkulov, and my words: 'we will 'take' Alan' were out of place". [4]*

Not a single witness has personally heard or read Vladimir Kozlov's speeches, in which he called for an unconstitutional overthrow of the government.

Excerpt from the transcript of the hearings:

Vladimir Kozlov: *"Did I understand you correctly, in that you personally had not heard the subject of our speeches or seen who exactly had been speaking?"*

Aydarov Asylbek (honorary pensioner of Zhanaozen): *"I don't know who exactly was delivering speeches there. I never saw Vladimir Kozlov or Serik Sapargali".*

Vladimir Kozlov: *"In your testimonies you say that 'Vladimir Kozlov, Mamay and Atabayev incited social discord". Did you actually hear this? Is your statement again based on hearsay?"*

Aydarov Asylbek: *"If they were present at the meeting, then I should consider that they were actually saying such things". [5]*

Also, witnesses summoned by prosecutors, uttered the same phrases, the meaning of which they could not explain ('politicisation of the conflict', 'coordination of the work of the committee', 'affiliated media outlets' etc.). At the same time, the phrases repeated in full, the indictment of the Prosecutor's Office. Witness for the Prosecution, Aizhangul Amirova, stated: *"Vladimir Kozlov*

is guilty of rendering help to the strikers, and then leaving them to their fate, by doing so, he politicised the conflict". [6]

Excerpt from the transcript of the hearings:

Venera Sarsembina (counsel): "You said that Amirova was coordinating the work..."

Estay Karashayev (operator in 'OzenMunayGaz', a former member of the strikes): "I meant to say: she talked with the oil workers, they were talking about their problems".

Venera Sarsembina: "Was the phrase 'she coordinated the work of the committee' your own wording or was it suggested to you by the investigator?"

Estay Karashayev: "I can't remember". [7]

Estay Karashayev "could not appear" at one of judicial cross-examinations, on 6 September, 2012, so his testimony was read out along with the testimony of a witness, Boranbay Chapayev. When the prosecutors were reading out the testimonies, both texts were almost identical in segments where the witnesses testified about the work of Vladimir Kozlov (despite the fact that both witnesses testified at different times - with an interval of seven days).

An activist of the strikes, **Roza Tuletayeva**, was forced to give incriminating evidence against the 'Alga!' party under pressure exerted by investigators. [8] During the pre-trial investigation into the riots in Zhanaozen, she was subjected to **severe torture**: she was suspended by her hair, suffocated with a bin liner and had her intestine prodded internally with an iron rod; also, she was threatened with reprisals against her family and young children. [9] On 19 September, 2012, her testimony was read out in court: "I believe that all politicised structures, such as 'Alga!' and ANSDP 'Azat' had a negative impact on the strikers, who had only labour demands". [10] Also, in the text, read out by the prosecutors, Roza Tuletayeva stated that Serik Sapargali handed her a piece of paper, on which he called on oil workers to overthrow the government.

On 21 September, 2012, Serik Sapargali asked the judge to discount the testimony from the case file as it did not correspond with reality, since Roza Tuletayeva met Serik Sapargali in the detention facility and told him that she had been forced to commit perjury. Still, the judge rejected the motion, as according to the position of the prosecution, the conversation between Roza Tuletayeva and Serik Sapargali in the detention facility was of a private nature. [11]

The testimony of **Talgat Saktaganov**, convicted for the events in Zhanaozen, who along with Vladimir Kozlov had been delegated by oil workers to the OSCE conference and to Brussels for a meeting with European MPs, was also taken as a basis for prosecution by the court. But during the trial, Talgat Saktaganov stated that Vladimir Kozlov had taken him abroad under false pretences. However, the witness was not able to answer the question as to why he believed so, since he had previously stated publicly that he had voluntarily gone to defend the rights of oil workers. [12]

Excerpt from the transcript of the hearings:

Vladimir Kozlov: "You stated that we were pursuing selfish goals when we gave you the opportunity to speak at the OSCE meeting. What kind of selfish goals were we pursuing?"

Talgat Saktaganov: "Why did you have to take us there, huh? Why? Why didn't you go alone?"

Vladimir Kozlov: "Well, so what benefit did I draw by taking you by my own means to Europe so that you could deliver a speech about your problems?"

Talgat Saktaganov: "I don't know".

Vladimir Kozlov: *"What do you personally consider more appropriate: a situation where oil workers deliver speeches themselves and speak about their problems, or, when a politician does that on their behalf?"*

Talgat Saktaganov: *"I'm not a politician, I have no idea what is more appropriate. I didn't ask him to take me. Why did he take me using his own money?"*

Vladimir Kozlov: *"Were you protesting when he was driving you there?"*

Talgat Saktaganov: *"No, I wasn't".* [\[13\]](#)

Moreover, some witnesses' testimonies were falsified. The testimony of a renowned Kazakh theatre director and oppositionist Bolat Atabayev, who resides in Germany, was read out in a distorted manner in court on 31 August, 2012. On 3 September, 2012, Bolat Atabayev wrote a letter to the Mangistau court, in which he protested against the testimony, promulgated on his behalf. According to him, they were translated into the Russian language erroneously, and were largely distorted, with additional words, directed against Vladimir Kozlov, supplementing the contents. Bolat Atabayev demanded to the investigator that the words which he had not uttered, be removed from the protocol, but his demand was subsequently ignored. [\[14\]](#)

In addition, the court completely ignored the testimony of witnesses confirming the innocence of the defendants. In particular, heads of regional branches of the 'Alga!' party, Fatima Kasenova and Marat Zhanuzakov, human rights activists Bakhyt Tumenova and Galim Ageleuov argued that the dissatisfaction of oil workers bore serious grounds, and the activities of opposition politicians did not pose a threat to society.

Excerpt from the transcript of the hearings:

Aleksei Plugov (counsel): *"How did you perceive the Skype conference with Mukhtar Ablyazov?"*

Marat Zhanuzakov: *"That was a conversation between a narrow circle of people, its main participant used everyday language, not literary terms. Even presidents allow themselves to speak in such a manner. For example, Putin said "rub them out in the outhouse" or "For 5 years I have sweated blood like a galley slave"... I do not agree with those who are striving to prise a literal meaning from the words spoken by Ablyazov. The expression "dump the government" should be construed as a metaphor, as it's equivalent to the phrase "regime change". Professionals often use slang in their professional environment: doctors - medical, politicians - political. Students say: "Professor dumps (flunks)", but everyone knows that he does not kill anyone. I was among those who "dumped (flunked) the students" but I did not kill anyone".* [\[15\]](#)

On 5 September, 2012, MEP Piotr Borys, when testifying in court as a witness, stated that there was nothing wrong with the fact that Vladimir Kozlov supported oil workers, as working with people in order to address labour and social conflicts is common practice for political parties of every EU country. [\[16\]](#) Subsequently, on 24 September, 2012, during the trial, **prosecutor Emirgali Zhanayev stated that MEPs Paul Murphy and Marek Migalski, who met with oil workers, "publicly voiced calls for seizure of power and the subversion of state power".** [\[17\]](#)

B) Bias of expert conclusions

At the trial, political scientists, psychologists and linguists were cross-examined as experts. ***The use of subjective psychological examinations of the inner world of the defendants, their motives and motivations which, according to the court, went hand-in-hand with the alleged crimes, evokes concern.***

The analysis of leaflets, correspondence and telephone conversations was conducted by experts: Nagim Abishev [\[18\]](#), Roza Akbarova [\[19\]](#), Mikhail Grachev [\[20\]](#). They came to the conclusion that

Vladimir Kozlov and his associates used special psycho-linguistic methods and techniques to subvert state power and overthrow the political system. In some cases, the experts demonstrated very categorical positions and made unsubstantiated conclusions about the guilt of the defendant, using phrases taken from the opinion of the prosecutor's office ("affiliated media", "the politicisation of the labour dispute").

Roza Akbarova stated: "Critical judgments expressed in publications and speeches on 'K+' , 'Stan TV', 'Vzglyad', 'Respublika', instead of forming a positive image of the authorities, sought to inflict damage to the opponent".

Mikhail Grachev noted that a direct appeal for the seizure of power included wording from a leaflet of the 'Alga!' party. "[There is a need to] elect our deputies, beginning from Maslikhats, who will represent the interests of regions and its inhabitants. To elect an akim, who will solve the problems of the region, and not serve Nazarbayev you must elect judges who will judge in accordance with the law and not by orders issued from above". [21]

Excerpt from the transcript of the hearings:

Vladimir Kozlov: "I must make this observation: on page 11 of volume 33, you again go beyond the limits of linguistic expertise. Here, you enter into the sphere of criminal political strategy. You state: unauthorised seizure of power is the first step of the opposition. There, you also mention the second step ... I'll draw your attention to the fact that these findings are findings of a political scientist, not a linguist. How can you explain your findings if you do not have the status of 'expert' in political science?"

Mikhail Grachev: "An expert, who is a linguist, is able to discern what is good and what is bad. One does not have to be a political scientist to possess this ability". [22]

The expert psychologist **Amangeldy Akashev**, in his testimony, spoke about the biography of Vladimir Kozlov and Serik Sapargali, and carried out a psychological and psychiatric evaluation. It should be noted that the expert used non-scientific language when characterising the defendants. When characterising Serik Sapargali, Amangeldy Akashev used the following words and phrases: "Sapargali changed jobs 9 times. He has not particularly moved up the career ladder. He is a loser - it's not an insult. This is my opinion". The expert stated that Serik Sapargali "due to his pathological stubbornness, participated in more than 11 unauthorised rallies" and "allows himself to express impermissible curses against the President". [23]

Excerpt from the transcript of the hearings:

Venera Sarsembina (counsel): "Article 17 of the Constitution of the Republic of Kazakhstan prohibits the use of offensive words."

Amangeldy Akashev: "It is on the basis of the case file that I came to the conclusion that Sapargali is a loser".

Venera Sarsembina: "Please tell me, does Sapargali have only negative character traits and can he only have a negative influence on society?"

Amangeldy Akashev: "Yes".

Serik Sapargali: "You distorted my whole biography, called me ignorant, a loser..."

Amangeldy Akashev: "It's not a big issue. Your life achievements are not that important anyway".

Amangeldy Akashev gave Vladimir Kozlov the following evaluation: "He does not get satisfaction from his activities. He has a meagre vocabulary, and one can sense his lack of classical education. He doesn't know how to form beautiful phrases. He is engaged in self-education. Kozlov is a bohemian personality. It can be stated with absolute probability that the activities of Kozlov are directed by Abylayov. He is engaged in politics not by vocation, but with an obvious effort..."

compulsively. He was engaged in self-education, but only after the suggestive period had already passed”.

Excerpt from the transcript of the hearings:

Vladimir Kozlov: *"What prompted you to determine that I am a bohemian personality?"*

Amangeldy Akashev: *"When you were a young man, you worked as a blue-collar worker and at the same time you held down a side job as a pianist in a restaurant. Working in such places is typical, for bohemian personalities".* [24]

Vladimir Kozlov was denied the right to conduct further examination with participation in the formation of the list of questions. However, the court did not take into account the testimony of an independent expert from Moscow – the psychologist **Dmitriy Starostin**. Having examined approximately 30 items of video footage and 20 written texts, he concluded: *"The focus of the submitted materials is political. ... In the submitted materials, there exists no call for the violent overthrow of the government or the forcible retention of power, or the violent overthrow of the constitutional order, or the forcible violation of the integrity of the territory of Kazakhstan".* [25]

C) Gross procedural violations during the trial

The Prosecutor's Office has limited the allotted time for familiarisation of the accused with the case file. Vladimir Kozlov was given only 12 days to become familiarised with the case file, consisting of 62 volumes (approximately 11,000 pages). This violates Article 14 of the International Covenant on Civil and Political Rights, according to which, in the case of criminal charges, an individual has the right to adequate time and facilities to prepare his or her defence. Also, Vladimir Kozlov's counsels noted in particular, that the wording of the sentence is similar to the indictment which had been prepared during the preliminary investigation. [26]

The investigator did not permit any confrontation between witnesses and Vladimir Kozlov (although testimonies of the parties differed significantly). During the hearing in the court of first instance, Judge Berdybek Myrzambekov received notes, and after reading said notes, he announced a break in proceedings. The counsels demanded that the notes be made public, but the judge refused the demand. The wording used by the prosecutors in many of their questions contained bias and could have exerted pressure on the participants in the judicial process. For example, on 28 August, 2012, the witness, Estay Karashayev was asked the following question: *"Do you know the people who created the appearance of concern for the workers, indisposing them against the government?"*. [27] Despite the judgmental and affirmative nature of the question, the judge did not dismiss it.

In addition, the court **violated the presumption of innocence**, taking as fact, the unsubstantiated version contained in the investigation file, regarding the organised criminal group, set up in March 2010 by Ablyazov, Ketebayev and Kozlov. The prosecutors constantly referred to Mukhtar Ablyazov as an "evil-doer", although no trials have been held to consider the substance of criminal charges presented to Mukhtar Ablyazov. The day before the announcement of the verdict against Vladimir Kozlov, i.e. on 7 October, 2012, in an interview with Russian Channel One, President Nazarbayev stated that all the perpetrators guilty of the Zhanaozen tragedy, had been arrested and that he knew what kind of punishment they should receive. [28]

At the same time, the court grossly violated Article 130, section 2 of the CPC: no employees, who had conducted the operation and search activities (tapping the offices and apartments of the activists since 2010), were cross-examined According to Article 116, section 6 of the CPC, data which has been obtained from an unknown source or from a source that has not been

determined during the hearing, **cannot be admitted as evidence**. The case file did not include any sanction from the prosecutor permitting the wire-tapping of offices or apartments. At a meeting of the supervisory board, the counsel, Venera Sarsembina also drew the attention of the judges to the fact that the prosecution had failed to provide warrants for the seizure of leaflets and materials pertaining to the Skype conference between Mukhtar Ablyazov and Vladimir Kozlov.

In addition, the expert Dmitriy Starostin stated that **the material of the Skype conference, on which the indictment was based, bore signs of editing**: "*The record was produced using longer material. This record does not include calls to overthrow the constitutional order*". [29] Mukhtar Ablyazov himself, in his petition to the judge, Berdybek Myrzabekov stated: "In the course of the trial, the indictment is based on a compilation of disparate parts of the Skype conference which ostensibly, I held with activists of the 'Alga' party. It should be noted that the recording of the Skype conference was obtained illegally through eavesdropping devices. At the same time, there is no possibility to hear the full Skype conference or peruse a complete transcript, produced on the basis of the former, in order to understand how, and by which methods, interpreters of the prosecutor identify the voices recorded from Skype and identify the persons who bear these voices". [30] Mukhtar Ablyazov requested that he be permitted to appear in court as a witness for the defence, but the judge rejected the motion.

The court sessions were held entirely in the Kazakh language, which Vladimir Kozlov doesn't speak. At the same time, **observers present at the trial highlighted the poor quality of translation from Kazakh to Russian**. The counsel, Aleksey Plugov noted that the expert opinion contained discrepancies between the Kazakh phrases quoted from the leaflet and their Russian translation, namely: "*Arise, Kazakh, from your knees and become free*" (in Kazakh) is translated into Russian as "*Get up, Kazakh, from your knees and throw the tyrant off your neck*". Also, in the official text of the Russian translation of the sentence, the same brochure is entitled '*Competent organisation of mass disorders*' in one part of the text and '*Competent organisation of mass protests*' in another. These inconsistencies in translation may very well have significantly affected the classification of actions as criminal.

During the consideration of supervisory review in the Supreme Court, the interpreter performed a selective translation, in some parts distorting the information. At one point, the judge addressed the interpreter with the following words: "*You don't have to translate everything, translate only what you think is necessary*". The prosecutor's statement wasn't translated. As a result, those international observers who had not previously been informed of details regarding Vladimir Kozlov's case, were not privy to that information.

In addition, the counsels, Aleksey Plugov and Venera Sarsembina noted that **Vladimir Kozlov was convicted on the basis of the new Criminal Code of the Republic of Kazakhstan, which carries harsher punishments**. The verdict stated that the OCG of Ablyazov-Ketebayev-Kozlov was established in March 2010. As of 2010, the Criminal Code provided for punishment of up to 6 years' imprisonment for establishing an organised criminal group. Despite the fact that the law is not retroactive, the court handed down the sentences on the basis of the new Criminal Code of the Republic of Kazakhstan of 25 November, 2011, which provides for a punishment ranging from 7 to 12 years in prison. By doing so, the court worsened the situation of the opposition politician, violating Article 77 of the Constitution of the Republic of Kazakhstan, which states that "*the laws establishing or intensifying liability, imposing new obligations on citizens or deteriorating their situation, are not retroactive*". [31] The court also illegally confiscated the property of Vladimir Kozlov. According to the verdict, 100% of Vladimir Kozlov's property was subject to confiscation. An apartment, which served as the only housing for Kozlov's family, was seized; which, according to lawyers, is expressly prohibited by law. [32]

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4. THE REACTION OF THE INTERNATIONAL COMMUNITY AND THE KAZAKH AUTHORITIES TO THE VERDICT

A) The reaction of the international community

The international community sharply criticised the verdict and called on the Kazakh authorities to stop using the criminal law in order to fight political opponents. Human rights organisations and governments of democratic countries recognised Vladimir Kozlov as a **political prisoner**, and repeatedly urged the Kazakh authorities to reconsider the verdict.

Catherine Ashton (High Representative for Foreign Affairs and Security Policy of the European Union), 9 October, 2012: *“The EU Delegation in Astana has been monitoring the trial, in co-operation with other international actors. While welcoming the opportunity to freely observe the trial, the EU noted several shortcomings in the judicial process. Namely, the trial processes did not provide clear insight into the investigation of the events, prove the guilt, or direct involvement of Mr. Kozlov in the violence in Zhanaozen. Therefore, Mr. Kozlov’s sentence seems disproportionate and, given his political activities, seems to carry political overtones”*. [\[1\]](#)

Freedom House, 9 October, 2012: *“Kozlov’s conviction criminalises legitimate political activity. His crime was to encourage workers to demand their legitimate, fundamental rights through political activity”*. [\[2\]](#)

Human Rights Watch, 9 October, 2012: *“The imprisonment of Kozlov further limits a narrow political landscape in Kazakhstan and sends a chilling effect to others who might want to criticise the government and its policies. It’s time for Kazakh authorities to uphold commitments to free speech and stop misusing criminal law to silence critics and political opponents”*. [\[3\]](#)

U.S. Embassy in Kazakhstan, 9 October, 2012: *“It is in this spirit that we note our concern regarding the prosecution of Vladimir Kozlov and the apparent use of the criminal system to silence opposition voices”*. [\[4\]](#)

Riccardo Migliori (Chairman of the Parliamentary Assembly of the OSCE), 9 October, 2012: *“It can only be concluded that this verdict and the harsh sentence are designed to send a message to opponents of the authorities in Kazakhstan”*. [\[5\]](#)

Markus Loening (Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office), 9 October, 2012: *“It is totally unacceptable to send Vladimir Kozlov to prison for more than seven years, and it indicates the existence of political motivation. The state shall protect political activity, rather than pursue it”*. [\[6\]](#)

Bartosz Kramek (Expert of the Open Dialog Foundation), 9 October, 2012: *“The EU should put pressure on the government of Kazakhstan in matters related to observance of human rights. We hope that the verdict against Kozlov, as well as the observers’ negative reports about the integrity of the trial and its feasibility in general, will be reflected here”*. [\[7\]](#)

Civic Solidarity, 10 October, 2012: *“The International Observation Mission concluded that the trial of Vladimir Kozlov, Serik Sapargali and Akzhanat Aminov cannot be found to comply with the standards of a fair trial (...). The link between the activities of the defendants and the riots of 16 December, 2011, in the city of Zhanaozen (charges based on Article 164 part 3 of the Criminal Code of the Republic of Kazakhstan) has not been proven. Evidence gathered by the investigating authorities is biased and insufficient to prove the guilt of the accused”*. [\[8\]](#)

Marcin Świącicki (member of the Polish Sejm): 10 October, 2012: *“This reminds me of the trials in the People’s Republic of Poland, when an ‘organised group’, ‘with the aim of violently overthrowing the constitutional order’, ‘had connections with foreign countries’, ‘collected*

money' and 'held meetings'... All the typical activities of the opposition in the communist state were subjected to punishment in the form of imprisonment or other reprisals". [\[9\]](#)

Viola von Cramon, (member of the German Bundestag) 11 October, 2012: "The verdict against Vladimir Kozlov and the deprivation of his liberty for seven and a half years are a slap in the face — including for the Federal Government — in the field of policy towards Kazakhstan. By passing the verdict, the government of Kazakhstan disclaimed the main responsibility for the shooting of oil workers in Zhanaozen on 16 December, 2011". [\[10\]](#)

Solicitors' International Human Rights Group, 10 November, 2012: "In the opinion of the observers, the guilty verdicts against Kozlov were not justified by the evidence presented to the Court, the testimony of witnesses or the reasoning in the final Judgment. We call for the immediate release of Kozlov". [\[11\]](#)

Norwegian Helsinki Committee, 18 October, 2012: "Authorities in Kazakhstan should seek to improve civil and political rights in the country, not stifle valid opposition. The verdict against Kozlov appears politically motivated and unjust". [\[12\]](#)

European Parliament resolution of 22 November 2012: "Express deep concern at the sentencing of Vladimir Kozlov, Akzhanat Aminov and Serik Sapargali, after a trial with numerous procedural shortcomings, with the effect of further limiting political freedom in Kazakhstan for the opposition". [\[13\]](#)

European Parliament resolution of 18 April 2013: "Reiterates its concern over the detentions of opposition leaders, journalists and lawyers on the basis of trials which fall short of international standards, and reaffirms its call for the release of all persons convicted on the basis of vague criminal charges which could be considered to be politically motivated, including among others, Vladimir Kozlov, Vadim Kurashim and Roza Tuletayeva; expresses its concern with regard to the fairness of trials, and reiterates its call for the guaranteeing of transparency and international standards in trials, an end to convictions on the basis of the above, vague criminal charges, and the upholding of the independence of the judiciary". [\[14\]](#)

U.S. Department of State, 19 April, 2013: "NGOs indicated the indictment in the case against Vladimir Kozlov contained lengthy political opinions and charges based on assumptions rather than evidence (...). The charges were linked to Kozlov's support of the striking oil workers in Zhanaozen. While Kozlov and Alga did provide the strikers with moral and financial assistance, authorities did not present evidence linking them to the violence or any attempt to overthrow the government to the court". [\[15\]](#)

Polish Bar Association, 14 May, 2013: "Courts are heavily influenced by government authorities. Judiciary and public administration are heavily corrupted". [\[16\]](#)

Amnesty International, 23 May, 2013: "He was a prisoner of conscience. Independent monitors, allowed into the trial, reported that there was no presumption of innocence and that the evidence used against Vladimir Kozlov did not conclusively prove his guilt". [\[17\]](#)

Sari Essayah and Eija-Riitta Korhola (Members of the European Parliament), 25 June, 2013: "Taking into consideration (...) that his (Vladimir Kozlov's – ed.) trial was recognised by international observers, organisations and media as unfair and politically motivated, we hereby call on Kazakhstan to reconsider the case of Vladimir Kozlov and prevent further political persecution of opposition in the future".

José Manuel Barroso (President of the European Commission), 23 July, 2013 [in response to the letter of MEP Paul Murphy on political prisoners in Kazakhstan]: "The EU Delegation in Astana, together with the embassies of EU countries in Kazakhstan, has been closely monitoring the trial

of Vladimir Kozlov, and attended the previous court hearings in his case, in order to ensure a fair and transparent trial. In addition, we remain in continuous contact with his lawyer, his wife, his former deputy in the 'Alga' party and NGOs, who inform us about his health. The Kazakh authorities refused to allow us to visit Vladimir Kozlov in prison."

Tomasz Woźniak (member of the Polish Sejm), 5 August, 2013: *"I want to say that I do not understand why the court convicted Vladimir Kozlov. For what crime? We Poles have fought for freedom for decades, and now we have it in our homeland, we can express our opinions freely. I am a member of the Sejm. I am in opposition. I can say whatever I want about the President, the Prime Minister, the domestic and foreign policies, and everything else... And no one will judge me for this, as we judge criminals, murderers, and thieves... We have no political prisoners"*.

Michael Mann (official representative of the head of European diplomacy, Catherine Ashton), 7 August, 2013: *"The European Union is disappointed with the decision of the Supreme Court of Kazakhstan, which upheld the sentence of Vladimir Kozlov, the convicted leader of the banned opposition party 'Alga' (...). An EU delegation along with international observers attended the court hearing and noted some procedural deficiencies as far as defendant's requests were concerned"*. [\[18\]](#)

After the announcement of the Supreme Court's decision on 5 August, 2013, Alia Turusbekova, the wife of Vladimir Kozlov, and President of the Public Fund 'Arka Suyeu', Mikhail Sizov, held a series of meetings at the embassy of the European Union. They met with representatives of diplomatic missions of the European Commission, the United States, the OSCE, the United Kingdom, Greece, Italy, Belgium, Austria, Spain, Germany, Finland, Sweden, the Netherlands and Latvia. A separate meeting was held with the Head of the EU Delegation to Kazakhstan, Aurelia Bouchez.

Alia Turusbekova and Mikhail Sizov discussed the human rights situation in Kazakhstan and the circumstances of the unfair trial in the case of Vladimir Kozlov with the Deputy Ambassadors and advisors of Ambassadors for Political Affairs. They spoke of the fact that the government has twice previously refused Mikhail Sizov registration to the Committee for the Defence of Political Prisoners of Kazakhstan. ***Representatives of the embassies expressed their regret that the review of the supervisory appeal by the Supreme Court was pro forma, and that the judges did not analyse in detail, all the circumstances of the case and the arguments of participants in a trial.*** Representatives of the embassies promised Alia Turusbekova that they would monitor the situation regarding Vladimir Kozlov's rights in the colony, and to examine and possibly influence the decision to transfer him to a colony in close proximity to his place of residence. [\[19\]](#)

B) The reaction of the authorities of Kazakhstan and the pro-government media

Most of the government officials believe that the criterion by which to assess the imparting of justice was the opportunity of international observers to be present in the court.

Altay Abibullayev (official representative of the Ministry of Foreign Affairs of Kazakhstan), 9 October, 2012: *"I strongly disagree with the politically motivated insinuations about the alleged lack of a fair and impartial judgment. The trial was held in the open mode. Media and representatives of NGOs from different countries were allowed into the court. This is a strong and vivid confirmation of the validity and fairness of the trial, which drew particular attention from the beginning"*. [\[20\]](#)

Nurdaulet Suindikov (official representative of the Prosecutor General of Kazakhstan), 10 October, 2012: *"The trial was held in conditions of maximum transparency, in compliance with*

the principles of full consideration, competitiveness and equality of both parties. The trial was attended by representatives of various non-governmental organisations, media, and international observers. The Court examined all the evidence presented by the prosecution and the defence”. [21]

Ermukhamet Ertysbaev (advisor to President Nursultan Nazarbayev), 11 October, 2012: *“I categorically disagree with the statement of Human Rights Watch that the verdict against Vladimir Kozlov was a blow to freedom of expression. Over the years, Kozlov and other opposition members have always expressed their views, giving a tough, hard-hitting assessment to both the President and the political system of Kazakhstan”. [22]*

Nursultan Nazarbayev (The President of the Republic of Kazakhstan), 22 October, 2012: *“The investigation was completely open, public and transparent. All media, who wished to participate in the trial, were allowed into the court. All of the perpetrators were convicted for specific crimes, not for some other offences. Law enforcement representatives, who have exceeded their authority and opened fire with the aim to kill, were also convicted. Those, who incited the conflict, were sentenced as well”. [23]*

The Embassy of the Republic of Kazakhstan in Belgium, 11 July, 2013: *“The tragic events in Zhanaozen came as a shock to everyone in Kazakhstan, casting a shadow over celebrations which marked the 20th anniversary of our independence. Over the past twenty years, our Government and citizens have taken great pride in the stability of our nation. As the President has said: “events in the Mangistau region have become a serious trial for Kazakhstan”. A challenge has been thrown down at us in the anniversary year’ (...).We acknowledge that the failure of the authorities and company management to resolve the dispute with striking workers set the context for the outbreak of violence. The Government continues to develop and improve mechanisms for addressing employment disputes at a local and national level, as well as the channels available to employees by which they are able to raise legitimate concerns”. [24]*

The Embassy of the Republic of Kazakhstan in Italy, July 2013: *“As pointed out by the court, these illegal actions were carried out through the unregistered parties ‘Alga’ and ‘Halyk Maidany’, as well as through associated radical media (‘Respublika’, ‘Vzglyad’, ‘K+’, ‘Stan TV’). In accordance with the legislation of Kazakhstan, these parties and the associated media ceased their activities. These structures are fully funded by Mr. Ablyazov, the former chairman of BTA Bank, who disappeared from Kazakhstan in 2009, after the bank’s shareholders accused him of embezzling nearly 6 billion dollars (...). In other words, these parties and media have become part of a sophisticated ‘sting operation’, organised by the condemned criminal, which threatened the security and stability of Kazakhstan. Ablyazov, without counting, had been spending the stolen dollars, turning them into an effective tool in his smear campaign against his own country (...). The government is obliged to respond to the attempts at destroying the foundations of the state, causing disruption and undermining national security”. [25]*

Pro-government media, which have previously ignored the subject of the trial of the opposition member, in a fairly similar style announced that the “Kazakh justice system unmasked the Kozlov-Ablyazov criminal group, which had been receiving financial and political dividends from destabilising the situation in the country”:

The ‘Zakon.kz’ Internet portal, article “Ablyazov, Kozlov and ‘Alga’: money for blood”, 9 October, 2012: *“The trial of the instigators of the illegal strike rally in Zhanaozen (Kozlov, Sapargali and Aminov), which has just ended in Aktau, proved that Ablyazov’s entire pyramid of lies was built on blood money. Ablyazov’s unprincipled know-how allowed him to shamelessly take over his subordinates from the radical group ‘Alga’. The scheme of this activity, which Ablyazov had been*

preparing along with his subordinates, is devoid of any kind of morals. First, they incited the social conflict, tipping information dirt on unwitting heads, and then they tried to acquire financial and political profits from the conflict". [26]

The 'Abai.kz' Internet portal, article "Alga: the way to make money from a lie", 9 October, 2012: *"The trials of the members of the group 'Alga', Kozlov and Sapargali, and instigator Aminov, who had been deceiving the nation, have just ended in Aktau. The trials revealed the true face of Ablyazov's organisation to the people of Kazakhstan and international observers. To sum up, everyone became aware that the group 'Alga' was prepared by the organisation that dragged people back by causing them harm and inciting social discord. The organisation was also involved in dishonest businesses". [27]*

The 'Express-K' newspaper, article "Kozlov remains without treasures", 12 October, 2012: *"His multi-million dollar revenues are clearly questionable. It is enough to say that most of these funds were clearly embezzled by fraudster Ablyazov. The trial in Aktau has ended with a fair outcome, although the gravity of crimes committed by Kozlov and 'Alga' could have led to a greater punishment". [28]*

The "Kazakhskaya Pravda" newspaper, article "The trial was open and transparent", 16 October, 2012: *"The court has thoroughly, comprehensively, objectively and impartially investigated all the circumstances of the case in order to ensure full competition and equality of the parties. The trial was held in the open mode, and might have been attended by anyone. All the media and representatives of public associations and organisations were allowed into the court, regardless of their country of origin, attitudes and beliefs". [29]*

The "Liter" newspaper, article "A fair verdict handed down against the instigators of mass riots in Zhanaozen", 18 October, 2012: *"As a result of the trial, everyone was duly punished. However, the residue of the events of December, 2011 still remains. After all, 16 people were killed and dozens were wounded. People have lost their loved ones and their relatives... These are irreplaceable losses – despite the fair verdict handed down by the court against the organisers of the riots, who persuaded the dismissed workers to continue the protest rally and to harshly oppose the authorities (...). Perhaps it is time to take more aggressive actions against the unregistered 'Alga' party and other similar 'socio-political' organisations in order to save the greatest asset of our Republic – its stability". [30]*

In the evening of 8 October, 2012, after the verdict, the state television channels 'Habar' and 'Kazakhstan' aired a film about Vladimir Kozlov, entitled 'Alga! and money'. The film has not been listed in any television programming schedule. **In the documentary, Vladimir Kozlov was presented as the main instigator of social discord.** No information was provided about the author or creative team behind the documentary. In the film, we could hear the narrator saying: *"The group led by Kozlov was used to earning money through yelling and empty appeals (...). Kozlov's wife is Alia Turusbekova – a Kazakh woman. Why did Kozlov marry a simple Kazakh girl? It is clear what he was thinking: I married your daughter, now respect me."*[31]

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5. VLADIMIR KOZLOV UNDER CONSTANT PRESSURE FROM THE AUTHORITIES

A) Vladimir Kozlov unlawfully denied a transfer to a colony in close proximity to his place of residence

On 16 December, 2012, by virtue of the decision of the Ministry of Internal Affairs (MIA), Vladimir Kozlov was transferred to a colony located far from his place of residence, i.e. in the city of Petropavlovsk, in the administrative centre of North Kazakhstan Province. On **14 December, 2012**, Kazakhstan's Interior Ministry explained that Vladimir Kozlov was transported to the penal colony EU 164/3 in North Kazakhstan Province due to the fact that there is no general regime colony in Mangistau Province, where he was convicted. [\[1\]](#) **However, Article 68 of the Criminal Executive Code (CEC) expressly stipulates that the convict should serve his sentence in a colony which is situated proximately to his last place of residence prior to his conviction** [\[2\]](#) (in Vladimir Kozlov's case: Almaty Province).

On **21 May, 2013**, the Ministry of Internal Affairs explained to Vladimir Kozlov's wife that at that time, there were no barriers to transferring Vladimir Kozlov to one of the prisons of the city of Almaty or Almaty Province. However, the request for such a transfer cannot be granted, since, according to Article 76 of the CEC of the RK, a person sentenced to imprisonment must serve his entire sentence in one correctional institution. [\[3\]](#) But, as stated by human rights activist, Yevgeniy Zhovtis, **at the outset, MIA should have adhered to the first legal requirement, i.e. to transfer Vladimir Kozlov to a colony which is proximate to his last place of residence.** It is only when this requirement has been fulfilled, that the second requirement of serving the entire sentence in the same prison becomes binding.

On **11 September, 2013**, the Committee of Criminal and Correctional Systems (CCCS) of the Ministry of Internal Affairs published an official response to the inquiry of the internet portal Total.kz: *"Solving of the problem regarding the transfer of V.I. Kozlov to the general regime colony of the Criminal and Correctional System Department for the city of Almaty and Almaty Province is currently impossible due to difficulties connected with the placement of inmates in the institution"*. [\[4\]](#) On 12 September, 2013, the Head of the EU Delegation in Kazakhstan, Aurelia Bouchez expressed her surprise and concern at the response of the MIA. [\[5\]](#) According to Yevgeniy Zhovtis, this response **indicates that there are no available places for inmates in the Almaty colony.** [\[6\]](#) The human rights activist points out that within the year, which has passed from the announcement of the verdict against Vladimir Kozlov, investigators have had sufficient time to legally arrange his placement in a colony situated in close proximity to his last place of residence: *"The colony is not a static institution, people are released from it... If there is a waiting list, please announce Mr. Kozlov's current placing on the list"*. [\[7\]](#) At the same time, according to the sources of the private media outlet 'Respublika', there are places available in the colony of Almaty province. [\[8\]](#)

On **7 October, 2013**, it became known that the CCES had dismissed Aliya Turusbekova's petition to transfer her husband to the colony near to his last place of residence, which she indicated, was due to the fact that *"there are no circumstances which would prevent Vladimir Kozlov's further confinement in the colony No. EC 164/3"*. The management of the CCES believes that the only sufficient grounds for the transfer of the convict to another prison would be the reorganisation of the prison, threats to the security of the inmate or circumstances surrounding his condition of health. [\[9\]](#) According to existing information, in the North Kazakhstan Province colony, Vladimir Kozlov is still not receiving adequate medical care, which in turn, means he is at risk of suffering a stroke. [\[10\]](#)

The commentary of the Criminal Executive Code indicates that the serving of a sentence of imprisonment in a prison close to the prisoner's last place of residence is aimed at social rehabilitation and maintenance of contact with his or her family. On 8 September, 2013, by virtue of the decree of President Nursultan Nazarbayev, a new national holiday was established in Kazakhstan - Family Day. In his words, "the cultivation of family values and large families constitute one of the highest priorities of our state".^[11]

Aliya Turusbekova is anticipating the birth of their child in the near future, which effectively deprives her of any opportunity to meet with Vladimir Kozlov in North-Kazakhstan Province.

B) The colony's administration is striving to transfer the oppositionist to solitary confinement

In the colony, Vladimir Kozlov constantly faces provocations and prejudice on the part of the administration. He receives ungrounded admonitions, still, the admonitions may adversely affect his further serving of punishment. In particular, the opposition politician may be punished by being placed in solitary confinement. In a letter to his wife, Aliya Turusbekova, Vladimir Kozlov gave examples of how the prison staff write reports pertaining to even slight misconduct on his part: he was observed wearing clothes other than his prison uniform or *'a tissue was found next to his bed'*.^[12] Aliya Turusbekova suspects that the prison administration wants to place Vladimir Kozlov in solitary confinement, and for this reason, it is deliberately contriving a 'legal' pretext to do so.

Vladimir Kozlov made an application for a long meeting with his wife on 12 November, 2013. Aliya Turusbekova fears that he may be sent to solitary confinement at the very moment that she arrives to visit him. *"I am very concerned about what is currently happening in the colony. Understanding that in prisons they can do horrible things to people (there are sad examples which testify to this fact), make me fear for my loved one. However, in spite of my condition, I am willing to hold a number of protest actions, including pickets near the building of the Interior Ministry and the Committee of Criminal and Correctional System, hunger strikes and other actions"* ^[13] - Aliya Turusbekova stated.

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6. CONCLUSIONS AND RECOMMENDATIONS

The trial of Vladimir Kozlov was accompanied by gross violations of international standards for fair trial. The equality and competitiveness of the parties was not ensured, which directly violates Article 14 of the International Covenant on Civil and Political Rights and Article 10 of the Universal Declaration of Human Rights. The fabricated evidence base confirms the dubious legitimacy of the charges presented against Vladimir Kozlov. The courts of appellate, cassation and supervisory instances failed to substantiate their decision to dismiss the appeals filed by Vladimir Kozlov. The consideration of appeals was conducted hastily and lacked the stage of oral statements of the participants of the court proceedings. Arguments made by the defence were ignored. In addition, the justification of the Ministry of Internal Affairs for refusing Vladimir Kozlov a transfer to a colony in close proximity of his place of residence directly contravenes the requirements of Kazakhstan's legislation.

Article 164 of the CC of the RK ('inciting social discord') is political and does not have a specific legal framework, therefore it can be used as a legitimate tool for political oppression. Human Rights Watch stated that the article "is vague, overly general and criminalises the behaviour and statements that are protected by international laws on human rights" [1]. The legislation of Kazakhstan partially determines 'social discord' only in Article 20 of the Constitution, which prohibits propaganda or agitation of "social, racial, national, religious, class and tribal superiority". But, according to observers, the court failed to prove that Vladimir Kozlov had promoted the supremacy of a social group over another social group.

In its Resolutions of 15 March, 2012, 22 November, 2012 and 18 April, 2013, the European Parliament urged Kazakhstan to amend Article 164 of the CC of the RK in order to bring it into line with international standards for human rights protection, but the Kazakh authorities ignored these demands. Moreover, the draft of the new Criminal Code provides for a further increase in penalties for inciting social discord. A person convicted under this article could face up to 20 years in prison. [2]

The sentence Vladimir Kozlov received, was influenced by evaluative judgements of actions of civil society activists and politicians, as well as by assumptions regarding the motivation for those actions. Vladimir Kozlov's criticism of the authorities was labelled by the prosecutors as 'deceitful', 'criminal', 'provocative' and 'undermining the constitutional foundations of the state'. The opposition politician was accused of 'creating a positive political image of Mukhtar Ablyazov'. Such accusations are unacceptable in a country which proclaims 'ideological and political diversity' in its constitution. The text of the indictment confirms that, according to the Kazakh prosecutors, public criticism of the authorities can be regarded as inciting social discord.

In fact, Vladimir Kozlov was prosecuted for conducting opposition activities. In European countries, conducting opposition activity is considered standard fair. According to the Monaco and the Istanbul Declaration of the OSCE Parliamentary Assembly, there should be no political prisoners in the OSCE area. On 1 July, 2013, in response to the question of a British journalist, Romilly Weeks, regarding harassment of opposition leaders, the Kazakh President stated: "*We have no political persecution, and if someone, say, is in prison, and so on – just give their names. This conversation is general... Thank you for your advice, remarks, but no one has the right to tell us how we should live or build our country*". [3] The Open Dialog Foundation believes that Kazakhstan, which is a member of the OSCE and the UN Council on Human Rights, cannot take such a position on human rights in the country.

Being concerned about the unfair and politically motivated judgement against the opposition leader, Vladimir Kozlov, and the oppression of the independent media, opposition activists and non-governmental organisations, the Open Dialog Foundation hereby calls on:

The Minister of Internal Affairs and the Chairman of the Committee of Criminal and Correctional System of the MIA of the Republic of Kazakhstan:

- To immediately implement the provisions of the CEC and transfer Vladimir Kozlov to a colony in close proximity of his place of residence in Almaty Province, which will also allow international human rights organisations and the EU representatives to carefully monitor the conditions of detention and the observance of the rights of the convict.

The Minister of Foreign Affairs of the Republic of Kazakhstan:

- To provide an opportunity for representatives of the European Union as well as Kazakh and international human rights organisations to carry out visits to the prison EC-164/3, where Vladimir Kozlov is incarcerated.

The President of the Republic of Kazakhstan and the Commission of Pardons with the President of the Republic of Kazakhstan:

- To pardon Vladimir Kozlov.

The Commissioner for Human Rights in the Republic of Kazakhstan:

- To submit a petition for clemency to the Commission of Pardons with the President of the Republic of Kazakhstan.

The Government of the Republic of Kazakhstan:

- To take into account the recommendations of the European Parliament and the United Nations High Commissioner for Human Rights, Navi Pillay, and conduct a comprehensive, impartial investigation into the events in Zhanaozen, with the participation of the international community.
- To amend Article 164 of the CC of the RK on the basis of the principles of the rule of law in accordance with international standards of human rights protection, to send the proposed changes for review to the European Commission for Democracy through Law (Venice Commission).
- To carry out reforms, designed to ensure the independence of the judiciary and respect for international standards of fair trial.
- To stop using vague criminal charges as a tool for politically motivated prosecutions of opposition leaders, independent journalists, civil society activists and human rights defenders.

The President of the European Parliament, Martin Schulz, the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, the EU Special Representative for Human Rights, Stavros Lambrinidis, the EU Commissioner for Human Rights, Nikoiforos Diamandouros, the European Commission President, Jose Manuel Barroso, the ODIHR Director, Janez Lenarcik, representatives of the diplomatic missions of the EU to Kazakhstan:

- In view of the negotiations for the adoption of a new agreement on extended partnership between the EU and Kazakhstan, to closely monitor the human rights situation in the country, to draw the attention of the authorities of Kazakhstan to the incidents which grossly violate human rights, stressing that one of the conditions for closer cooperation is the immediate and full implementation by Kazakhstan, of its international obligations in the field of human rights, the inadmissibility of the practice of politically motivated prosecutions and vengeance towards political opponents.

- To verify the conditions of detention and the observation of the rights of Vladimir Kozlov in the colony, to make demands to the colony administration that Vladimir Kozlov be given an opportunity to undergo proper medical treatment.
- To promote the adoption of a positive decision regarding Vladimir Kozlov's transfer to a colony in close proximity to his place of residence.

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

- President Nursultan Nazarbayev - The Presidential Administration, the 'Akorda' building, Left Bank, Astana 010000, Kazakhstan, fax +7 7172 72 05 16;
- 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, fax: +7 7172 740548;
- Chairman of the Committee of Criminal and Correctional System of Kazakhstan with the Ministry of Internal Affairs, Baurzhan Berdalin - 010000, Astana, 2 B.Mailin Street. Tel. +7 7172 72-30-26, +7 7172 72-30-37. A form for appeals: <http://kuis.kz/kz/otinishter>;
- Minister of Internal Affairs, Kalmukhanbet Kasymov - 010000, Astana, 1. Prospect Tauelsizdik, Tel. +7 7172 72 24 93, +7 7172 71-51-89, e-mail: oraz-n@mvd.kz;
- General Prosecutor of Kazakhstan, Askhat Daulbayev - 010000, Astana, House of Ministries, entrance No. 2, 8 Orynborg Street, tel.: +7 7172 71-26-20, +7 7172 71-28-68;
- 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;
- President of the European Parliament, Martin Schulz - Rue Wiertz 60, 1047 Bruxelles, Belgique. Tel. +32 (0) 2 28 40 737, +33 (0) 3 88 1 74 938. E-mail of the head of the cabinet, Markus Winkler: markus.winkler@europarl.europa.eu;
- High Representative of the European Union for Foreign Affairs and Security Policy, Catherine Ashton - 1046 Brussels, Belgium. Tel. +32 2 584 11 11. The form for appeals: http://www.eeas.europa.eu/contact/index_en.htm;
- Stavros Lambrinidis - EU Special Representative for Human Rights - 1046 Brussels, Belgium. Tel. +32 2 584 2305, e-mail: stavros.lambrinidis@ext.eeas.europa.eu;
- EU Commissioner for Human Rights, Nikoforos Diamandouros - F-67001, Strasbourg, avenue du Président Robert Schuman, 1, tel.: +33 3 88 17 23 13;
- President of the European Commission, Jose Manuel Barroso - 1049 Brussels, Belgium. Tel.: +32 (0) 2 298 1566, +32 (0) 2 296 5745. The form for appeals: http://ec.europa.eu/commission_2010-2014/president/contact/mail/index_en.htm;
- Director of the ODIHR, Janez Lenarcik - Ul. Miodowa 10, 00-251 Warsaw, Poland, Office: +48 22 520 06 00, Fax: +48 22 520 06 05, e-mail: office@odihhr.pl.

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The Open Dialog Foundation is a non-governmental organisation based in Warsaw, actively promoting the observance of human rights and democratisation processes in the former Soviet space, with special attention given to the Republic of Kazakhstan, Ukraine and the Russian Federation. Over the past year, the Foundation has actively promoted the observance of human rights in Kazakhstan through detailed reports on the situation in the country and direct involvement of representatives of the Kazakh civil society in various projects. Over the years of its activity, the Open Dialog Foundation has disseminated information regarding the cases of numerous civil society activists, independent journalists and representatives of the democratic opposition, who were subjected to threats, persecution, imprisonment and assassination in Kazakhstan.

00-580 Warsaw

11a Szucha Avenue, office 21

E-mail: odfoundation@odfoundation.eu

www.odfoundation.eu

The report was published in November, 2013

Printed by: OPEN DIALOG FOUNDATION

The cover photo was taken from Vladimir Kozlov's Facebook page