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France must ensure the safety of the opposition politician and a fair extradition trial

In December, 2013, France will hold a series of court hearings in order to review the extradition case of the Kazakh politician, Mukhtar Ablyazov. International human rights organisations are calling on France not to allow his extradition to Ukraine or Russia, as Kazakh authorities were heavily influencing the law enforcement agencies of these countries during the initiation of criminal cases against Mukhtar Ablyazov and continue to exert this influence at the stage of investigation. Both in Ukraine and Russia, Mukhtar Ablyazov risks being subjected to physical violence and judicial bias. Also, there is a high probability that Ukraine and Russia will render Mukhtar Ablyazov to Kazakhstan, where he will be at risk of torture and face unfair trial.

In 2002, the opposition politician and former Minister of Energy, Mukhtar Ablyazov, was sentenced to imprisonment in Kazakhstan for his political activities. In prison, he was repeatedly tortured and beaten. The European Parliament, Human Rights Watch, Amnesty International, and the U.S. State Department labelled the verdict politically motivated.¹ After his release from prison, Mukhtar Ablyazov continued to support, and fund the opposition.² In 2009, the then Chairman of the Board of Directors of BTA Bank, Mukhtar Ablyazov, again fell into disfavour with President Nursultan Nazarbayev due to his continued engagement in opposition activity and his financing of the opposition.³ BTA Bank has been nationalised, and criminal proceedings with charges of financial criminality were instituted against its executives and employees. Mukhtar Ablyazov was declared internationally wanted by law enforcement authorities of Kazakhstan, Russia and Ukraine.

In Ukraine, Mukhtar Ablyazov was accused of fraud and misappropriation of property on a particularly grand scale, by a group of persons, under a preliminary conspiracy (Art. 190, section 4 and Art. 191, section 5 of the Criminal Code of Ukraine). On 7 July, 2011, the British government, referring to possible political motives of the criminal prosecution of Mukhtar Ablyazov, granted him **political asylum**.⁴ On 31 July, 2013, French police arrested Mukhtar Ablyazov upon the issuance of a “red notice” by Interpol, based on a request for his extradition by Ukrainian law enforcement authorities. The Russian Federation and the Republic of Kazakhstan also sent requests for the extradition of the Kazakh politician.

1. MUKHTAR ABLYAZOV FOUND GUILTY WITHOUT TRIAL IN SEVERAL CRIMINAL CASES IN KAZAKHSTAN

The Kazakh Prosecutor's Office accused Mukhtar Ablyazov of crimes such as:

1.1. Embezzlement or misappropriation of entrusted property (Art. 176, section 3, subparagraphs ‘a’, ‘b’ of the Criminal Code of the Republic of Kazakhstan), legalisation of money or other property acquired by criminal means (Article 193, section 3, subparagraphs ‘b’, ‘c’ of the Criminal Code of the Republic of Kazakhstan), illegal use of bank funds (Art. 220, section 1 of the Criminal Code of

¹ http://odfoundation.eu/en/publications/1412/political_persecution_of_mukhtar_ablyazov

² <http://rus.azattyq.org/content/kozlov-sapargali-aminov-trial-zhanaozen-case/24701331.html>

³ <http://www.respublika-kz.info/news/politics/8336/>

⁴ <http://www.theguardian.com/world/2011/jul/12/kazakhstan-financial-sector>

the Republic of Kazakhstan), abuse of authority (Art. 228 of the Criminal Code of the Republic of Kazakhstan), fraud (Art. 177, section 3, subparagraphs 'b', 'c' of the Criminal Code of the Republic of Kazakhstan), and establishment and management of a criminal organisation (Art. 235, section 3 of the Criminal Code of the Republic of Kazakhstan).

Neither Kazakhstan nor Europe conducted trials on the presented criminal charges. The decision of the High Court in London dated 23 November, 2012, to recover 2.1 billion dollars from Mukhtar Ablyazov in favour of Kazakhstan's BTA Bank, was taken as part of two civil lawsuits. Meanwhile, in Kazakhstan, on 25 December, 2009, and 24 May, 2012, 26 people were sentenced to imprisonment in the case of Mukhtar Ablyazov. Employees, business partners and borrowers of BTA Bank (including those, who had taken and paid off their loans) were prosecuted. It should be mentioned that as a result of the second trial, people, who had cooperated with the investigation and had been exempted from criminal responsibility under Article 65 of the Criminal Code (due to active repentance), were convicted.⁵ ***In many cases, the defendants received a longer period than requested by the Prosecutor's Office.***⁶ The remaining managers and employees of BTA Bank were placed on interstate and international wanted lists. In particular, Tatiana Paraskevich, a former colleague of Mukhtar Ablyazov, is currently at risk of extradition from the Czech Republic. Amnesty International and the Czech Helsinki Committee ***called on the Czech authorities to prevent the extradition of Tatiana Paraskevich to Ukraine or the Russian Federation*** and to provide her with international protection, as she was being prosecuted due to her cooperation with Mukhtar Ablyazov and ties to the opposition.⁷

1.2. Incitement of social hatred (Art. 164 of the Criminal Code), calls for the overthrow of the constitutional order (Art. 170 of the Criminal Code), and establishment and management of a criminal organisation (Art. 235 of the Criminal Code).

The Kazakh Prosecutor's Office alleged that while Mukhtar Ablyazov was abroad in March, 2010, he established an 'organised criminal group' (OCG) to support the striking oil workers in Zhanaozen, and thus provoked the tragedy. As has been well-documented, the strike rally of 16 December, 2011, was dispersed by police with the use of firearms. Officially, the number of fatalities was 17, with casualties totalling 108.⁸ 37 oil workers were accused of organising mass riots. Of the 37, 3 were acquitted. There is evidence which suggests that the **detained oil workers were subjected to torture and ill-treatment by the investigating authorities** (beatings, suffocation, threats of rape and harm to their relatives).⁹

According to Kazakh Prosecutor's Office, opposition politicians **Vladimir Kozlov** and **Muratbek Ketebayev** joined Mukhtar Ablyazov's OCG.¹⁰ They faced criminal charges similar to those presented against Mukhtar Ablyazov. Muratbek Ketebayev was placed, by Kazakhstan on the international wanted list, and, on that basis, arrested by Polish police on 12 June, 2013. ***The District Attorney's Office in Lublin stated that the charges against Muratbek Ketebayev were most likely of a political nature.*** On 13 June, 2013, Muratbek Ketebayev was immediately released from detention, and information about him was deleted from Interpol's databases. On 6 November, 2013, the District

⁵ http://www.bureau.kz/data.php?n_id=4767&l=ru

⁶ http://odfoundation.eu/files/pdf/Report_Interpol_fin_Eng.pdf

⁷ http://odfoundation.eu/en/urgents/1487/the_case_of_tatiana_paraskevich_with_the_use_of_ukrainian_and_russian_law_enforcement_agencies_kazakhstan_intends_to_compel_the_accused_to_testify_against_mukhtar_ablyazov

⁸ <http://rus.azattyq.org/content/zhanaozen-unrest-black-lists-of-officials/24742533.html>

⁹ http://www.odfoundation.eu/files/pdf/ODF_courts_Zhanaozen_maket_EN_final.pdf

¹⁰ http://odfoundation.eu/ru/urgents/1145/prigovor_vladimira_kozlova

Prosecutor's Office in Lublin officially informed the lawyer that the **case against Muratbek Ketebayev had been closed**, as Kazakhstan had not sent a formal request for his extradition.¹¹

During the strike rally in Zhanaozen, **Vladimir Kozlov** held meetings with the oil workers, and represented them in the European Parliament. On 8 October, 2012, the Mangistau Regional Court sentenced him to seven and a half years of imprisonment with confiscation of property. International human rights organisations, the European Parliament and the governments of democratic countries recognised Vladimir Kozlov as a **political prisoner**.¹² According to the verdict, Kozlov's **opposition party 'Alga!' and 34 independent media outlets, which were covering the Zhanaozen events most comprehensively, were banned in Kazakhstan**.¹³ The government labelled them 'extremist' and accused them of colluding with Mukhtar Ablyazov and inciting social discord. **While considering the case of Vladimir Kozlov, the Kazakh courts failed to observe presumption of innocence in respect of Mukhtar Ablyazov, forming a conjecture that he had established and managed Kozlov and Ketebayev's OCG**. The prosecutors constantly referred to Mukhtar Ablyazov as a 'criminal', although no trials have yet been conducted in order to review the basis of the criminal charges brought against him. The Prosecutor's Office of Kazakhstan stated that Ablyazov, Kozlov and Ketebayev's OCG has also committed crimes **"against the peace and security of mankind"**.¹⁴

1.3. Act of terrorism (Art. 233 of the Criminal Code)

On 28 March, 2012, the Prosecutor's Office of Kazakhstan, in violation of the laws relating to presumption of innocence, stated that opposition politicians **Muratbek Ketebayev** and **Mukhtar Ablyazov**, as well as the security chief, **Alexander Pavlov**, "had conspired to commit acts of terrorism and extremism": *"It was established that in early March 2012, they instructed their accomplices to carry out a series of explosions in public places, including areas of parkland and office buildings around the city of Almaty on 24 March"*.¹⁵ Information about the commencement of the trial has not yet been received. Art. 49 of the Criminal Code provides for the **death penalty for terrorist offences**. Since 1990, Kazakh judges have handed down 536 death sentences. Since 2003, following the introduction of a moratorium, the execution of death sentences has been suspended.¹⁶ However, the new the Criminal Code of the Republic of Kazakhstan expands the list of crimes punishable by the death penalty. On 27 and 28 September, 2013, participants of the first Congress of Philosophers of Kazakhstan supported the retention of the death penalty in the country, as "the society is not yet ready for abolition of this form of punishment".¹⁷ In addition, according to First Deputy General Prosecutor of Kazakhstan, Johann Merkel, "the Constitution does not permit the complete abolition of capital punishment".¹⁸

Kazakhstan demanded that Spain extradite **Alexandr Pavlov** for terrorist activities and financial crimes committed in conspiracy with Mukhtar Ablyazov. On 19 April, 2013, a Spanish court rejected

¹¹ <https://www.facebook.com/mur.ketebayev/posts/542897525786591>

¹² The verdict against Vladimir Kozlov was harshly criticised by Freedom House, Human Rights Watch, Civic Solidarity, Solicitors' International Human Rights Group, the Norwegian Helsinki Committee, the Polish Bar Association, the European Parliament, the U.S. Department of State, Catherine Ashton, and Jose Manuel Barroso - http://odfoundation.eu/files/pdf/ODF_Vladimir_Kozlov%E2%80%99s_case_RU.pdf

¹³ The 'Vzglyad' newspaper, the 'Stan.tv' news website, the 'K+' TV channel, 'one mass media outlet 'Respublika'' (8 newspapers and 23 information websites) - http://odfoundation.eu/files/pdf/ODF_mission_report_Dec2012_EN.pdf

¹⁴ Quote from the Decision on indictment of Muratbek Ketebayev in his absence.

¹⁵ http://odfoundation.eu/ru/urgents/731/press_reliz_generalnoy_prokuraturi_respubliki_kazahstan

¹⁶ http://tengrinews.kz/kazakhstan_news/536-kazahstantsev-byili-kaznenyi-do-vvedeniya-moratoriya-228790/

¹⁷ http://tengrinews.kz/kazakhstan_news/za-smertnuyu-kazn-v-kazahstane-vyistupili-filosofyi-242483/

¹⁸ http://tengrinews.kz/kazakhstan_news/polnostyu-otkazatsya-ot-smertnoy-kazni-kazahstanu-ne-pozvolyaet-konstitutsiya-244187/

the request to extradite Alexandr Pavlov. A month later, Kazakhstan filed a second request for his extradition. After reviewing the request, on 11 August, 2013, the Supreme National Court of Spain (Audiencia Nacional) decided to approve the extradition of Alexandr Pavlov to Kazakhstan. On 25 October, 2013, shortly before the court's decision, Kazakhstan sent a new batch of documents pertaining to the case of Alexandr Pavlov, to Spain. ***It is noteworthy that these documents did not relate to Alexandr Pavlov, but rather to the case of Mukhtar Ablyazov*** (Kazakhstan even sent guarantees provided by Ukraine to the French authorities on the issue of Ablyazov's extradition to Ukraine). Now, the final decision in the case of Alexandr Pavlov's extradition will be made by the Spanish government. Amnesty International immediately called on the Spanish authorities to rescind the court's decision on the extradition, referring to the ***frequent cases of persecution of former associates of Mukhtar Ablyazov, indicating the existence of a political order from the Kazakh authorities.***^{19,20}

2. SAFETY AND OBSERVANCE OF MUKHTAR ABLYAZOV'S RIGHTS IN UKRAINE ARE QUESTIONABLE

On 7 August, 2013, the General Prosecutor's Office of Ukraine provided "written guarantees" to the French Ministry of Justice of the French Republic in the event that Mukhtar Ablyazov should be extradited to Ukraine:

- the objective of the criminal proceedings against Ablyazov is not to persecute him for political reasons or due to his race, religion or nationality;
- Ablyazov will be held criminally responsible only for those crimes, for which he is extradited; furthermore, he will not be expelled or extradited to a third state without the consent of the French Ministry of Justice; after the trial and serving his sentence, he will be allowed to leave the territory of Ukraine unhindered;
- Ablyazov will be guaranteed the right to a fair trial in the criminal proceedings, as well as legal protection and assistance from a counsel;
- in the case of Ablyazov's conviction and imprisonment, Ukraine will guarantee compliance with the requirements of the European Convention on Human Rights and Fundamental Freedoms of 1950; in particular, he will not be subjected to treatment that might pose a threat to his physical and mental integrity, and the conditions of imprisonment will not be inhumane or degrading;
- Ablyazov will be provided with appropriate means and free access to sufficient health care, both in the penal institution, and, if necessary, in medical institutions outside of the correctional facility. .

On the basis of numerous statements of international human rights organisations and the latest political events in Ukraine, the guarantees provided in the letter of the General Prosecutor's Office of Ukraine to the French Ministry of Justice regarding the extradition of the Kazakh oppositionist, Mukhtar Ablyazov, are virtually impracticable. Unfortunately, the Ukrainian authorities are unable to impartially conduct the proceedings both with regard to the pre-trial stage and trial stage. Also, protection against torture in prisons— not only for foreigners, but also for the citizens of Ukraine, cannot be guaranteed. In addition, the presented guarantees are not in line with the current legislation of Ukraine, due to the lack of any legal acts, mechanisms or principles regulating the provision of any international guarantees in extradition proceedings. Also, no mechanisms for the implementation of the guarantees or the monitoring of their implementation are currently in place.

¹⁹ <http://www.amnesty.org/en/news/aleksandr-pavlov-extradition-2013-11-08>

²⁰ Support for Alexandr Pavlov has been also expressed by Members of the European Parliament, Raul Romeva-and-Rueda, Piotr Borys and Marek Migalski, senators in the Italian Parliament, Luigi Compagna and Luigi Manconi, and members of the Polish Sejm, Ligia Krajewska and Marcin Świącicki.

Paradoxically, according to national legislation, the General Prosecutor's Office of Ukraine, claiming to operate on behalf of the State as a “guarantor”, will not be liable for any violation of the guarantees provided.

On 1 August, 2013, Amnesty International announced: **“There is a real risk that, if Alexandr Pavlov is extradited to Ukraine, he will be further transferred to Kazakhstan, where he will face an unfair trial, possible torture and other ill-treatment”**.²¹ The use of torture in Kazakhstan is of a systematic nature. On 11 July, 2013, Amnesty International concluded that Kazakh authorities are unable to fully and effectively honour their commitments under the UN Convention Against Torture.²² The Polish Bar Council²³ and the U.S. Department of State²⁴ pointed to corruption in the justice system and the absence of the right to a fair trial in Kazakhstan.

2.1. The Kazakh authorities are interested in the extradition of Mukhtar Ablyazov to Ukraine or the Russian Federation due to the close cooperation between law enforcement agencies and special services of the CIS countries.

Ukraine and Kazakhstan are both party to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (“Minsk Convention”) and the Agreement on interaction of the Ministries of Internal Affairs of the independent states in the sphere of the fight against crime. **These agreements provide for the extradition of wanted persons and joint investigative activities.** On 6 August, 2013, a spokesman for the Kazakh General Prosecutor’s Office, Nurdaulet Suindikov, did not rule out the possibility of Mukhtar Ablyazov’s extradition to Kazakhstan in his statement, despite the absence of an extradition treaty with France: **“The General Prosecutor’s Office of the Republic of Kazakhstan will take all measures, provided by the relevant law, in order to bring about Ablyazov’s extradition”**.²⁵ **On 29 October, 2013, we learnt of the latest case, in which employees of the Ministry of Internal Affairs of Kazakhstan flew to Ukraine in order to arrest and extradite a citizen, who had been placed on the international wanted list, by Kazakhstan.**²⁶

In Ukraine there is an additional threat that Mukhtar Ablyazov will be abducted by Kazakh secret services and transferred to Kazakhstan. Over recent years, **Kazakh secret services have repeatedly made threats and assassination attempts against oppositionists, as well as civil activists in the former Soviet countries.** The most notorious examples being the attempted assassination of the opposition leader Petr Voik in Bishkek on 1 December, 1998; assassination attempt on ex-officials Alnur Musayev and Rakhat Aliyev in Vienna on 25 September, 2008; surveillance of the ‘Golos Respubliki’ newspaper editor Daniyar Moldashev in Moscow in March, 2011; attempted abduction of the oppositionist, Aynur Kurmanov in Moscow on 15 December, 2012.²⁷

On 3 July, 2013, Amnesty International's researcher, Rachel Bugler expressed concern that the **“special services of Russia, Ukraine and Central Asia are more and more frequently colluding to abduct and illegally smuggle wanted individuals into prisons. These people are at real risk of being subjected to torture after returning to Central Asia. And this happens so often that we can speak of a comprehensive regional programme of ‘returning’ people to places of detention”**.²⁸ On 19 October, 2012, in Kiev, Leonid Razvozhayev, a citizen of the Russian Federation and the parliamentary assistant of a famous opposition member of parliament, Ilya Ponomarev, **was kidnapped**. On 21 October, 2012, Leonid Razvozhayev arrived in Moscow and was arrested. Then, a representative of the

²¹ <http://www.amnesty.org/en/news/france-ensure-safety-kazakhstani-opposition-figure-2013-08-01>

²² <http://www.amnesty.org/en/news/kazakhstan-no-accountability-entrenched-torture-2013-07-11>

²³ http://adwokatura.pl/wp-content/uploads/2013/07/NRA_Report_on_Mission_in_Kazakhstan-amended_all.pdf

²⁴ <http://www.state.gov/j/drl/rls/hrrpt/2012/sca/204402.htm>

²⁵ <http://prokuror.gov.kz/rus/novosti/press-releasy/vystuplenie-oficialnogo-predstavatelya-generalnoy-prokuratury-nurdauleta>

²⁶ http://tengrinews.kz/kazakhstan_news/sud-obyazal-osuidennogo-oplatit-ego-ekstraditsiyu-iz-ukrainyi-v-kazahstan-244533/

²⁷ http://odfoundation.eu/en/publications/1273/kazakh_security_services_on_guard_of_nazarbayevs_regime

²⁸ <http://www.russian.rfi.fr/tsentralnaya-aziya/20130703-amnesty-international-rossiya-ne-prepyatstvuet-pytkam-v-tsentralnoi-azii>

Ukrainian Foreign Ministry announced that a kidnapping had taken place, but went on to state: “this is not a criminal case, but rather an issue of cooperation between law enforcement agencies, of which I know nothing”.²⁹

2.2. The economic and political interests in the bilateral relations between Ukraine and Kazakhstan may influence the possibility of ‘re-extraditing’ Mukhtar Ablyazov from Ukraine.

Following the collapse of the USSR, within a short period of time, Ukraine and Kazakhstan signed an extensive package of framework diplomatic agreements in the economic sphere: the Treaty of Amity and Cooperation (1994), the Memorandum on Economic Cooperation (1995), the Cooperative Economic Development Agreement (1999) and others.

On 29 May, 2013, presidents of Ukraine, Kazakhstan and Russia took part in the meeting of the Supreme Eurasian Economic Council, discussing the integration of the economies of the countries.³⁰ In 2014, the President of Ukraine, Viktor Yanukovich, will conduct a state visit to Kazakhstan. **In 2012, Viktor Yanukovich declared Ukraine's desire to obtain ‘observer status’ in the Shanghai Cooperation Organisation.³¹ Within the framework of the organisation, Kazakhstan and Russia are obliged to render to each other, any persons accused of terrorism and extremism. This fact can be used as the main “legitimate basis” for the transfer of the alleged ‘terrorist’, Mukhtar Ablyazov, by Ukraine to Kazakhstan or Russia.**

On 14 October, 2013, the Minister of Foreign Affairs of Ukraine, Leonid Kozhara, stated that Ukraine, as the current Chair of the OSCE, will support Kazakhstan's initiatives within the organisation.³² Let us recall that during its 22nd annual congress, the OSCE Parliamentary Assembly expressed its regret that some OSCE participating states, seeking the arrest of opponents on politically motivated charges, continued to misuse the Interpol system. Representatives of Ukraine and Kazakhstan expressed strong opposition to these statements by the OSCE Parliamentary Assembly.³³

Kazakhstan ranks third in terms of volume of trade with Ukraine among the CIS countries, and eighth among all the trading partners of Ukraine. The value of Ukrainian investments in the economy of Kazakhstan amounts to 25 million dollars.³⁴ Throughout 2012, the level of bilateral trade grew by 24%³⁵. In September, 2013, Kazakhstan became one of the main importers of steel pipes from Ukraine (imports amounted to 53.03 million dollars).³⁶ Bilateral cooperation in the naval sphere between the two countries is also strengthening.³⁷ On 9 July, 2013, Kazakh national oil company ‘KazMunaiGas’ announced its plans to purchase terminals for the import of raw materials and enter the retail petrol market in Ukraine.³⁸ After Viktor Yanukovich came to power in 2010, Kazakhstan has become one of the main directions of Ukraine’s foreign policy. The presidents of both countries have been in close direct contact: in recent years, Yanukovich and Nazarbayev have been regularly calling each other and exchanging visits. On 7 April, 2010, during his official visit to Astana, Viktor Yanukovich stated: “I consider the strengthening, development and intensification of our relations

²⁹ http://amnesty.org.ua/sites/default/files/PR_AI_Ukraine_Razvozhayev_abduction_29.10.2012_UKR.doc

³⁰ http://www.akorda.kz/ru/page/page_214000_segodnya-v-akorde-prezident-kazakhstana-nursultan-nazarbaev-prinyal-uchastie-v-zasedanii-vysshego-evrazhskogo-soboraniya

³¹ <http://www.newsru.ua/ukraine/25aug2012/shanghai.html>

³² <http://www.time.kz/news/politics/2013/10/14/prezident-ukraini-viktor-janukovich-posetit-kazakhstan-v-2014-godu>

³³ <http://www.youtube.com/watch?v=x0g6csEaG5U>

³⁴ <http://www.aif.ua/money/news/57298>

³⁵ http://www.akorda.kz/ru/page/page_213991_segodnya-prezident-kazakhstana-nursultan-nazarbaev-v-ramkakh-zasedaniya-vysshego-evraziiskogo-ekonomicheskogo-soboraniya

³⁶ <http://minprom.ua/news/136157.html>

³⁷ <http://newsper.net/ru/article/region/3/theme/6?id=3462463>

³⁸ <http://oilnews.kz/1/novosti/novosti-tek-kazaxstana/kazaxstanskaya-nacionalnaya-kompaniya-kazmunajgaz-planiruet-osushhestvit-krupnyu-biznes-ekspansiyu-v-evropu/>

with Kazakhstan as one of the priorities of Ukraine's foreign policy. I personally, as President, perceive the style of leadership of my senior colleague Nursultan Nazarbayev, who was able to build a stable, peaceful and prosperous state during the years of independence, a benchmark which needs to be achieved.. Ukraine intends to pursue the very same goals".³⁹

Worryingly, in recent years, Ukraine has been demonstrating common trends with Kazakhstan in the sphere of deterioration of human rights. On 22 May, 2012, the European Parliament called on the Ukrainian authorities to ensure the rights of all prisoners, convicted for political reasons, in particular, Yulia Tymoshenko, Yuriy Lutsenko and Valeriy Ivashchenko.⁴⁰ International human rights organisations have drawn attention to the increasing number of attacks on journalists, as well as attempts undertaken by the authorities in 2012 to introduce criminal punishments for libel, as such harsh sentences are already commonly announced in Kazakhstan. Under the pressure of mass protests, the Ukrainian parliament rejected the initiative. "The conditions for the operation of mass media have deteriorated since the election of Viktor Yanukovich. The media do not provide the public with objective information due to the influence of business magnates with different political interests, and so, the state controls national and regional television", Freedom House reported.⁴¹

On 4 April, 2013, the Prime Minister of Ukraine, Mykola Azarov, suggested the Kazakh Prime Minister, Serik Akhmetov, directly supply gas and oil from Kazakhstan to Ukraine without the mediation of Russia. The question of direct deliveries of gas and oil from Kazakhstan to Ukraine is one of the key aspects of collaboration between these countries. Due to the fierce confrontation with Russia, or the so-called 'gas wars', ensuring gas supplies without the mediation of Russia is one of the most important political and economic issues for the Ukrainian government.

The possibility of supply of Kazakh oil to Odessa oil refinery, owned by the East European Fuel and Energy Company (a company founded by Ukrainian businessman Sergei Kurchenko), is now being considered.⁴² Sergei Kurchenko's company is cooperating with Kazakhstan in the field of crude oil imports.⁴³ According to various analytical reports, Sergei Kurchenko is the 'front man' of the so-called 'Family' – President Yanukovich, his son and their proxies.^{44, 45}

In addition, for Kazakhstan, the extension of Ukraine's prospects for European integration is also important in the context of the extradition of Mukhtar Ablyazov. Thus far, Ukraine has preserved the chance to sign the Association Agreement with the EU. The fate of this agreement will be resolved, presumably, during the summit of 'Eastern Partnership' in Vilnius on 28-29 November, 2013.⁴⁶ Even in the case of a positive decision for Ukraine, the threat of Mukhtar Ablyazov's extradition to Ukraine, and then, perhaps, to Kazakhstan or Russia, remains high. The signing of the Association Agreement would formally enhance the credibility of the Ukrainian government in the eyes of the French government, which could contribute to granting the request of the General Prosecutor's Office of Ukraine to extradite the Kazakh politician.

On 15 November, 2013, Mukhtar Ablyazov's daughter, Madina Ablyazova, filed an open letter to Ukrainian President, Viktor Yanukovich, through the Ukrainian Embassy in Switzerland. In the letter she noted that ***in the case of her father's extradition, Ukraine will acquire another political prisoner***, which may seriously damage the image of the country and the process of European integration. Madina Ablyazova emphasises that the *"Kazakh regime is responsible for the false accusations,*

³⁹ <http://newsite.kazpravda.kz/print/1270678949>

⁴⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2012-0235+0+DOC+XML+V0//EN>

⁴¹ <http://www.freedomhouse.org/report/freedom-world/2013/ukraine>

⁴² http://www.ng.ru/cis/2013-04-04/1_ukraina.html

⁴³ <http://vetekgroup.com/ru/activity/Ing>

⁴⁴ <http://ukrainianweek.com/Politics/83743>

⁴⁵ <http://ukrainianweek.com/News/82343>

⁴⁶ <http://korrespondent.net/ukraine/politics/3209252-sovet-es-ne-prynial-reshenya-po-ukrayne-no-hotov-sdelat-eto-v-luiboi-moment>

*presented by Ukraine”, due to the fact that “for many years [Mukhtar Ablyazov] had been funding and supporting the political forces and the media, fostering democratic reforms in the country. He was financing and supporting them, knowing that it could cost him his life... I am fully aware that, should my father be rendered to Ukraine, a painful death would await him there. And it does not matter, whether it be Ukraine, Russia or Kazakhstan, to which you immediately re-render him”.*⁴⁷

2.3. In addition to the danger of being expelled to Kazakhstan, Mukhtar Ablyazov is also at risk of torture and ill-treatment in Ukraine.

At the end of 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concluded that “the phenomenon of ill-treatment carried out by police, remains widespread in Ukraine”.⁴⁸ In 2010, in Ukraine, up to 790 thousand people suffered from torture and other ill-treatment at the hands of law enforcement agencies⁴⁹, and **in 2011 almost a million citizens were victims of police violence.**⁵⁰ Of the 114,474 complaints filed against Ukrainian police officers in 2012, only 32 cases resulted in prosecution.⁵¹ On 23 February, 2012, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stated in his report that the majority of complaints of torture are commented on by the Ukrainian authorities with the ‘standard response’, in which they point to an absence of evidence: “In addition, in most cases, victims do not file any appeals to the authorities, as they fear retaliation by the police, or do not believe that any actions will be taken”.⁵²

On 22 May, 2013, Amnesty International reported that torture in Ukraine remains widespread and unpunished: “Flaws of the criminal justice system result in prolonged periods of pre-trial detention and violations of the rights of detainees”.⁵³ According to Ukrainian expert Maxim Shpachenko, as of 18 March, 2013, **“about 14 thousand people had been detained in Ukrainian pre-trial detention centres without conviction, of which at least 1,721 people were held for over 18 months”.** From 2005 to 2013, more than 1,350 people died in Ukrainian detention facilities (23% – from cardiovascular diseases, 21% – from lung diseases, 20% – from AIDS and HIV infection).⁵⁴

2.4. There are doubts over fairness regarding the potential legal process involving Mukhtar Ablyazov in Ukraine.

Every year, the European Court of Human Rights receives about ten thousand applications from Ukrainians.⁵⁵ According to the Global Corruption Barometer 2010/11, the Ukrainian judicial system is recognised as one of the most corrupt in the world.⁵⁶ **The Ukrainian law enforcement agencies are strongly influenced by the Kazakh BTA Bank,** although it is not a party in court proceedings in the case of extradition of Mukhtar Ablyazov and his colleagues. According to media reports, on 31 October, 2013, Westminster Court prohibited Ukraine from extraditing Igor Kononko, who, according

⁴⁷ <https://www.facebook.com/notes/мухтар-аблязов/обращение-дочери-мухтара-аблязова-к-президенту-украины/371227039678529>

⁴⁸ <http://www.cpt.coe.int/documents/ukr/2012-30-inf-eng.htm>

⁴⁹ <http://www.amnesty.org/fr/library/asset/EUR50/009/2011/en/79cc46b7-6cbf-4aef-acd6-1a7faba95a13/eur500092011ru.pdf>

⁵⁰ <http://helsinki.org.ua/index.php?id=1324302032>

⁵¹ http://www.bbc.co.uk/ukrainian/news/2013/04/130411_police_torture_ukraine_amnesty_international_sd.shtml

⁵² <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2075485&SecMode=1&DocId=1883332&Usage=2>

⁵³ <http://www.amnestyusa.org/research/reports/state-of-the-world-2013>

⁵⁴ <http://gazeta.zn.ua/LAW/ukrainskie-konclagerya-.html>

⁵⁵ <http://www.kyivpost.ua/ukraine/article/suddya-yevropejskogo-sudu-spravi-z-ukrayini-vrazhayut-svoyeyu-serednovichnoyu-zhorstokisty-22078.html>

⁵⁶ <http://gcb.transparency.org/gcb201011/infographic/>

to the Ukrainian Prosecutor's Office, was one of the members of Mukhtar Ablyazov's OCG. **In Westminster Court, the interests of the Ukrainian Prosecutor's Office were represented by the law firm 'Ilyashev & Partners', a firm which simultaneously represented the interests of Kazakhstan's BTA Bank in Ukraine.** Director of the law firm 'Ilyashev & Partners', Irina Mayorova, informed Westminster Court that it was BTA Bank (Kazakhstan), who were paying for the legal services, provided to the Prosecutor of Ukraine in the extradition trial of Igor Kononko, including the experts.⁵⁷ Earlier, on 11 September, 2010, Roman Marchenko, a partner in the law firm 'Ilyashev & Partners', informed the head office of BTA Bank as follows: *"I am delighted to report that we have rendered assistance with our investigations, prompting an advancement in the case involving M. Ablyazov... The main fact having been established is that the organised criminal group, consisting of Ablyazov, Zharimbetov and others did exist"*.

The evidence in the criminal case against Mukhtar Ablyazov in Ukraine was uncovered by unidentified persons in Kiev, and the examination of the evidence was carried out by Kazakh prosecutors.⁵⁸ **Ukrainian prosecutors demonstrate great interest in the extradition of Mukhtar Ablyazov, despite the fact that the party affected in the criminal case is not Ukraine, but the Kazakh BTA Bank.** According to Art. 576 of the Criminal Procedure Code of Ukraine, the state, which takes the decision to extradite a person to Ukraine, may express certain limitations (such as the inadmissibility of transferring the extradited person from Ukraine to a third state). Such limitations are mandatory for Ukrainian law enforcement agencies. **However, the guarantee of the General Prosecutor's Office of Ukraine concerning the rights of Mukhtar Ablyazov during his possible detention in Ukraine, are inadmissible in view of the possible custom nature of the case and the deterioration of the human rights situation of detainees in Ukraine.**

According to the former Kazakh political prisoner, Sergei Duvanov, the extradition of Mukhtar Ablyazov and his associates will disappoint and strike a blow to the civil society of Kazakhstan, as it will point to the presence of double standards in the European policy in the field of human rights: *"Rendering a person from the opposition is tantamount to rendering assistance to an authoritarian regime in its hunt for the political opposition. And this is not right, and it obviously contravenes European standards... By rendering Pavlov, and subsequently Ablyazov, Europe, with its own hands, will largely contribute to the mopping-up of the democratic opposition, conducted by Nazarbayev's regime in the Kazakh political field"*.⁵⁹

Appeals to the French authorities to ensure a fair trial in the case of Mukhtar Ablyazov's extradition and not to extradite him to Kazakhstan or another country, which may transfer him to his homeland, were also made by Human Right Watch⁶⁰, the International Federation for Human Rights, Human Rights League of France and Kazakhstan International Bureau for Human Rights and Rule of Law.⁶¹ On 1 August, 2013, Viola von Cramon, spokesperson on foreign relations of the EU, said: *"The charges pertaining to economic crimes, brought against oligarch Mukhtar Ablyazov, are almost inseparable from the political persecution of the opposition politician, just like in Khodorkovsky's case in Russia (...). **The Federal Government should openly address this issue and make it clear to the French partner that the expulsion of Ablyazov is a threat to the European reputation**"*.⁶²

⁵⁷ <http://www.theinsider.com.ua/politics/5277534058cbe/>

⁵⁸ http://odfoundation.eu/en/publications/1429/tatyana_paraskevich_case_former_colleague_of_opposition_politician_mukhtar_ablyazov_seeks_political_asylum_in_the_czech_republic

⁵⁹ <http://www.respublika-kz.info/news/politics/33891/>

⁶⁰ <http://www.hrw.org/news/2013/08/08/france-protect-critic-kazakhstan-government>

⁶¹ <http://www.fidh.org/ru/vostochnaya-evropa-i-central-naya-aziya/Kazakhstan/kazakhstan-otkrytoe-pis-mo-vlastyam-francii-po-povodu-vozmozhnoj-13911>

⁶² http://www.gruene-bundestag.de/presse/pressemitteilungen_ID_2000147/2013/juli/eu-staaten-duerfen-sich-nicht-an-kasachischer-jagd-auf-oppositionspolitiker-beteiligen_ID_4389629.html

On 15 October, 2013, Members of the European Parliament, Nicole Kiil-Nielsen, Niccolo Rinaldi and Graham Watson, in a written question to the High Representative Catherine Ashton, highlighted the need to notify the EU member states about the political context of the persecution of Mukhtar Ablyazov, his wife Alma Shalabayeva, and colleagues Tatiana Paraskevich and Alexander Pavlov by the Kazakh authorities. **MEPs drew attention to the fact that Ukraine, Russia and Kazakhstan were using the Interpol's system to arrest these people.** The European politicians stressed: "Mr Ablyazov, already imprisoned once in Kazakhstan, is an outspoken critic of the current regime. If he is extradited to Ukraine, he is at risk of being handed over to Kazakhstan, where he could face torture and ill-treatment".⁶³

On 16 November, 2013, the all-Ukrainian association for human rights, public organisations 'Ukrainian Helsinki Human Rights Union' and the "No Borders" project of the NGO 'Centre for Social Action' also expressed their concern over the possible extradition of Mukhtar Ablyazov. In their open letter to the French authorities, the organisations stated that, given the close cooperation of Ukraine with Russia and Kazakhstan, as well as the overall situation in Ukraine, there are sufficient grounds to fear that "should Mr. Ablyazov be extradited to Ukraine, he would be subsequently transferred to third countries, and, ultimately, he will find himself in Kazakhstan".⁶⁴ Ukrainian human rights activists point to the fact that the national legislation of Ukraine does not provide for mechanisms for monitoring of the implementation of the guarantees that the General Prosecutor's Office of Ukraine has given to the French government, and that these guarantees cannot be considered reliable "in the overall atmosphere of corruption, tyranny and lawlessness prevailing in all spheres of government activities".

Ukrainian human rights activists also note that they are **"not familiar with other similar examples, of Ukraine demanding the extradition of a foreign national who had never lived in the country and had never caused harm to any of its citizens. In addition, the legal basis for instituting criminal proceedings was a statement made by an enterprise with foreign capital, which had quite recently been owned by Mr. Ablyazov himself"**.⁶⁵

In the case of Mukhtar Ablyazov's extradition to Ukraine, Russia or Kazakhstan, a number of international legal instruments of human rights protection will be violated:

- Art. 3 of the European Convention on Extradition, which prohibits extradition on politically motivated charges;
- Art. 3 of the UN Convention Against Torture, which prohibits expulsion, return or extradition of a person to another state, where there are substantial grounds for believing that he or she might be in danger of being subjected to torture;
- Art. 33 of the UN Convention Relating to the Status of Refugees, which provides protection against expulsion, if a person might be prosecuted due to his or her political beliefs.

The political struggle against the opponent of the regime of President Nursultan Nazarbayev has turned into persecution of civil and political activists, their families and loved ones, both in Kazakhstan and abroad. The Open Dialog Foundation supports the statements of international human rights organisations and representatives of the European Parliament on the inadmissibility of Mukhtar Ablyazov's extradition from Europe. The Open Dialog Foundation wishes not to comment on the validity of the charges against Mukhtar Ablyazov and his partners. However, there is every reason to assert that there are political overtones surrounding the cases in the context of

⁶³ http://odfoundation.eu/files/pdf/15.10.2013_WQ_Ashton_Persecution_Kz_opposition_Kiil-Nielsen,%20Rinaldi,%20Watson%20MEPs_EN.pdf

⁶⁴ <http://helsinki.org.ua/index.php?id=1384599790>

⁶⁵ <http://helsinki.org.ua/index.php?id=1384778785>

the struggle between the Kazakh authorities and opposition figures and dissidents. Therefore, all the charges faced by Mukhtar Ablyazov and his associates must be investigated in Europe in accordance with international fair trial standards. At the same time, the French government and the court must take into account the feasibility of the 'guarantees' provided by the General Prosecutor's Office of Ukraine, which, according to national legislation, shall not be held responsible for their potential violation. In addition, the socio-political situation in the country, as well as numerous instances of torture and persecution of dissidents, constitute a flagrant disregard for the very principles which the guarantees were supposedly made in order to uphold.

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