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вам человека Републике Казахстан



REPORT

**on the results of the visit of an international
human rights monitoring mission
to the Republic of Kazakhstan
23-26 August 2018**

**Claude Béglé, Carlo Sommaruga, members of the Swiss Parliament,
representatives of the Foreign Affairs Committee
Antonio Stango, the President of the Italian Federation for Human Rights
Patrick Chuard, journalist with the Tribune de Genève**

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1. Executive summary

From 23 through 26 August 2018, an international human rights compliance monitoring mission implemented a visit to the Republic of Kazakhstan, in particular to the city of Astana and the city of Pavlodar. The mission included President of the Italian Federation for Human Rights Antonio Stango and members of the Swiss Parliament Claude Bégli and Carlo Sommaruga, as well as a journalist with the Swiss publication *Tribune de Genève*, Patrick Chuard.

Upon the invitation of Kazakhstan human rights advocates, the Mission implemented the visit with the objective of monitoring compliance by Kazakhstan's authorities with their international obligations with respect to the protection of human rights and rule of law. The given circumstances are documented in treaties ratified by the Republic of Kazakhstan, in particular in the International Covenant on Civil and Political Rights, the UN Convention Against Torture, and the Enhanced Partnership and Cooperation Agreement with the European Union, as well as obligations within the framework of the OSCE in the realm of the human dimension.

Kazakhstan is a large exporter of gas and oil to Switzerland and Europe. Kazakhstan's authorities are interested in strengthening economic cooperation with the EU and Switzerland, included in attracting additional investments. In connection with this, Kazakhstan is trying to create a positive image for itself in the international arena, demonstrating adherence to the values of democracy and rule of law. However, unfortunately, as for the moment this adherence remains mostly at the level of rhetoric.

The Soviet legacy can be discerned in the work of Kazakhstan's state institutions. President Nursultan Nazarbayev has been ruling the country singlehandedly over a span of 27 years already. Human rights organizations characterize the Kazakhstan regime as authoritarian. In their reports, human rights advocates cite facts of politically motivated criminal prosecutions for civic and journalistic activity, for participation in peaceful rallies, and for criticizing the authorities in posts and commentaries in social networks. The problem of political prisoners and of the broad use of torture in places of deprivation of liberty in Kazakhstan is acute.

The absence of the rule of law leads to arbitrariness of the state at all levels, in particular in law enforcement, judicial, and penitentiary systems. In such situation the state puts itself above the law, and violations made by state bodies remain unpunished.

Developing a market economy and wishing to strengthen relations with Western countries, Kazakhstan's authorities apparently understand the necessity of introducing real reforms in the sphere of justice, freedom of assembly, freedom of association, and freedom of speech. We express the hope that the completed observation Mission and the given report will strengthen the dialogue with Kazakhstan with respect to the question of human rights, which will contribute to the sustainable development of the country.

In contravention of the recommendations of the EU, the UNO, and the OSCE, Kazakhstan's authorities have adopted a new Criminal Code in which are such politicized and vague charges as "incitement of social discord", "defamation", dissemination of knowingly false information", "interference in the activities of state bodies", "violation of the order of organizing and conducting peaceful assemblies", "inducing to participate in a strike recognized by a court as illegal", and "rendering of information, financial services to a criminal group". These articles are used for the criminal prosecution of civic activists, human rights advocates, and journalists.

According to the report of the UN Special Rapporteur on Freedom of Peaceful Assembly, the right to peaceful assemblies in Kazakhstan is so restricted that this right loses all meaning.¹ In the year 2016, more than 1000 participants in peaceful protests against changes in the Land Code were detained. Afterwards, more than 30 persons were arrested, while the activist Maks Bokayev was sentenced to a prison term. He continues to be in prison, despite the demands of the UN Working

¹ <http://freeassembly.net/reports/kazakhstan/>

Group on Arbitrary Detention about his release.

Mass detentions of peaceful protesters took place in the current year 2018 as well. Even on the day of the arrival in Kazakhstan of a European Parliament delegation headed by Iveta Grigule, 10 May 2018, Kazakhstan's authorities detained around 200 persons, who had come out to a peaceful protest against the use of torture.²

Human rights organizations point to the fact that the activists Aron Atabek, Makhambet Abzhan, and Sanat Bukenov were confined in prison for their civic activity. In recent years, there are practically no independent mass information media left in Kazakhstan, while those few that do continue to function at a local level are being subjected to persecution, for example the *Uralskaya nedelya* newspaper³. A prison term for his journalistic activity is being served by the editor of the *Versiya* newspaper, Yaroslav Golyshkin⁴.

On 13 March 2018, a Kazakhstan court banned the opposition movement Democratic Choice of Kazakhstan (DCK), having recognized it as "extremist". The court substantiated its decision by saying that the DCK is "inciting social discord", "inducing protest sentiments", and "forming a negative image of the authorities". The procurator-general declared that criminal liability looms for any expression of support for the DCK.

Broad publicity was received by the cases of Muratbek Tungishbayev, Aset Abishev, Almat Zhumagulov, and Kenzhebek Abishev, who are under arrest on charges of supporting the DCK. Alovas Dzhumayev was sentenced to 3 years in prison on these charges in September 2018. His spouse Aygul Akberdiyeva, a housewife and the mother of four minor children, is likewise named in this case. The charges against her have been sent to the court; she faces up to 10 years in prison. In Akberdiyeva's words, an investigator threatened to put her in prison, and to send the children to an orphanage.⁵ Yet another activist, Aset Nurzhaubay, read out a "statement of repentance", after which he received a suspended sentence.

The reports of human rights organizations, as well as the results of our meetings confirm that ill-treatment in Kazakhstan's prisons and detention facilities has a systemic character. Unfortunately, violence is an everyday phenomenon in places of deprivation of liberty in Kazakhstan. Both politically prosecuted persons and other inmates become victims of torture. Subjected to torture and cruel treatment with the aim of obtaining false testimony against DCK leader Mukhtar Ablyazov were Iskander Yerimbetov,⁶ Aset Nurzhaubay, Mukhtar Dzhakishev,⁷ Kenzhebek Abishev, Muratkhon Tokmadi,⁸ and many others.

In Kazakhstan's prisons and detention facilities, the prisoners are not afforded the proper medical care, which likewise is a variety of torture. Not long before the Mission's visit to Kazakhstan, it became known that Mukhtar Dzhakishev's state of health had significantly deteriorated and that his life is in danger, as well as that Muratbek Tungishbayev had lost his sight.⁹

The members of the Mission express deep regret in connection with the fact that the authorities did not allow us to meet in places of deprivation of liberty with Iskander Yerimbetov, Aset Nurzhaubay, Almat Zhumagulov, Kenzhebek Abishev, Mukhtar Dzhakishev, and Aron Atabek. Human Rights organizations have recognized them as political prisoners and have cited facts about how these persons had been subjected to torture and cruel treatment, and are likewise experiencing problems with health.

The method of punitive psychiatry has been used against the activists Natalia Ulasik and Ardak

² <https://rus.azattyq.org/a/kazakhstan-astana-almaty-protests-political-prisoners/29219523.html>

³ https://www.facebook.com/tamara.eslamova1/posts/1923392671037710?_tn_=-H-R

⁴ <http://tired.info/dir/353/yaroslav-golyshkin/>

⁵ https://www.facebook.com/aigul.kazakhstan.1/posts/162616671303468?_tn_=-R

⁶ <https://www.hrw.org/news/2018/02/16/kazakhstan-businessman-alleges-torture>

⁷ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f115%2fd%2f2304%2f2013&Lang=en

⁸ <https://en.odfoundation.eu/a/8275,the-report-the-case-of-muratkhon-tokmadi>

⁹ <https://www.amnesty.org/en/documents/eur57/8987/2018/en/>

Ashim.¹⁰

The human rights advocate Elena Semenova and the activist Maygul Sadykova are being subjected to persecution and obstructions to their human rights activity. We express alarm in connection with the fact that in September and October 2018, Kazakhstan's authorities in some occasions refused exit from the country to Maygul Sadykova and Elena Semenova, not allowing them to go to the EU for meetings with members of the Europarliament and the PACE. Mission member Claude Béglé made an inquiry with respect to Sadykova's case, and we are thankful to Kazakhstan's authorities for the fact that her situation was resolved positively and she was later able to exit the country. We express the hope that Elena Semenova will likewise get such an opportunity, and that from now on the practice of prohibiting activists from leaving Kazakhstan for the conducting of human rights meetings will not be used.

2. Organisational issues

The Mission was invited to the Republic of Kazakhstan by Director of the Kazakhstan International Bureau for Human Rights and Rule of Law Yevgeniy Zhovtis and Head of the Kazakhstani human rights organization "Ar-Rukh-Hak" Bakhytzhana Toregozhina. The Kazakhstan human rights advocates had asked the Mission to implement a monitoring visit with the objective of assessing the situation with human rights, as well as having brought our attention to facts of prosecutions which, according to the human rights advocates' conclusions, are politically motivated¹¹. The financial expenditures connected with the conducting of the Mission were covered by the Italian Federation for Human Rights.

The Mission participants express gratitude to the Kazakhstan International Bureau for Human Rights and Rule of Law, the human rights organization Ar-Rukh-Hak, and the Italian Federation for Human Rights for the assistance rendered in organizational and logistical questions. We count on further cooperation, inasmuch as such missions allow the international public to be furnished with information about human rights in Kazakhstan. This in its turn promotes the greater openness of the Kazakhstan authorities and their readiness for dialogue.

Likewise, the Mission expresses its thankfulness to Kazakhstan's authorities, communication with which preceded the visit. With the assistance of the MFA of Kazakhstan, the members of the Mission conducted a series of meetings with representatives of the official authorities in Astana: Human Rights Commissioner in the RK Askar Shakirov, deputy Minister of Foreign Affairs Roman Vasilenko, head of the Investigative Department of the National Bureau for Counteracting Corruption Sergey Perov, Chairman of the Committee of the Criminal-Execution System of the MIA of the RK Azamat Bazylbekov, and deputy chairman of the Committee of the Criminal-Execution System of the MIA of the RK Meyram Ayubayev, as well as with a representative of the Procuracy-General of the RK Olesya Keksel.

At the same time, the Mission participants express regret in connection with the denial of a visit to the arrestee Iskander Yerimbetov. Substantiating the given denial, representative of the Ministry of Justice Maksat Bereketov made reference to the fact that international delegations had already come to the prisoner before, and that his case is at the stage of trial. However, the given substantiation is not convincing and goes contrary to Kazakhstan's international obligations.

Likewise the Mission sent out requests for meetings in places of confinement with Aset Nurzhaubay, Almat Zhumagulov, Kenzhebek Abishev, Mukhtar Dzhakishev, and Aron Atabek; however, an answer was not given. For this reason, the authorities did not provide us with the opportunity to check first-hand the information about torture and improper treatment in relation to these prisoners.

¹⁰ <https://en.odfoundation.eu/a/8625.report-the-list-of-kazakhstani-political-prisoners-and-other-victims-of-politically-motivated-prosecution-updated>

¹¹ http://tirik.info/dir/wpbdp_category/list01/

3. Meetings with representatives of the official authorities of Kazakhstan

On 24 August 2018 in Astana, the Mission participants conducted a series of meetings with representatives of the official authorities of the Republic of Kazakhstan. During the time of each of the meetings, concern was voiced by the Mission participants about the current situation with the observance of human rights in Kazakhstan. Members of the Mission expressed the hope that Kazakhstan will carry out the obligations taken upon itself within the framework of ratified international agreements.

The Mission posed to Human Rights Commissioner (also known as the Ombudsman) Askar Shakirov several questions with respect to several instances of prosecutions that human rights advocates assess as politically motivated. Mister Shakirov repeated the official position of the authorities with respect to the given cases, having attested that each instance touched upon “has real criminal foundations under it”. Likewise, he reported that human rights are being respected in Kazakhstan, while all complaints by citizens, included among else complaints of torture, are meticulously investigated.

“There are also some signs of cruelty present, but we can prosecute them with judicial orders only having real evidence of the use of torture”, reported the Ombudsman. However, the example of the human rights advocate **Elena Semenova** says otherwise. Semenova submitted dozens of complaints by prisoners about torture, but the authorities had dismissed the complaints due to an “absence of corroborations” of the alleged facts. In July 2018 in Strasbourg, Elena Semenova recounted about the mass character of torture in Kazakhstan and the impunity for its use. Based on the facts of Semenova’s utterances in the Europarliament, criminal charges of “dissemination of knowingly false information” were brought against her. At interrogations, investigators were asking Semenova with whom of the Europarliament members she had been meeting and whether she consider that her appearances had “brought political harm to the country”.

That being said, Ombudsman Askar Shakirov denied the political character of the prosecution of the human rights advocate Semenova, asserting that she is not being prosecuted for her activity and can freely travel throughout Kazakhstan. However, after some time, on 8 October 2018, Semenova was not let go out of Kazakhstan for a meeting with PACE members. The actions by the authorities contradict their initial affirmations.

On the whole, the meeting with the Ombudsman gives grounds for assuming that he has limited influence on the situation with violations of human rights in Kazakhstan.

During the time of the meeting with the Mission participants, Deputy Minister of Foreign Affairs Roman Vasilenko recounted about the development of human rights in Kazakhstan and its “movement in the direction of developed countries”. Mister Vasilenko likewise adhered to the official explanation of the authorities with regard to an absence of political motives in the criminal prosecutions and arrests of representatives of civil society.

At the meeting with head of the Investigative Department of the National Bureau for Counteracting Corruption Sergey Perov, Chairman of the Committee of the Criminal-Execution System of the Ministry of Internal Affairs (MIA) Azamat Bazylbekov, and deputy chairman of the Committee of the Criminal-Execution System of the MIA Meyram Ayubaev, questions of the use of torture in Kazakhstan prisons and detention facilities were likewise raised. Azamat Bazylbekov reported that arrestees “harm themselves, in order to accuse workers of the penitentiary system” of beatings and torture. He likewise added that torture in the prisons of Kazakhstan is “ruled out”, because all places of deprivation of liberty are equipped with video surveillance cameras.

A representative of the Procuracy-General, Olesya Keksel declared at a meeting with Mission participants that DCK activists had been “warned” by the police about how the DCK had been recognized by a court as an “extremist organization” and that further participation in the organization, which “spreads hate, intolerance, and social discord among people”, threatens criminal liability. She asserted that *“only an extremist organization can pursue the objective of*

upsetting the prevailing political and constitutional order”.

The Mission members underscore that the existence of a political opposition, pluralism of opinions, and criticism of the power are indispensable factors in the development of a society and a state. The given actions cannot be called “extremism” and become a basis for criminal prosecution. In such a manner Kazakhstan is weakening its international position as a state that has ratified the International Covenant on Civil and Political Rights and the Enhanced Partnership Agreement with the EU, as well as the obligations within the framework of the OSCE in the realm of the human dimension.

4. Meetings with victims of torture and their relatives

On 23 August 2018, in the city of Pavlodar, the Mission participants met with relatives of convicts from different cities, who, according to testimonies available, had been subjected to torture in prisons. Likewise present at the meeting were two former prisoners. The meeting was organized by the human rights advocate Elena Semenova. Those present recounted about the wrongful actions of employees of the penitentiary system in relation to them and to their kindred sojourning in confinement. The majority of those present were recounting about strict regime prison OV-156/6 in the settlement of Polovinka of East Kazakhstan Oblast (region).

One of the former prisoners, Vladimir Akimbetov, is now forced to move about on crutches and may soon lose a leg because of systemic torture in prison: *“The prison regime — this is endless hitting, a prohibition on looking overseers in the eye, a prohibition on using the toilet, and engaging in physical exercise in the cold”*, recounted Vladimir. *“I was left for six months without medical care; then they put me in the isolator, because I didn’t want to be a ‘stool pigeon’. They beat me so much on the legs that I lost consciousness and ended up in a military hospital. I could no longer walk. There were witnesses to this, but they forced them to keep silent. My complaint did not lead to anything.”*

On 25 August 2018 in Astana, meetings took place with Gayni Yerimbetova – the mother and civic defender of the arrestee Iskander Yerimbetov, and with Merey Kaliyeva – the wife and civic defender of the arrestee Muratbek Tungishbayev, as well as with the human rights advocate Bakhytzhan Toregozhina. The participants in the meetings recounted about the torture used in detention facilities, including in the form of a refusal to furnish medical care. On that same day took place a meeting with civil society activists Vadim Akinfeyev and Zhaslan Suleymenov, who reported that they had been subjected to torture and humiliation in Kazakhstan places of confinement.

On 28 August 2018, the Mission participants conducted meetings in Astana with Ruslan Orzoyev, whose brother had been tormented to death in a prison adjacent to the city of Karaganda; a representative of the Public Monitoring Commission in Kostanay Oblast, who recounted about egregious violations of human rights in his region; Yana P., the wife of a DCK activist who had been detained by police employees in Kostanay on 23 June at a rally, after which they had beaten and threatened him for a long time; Arman Alakayev, who recounted about the criminal prosecution in relation to him on charges of supporting the DCK; and an Astana lawyer who is being persecuted for supporting the DCK.

Besides that, it is worth noting that during the time of the meetings with representatives of civil society and torture victims, the Mission participants noticed surveillance, which was presumably being conducted by employees of the special services.

5. Cases of individual political prisoners

5.1. The case of Iskander Yerimbetov

The entrepreneur Iskander Yerimbetov, together with three employees of the “Sky Service” company (in which he was an investor), was detained on 13 November 2017. Charges of “money laundering” (pt. 3 art. 193 CC) of funds supposedly stolen by Mukhtar Ablyazov were brought against him. However, after 4 months had passed since the detaining, completely different charges, not connected with the Ablyazov case, were brought against Yerimbetov and the other figurants in the case. On 1st March 2018, a criminal case was initiated against Yerimbetov on a charge of “fraud” (art. 177 of the Criminal Code of Kazakhstan in the old revision). In three days, the investigators reported about the “conclusion of the inquest” with respect to this case.

The trial in the “fraud” case began on 14 June 2018 in the Medeu district court of Almaty. In the bill of indictment it is said that the Yerimbetov’s “Sky Service” company had “unjustifiably set prices” for the rendering of its services “too high” by 6-10% to companies with the participation of state capital. It became known to the Mission that the given charge is not legally substantiated, because in Kazakhstan there is no law that regulates the amount of the prices for rendering helicopter services (it is in the rendering of this type of services that the “Sky Service” company is engaged).

During the time of the court trial, representatives of the injured-party companies declared that they did not have claims against Iskander Yerimbetov’s company during the time of association, and that it had been the investigative bodies that had let them know about the harm inflicted.

In the course of the conducting of the investigation, Yerimbetov had been declaring on numerous occasions that officers had been torturing him: they had been beating, intimidating, and strangling him, forcing him to incriminate himself and demanding that he influence his sister, the political refugee Botagoz Jardemalie, so that she would return to Kazakhstan and give testimony against Mukhtar Ablyazov necessary to the investigation.¹² Besides this, Iskander Yerimbetov was being summoned for interrogations by employees of the National Security Committee (KNB), which took place in the absence of a lawyer. The Mission expresses disappointment with the fact that the authorities of Kazakhstan closed the criminal case with respect to torture in relation to Yerimbetov, despite the conclusions of independent human rights organizations, which had confirmed facts of torture. Likewise the Mission considers that the demands of the investigators that Yerimbetov “influence” his sister are unlawful and must be investigated.

Iskander Yerimbetov has been held in a SIZO (detention facility; a pre-trial detention prison) in connection with the case of “money laundering”. A measure of restraint was not selected in judicial order in the case of “fraud”. The last time the measure of restraint in connection with the case of “money laundering” was extended on 5 May 2018 by 1 month – to 13 June 2018. In such a manner, since June 2018 he has been under guard without a court decision about the selection of a measure of restraint.

After the Mission, we learned that the last hearings in Iskander Yerimbetov's case were held in a very short time. On 19 October 2018, the hearing lasted 15 hours — until 1:30 A.M. without presence of Yerimbetov's lawyers and almost without breaks. The judge did not take into account the fact that Iskander Yerimbetov and Vasilina Sokolenko were ill (Yerimbetov had a cold, and Sokolenko had high blood pressure). On 22 October 2018, the judge organized pleadings and passed the sentence on the same day. According to the video recording of the hearing, the judge interrupted the speakers and did not let them finish their speeches. On this day, Iskander Yerimbetov was sentenced to 7 years in prison.

The Mission brings attention to the fact that during the time of the court trial, key prosecution

¹² Yerimbetov’s sister, the well-known human rights advocate and critic of Kazakhstan’s authorities Botagoz Jardemalie, had worked as a lawyer for Mukhtar Ablyazov. She currently resides in Belgium, where she has received political asylum.

witnesses had declared that pressure had been exerted on them by investigators. At the trial, the defendants Vasilina Sokolenko and Dmitry Pestov recanted their “confessionary testimonies”, which they had been compelled to give under pressure. The court sentenced Sokolenko and Pestov to four and a half years in prison. Mikhail Zorov, who supports the investigation’s position and refused to answer questions in court, was sentenced to 3 years of probation.

The Mission members consider that the case of Iskander Yerimbetov is an alarm signal not only for Kazakhstan’s business, but for foreign investors as well. The businessman had been subjected to torture, after which he was charged with “unjustifiably setting prices too high”, even though his company was selling services at open tenders. In the trial, the investigators declared that the profit obtained by the company is “theft”. This precedent confirms that in the event that political loyalty is lost, investors may be subjected to prosecution in Kazakhstan and will not be able to count on a fair trial.

5.2. The case of Muratbek Tungishbayev

Opposition blogger and journalist Muratbek Tungishbayev had been covering the events in Zhanaozen (where, in December 2011, at least 14 protestors were killed by police), because of which he was forced to flee Kazakhstan. In recent times, he had been residing in Kyrgyzstan. On 26 June 2018, Tungishbayev was extradited from Kyrgyzstan at the request of Kazakhstan’s authorities. Human rights advocates pointed to the fact that the extradition had been implemented with gross violations. Tungishbayev had not been given the opportunity to submit a notice of appeal of the decision about the extradition. Besides that, in this period, his procedure of obtaining the status of a refugee had not yet been finished. Lawyers and relatives were not informed about the extradition.

Kazakhstan’s authorities are charging Muratbek Tungishbayev with supporting the DCK, and specifically of “participation in the activity of an organization after its recognition as extremist” (pt. 2 art. 405 CC) and “rendering of information services to a criminal group” (pt. 1 art. 266 CC). Kazakhstan’s authorities thereby grossly violated extradition guarantees, given that Kyrgyzstan had sanctioned Tungishbayev’s extradition only under art. 405 CC.

Earlier, before the arrest, Tungishbayev had undergone an eye operation. In the SIZO, Muratbek Tungishbayev began to lose his sight. By the moment of the Mission’s visit to Kazakhstan, the state of Tungishbayev’s health had seriously deteriorated; doctors were talking about the necessity for the prisoner’s immediate hospitalization. His spouse reported that Tungishbayev had gone blind in the left eye. The question of medical treatment for Muratbek Tungishbayev was raised during the time of the meeting with Human Rights Commissioner Askar Shakirov on 24 August 2018. The Ombudsman promised that Tungishbayev would be sent to the Institute of Eye Diseases for an operation. On that same evening, Murat Tungishbayev was operated on in Almaty. However, after the operation, they drove him right back to the SIZO, which does not have the proper conditions for post-operative recovery.

5.3. The case of Aset Nurzhaubay

Aset Nurzhaubay was arrested in April 2018 after a poster with the inscription «Alga DVK» («Forward DCK») was found in his house. The investigation imputed “participation in DCK groups in social networks” and “calls for protest actions” to him. Charges of “storage and dissemination of the property of a criminal group, rendering of information services to a criminal group” (art. 266 pt. 1 CC RK) and “participation in the activity of an organization after its recognition as extremist” (art. 405 pt. 2 CC) were brought against him. Later, an additional charge of “fraud” (art. 190 pt. 1 CC RK) was brought against him.

Aset Nurzhaubay declared that he had been subjected to torture on 28 July 2018 in the SIZO. Likewise, in the courtroom, Mr. Nurzhaubay declared that investigator Baurzhan Bakytuly had been

forcing him to sign confessional testimony; otherwise he promised to put his mother in jail. As a sign of protest, Nurzhaubay performed an attempted suicide, having cut his veins.

The Mission expresses regret in connection with the fact that, on 18 September 2018, the police did not allow Nurzhaubay's mother Galiya Ospanova to attend a meeting with members of a Europarlament delegation. The police tried to detain Ospanova with the use of force.¹³ In its statement, the Europarlament's delegation expressed particular concern with the given fact.¹⁴

As became known, on 2 October 2018, Aset Nurzhaubay read out a statement "on repentance" in the courtroom, in which he renounced his previous testimony and fully admitted guilt. Nurzhaubay, in particular, read such words: "*in Kazakhstan there is no one prosecuted for political motives. Everyone bears punishment for committed acts*". A few days earlier, Nurzhaubay's mother Galiya Ospanova likewise declared that she "does not have claims" against the law enforcement bodies. The existing facts, as well as the practice of obtaining evidence on the part of the law-enforcement bodies of Kazakhstan confirm the Mission members' apprehensions that Nurzhaubay's and Ospanova's testimonies may have become the result of pressure exerted on them.

The procurator had been asking 6 years in prison for Nurzhaubay, but after the "repentance", the court sentenced him to a term of 4 years suspended.

5.4. The case of Almat Zhumagulov and Kenzhebek Abishev

The activist Almat Zhumagulov and the poet Kenzhebek Abishev are being charged with "public calls for the commission of an act of terrorism" (art. 256 pt. 2 CC RK). Almat Zhumagulov is additionally being charged with "inflaming nationality discord" (art. 174 pt. 1 CC RK).

Zhumagulov and Abishev are being charged with "disseminating leaflets in support of the programs of the DCK" with the aim of "creating a social-psychological atmosphere of social unease". Almat Zhumagulov is a DCK supporter. Kenzhebek Abishev denies having anything whatsoever to do with the DCK.

Besides that, Zhumagulov and Abishev have been charged with preparing a video appeal with calls for *jihad*. The main physical evidence in this case is a video clip, but neither Zhumagulov nor Abishev are in this video.

Since November 2017, they are being restrained in a SIZO. They had declared that in the SIZO, the investigators had been demanding that they sign accusatory testimony, threatening reprisals against members of their family. Likewise, the accused are complaining of a deterioration of their health in the SIZO. Abishev suffers from ischemia, but is being denied hospitalization.

As of the present moment, the Almaly district court of the city of Almaty is examining their case. The defendants are complaining that in the SIZO they are not being given sufficient food, while during the time of the trial the convoyers (prisoner transport guards) are prohibiting them from getting food from family members. Likewise, they have declared to the court about cruel treatment on the part of the convoyers during the time of delivery from the SIZO.

5.5. The case of Mukhtar Dzhakishev

Former head of the state company «Kazatomprom» Mukhtar Dzhakishev is serving a 14-year punishment in a strict regime colony in the city of Semey of East Kazakhstan Oblast, to which he had been transferred not long before the start of the Mission.¹⁵ He had been charged with "misappropriation of entrusted property" (art. 176 CC RK), "receiving a bribe" (art. 311 CC RK), and "fraud" (art. 177 CC RK). Dzhakishev has been in detention since 21 May 2009. He is a close friend

¹³ <https://twitter.com/AnaGomesMEP/status/1042032224399511552>

¹⁴ [http://www.europarl.europa.eu/cmsdata/153280/5-draft%20press%20statement%20KAZ%20\(1\).pdf](http://www.europarl.europa.eu/cmsdata/153280/5-draft%20press%20statement%20KAZ%20(1).pdf)

¹⁵ <https://rus.azattyq.org/a/kazakhstan-khozheniye-po-tuyrmam-mukhtara-dzhakisheva/29420058.html>

of the opposition politician Mukhtar Ablyazov. Kazakhstan human rights advocates have recognized Dzhakishev as a political prisoner.

Lawyers and human rights advocates underscore that Mukhtar Dzhakishev is at risk for heart attack and stroke. Medical examinations have documented impairments of his brain function.

Human rights advocates underscore that Dzhakishev is not receiving the proper medical care in the prison, and the authorities are not permitting him to be hospitalized in a private clinic. In June 2018, in prison, Dzhakishev was conferred disability status. Dzhakishev's lawyer notes that, taking the complexity of the illnesses into account, the conditions do not exist in Kazakhstan for Dzhakishev's effective treatment.

Not long before the start of the Mission, it became known that Dzhakishev was already no longer able to move about on his own. In September 2018, it became known that Dzhakishev's mother had died. Despite the requests of lawyers, Dzhakishev was not let out to say his farewells to his mother.

The Mission expresses regret that its participants were not allowed into the colony where Mukhtar Dzhakishev is being held. Before this, in March and June 2018, the authorities had likewise denied other observational missions the opportunity to visit Dzhakishev.

In December 2015, the Human Rights Committee of the UN had demanded that the sentence be overturned and Dzhakishev released, but Kazakhstan's authorities are not carrying out this decision.

6. Recommendations

For Kazakhstan's authorities:

- 1) To ensure proper implementation of the principle of the rule of law. To combat arbitrariness of state bodies at all levels, in particular in law enforcement, judicial, and penitentiary systems.
- 2) To cease the use of torture in prisons and detention facilities, to investigate in a proper manner all claims of torture and to ensure the liability of those guilty of the use of torture; to reconsider all criminal cases in which testimony was obtained in consequence of torture. The practice of torture, which has a systemic character, worsens Kazakhstan's international image.
- 3) To carry out the recommendations of EU representatives and UN bodies related to the decriminalization of criminal code articles for "defamation" and "dissemination of false information" in accordance with international standards. At the legislative level, to give a clear definition to the concepts of "incitement of social discord", "interference in the activities of state bodies", and "extremism", so as to avoid their broad interpretation and selective application.
- 4) In relation to the cases of Iskander Yerimbetov (who is being restrained in SIZO LA 155/1 of the city of Almaty), Almat Zhumagulov, Kenzhebek Abishev, Muratbek Tungishbayev, Aset Abishev (all being restrained in SIZO LA 155/18 of the city of Almaty), to change the measure of restraint to one unconnected with detention in custody in connection with information about cruel treatment and the violation of their rights, poor state of health, and the dubious character of their charges.
- 5) To carry out the decision of the Human Rights Committee of the UN related to releasing Mukhtar Dzhakishev.
- 6) To ensure for all prisoners full-scale medical services according to the Minimum Standard Rules for the Treatment of Prisoners confirmed by the UN.

- 7) To furnish a proper medical examination and medical care for Iskander Yerimbetov, Almat Zhumagulov, and Kenzhebek Abishev. To reopen the criminal case of torture in relation to Yerimbetov and to investigate the facts of torture in a proper manner. Taking into account the existence of illnesses dangerous to life, to permit Mukhtar Dzhakishev to travel out beyond the confines of the country with the aim of getting the necessary medical treatment.
- 8) To release from places of confinement persons in relation to whom human rights organizations are citing evidence of their politically motivated conviction.
- 9) To ensure for prisoners the right to a fair trial, as well as conducting a reform of justice in accordance with international standards for a fair investigation and trial.
- 10) To ensure unimpeded access to prisoners for representatives of human rights observational missions.
- 11) To define clearer criterias about price setting, to better distinguish between acceptable business practice and illegal profits, which could be assimilated to a "theft". This in the interest of a healthy market economy. For that reason, the case of Iskander Yerimbetov becomes an alarm signal for foreign investors, who cannot be confident of the safety of their investments and the rule of law.
- 12) To cease the persecution of human rights advocates for their professional activity. The case of Elena Semenova is an example of the criminal prosecution of a human rights advocate because her conclusions do not coincide with the conclusions of state bodies.
- 13) To overturn the court decision on the banning of the Democratic Choice of Kazakhstan opposition movement, inasmuch as the given court decision does not have legal certainty and gives the opportunity to sentence people to prison terms for criticizing the power and expressing the right to freedom of assembly, freedom of association, and freedom of speech.
- 14) To carry out the obligations with respect to human rights and the rule of law taken upon itself within the framework of international treaties.

For the international community:

- 1) Within the framework of the dialogue between the Swiss and Kazakh authorities, it is important to systematically reiterate the necessity for Kazakhstan to honor their international obligations with respect to protecting human rights and rule of law, in particular ensuring the right to freedom of assembly, freedom of association, and freedom of speech.
- 2) Questions of human rights and rule of law should also be mentioned in the course of other negotiations between Switzerland and Kazakhstan including in areas such as investment, trade, energy and economic cooperation.
- 3) The presence on the field of international observers - including those of OSCE - would be very advisable, to monitor the conditions of detention of prisoners and closely follow up on trials which human rights organizations are suspecting to have a certain political motivation.
- 4) The international community (including Switzerland) should assist Kazakhstan in their effort to improve the situation of human rights and the rule of law. In particular, the EU has allocated 5.5 million Euros for supporting judicial reform in Kazakhstan. Representatives of Kazakhstan's law enforcement agencies said that the justice system was improved as a result of this reform. However, the facts cited in this report indicate that there are serious systemic problems in the field of justice and the rule of law. Thus, it is legitimate for the international community to monitor the effectiveness of their provided support, so that such projects lead to real progress in the area of human rights. On its side, Switzerland could also offer the services of its Human Security Division, with a view to contribute to the strengthening of Kazakhstan civilian society.