The Solicitors International Human Rights Group

TRIAL OBSERVATION REPORT

The Republic of Kazakhstan

v.

Vladimir Kozlov, Seryck Sapargali and Akzhanat Aminov

The Mangistau District Court - Aktau

August 16th – October 1st 2012

Written by Lionel Blackman

Mission members: Lionel Blackman, Ruby Sandhu, Alexandra Zernova, Marija Musja

November 2012

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FOREWORD

In August 2012 a team of four observers from the Solicitors International Human Rights Group (SIHRG) attended the trial of Vladimir Kozlov, Seryck Sapargali and Akzhanat Aminov. These men were accused of fomenting a protest that led to death and destruction on 16th December 2011 in Zhanaozen, Kazakhstan. The trial was before a single Judge sitting in the District Court of Mangistau in the City of Aktau. The observation team comprised of practising solicitors Lionel Blackman and Ruby Sandhu and Russian speaking members Alexandra Zernova and Marija Musja. The Solicitors International Human Rights Group is a non-governmental organisation based in the United Kingdom. Solicitors form a recognised legal profession in the United Kingdom with over 138,000 members practicing in all areas of law at home and abroad. SIHRG provides independent reports. The translation of the Judgment into English was undertaken by Barbara Odrobinska-Dudek.

Casting a shadow over this case is the former Kazakhstan politician, businessman and banker, Mukhtar Ablyazov. He is accused of stealing a staggering £5 billion from the Kazakh BTA Bank. At the time of writing he is still on the run from the Kazakhstan authorities and the High Court in London, United Kingdom. The High Court sentenced him to 22 months imprisonment for lying in legal proceedings about his assets. He featured in this case as a "leader" and "financial backer" of "Kozlov's Alga Party." Thus, the cause of Kozlov is not a popular one for all in the international community or of course for all in Kazakhstan. Nevertheless, we approached this case as we would any other. That is to say, with an objective examination of the trial. Similarly, we put out of our minds generalized assumptions that some will voice about the human rights reputation of the State of Kazakhstan. We maintained an open mind throughout about whether the accused were receiving a fair trial or not.

Executive Summary

- In the opinion of the observers the verdicts of guilty against Kozlov were not justified by either the evidence presented to the Court or the reasoning in the final Judgment.

- We observed the Judge ensure in most respects that the trial complied with procedural norms despite the trial's length and complexity. In this regard he displayed considerable trial management abilities.

- Despite displaying stamina and intellectual capacity during the trial the Judge reached flawed verdicts. His Judgment included misleading impressions of the evidence. He failed to properly justify the Court's verdicts in law or fact. The Judge accepted opinion evidence of Prosecution witnesses on the ultimate issues of guilt without any evaluation of his own. Thus he demonstrably lacked independence from the Prosecution.

- The 43 page Judgment displays a consistent hostility to any criticism of the authorities. It would not be unreasonable to infer that there was or might have been direct but hidden political influence bearing upon the Judge that led him to the disputed verdicts in the manner he did. Whether there was political control over the Judge is not a matter that we can be certain about.

- If Kazakhstan wishes to establish confidence in its legal system the judges must be independent and be seen to be independent from those in control of the executive power. Judicial independence is demonstrated through properly reasoned verdicts justified in law and by the evidence.

- Kazakhstan should yield to the recommendation of United Nations High Commissioner for Human Rights Navanethem Pillay of 12th July 2012 for an independent international enquiry into the Zhanaozen events.

- We have made recommendations on revisions to the Criminal Code and Criminal Procedure Code and the procedure for appointment of judges. They appear in the Conclusions on page 61.

- We recommend Kozlov's immediate release.

PART ONE: INTRODUCTORY MATTERS

Background to the Trial

On 16th December 2011 there was violent disorder in the town of Zhanaozen in the District of Mangistau in Kazakhstan. The immediate background was a long standing dispute between oil workers and their employers over pay. A protest was maintained for many months in the town square. Rioting took place and property was damaged. Conflict occurred between protestors and police where 15 civilians were shot dead and others wounded by police fire. There followed trials leading to the imprisonment of 13 civilians and 5 police relating to the incident. Investigations relating to embezzlement of funds intended for social welfare projects in the area led to trials against oil company executives and local government officials.

The Prosecution sought to establish that there were protagonists who drove on the protesting oil workers and that they bore responsibility for the violence of 16th December 2011.

Between 16th August and 1st October 2012 in the City of Aktau there was a criminal trial hearing before a single Judge sitting in a court of first instance the District Court of Mangistau in Kazakhstan. The Defendants on trial faced charges including (in short form) inciting social disorder, calling for the violent overthrow of the constitutional order and establishing and leading an organized criminal group. The names of the Defendants were Vladimir Kozlov, Seryck Sapargali and Akzhanat Aminov. The Judge was Mr. Berdybek Myrzabekov. This was the trial that we observed and report on.

The authorities believed that "One of the reasons for the mass disorders [December 2011] was the active efforts of some individuals who persuaded fired workers to continue their protests and to violently oppose the authorities." They claimed that "..experts found evidence of the call to enflame social hatred in the propaganda materials that the individuals mentioned distributed." See Statement by the delegation of Kazakhstan to the Organization for Security and Co-operation in Europe (OSCE) on the events in the town of Zhanaozen 26 January 2012 attached in appendix 1.

The disorder in Zhanaozen fell upon the 20th anniversary of the nation's Independence Day.

The Defendants and the Charges

Kozlov Sapargali Aminov

In the dock left to right Aminov, Sapargali and Kozlov. In the foreground Kozlov's lawyers,

Vladimir KOZLOV

Charged with inciting public discord (Article 164, part 3 of the Criminal Code); calling for the violent overthrow of the constitutional order (Article 170, part 2); and establishing and leading an organized criminal group (Article 235, part 1).

Aged 52 he was the leader of the unregistered opposition party Alga *[Forward]*. He pleaded not guilty to all charges. Prosecutors said he had acted under orders from Mukhtar Ablyazov, the self-exiled former head of Kazakh bank BTA and an arch foe of Nazarbayev, to travel the country and find "a weak spot". Kozlov's Alga party, long denied official registration, was not eligible to run in the January 2012 Parliamentary elections. He was arrested a week after the election. He is a businessman. He led the establishment of Alga in 2007. Strikes by oil workers over pay started in 2007. Kozlov claimed the workers sought advice from Alga. The Prosecution said that Alga sought out and championed the cause of these workers for political ends and stoked the dispute up leading to the disorder in Zhanaozen on 16th December 2011.

Seryck SAPARGALI

Charged with inciting public discord (Article 164, part 3 of the Criminal Code) and calling for the violent overthrow of the constitutional order (Article 170, part 2). Aged 60, was an activist of the "Khalyk-Maydany" movement. He said he accepted some blame without admitting full guilt.

Akzhanat AMINOV

Charged with inciting public discord (Article 164, part 3 of the Criminal Code); calling for the violent overthrow of the constitutional order (Article 170, part 2); and establishing and leading an organized criminal group (Article 235, part 1). Aged 54, a local oil worker was a leader of the strikes of oil workers of OzenMunaiGaz in Zhanaozen. He pleaded guilty in the trial we observed. The previous year in August 2011 he was given a two-year suspended sentence for organizing an illegal strike.

Terms of Reference of the Delegation

- To comply as appropriate with the following guidelines: Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012 OSCE ODIHR; The Trial Observation Manual for Criminal Proceedings – Practitioners Guide of the International Commission of Jurists 2009 and The Guidelines contained in the Guidelines for Human Rights Fact Finding Missions (A joint publication of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of the Lund University and International Bar Association – September 2009).

- To report on whether the criminal process and trial complied with the standards set under the International Covenant on Civil and Political Rights 1966 and the Laws of Kazakhstan including the following rights to:

1. PRE-TRIAL LIBERTY
2. FAIR TREATMENT IN PRE-TRIAL DETENTION

Fair trial rights to:

3. AN IMPARTIAL TRIBUNAL
4. A PUBLIC HEARING
5. THE PRESUMPTION OF INNOCENCE
6. THE DISCLOSURE OF THE CASE
7. PREPARATION OF THE DEFENCE
8. A TIMELY TRIAL
9. BE PRESENT AT THE TRIAL
10. LEGAL ASSISTANCE
11. EXAMINATION OF WITNESSES
12. A FREE INTERPRETER
13. NOT TO SELF-INCRIMINATE
14. THE LEGAL CERTAINTY OF CRIMINAL CHARGES
15. A REASONED JUDGMENT

The Content and Structure of the Report

The Report considers the conduct of the trial against the prevailing applicable international standards contained in the International Covenant on Civil and Political Rights 1966 (ICCPR) and the relevant Constitutional rights contained in the Constitution of Kazakhstan 1997 as amended (KC). Where relevant we also consider the Criminal Code of the Republic of Kazakhstan (CC) and the Criminal Procedure Code of Kazakhstan (CPCK). Kazakhstan is not in the Council of Europe's Human Rights Convention (ECHR). On 26th May 1995 the Commonwealth of Independent States created a Convention on Human Rights and Fundamental Freedoms (CISHR). This Convention broadly reflects the standards in the ICCPR and ECHR. The CISHR provides for a complaints process to a Commission. Kazakhstan has acceded to the CISHR. The CISHR mechanism is not in effective operation. Kazakhstan ratified the ICCPR on 24th January 2006 and the Optional Protocol that allows for individual petitions on 30th June 2009. Kazakhstan is a member of the Organisation for Co-operation and Security in Europe (OSCE) and members of the OSCE are committed to uphold international human rights standards including fair trial rights.

It was claimed by supporters of Kozlov that the Prosecution was politically motivated. As we observed the trial and considered the 677 page "protocol of accusation" (often described as the "indictment" and we use the word "Indictment" onwards from here) our concerns developed about the sufficiency of evidence and the certainty of the charges.

We undertook an assessment of the evidence. Our decision to do so was consistent with the guidance contained in the International Commission of Jurists Practitioners' Guidance to Trial Observation Missions in Criminal Proceedings 2009 at page 21:

- Proceedings brought against human rights defenders, journalists and political or social opponents for the legitimate and peaceful exercise of their rights to promote and strive for the protection and realisation of human rights, their political rights and/or their freedom of conscience, expression and association. Generally speaking, such proceedings are brought for reasons of political persecution (political trials) rather than to impart justice.

- Proceedings in which there is such a complete and blatant absence of proof against the defendant that the proceedings as a whole may be unfair. These kinds of proceedings are usually initiated for reasons other than the proper administration of justice. In such situations, trial observers will, as part of their assessment, need to evaluate whether sufficient evidence was presented by the prosecution.

There is a paradox in that whether the ground for applying either of the two exceptions applies in any particular case is not truly appreciated until the evidence is assessed. The Delegation was mindful of the reminder that follows the ICJ exceptions expressed in the Guidance as follows:

> Even in these cases, however, the primary focus of the trial observation must be compliance with the judicial guarantees of due process.

The Trial Report is in two halves. Part Two of the Report deals predominantly with what one may call "procedural rights" and Part Three with the evaluation of the Judgment. There are overlaps between the two halves as the evaluation exercise cannot be conducted in isolation from the Defendants' procedural rights.

Composition of the Delegation

The Open Dialogue Fund requested by email dated 19th August 2012 experts from the Solicitors International Human Rights Group (SIHRG) to form a trial observation mission. SIHRG is a United Kingdom based non-governmental organisation with a membership drawn principally from the solicitors' profession of England and Wales. A solicitor is a qualified lawyer and there are 138,000 solicitors practising in the United Kingdom and overseas. The objects of SIHRG include raising awareness of international human rights law within the solicitors' profession and motivating solicitors to participate in the movement to deepen respect for universal human rights around the world. It provides training in the UK and overseas on international human rights law. SIHRG has established a clear principle that whomsoever invites or sponsors it to observe a trial the report will be objective. SIHRG proceeded to recruit from its full membership suitable experts with relevant experience and language skills. The four observers were:

Lionel Blackman – delegation leader – Chair of the Solicitors International Human Rights Group – criminal advocate with 28 years trial experience.

Ruby Sandhu – committee member of SIHRG and human rights lawyer with extensive experience in the field of criminal prosecutions with political considerations.

Alexandra Zernova – committee member of SIHRG and its CIS Working Group Coordinator, Russian speaker and human rights lawyer.

Marija Musja – SIHRG member, law graduate and Russian speaker.

Pre- Mission Preparation

The request to form the trial observation mission was issued by the Open Dialogue Fund (ODF). The invitation was dated 19th August 2012 requesting attendance the next day. The trial had already started on the 16th August 2012. After a shortened selection exercise within SIHRG it was to take a full week to obtain the visas required for the delegation to enter Kazakhstan. Therefore, a departure was planned for Friday 31st August and visas were finally obtained the morning of the flight to Aktau.

The gentleman who met our delegation at the airport and led us to our apartment accommodation was Yerlan Kaliev – a lawyer and Defence witness and member of the political party Alga. The day of our arrival he introduced us to Kozlov's lawyers, (Venera Sarsenbina and Alexei Plugov) and Evgeniy Zhovtis (Director of the Kazakhstan International Bureau for Human Rights and Rule of Law – who had been observing the trial throughout). We received a briefing from their point of view of the trial since it started on 16th August. We had no further discussions with Kaliev about the case. An independent local partner to work with a trial observation delegation is customary. The Delegation was bereft on this mission of local partner support. We had to make our own arrangements for meetings with participants and other interested parties. This is not a criticism of Yerlan Kaliev or his associates.

On the contrary it demonstrated the understanding of the supporters of Kozlov that we were independent. The absence of a reliable and independent local partner and the very late invitation to attend indicated to us the possible inadequate state of development of civil society in Aktau. Kazakhstan civil society representatives in the public gallery during the trial had travelled from the former capital Almaty some 3000 kilometres away. It was from Almaty that Kozlov's own lawyers came from. None of the members of the observation team had visited Kazakhstan before.

Interpreters and language issues

The delegation was fortunate to be able to rely upon its own native Russian speaking members Alexandra Zernova and Marija Musja, for interpretation and translation of Russian to English and vice-versa.

Article 7 of the Constitution of Kazakhstan provides:

1. The state language of the Republic of Kazakhstan shall be the Kazakh language. 2. In state institutions and local self-administrative bodies the Russian language shall be officially used on equal grounds along with the Kazakh language.

The official language spoken in Court was the Kazakh language and the proceedings were interpreted into Russian by court appointed interpreters (and vice versa where necessary) for the benefit of the Russian speaking Kozlov. The other Defendants on trial, Seryk Sapargali and Akzhanat Aminov, were Kazakh language speakers. Thus, the Kazakh language words spoken in the trial crossed two interpretation bridges before reaching the ears or eyes of the English only speaking members of the Delegation - Lionel Blackman and Ruby Sandhu. They were able to follow and understand proceedings by watching a computer screen displaying the typed translation of the Russian interpretation. The translation was provided by the native Russian speakers in the Delegation. As the proceedings were being interpreted between Kazakh and Russian there was sufficient time delay for the proceedings to be translated into English in this manner.

Court documentation available to the Delegation included the 677 page "indictment" that included the charges and a detailed explanation of the accusations together with summaries of the evidence and responses of the Defendants. The document was available in two official versions: Kazakh and Russian. The Delegation relied on the Russian language version.

Media Strategy

The Delegation did not provide any statements to any media concerning its view points during the trial observation. On our second day we were approached by a Kazakhstan television crew who wanted to know why we were there. Consistent with the ICJ guidance we decided it was appropriate to allow the media to broadcast, if they chose to, a public interview drawing attention to our presence and purpose of reporting on the trial's compliance with international trial standards.

Agenda

The Delegation determined that in order to obtain as wide as possible insight into the trial it was appropriate to interview participants listed below. We indicate against each participant whether we succeeded in meeting or not:

The Defendants -	Not possible within time frame of mission
Defence lawyers -	Kozlov's lawyers – yes Sapargali's lawyer – declined Aminov's lawyers – agreed short interview
Alga party -	Yerlan Kaliev discussed background on our day of arrival
The Prosecutor -	Requested in writing and personally on three occasions but declined by the senior Prosecutor Mr Amirgali Zhanayev on the ground "It is against the law to speak to the Prosecutor during the trial". We regret that our request was declined. Our letter of request made it clear that we would confine our interview to procedural matters.
The Judge -	Requested in writing but declined in writing by the Court administration citing legal provisions prohibiting an interview. We regret that our request had to be declined. Our letter of request made it clear that we would confine our interview to procedural matters.

Other trial observers or watchers. We had meetings with all of the following:

Yörük Işık of the National Democratic Institute.

Evgeniy Zhovtis - Director of the Kazakhstan International Bureau for Human Rights and Rule of Law – interviewed on two occasions and assisted on matters of evidence and law.

Stephan Buchmayer of the OSCE ODIHR office Kazakhstan.

Zhanar Kasymbekova – journalist.

Amangeldy Shormanbayev - Expert on Political Rights, International Legal Initiative Institute

Witnesses, victims and victims relatives of 16th December incident in Zhanaozen:

Requested but not fulfilled due to lack of local partner support.

The court sittings were lengthy. Monday to Friday 9.00am to 6.30 or 7.00pm. Consequently, we were not enabled to travel to Zhanaozen (a three hour drive away) to interview anyone there nor arrange visits to the Defendants held in detention. We returned to the United Kingdom on the 15th September.

Part Two: The Trial Report – Procedural Rights

The Judiciary, Prosecution and Bar

All appointments to the judiciary are ultimately made by the President on the recommendations of the Board of the Supreme Judicial Council. Recommendations for the Supreme Court that are approved by the President are passed to the Senate for appointment. Judges financial security is provided for. Remuneration is high in relative terms. It is an offence to seek to influence a Judge outside the court room proceedings.

The trial took place in a court of first instance, namely the District Court of Mangistau. The Judge, Mr Berdybek Myrzabekov, is a regular District Judge of the Region. He was not parachuted in from either Almaty or Astana to undertake this politically sensitive trial. He did preside over the trials of persons connected with a separate disturbance in Shepte that took place on 17th December 2011 where all accused were found guilty and imprisoned. He was one of several judges qualified in the region to undertake this particular trial.

The Law on Prosecutors provides for the appointment of the Attorney General by the President with the consent of the Senate. The Constitution (Article 44 (5)) provides for the appointment of the Procurator General by the President. Other prosecutors are appointed by the President with the consent of his appointee the Attorney General.

The Law on Advocates provides for the creation of independent Bar associations. Licensing and certification and registration are conducted by the Ministry of Justice. Provided a lawyer has passed the required training and otherwise does not fall short of legal requirements he or she is entitled to practice.

Kazakh law provides for a form of jury trial (citizens and Judge constituted panels) in criminal cases and the reason why no such panel determined this case was because jury trials are only available for capital crimes such as murder (currently there is a moratorium on carrying out executions).

The Court Room

The Judge presided in a customary central elevated position and was shown throughout due respect but not obsequious deference by trial participants and public alike. The team of up to three uniformed prosecutors sat to the Judge's right. The witness stand was positioned directly opposite the Judge separated by no more that a couple of metres. Witnesses remained standing. We observed the Judge paying close attention to all witnesses before him. He was in an excellent position to assess the demeanour of each witness as they gave their evidence. Advocates remained seated at their desks during any examination of witnesses but usually stood if addressing the Judge. The Defence lawyers

were positioned at desks to the Judge's left and were immediately in front of the glass framed dock. The Defendants had a bench on which they could keep their papers and write and there was a roughly 15 centimetre gap between the bench and the glass frame through which they could instruct their lawyers with ease and pass papers. Persons in the public gallery such as Kozlov's wife seated close to the Defence advocates were not inhibited from passing notes to assist them. A number of journalists from the independent press (perhaps about three) and other Kazakhstan human rights observers were free to make notes on computers and power was supplied by the court to their cables.

Use was frequently made of large monitors and computers to display documents. There were an adequate number of monitors for all participants and members of the public in the gallery to see. Though for some personal eyesight might not be equal to the task. Where matters of importance arose from documents displayed in this manner witnesses were allowed to leave the witness stand and approach the monitor to examine the document closely. Although it appeared to be the case that a number of documents the Prosecution relied upon in examining defence witnesses were *only* available via the monitors and not in paper form for closer scrutiny.

When witnesses were examined there was a general consistency in the order of questioning familiar to the adversarial process. The Defendants frequently exercised a right, co-existing with their own lawyers, to examine any witness. For example the last witness called by the Prosecution was examined by Mr Kozlov himself for a full hour. Some jurisdictions prohibit a represented Defendant from asking questions save through the mouthpiece of his legal representative. In this trial, the Defence lawyers were always free to supplement their own clients' questions and vice-versa. The scope of the trial spanned a long period of time as it investigated the political activities and lives of the Defendants over a number of years. Strict adherence to the "only your lawyer may ask questions" approach could have served as a severe handicap to the full airing of the Defence case as so much knowledge about events would be carried in the heads of the Defendants not their lawyers. We observed Mr Kozlov and Mr Sapargali conducting examination in person and they were not wanting in ability and confidence in court to do so.

The Judge did question witnesses occasionally but not intrusively as between the parties. Defence lawyers exercised their rights to raise objections and orderly legal argument would follow. The Judge would rule and his ruling would be respected.

Two interpreters worked side by side seated just to the right of the witness stand. Microphones and amplification of the voices of all participants was in use. The overall quality of audibility was of a high standard. We observed very few requests from the participants, including the Defendants, for repetition. Fairly often misunderstandings by the interpreters were ironed out, sometimes aided by persons seated in the public gallery!

There were numerous moving image camera lenses both outside the court building and in the court room. In the court room there appeared to be up to four fixed closed circuit television security cameras. Additionally, there were two video cameras on tripods or stands. One camera was facing the dock from the back of the court and the other was facing the public gallery from behind the Prosecution's desk.

The Trial Dates

The full trial oral hearings started on 16th August 2012 and ended on the 1st October 2012 with a few days' adjournment in the second week. The Judge delivered his verdict on the 8th October 2012.

As explained in the introduction the sending organisation issued the invitation on 19th August by which time the trial had already started. A short period of delegate recruitment and selection was involved by SIHRG and then it took a full week to obtain visas to enter Kazakhstan. The visas were not obtainable until the morning of the day of the Delegation's flight. Thus, the Delegation commenced its trial observation on 3rd September missing several days of the trial. We left on 15th September before the completion of the Defence case and speeches.

The Trial Rights in Question

The Fair Trial Rights

The Supreme Court of Kazakhstan adopted a regulatory decision on the application of international treaty standards on 10 July 2008 to promote full compliance with ratified treaty standards in judicial practice. The decision requires judges to be guided by the standards of international treaties, to which Kazakhstan is a party, those standards being an integral part of the current Kazakh law. This affirms the provision of Article 4 (3) of the Constitution of Kazakhstan:

> International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law

The principle legal standards to be found in the International Covenant on Civil and Political Rights 1966 (ICCPR) which Kazakhstan ratified in 2006 and the Constitution of Kazakhstan 1997 as amended (KC) are considered below:

1. RIGHT TO PRE-TRIAL LIBERTY

> ICCPR - Article 9
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment

Kozlov was held in pre-trial detention from the day of his arrest in January 2012 up to and including his trial. Several bail applications were made by his Defence lawyers and each was refused on the grounds he might take flight or commit further offences. These are widely recognized exceptions to the presumption in favour of pre-trial release. It was reported to us that unlimited financial security was offered to the Court by Kozlov but the Court declined to set any amount as an acceptable surety. Though it is not known to the Delegation whether the Judge determining the bail application was made aware of it or not, at the trial the Prosecution produced a letter from Kozlov, created before his arrest

addressed to the British Government requesting asylum. Thus, there may have been substantial grounds to fear if released he might take flight. Moreover, the Prosecution's case placed weight on the connection between Kozlov and the fugitive Mr Ablyazov a man accused of stealing £5 billion. The Delegation cannot suggest that the decision to keep Kozlov in detention pre-trial for a period of seven months was in breach of his international human rights. Regrettably, we do not have an insight into the bail applications, if any, of the other two Defendants. It is noted that they indicated guilty pleas in whole or part.

We are satisfied that there was not a breach of the qualified right to pre-trial liberty. Even if the final evaluation of evidence permits an inference that the investigation and prosecution of the Defendant Kozlov was politically motivated rather than evidence based that could not necessarily be regarded as a basis for believing that the Court's decision to remand him into pre-trial detention was similarly driven. Decisions on pre-trial detention do not as a rule require a detailed examination of all the forthcoming prosecution evidence (which in this case turned out to be voluminous).

2. RIGHT TO FAIR TREATMENT IN PRE-TRIAL DETENTION

> ICCPR - Article 10
>
> 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
>
> 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

We did not interview Kozlov. We received a report that he had during the trial not been given lunch on occasions and not been allowed to change his shirt during the trial. Our delegation observed his performance closely in the trial and it did not appear that he was lacking in vigour to instruct his lawyers, ask questions or in any other way participate in his trial and follow proceedings. He gave evidence for three and a half days. We also received a report that Aminov had an issue with medical care during detention and suffered from diabetes. We only had his lawyers to rely on who indicated that this issue had been resolved and his medical needs were attended to. We had no information on Sapargali but we observed that he consistently appeared in the dock in good spirits. We were not able to speak to the Defendants.

We have no grounds to suggest that any of the Defendants' rights were denied under this Article.

3. RIGHT TO FAIR TRIAL – IMPARTIAL TRIBUNAL

> ICCPR - Article 14
>
> 1…….. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
>
> KC – Article 77
>
> 1. A Judge when executing justice shall be independent and subordinate only to the Constitution and the law.
> 2. Any interference in the activity of the court in the exercise of justice shall be inadmissible and accountable by the law. Judges shall not be held accountable with regard to specific cases.
> 3. In application of law a Judge must be guided by the following principles:
> 1) a person shall be considered to be innocent of committing a crime until his guilt is established by a court's sentence that has come into force;

This is probably both the most important issue in our report and the most difficult to answer. It goes to the heart of the justice system of any jurisdiction whether judges can resist executive influence over their decision making. The President of Kazakhstan appoints the judges following recommendations made by the Board of the Supreme Judicial Council. The Delegation has no evidence to suggest that the Judge Mr Berdybek Myrzabekov was not appointed following an appropriate recommendation to the President, or that he was selected to undertake this trial other than in the manner that would apply to a less noteworthy case. We were told by Kozlov's lawyers that the Judge denied all Defence motions. However, many of these were submitted pre-trial and we were in no position to assess the merits of the arguments. The Judge demonstrated respect and courtesy to all trial participants. There was no overt sign of a lack of impartiality on the part of the Judge. Moreover, we witnessed the Judge reject a number of Prosecution objections made to Defence questions to witnesses. Any lack of independence was latent and beyond our powers of direct observation.

Kozlov commenced his testimony at 2 o'clock on Friday 7th September. He was given free rein to give a full history of his political activities. Neither Judge nor Prosecutor interrupted his extensive testimony justifying his activities and explaining the restrictions he and others had faced. His testimony lasted three and a half days, a total of approximately twenty-five hours. His cross-examination by the Prosecutor lasted a mere one hour and was conducted professionally. The Judge displayed no prejudice towards him in body language or otherwise and permitted him breaks when requested.

Aminov read a statement and faced only a few questions from the other parties. The Judge displayed no prejudice towards him in body language or otherwise.

The Judge displayed no prejudice towards Sapargali in body language or otherwise.

The Prosecution advocates were treated with equal respect during periods of legal arguments or questioning. In respect of all advocates and indeed witnesses the Judge displayed no prejudice in body language or otherwise.

We have explained in Part 1 Introductory Matters – Content and Structure of the report at page 5 above the reasons for undertaking an evaluation of evidence which is contained in Part 3 of this Report.

It was our evaluation that convictions reached in this case were not justified by the evidence or legal reasoning we observed. We are not able to say we are satisfied that those verdicts were reached impartially. The Prosecution relied substantially on the opinion evidence of "experts" including linguists, psychologists and political analysts. Their opinions were equivalent to verdicts of guilty. The "experts" considered evidence that was of a nature that ought to have been evaluated by the Judge without any or with very little expert assistance. The "experts" considered the meaning and underlying intent of ordinary words in leaflets and conversations. We are of the view that the materials considered by the "experts" were within the capacity of any qualified Judge to understand for himself. It was necessary in order to ensure a fair trial undertaken by an independent and impartial tribunal that the Judge evaluate the materials in question for himself. He did not do so.

In reading the Court's 43 page verdict it appeared to us that the Judge, for whatever underlying reason, adopted the assertions of facts and legal consequences made by the Prosecution in the Indictment. The Judge did so without any or any sufficient judicial reasoning. In the Judgment the Judge showed a consistent hostility to any kind of criticism of the authorities that appeared in evidence before him. Any words of criticism of the authorities were treated by the Judge as part of the alleged overarching criminal purpose of the accused.

We are not satisfied that the court was impartial in the light of the evidence that we evaluated.

This conclusion carries a limited qualification. We were not present, for reasons explained above, for the entire trial. We did not have access to all documents, audio and video evidence in their entirety. However, we did have adequate sources from which to evaluate the evidence that were sufficient in our opinion to justify advancing our conclusion. It would be extraordinary if there was stronger evidence than that contained in the sources that we evaluated. This is because those sources we considered included the Prosecution's own "Indictment" of 677 pages. Under the requirements of the CPCK the "Indictment" would be required to include at least a summary of the best evidence the Prosecution intended to rely upon in the trial. This is consistent with the defence right to disclosure of the case. Also in the 43 page Judgment of the Court the key evidence upon which the guilty verdicts were based would have to be referred to in accordance with the duty of the Judge to provide a reasoned judgment.

The sources upon which we based our evaluation included:

- **The 677 page official Russian language "Indictment" setting out the Prosecution's evidence in detail.**

- **Ten days of testimony dominated trial observation.**

- **Five principal items of evidence the Prosecution relied on:**

    - **Transcript of statements made by Kozlov captured on video when he addressed a gathering in the street in Zhanaozen on 15th March 2010**

    - **Transcript of Skype conference between Ablyazov and Kozlov and others on 30th April 2010.**

    - **Transcripts of Tape recording of conversations between Kozlov and Atabayev**

on 25th and 31st October 2011

- **The leaflet: "Rise up from your knees Kazakh and throw by the neck the tyrant and thief"**

- **The leaflet: "Fighters of Sacred Mangistau land!"**

- **Interviews with trial participants and observers as indicated under the Agenda heading in Part 1 of this report.**

- **The Judge's 43 page judgment.**

4. RIGHT TO FAIR TRIAL – PUBLIC HEARING

> ICCPR - Article 14
>
> 1…….. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Court room was spacious and sufficient for its purpose. The public gallery was as large as the well of the court. There was sufficient seating for up to 100 members of the public and press to attend. During our observation days there was no shortage of seating supply to meet the demand. There was minimal security screening on entering the court. The court's employees were courteous. Anyone attending in the gallery was required to show his or her identity document and the name was written into an attendance register. There would then be a somewhat cursory physical check if any at all. Mobile phones were not supposed to be allowed in. However, in practice many mobiles rang during proceedings and little fuss was made. The overall atmosphere was relaxed. There was not an oppressive police presence but just some regular court security staff on patrol. Members of the public with or without any apparent special interest in the trial would laugh at lighter moments of the trial without so much as a raised eye-brow from the Judge. An extensive audio amplification with microphones system was in place. Also, a large monitor was facing the public gallery to share with the public the computer displays when in use during the trial. The Judge usually explained to everyone what would happen at the beginning of each new sitting or session. The Judge displayed tolerance towards a person in the public gallery who noisily interrupted the testimony of Aminov. He rebuked her but did not exclude her from the court room. On the same day the Judge, after consulting the parties, permitted various representatives of the "mass media" into the court room to take photographs and video footage of the proceedings. Sapargali was giving his evidence at the time and continued under the glare of the cameras.

We were satisfied that there was full and free access to any member of the public or international observer to the gallery of the court room and that the proceedings were audible.

5. RIGHT TO FAIR TRIAL – PRESUMPTION OF INNOCENCE

ICCPR -Article 14

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

KC – Article 77

3. In application of law a Judge must be guided by the following principles:
1) a person shall be considered to be innocent of committing a crime until his guilt is established by a court's sentence that has come into force……..

8) any doubts of a person's guilt shall be interpreted in the favor of the accused

Criminal Procedure Code – Article 19:

1. Everyone shall be deemed to be innocent until his guilt in a commission of a crime is proven in accordance with the procedure as established by this Code and is established by a court sentence that entered into legal force.

2. No one shall be obliged to prove his innocence.

3. The outstanding doubts with regard to the guilt of an accused person shall be interpreted for his benefit. Any doubts, which arise when criminal and criminal procedural laws apply, must be decided for the benefit of the person accused.

4. An accusative sentence may not be based on presumptions and it must be confirmed by sufficient amount of authentic evidence.

We conducted our own evidence evaluation for reasons stated in Part 1 Introductory Matters – Content and Structure of the Report at page 5 above and that evaluation is contained in Part 3 below.

For the reasons given in section 3 above concerning the impartiality of the court we are not satisfied that the presumption of innocence was applied.

6. RIGHT TO FAIR TRIAL – RIGHT TO DISCLOSURE OF CASE

ICCPR - Article 14 (3)

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

KC - Article 7

1. The state language of the Republic of Kazakhstan shall be the Kazakh language. 2. In state institutions and local self-administrative bodies the Russian language shall be officially used on equal grounds along with the Kazakh language

The Prosecution case was served in the Kazakh and Russian language. Thus, we are satisfied that the materials upon which the Prosecution relied upon were available to the Defence in a language or languages which the Defendant or his Kazakh language speaking lawyer would understand. Russian speaking members of the Delegation perused the volumes of evidence and so we are also satisfied that the Defence were served with the details of the case. As to the promptness of the service of the case please see the comments under the next related category under 7 below.

We are satisfied that detailed evidence was served in a language that could be understood. Concerning promptness of service of the case – see 7 below.

7. RIGHT TO PREPARE DEFENCE

ICCPR - Article 14 (3)

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

It is understood that the Defence received a preliminary form of "Indictment" in April 2012. The final form of "Indictment" – the 677 page document referred to in this Report – was drawn up on the 8th August 2012. Thus, service of that could not have been much more than a week before the trial. The position in respect of the disclosure of the full and final trial bundles of evidence is not clear. We were told that the bundles were served days before the trial and that Kozlov in jail declined to accept them. The Judge refused an adjournment requested by the Defence to have more time to consider the evidence. Thereafter, the Defence lawyers worked hard on the papers. There was an adjournment in the first few days of the trial on account of the death of a relative of one of Kozlov's lawyers. The pause provided additional time for preparation. There were weekends interposing this six week trial. When we spoke to them the Defence lawyers did not complain that they were not ready for trial once it started. We understand that substantial preliminary bundles of the evidence were served at an earlier stage.

We noted that the Defence called numerous witnesses including a Polish Member of the European Parliament. This indicated that the Defence was not lacking in resources or ability to organize itself. The Defendant Kozlov had the service of two advocates. We regard the service of the Prosecution's

full evidence at such a late stage as inappropriate. If this is a systemic problem the Procurator General of Kazakhstan ought to address it and the Code of Criminal Procedure should be tightened up to provide a more rigorous timetable for disclosure. Though the potential for unfairness of the late service of the full bundles was apparently overcome through the dedication of the Defence lawyers we think it was regrettable that the final "Indictment" and the full trial bundles were served so late in the day. The Defendants had already been in detention for several months. The Judge would have had to balance the right to a timely trial, especially for Defendants in custody, as well as the interests of witnesses and co-defendants, in refusing the adjournment sought.

We are satisfied that there was not a breach of the right to prepare of sufficient gravity when considered in isolation to render the trial unfair.

8. RIGHT TO TIMELY TRIAL

ICCPR - Article 14 (3)

(c) To be tried without undue delay;

The alleged offences were on or before 16th December 2011. The Defendant Kozlov was arrested in January 2012. His trial, together with two other Defendants, opened in Court on the 16th August 2012. It was a case in which the Prosecution presented over 30 volumes of evidence. All Parties called numerous witnesses. The trial lasted six weeks with some recesses and sitting five days a week and the court sat generally a full eight hours a day. Thus by any comparative standards it must be regarded as having been a substantial trial in terms of length and complexity. The Defendant Kozlov was held in detention from the date of his arrest. Nevertheless, considering these factors the passage of seven months between arrest and trial can be regarded as a trial "without undue delay" by prevailing international standards.

[Consider: Human Rights Committee under the ICCPR *Sandy Sextus v. Trinidad and Tobago*, Communication No. 818/1998 para 7.2 - a 22 month delay between arrest and trial for murder was unreasonable. See also UNHCR *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*. The length of justifiable detention pending trial depends on many factors including the complexity of the case. The standard "custody time limit" on pre-trial detention in United Kingdom legislation for serious cases is 6 months.]

We found no breach of the right to a timely trial.

9. RIGHT TO BE PRESENT

ICCPR - Article 14 (3)

(d) To be tried in his presence,

Kozlov was present throughout. If a Defendant is present physically but cannot follow proceedings through ill health whether mental or physical this right is not truly complied with if the trial proceeds despite his condition. We did not interview Kozlov but did his lawyers. They did report on some failures to provide him with adequate food at lunchtimes and lack of shirt changing. However, no substantial complaint was made that this diminished his presence in court and ability to participate. We did not observe any signs of inability to concentrate. It is understood that Aminov suffers from diabetes. There were some occasions when he appeared to be slumped on his desk during the trial. However, in a lengthy trial where a Defendant is not actively contesting the charges such behaviour is not uncommon in healthy persons in the dock and we cannot read anything into it. We observed him stand and read his statement and answer questions on the seventeenth day of the trial. Sapargali appeared to be alert throughout.

We are satisfied that the right to presence was not breached.

10. RIGHT TO LEGAL ASSISTANCE

ICCPR - Article 14 (3)

(d)…..and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

KC - **Article 13**

……
2. Everyone shall have the right to judicial defense of his rights and freedoms.
3. Everyone shall have the right to qualified legal assistance. In cases stipulated by law, legal assistance shall be provided free of charge

Article 16 ……. 3. Every person detained, arrested and accused of committing a crime shall have the right to the assistance of a defense lawyer (defender) from the moment of detention, arrest or accusation.

Kozlov had the services of two advocates. Their services appeared to be adequate.

Sapargali was represented in court by one lawyer. She declined an interview and we were not able to see her client. In view of the indication he gave to the court admitting his guilt “in part” it was not possible to contemplate any assessment as to the adequacy of his representation.

Aminov had entered an unqualified plea of guilty yet was represented by two lawyers. We observed only one occasion when one of his lawyers asked questions of a witness. We spoke to his two lawyers briefly and they referred to the fact that in Kazakh law Aminov was entitled to change his plea before the trial ended and they could not say whether he was or was not going to do so. They said that he had had a medical issue in pre-trial detention but this issue had been addressed and they did not have concerns about his fitness for trial. They said that they had ready access to him. They would not specify the number of conferences they had with him pre-trial but simply repeated the assertion that they saw him every day. They told us that they had been appointed by his relatives.

We have no grounds for suggesting that the right to appropriate legal assistance was denied.

11. RIGHT TO EXAMINATION OF WITNESSES

> ICCPR - Article 14 (3)
>
> (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> Throughout the trial days we observed that both Kozlov's lawyers and Kozlov himself were able to freely question all witnesses whether called by the Prosecution or Defence. The Defence called numerous witnesses including a Polish MEP.

The Defence applied during the afternoon on the 5th September 2012 to "call" eight Defence witnesses via Skype video technology. The reason was that these witnesses were abroad. The CPCK Article 101 (5) empowers the Court to take measures to provide security to witnesses. Under this power the Court can authorize the "video live link" facility for the benefit of fearful witnesses. However, there is no provision for enabling live links merely for convenience. Article 14 ICCPR provides for a right to "obtain the attendance and examination of witnesses…..under the same conditions as witnesses against him". Witnesses in attendance in the court itself can be seen more clearly and their demeanour assessed more accurately than via a video monitor. In this case witnesses were shown documentation either via monitors or on paper. It could have been very problematic to examine witnesses on a live link on such documentation at such short notice. The Defence application was rather "late in the day". No cogent reasons were advanced as to why arrangements had not been made for the attendance of the witnesses before the court. Their actual location would not necessarily be established through Defence arranged Skype video calling. There were no established safeguards to the facilities from where the witnesses would testify. For example, verification that a video conference room of a foreign court was being used with safeguards to prevent hidden tutoring.

The Judge allowed several statements to be read by the Prosecution. Most of the witnesses whose statements were allowed to be read were said to be ill or in hospital. Witnesses who failed to appear at the hearing included B. Atabayev *"for good reason (due to a business trip to Germany) and of Z. Mamay (in connection with the treatment at the hospital in Almaty). The testimonies had been given during the preliminary investigation."* (Judgment page 13.) The evidence of these two witnesses was of great importance and we are not satisfied that sufficent cause or enquiry was given to the circumstances justifying their excusal from attending court to be questioned. Article 353 of the CPCK regulates the reading of the statements of absent witnesses:

1. The voicing in the court trial of the testimony of the victim and witness given by them during the pre-court procedure on the case or in the preceding court trial, as well as video records and cinematic taping of their interrogation shall be allowed as follows:

…….

2) if there is no victim or witness in the court session, due to reasons which exclude the possibility of their appearance in the court trial.

Given the primacy of Article 14 (3) ICCPR it is our opinion that the Judge should have conducted a thorough examination of the justification for the absence of these witnesses. A business trip to Germany does not "exclude the possibility" of Atabayev's attendance as the business trip could have been re-arranged. CPCK Article 82 (4): *A witness shall be obliged as follows: to arrive when summoned by the inquest officer, detective, procurator and court.*

Moreover, the evidence of these witnesses and Atabayev in particular *could* have been crucial to the findings of fact upon which the Judge determined that Kozlov was guilty. The international jurisprudence recognizes that the right to question witnesses is not absolute. There is a consistent line of authorities of the Human Rights Committee and the European Court of Human Rights that a fair trial is not attained where the Defence cannot challenge a crucial witness.

[Consider - *Dugin v Russian Federation*, HRC Communication 815/1998, UN Doc CCPR/C/81/D/815/1998 (2004), *Mirilashvili v Russia* [2008] ECHR 1669, para 163; *Asch v Austria* [1991] ECHR 28, para 27; *Isgrò v Italy* [1991] ECHR para 34; *Kostovski v the Netherlands* [1989] ECHR 20, para 41]

Of course Atabayev's statement was not necessarily unhelpful to Kozlov and thus the Judge's decision may not have been incompatible with Article 14 (3). The question then remaining unanswered is whether any Defence expectation that he would be available was dashed. If he was "kept out of the way" because of the assistance he may have provided to the Defence then there may have been a breach of Article 14 in terms of the right to call witnesses. Regrettably the factual circumstances behind his absence from the trial are beyond our powers of observation or investigation. Whatever the background to Atabayev's non-attendance may have been the Judge failed to evaluate in the verdict the importance of his evidence. One is left guessing what impact Atabayev's evidence or any part of it selected by the Judge may have had on the Judge's findings of fact.

The defence called Tatyana Gorbachev working for Golos Respubliki (Voice of the People), an independent newspaper in which, the Defence wished to elicit, they had published no offensive literature. The Prosecution objected to the calling of this witness on the grounds she was not called at the beginning. The Judge overruled the Prosecution's objection.

We found no grounds for suggesting that the Judge unfairly fettered the right of the Defence to call witnesses. We did find that the Judge failed to make sufficient enquiry of the reasons for Atabayev's and Mamay's absence to warrant the application of Article 353 (1) (2) of the CPCK. He also failed to provide an appropriate evaluation of the impact of Atabayev's evidence in order that consideration could be given to whether exceptions to the right to examine witnesses under Article 14 ICCPR applied.

12. RIGHT TO FREE INTERPRETER

ICCPR - Article 14 (3)

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

KC - Article 7

The state language of the Republic of Kazakhstan shall be the Kazakh language. In state institutions and local self-administrative bodies the Russian language shall be officially used on equal grounds along with the Kazakh language.

The official language spoken in Court was the Kazakh language and the proceedings were interpreted into Russian by court appointed interpreters (and vice versa where necessary) for the benefit of Kozlov. The other Defendants on trial, Seryk Sapargali and Akzhanat Aminov, are Kazakh language speakers. Kozlov's leading lawyer Venera Sarsenbina addressed the court in the Kazakh language. His second lawyer Alexei Plugov is not a Kazakh language speaker

Reports were circulating that witness testimony was not being accurately interpreted from the Kazakh language to Russian for Kozlov's benefit. However, the Judge (who sits alone and was the final arbiter of both law and facts in the trial) is a Kazakh and Russian language speaker and therefore his understanding would not have been compromised. Moreover, Kozlov's lead lawyer is a Kazakh language speaker and thus not only would not be misled by misinterpretation but would have had the right to object and seek correction if anything materially affecting her client's right to a fair trial turned on the mistake. Likewise, if the interpreter was misinterpreting Kozlov's evidence from Russian to the Kazakh language there were two safeguards. The Judge, Mr Berdybek Myrzabekov, as noted, is a Russian and Kazakh language speaker. Ms Sarsenbina, Mr Kozlov's lead lawyer, would have been able to raise objection too.

Bi-lingual trial participants aware of material and significant inaccuracies had the opportunity to raise interpretation mistakes in Court and seek correction and adjustments as appropriate. Kozlov's lawyers, Ms Venera Sarsenbina and Mr Plugov, who we met on 1st September 2012, stated that the Judge had not hampered their conduct of the defence and its right to raise objections, questions or arguments and it follows that they would have been able to raise objections to mistranslations and misinterpretations of a material nature. There were a few tussles over incorrect interpretations. One of the two interpreters was audible but her diction was not clear and our own Russian speaking delegate struggled to understand her. However, there appeared to be no complaints from the participants. On 5th September 2012 only one interpreter was on duty and towards the end of what was a long eight hour session his concentration was evidently being tested. We would have expected a consistent and higher quality (and quantity) of interpreter services to the court throughout the trial.

We found there to be no breach of the right to a free interpreter.

13. RIGHT AGAINST SELF-INCRIMINATION

ICCPR - Article 14 (3)

(g) Not to be compelled to testify against himself or to confess guilt.

……

KC – Article 77 ……(6) the accused shall not be obligated to prove his innocence; 7) no person shall be compelled to give testimony against oneself.

We observed no procedural irregularity or conduct that placed any obligation or compulsion upon any Defendant to testify, confess or incriminate himself.

We are satisfied that the right against self incrimination was complied with.

14. RIGHT TO LEGAL CERTAINTY OF CRIMINAL CHARGES

ICCPR - Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed…….

KC – Article 77 (5) the laws establishing or intensifying liability, imposing new responsibilities on the citizens or deteriorating their conditions shall have no retroactive force…..

We consider the issue of legal certainty at greater length in Part 3 - the Evaluation section below.

We cannot suggest conclusively that the charges lacked legal certainty. If the convictions are appealed we recommend further consideration of this issue after reading legal arguments and judgments from appeal hearings in the domestic jurisdiction.

15 RIGHT TO A REASONED JUDGMENT

Article 14 (5) ICCPR provides that anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law. The right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned written judgment of the trial court. See UN Human Rights Committee, CCPR General Comment 32 (2007). We consider this matter fully in the following Part 3.

We consider the issue of a reasoned judgment at greater length in Part 3 - the Evaluation section below.

We found that the Judgment handed down by Judge Myrzabekov was not reasoned on several grounds. It was misleading in respect of evidence. It failed to provide an interpretation of the Articles of the Criminal Code in question. It failed to explain how the law was applied to the facts. It failed to adequately explain the evidential basis for apparent findings of fact.

Part Three: The Trial Report - Evaluation of the Law, the Evidence and the Judgment

The Question of Legal Certainty

When a court's wide interpretation of an article of a criminal code results in a conviction based on facts that would not give rise to liability upon a stricter literal interpretation the right to legal certainty contained in Article 15 of the ICCPR must be considered.

> ICCPR - Article 15
>
> 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed…….

The principle is reflected in Article 77 (5) of the Constitution of Kazakhstan:

> the laws establishing or intensifying liability, imposing new responsibilities on the citizens or deteriorating their conditions shall have no retroactive force…..

We cannot improve upon the succinct and sourced statement of the principles as set out in the International Commission of Jurists Practitioners Manual on Trial Observation set out from page 102 – which we reproduce below:

> "People may only be charged, prosecuted, tried and punished for crimes that are clearly defined in law.
>
> The legal definition of criminal offences must comply with the principle of legality of criminal offences (*nullum crimen sine lege*), which is absolute and non-derogable.
>
> The principle of *nullum crimen sine lege* is closely linked to the right to "security of person" since it seeks to safeguard people's right to know for which acts they may be punished and which not. Indeed, "criminal law provides a standard of conduct which the individual must respect". The principle of legality of offences is a fundamental element of the right to a fair trial as far as criminal matters are concerned.
>
> The principle of legality of criminal offences means that, in order to be termed a criminal offence, the specific type of behaviour to be punished needs to be strictly classified in law as an offence and the definition of all criminal offences must be precise and free of ambiguity.
>
> The principle of legality of offences means that, in order to be held criminally responsible for a crime, the alleged offender must have fully committed the criminal behaviour in question (be it an act or

omission) as described precisely and unambiguously in criminal legislation, without prejudice to the rules of criminal liability concerning the attempted commission of such an offence or the issue of complicity.

Definitions of criminal offences that are vague, ambiguous and imprecise contravene international human rights law and the "general conditions prescribed by international law". The principle of legality of criminal offences implies a restrictive interpretation of criminal law and the prohibition of analogy. The bringing of charges or proceedings or the imposition of criminal penalties based on analogy for types of behaviour that are not established in criminal law as offences are incompatible with the principle of legality.

Legitimately exercising one's fundamental freedoms cannot be legally termed or classified as a criminal offence because criminal law can only prohibit forms of behaviour that harm society.

The principle of legality of offences also means that no one can be convicted for an offence except on the basis of individual criminal responsibility (principle of individual penal responsibility). This principle prohibits collective criminal responsibility. It does not, however, preclude prosecution of persons on such established grounds of individual criminal responsibility as complicity or incitement, nor does it prevent individual accountability on the basis of the well-established superior responsibility doctrine."

The Charges

The Articles of the Criminal Code alleged to have been broken by the Defendants are reproduced in full here:

Article 164 Incitement of Social, National, Tribal, Racial, or Religious Enmity

Kozlov, Sapargali and Aminov

1. Deliberate actions aimed at the incitement of social, national, tribal, racial, or religious enmity or antagonism, or at offense to the national honour and dignity, or religious feelings of citizens, as well as propaganda of exclusiveness, superiority, or inferiority of citizens based on their attitude towards religion, or their genetic or racial belonging, if these acts are committed publicly or with the use of the mass information media, - shall be punished by a fine in an amount up to one thousand monthly assessment indices, or in an amount of wages or other income of a given convict for a period up to ten months , or by detention under arrest for a period up to six months, or by correctional labour for a period up to two years or deprivation of freedom for period up to five years.

2. The same acts committed by a group of persons or committed repeatedly, or combined with violence or a threat to apply it, as well as committed by a person with the use of his official position, or by the head of a public association, - shall be punished by a fine in an amount from five hundred to three thousand monthly assessment indices, or in an amount of wages or other income of a given convict for a period from, five months up to one year or by restriction of freedom for a period up to four years, or by imprisonment for a period from two to six years with deprivation of the right to hold certain positions or to engage in certain types of activity for a period up to three years, or without it.

3. The acts stipulated by the first and second parts of this Article which entailed serious consequences, shall be punished by imprisonment for a period from three to ten years with deprivation of the right to hold certain positions or to engage in certain types of activity for a period up to three years, or without it.

Article 170 Exhortations for the Forcible Overthrow or Changing of the Constitutional Order, or Forcible Disruption of the Territorial Integrity of the Republic of Kazakhstan

Kozlov, Sapargali and Aminov

1. Public exhortations for the forcible seizure of power, forcible retention of power, disruption of the safety of the state, or forcible changing of the constitutional order, as well as forcible disruption of the integrity of the Republic of Kazakhstan and the unity of its territory, as well as distribution of materials with such content for those purposes, - shall be punished by a fine in an amount from three hundred up to one thousand monthly assessment indices, or in an amount of wages or other income of a given convict for a period from three to ten months, or by imprisonment for a period up to five years.

2. The same acts committed with the use of the mass information media, or committed by an organised group, as well as by a person who was earlier convicted under this Article, - shall be punished by a fine in an amount from one to five thousand monthly assessment indices, or in an amount of wages or other income of a given convict for a period from ten months to one year, or by imprisonment for a period from three to seven years.

Article 235 The Creation and Guidance of an Organised Criminal Group or Criminal Association (Criminal Organisation), and Participation in a Criminal Association

Kozlov and Aminov

1. The creation of an organised criminal group, as well as the leadership of it, - shall be punished by imprisonment for a period up to six years.

2. The creation of a criminal association (criminal organisation) for the commission of grave or especially grave crimes, as well as the leadership of such an association (organisation), or of its structural subdivisions, as well as the creation of an association of organisers, heads, or other representatives of organised criminal groups for the purposes of development of plans and conditions for the commission of grave or especially grave crimes, - shall be punished by imprisonment for a period from five to ten years with forfeiture of property, or without it.

3. Participation in a criminal association (criminal organisation), or in an association of organisers, heads, or other representatives of organised criminal groups, - shall be punished by imprisonment for a period from three to eight years.

4. Acts stipulated by the first, second, or third part of this Article, which are committed by a person with the use of his official position, - shall be punished by imprisonment for a period from eight to fifteen years with forfeiture of property, or without it.

The Prosecution of a deliberate act (Article 164 above) engages Article 20 of the Criminal Code defining "deliberate":

Article 20. A Crime Committed Deliberately

> 1. A crime which was committed with direct or indirect intent shall be considered a deliberate crime.
>
> 2. A crime shall be recognised as an act committed with direct criminal intent, if a person was aware of public danger of his acts (omission of acts), foresaw a possibility or inevitability of publicly dangerous consequences, and disregarded their emergence.
>
> 3. A crime shall be recognised as an act committed with indirect intent, if a person was aware of the public danger of his acts (omission of acts), foresaw a possibility of the emergence of publicly dangerous consequences, did not desire but consciously admitted the possible emergence of such circumstances, or had an indifferent attitude towards them.

Legal Liabilities

Article 164 (3)

Article 164 (1) of the Criminal Code lacks legal certainty.

"Deliberate actions aimed at the incitement of social, national, tribal, racial, or religious enmity or antagonism, or at offense to the national honour…."

In particular the offence within the Article relied upon by the Prosecution of "deliberate actions aimed at the incitement of social…enmity or antagonism" is capable of applying to such a huge variety of conduct that falls within social discourse, disputations, arguments and political debate that it would be very difficult for any reasonably competent lawyer to advise what is legal and what is not, particularly when liability may be founded upon either intent or indirect intent as per Article 20 (3) of the Code:

> A crime shall be recognised as an act committed with indirect intent, if a person was aware of the public danger of his acts (omission of acts), foresaw a possibility of the emergence of publicly dangerous consequences, did not desire but consciously admitted the possible emergence of such circumstances, or had an indifferent attitude towards them.

A further problem is the meaning of "social". Applying the *ejusdem generis* rule of interpretation it is submitted that in this Article "social" must relate to a clear societal distinctiveness. The other categories provided in the Article possess this quality: "national, tribal, racial, or religious…" The Article lacks certainty as no one knows what other groupings or distinct individual characteristics might be regarded as "social". Would two families at war be caught by this Article? Would two excited and opposing football teams be caught by this Article? Would incitement to enmity against one person who has long hair be caught? As one expands from the micro to the macro in society, where are the lines of the law drawn and how can one predict where those lines are drawn? Can one draw a distinct social line around dismissed employees on the one hand and say managers on the other? Since when has it been recognized in the law that these two descriptors delineate distinct social groups? Are

the social groups in this case the governed and the government? Would not such distinctions be based on categories too broad to be meaningful? Moreover, is it not absurd to suppose that the legislature intended that the purpose of the Article was to outlaw incitements to enmity or antagonism between the governed and the government in a Republic that declares itself to be democratic and embraces in its constitution the right to freedom of speech?

The potential for liability is arguably so wide that it is incompatible with the Universal Declaration of Human Rights Article 19 and the ICCPR Article 19 and the Constitution of Kazakhstan (KC) concerning the right to freedom of speech:

> **Article 20 (KC)**
>
> 1. The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited.
> 2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.
> 3. Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence shall not be allowed.

The restriction on freedom of speech contained in Article 20 (3) of the KC does not include the wider notion of ills that can arise from speech included in Article 164 (1) of the Criminal Code – "social enmity or antagonism". Hence Article 164 (1) in part is incompatible with the Constitution.

Part 2 of Article 164 of the Code provides for stiffer penalties where conduct proscribed under the first section is combined with the threat of violence. This turns the question to whether Part 2 is defining an aggravating feature of a Part 1 offence or creating a separate offence of e.g.: "inciting social enmity or antagonism with the threat of violence". This interpretation may have the quality of legal certainty as generally speaking most people understand that violence is unacceptable save in exceptional circumstances. These issues would be a matter for determination by a Kazakhstan Court working with the original language in which the Article was written. Moreover, the interpretation by a domestic court would enjoy a degree of "marginal appreciation". We are conscious of a culture in Kazakhstan that places a high value on social order. "Violence or the threat of violence" is one of a number of additional elements in Part 2 that can be combined with a Part 1 action to create an alternative offence. The only other element that may have some relevance to the case is the element of repeated Part 1 actions. If the repeated behaviour alleged is deliberate action aimed at inciting social enmity or antagonism we submit that its frequency does not cure the problem of legal uncertainty. The right to freedom of speech may be restricted for purposes of public order if repetition is infringing on the rights of others – say repeated and prolonged shouting in a residential area – but this case is not concerned with any similar scenario.

The view (and it is a generous one) that Parts 1 and 2 (violence element) may have sufficient legal certainty, takes into account the arguments put forward above concerning the uncertainty of the meaning of the word "social". Under Part 2 the gravamen of the criminal offence is violence or the threat of violence. This element arguably confers a sufficient degree of certainty to the Article as a whole notwithstanding the vague word "social". This is because every human has a right to be protected against violence or the threat of violence however they may be defined socially. The vagueness of the word "social" is of less consequence in this context.

We are not qualified to give a definitive opinion on whether the correct interpretation of Article 164 (1) and (2) in the original legislative language fails the test of legal certainty in relation to the accusation "deliberate actions aimed at the incitement of social enmity or antagonism combined with violence or the threat of violence". Using the English language version available to us we appreciate an argument that where an accused faces such a charge it would not necessarily fail for lack of certainty. However, in relation to a charge under Part 1 only of "deliberate actions aimed at the incitement of social enmity of antagonism" we do submit that it is void for uncertainty and is incompatible with the right to freedom of speech. The problem here is one example of the need for the Judge to have provided a clearly reasoned judgment

It follows from the analysis so far that the key question in the case is whether there was sufficient evidence of advocacy by the Defendants of violence or the threat of violence (that was combined with deliberate actions aimed at the incitement of social enmity or antagonism) to found liability under Article 164 (1) and (2) as read together. If there was none upon which any fair and impartial tribunal could reach such finding it follows that the prosecution under Art 164 should have failed as the offence under Art 164 (1) alone lacks legal certainty and is incompatible with the right to freedom of speech.

We turn now to the impact of Art 164(3). The Indictment charged the Defendants under Article 164(3) … "The acts stipulated by the first and second parts of this Article which entailed serious consequences…." The exercise of interpretation of this part poses the following questions:

Can a charge that relies only on Part 1 lead to a conviction under Part 3? In other words can an incitement to social enmity or antagonism that is not combined with violence or the threat of violence and where serious consequences were entailed lead to the greater sentence under Part 3? As argued above Part 1 alone lacks legal certainty in respect of "incitement of social enmity or antagonism" and is incompatible with the right to freedom of speech. It follows that in any case where it is argued that the Part 1 only incitement entailed serious consequences the charge fails *ab initio* as the premise of the charge under Part 1 is void. Moreover, a logical reading of Part 3 is that liability under it can only flow from the combination of Part 1 and 2. This appears to be the legislative intent indicated by the words: "The acts stipulated by the first and second parts…" (Emphasis supplied.) It is also difficult to see how an offence under Part 1 only could ever be responsible for serious consequences. Any chain of causation between the two would surely involve a distinct and intervening action.

Can a charge that relies on the combination of Part 1 and 2 lead to liability to the greater sentence under Part 3 if serious consequences are entailed? We argue that, subject to an analysis of the original legislative language by a Kazakhstan appeal court, a basis for legal certainty can be established on the English version when Parts 1 and Part 2 (violent element) are read together. The restriction on freedom of speech when Part 1 actions are combined with violence is not incompatible with that right. It follows that here the key question is whether there is a causal connection between the serious consequences and the commission of the offence under Parts 1 and 2. If there was an incitement to social enmity or antagonism in April 2011 combined with the threat of violence would that have factually entailed the serious consequences that occurred on 16th December 2011? If a leaflet was distributed in the weeks or days preceding the 16th December 2011 and those leaflets contained inflammatory language such as "Rise up from your knees and throw by the neck the tyrant and thief" would the authors and distributors of that leaflet be responsible for the serious consequences of 16th December 2011? If those who committed the violence and destruction acted independently and without encouragement from the leaflet then the answer would have to be "No"

If the Prosecution succeeded in establishing deliberate actions aimed at the incitement of social enmity or antagonism combined with violence or the threat of violence it would be for the Prosecution to prove that those actions entailed the serious consequences. We remind the reader that in accordance with international law and the Constitution of Kazakhstan the presumption of innocence applies meaning the Prosecution bears the burden of proof to a high standard in respect of the essential elements of any criminal charge.

What proof did the Prosecution bring to the trial that persuaded the Judge to find as a fact that any act of incitement under Parts 1 and 2 committed by a Defendant on trial entailed the serious consequences under Part 3? Was a single witness present in Zhanaozen on the 16th December 2011 called by the Prosecution to establish that any person was incited to violence or destruction by anything done by any Defendant that contravened Parts 1 and 2? Was a single witness not present in Zhanaozen on 16th December called to establish the connection as a fact not mere opinion?

That there were serious consequences on 16th December 2011 in Zhanaozen is beyond any doubt whatsoever. However, to assume a connection between what happened and the acts of any of the Defendants would be an error. The connection would have had to be based on evidence adduced in the trial. A Court may only base its verdict on the evidence presented or agreed by the parties or of which "judicial notice" is taken (e.g., the President of Kazakhstan is Nursaltan Nazarbayev) during the criminal process of the case in question.

At a previous trial in 2012 five police officers were convicted and imprisoned for breaking the law by shooting at civilians in Zhanaozen on 16th December 2011. How could there be a connection between any incitement by the Defendants and the unlawful acts of law enforcement officers when the incitement by the Defendants could not be interpreted as an incitement of the police concerned?

For liability under Art 164 (3) to be properly founded it would have had to have been established in their trial that the incitement committed by the Defendants was connected to violence or destruction committed by protestors or other civilians. The Prosecution would have to show civilian disorder was not a response to the unlawful acts of the police. It would be absurd to suggest that a violent reaction to unlawful police violence including shooting could remain inspired solely by the alleged acts of incitement by the Defendants in this trial. "Entailing" is an issue of causation. This poses the question whether liability for serious consequences can be founded on an incitement which is a partial cause. It is submitted that the act of incitement contrary to Parts 1 and 2, if not the sole cause, would have had to have been at the least a substantial cause. The Prosecution would have to show that there was not an intervening act (*novus actus interveniens).* If they could not refute the existence of an intervening act the Prosecution would have to show that any intervening act that was evidenced was foreseeable by a Defendant as arising from his unlawful act of incitement. It would be manifestly absurd for the State to maintain an argument that the Defendants could have reasonably foreseen that the State would use unlawful violence against civilians on 16th December 2011. One explanation we were given as to events in Zhanaozen relates a surprise decision by the local authority to stage for the first time public celebrations of the Independence Day in the Square leading to barriers being installed, large members of the public sharing the Square and large numbers of police arriving. Civilians took to a music stage and destruction ensued. The police chased protestors taking flight and opened fire from a distance at them. Did the Defendants foresee that any of their encouragement to the oil workers' protest on that day would be met by those events? Thus, it is a matter of fact as to the sequence of events in Zhanaozen on 16th December 2011. Those facts were not established in the trial that we observed. So, whatever the truth maybe of the Zhanaozen Square events of 16th December 2011 the Judge had no

lawful basis upon which he could have established a chain of causation between the incitement alleged and the serious consequences of 16th December 2011.

Last but not least the deliberate action aimed at the incitement of social enmity or antagonism combined with violence or the threat of violence must be "committed publicly or with the use of the mass information media" – see Part 1. Consequently, the definition of "public" must be considered. Generally, "public" is taken to mean a place or medium to which access is not restricted to a narrow select group. If the deliberate action aimed at the incitement is made in a private place to which access is restricted to a narrow category of persons that would not be "public". In the circumstances of this case it would be necessary for the Prosecution to show that the incitement was made in public or over a medium (internet or television or newspaper etc) which was not restricted. It would be public if it was done by a communication in a location such as a street, square or park open to the public or a section of it. Leaflets posted in public places might fall foul of the Article.

The route to a verdict of guilty under Article 164 (3) in this case would have to have crossed the following bridges. Each question below would have to be answered in the affirmative for a conviction under Article 164 (3) to be possible.

1. Was there a deliberate action aimed at the incitement of social enmity or antagonism towards another combined with violence or the threat of violence?

2. Did the Defendant knowingly cause or encourage that incitement?

3. Was that deliberate action committed in public or with the use of the mass information media?

4. Did the incitement entail serious consequences in the sense that the cause or substantial cause of the serious consequences was the incitement and not substantially another cause not reasonably foreseeable by the Defendant arising from his act of incitement?

Article 170 (2)

> 1. Public exhortations for the forcible seizure of power, forcible retention of power, disruption of the safety of the state, or forcible changing of the constitutional order, as well as forcible disruption of the integrity of the Republic of Kazakhstan and the unity of its territory, as well as distribution of materials with such content for those purposes……

The Defendants were charged with exhorting the (a) forcible seizure of power, (b) disruption of the safety of the state and (c) forcible changing of the constitutional order. It is submitted that 170 (1) creates separate bases of liability. The forcible seizure of power is distinct from, for example, disrupting the unity of the Republic's territory. Therefore, the different limbs of the Article are disjunctive not conjunctive. As questions of duplicity of charges are not a matter we can opine on in Kazakhstan law we work on the assumption that the Defendants were not misled or confused by the nature of the charges that they faced by the citation of three limbs of liability against them within the one charge under Article 170.

As a matter of interpretation it is submitted that "power" refers to the central state of the Republic of Kazakhstan. This is a contextual interpretation given the other bases of liability. "Disruption of the safety of the state" is of less certain meaning. What is meant by "safety" and the "state"? We submit that "safety of the State" is open to such a broad interpretation that it may lack legal certainty. Constitutions have their own peaceful mechanisms for amendment of their clauses including outright abolition and re-constitution. Forcible changing therefore indicates the use of force to effect constitutional change. The use of force is synonymous with the use of violence or the threat of violence and must carry the same connotation where used elsewhere in the Article.

Under Article 170 (1) the act of exhortation must be performed in public. Consequently, the definition of "public" must be considered. Generally, "public" is taken to mean a place or medium to which access is not restricted to a narrow select group. If the exhortation for forcible change of the constitution is made in a private place to which access is restricted to a narrow category of persons that would not be "public". The exhortation would be public if it was done by a communication in a location such as a street, square or park open to the public or a section of it. Leaflets posted in public places that exhort forcible change of the constitutional order would fall foul of the Article.

In this case the Prosecution would have to show that a Defendant performed or encouraged a public exhortation of (a) forcible seizure of power, or …….. (c) forcible changing of the constitutional order.

The Defendants were charged under Article 170 (2): "The same acts committed with the use of the mass information media, or committed by an organised group…" Part 2 provides for a heavier penalty.

Liability under Article 170 (2) poses some further hurdles for the Prosecution. It must be proved that the Defendant either knowingly used the mass information media to broadcast the communication or did so as part of an organised group. As Part 1 stipulates a requirement for a pubic exhortation it follows that the use of the mass information media must involve a medium to which the public has access. It is submitted that such access must not be merely a theoretical possibility but an access that is reasonably available on reasonable enquiry by any member of the public.

Alternatively, liability under Part 2 will arise if the commission of an offence contrary to Part 1 is committed "by an organised group". As it was expressed in the ICJ's Manual for Trial Observers quoted above –

> "The principle of legality of offences also means that no one can be convicted for an offence except on the basis of individual criminal responsibility (principle of individual penal responsibility). This principle prohibits collective criminal responsibility".

Individual responsibility is provided for under Part 1. The second element of Part 2 purports to create a collective responsibility of an organized group. Individual liability cannot be based merely on association with the organized group in question. A conviction based on Article 170 Part 2 – 2nd limb may be contrary to the principle of legality. If this interpretation is correct then only the 1st limb of Part 2 survives (use of mass information media). Nevertheless, we hesitate to trespass too far on the interpretation of an English language translation on this point. Therefore, we will assume for the sake of this case analysis that the apparent difficulty can be overcome by treating a person proven to be a member of an organized criminal group as potentially liable under this Part 2.

The route to a guilty verdict would have to cross the following bridges. The questions would have to be answered in the affirmative for a conviction to be possible under Article 170 Part 2 – first limb – use of mass information media.

1 Was there a public communication (written, pictorial, oral etc) that exhorted another to (a) forcible seizure of power, or …… (c) forcible changing of the constitutional order?

2 Did the Defendant make or encourage the making of the public communication?

3 Was the public communication made or displayed using the mass information media?

4 Did the Defendant knowingly use or encourage the use of the mass information media to broadcast or publish the communication?

5 Or, was the *responsible* Defendant a member of an organised criminal group sharing responsibility for the exhortation?

Where we use the word "Encouragement" in the above questions it can be taken to address the issue of liability based on "distribution" as mentioned in Part 1 of Article 170.

Article 235 (1)

"The creation of an organised criminal group, as well as the leadership of it……."

Are the two elements of creation and leadership conjunctive or disjunctive? The comma indicates the creation of two bases of liability: (a) creation and (b) leadership. The original Russian language version of the code has a comma in the same place:

1. Создание организованной преступной группы, а равно руководство ею, -

Alternative translations of руководство are: guide, management, guidance, direction. It would be strange if only the creators of an organised criminal group who continued its leadership or management faced liability under the Article and not succeeding managers and leaders who continued with the group's criminal purpose. So, we submit that anyone for the time being guiding, managing or leading the criminal group is liable under the Article. The question is whether the purpose of the Article is to punish creators and managers of groups who have as their mainstay a criminal purpose or to punish those who are within an organised group who break the criminal law during the course of their otherwise lawful activities?

Is a distinction to be drawn between a group organised for the purpose of smuggling drugs and a bank whose senior employees carry out a single fraud during the carrying out of otherwise the normal and lawful activities of a bank? If the definition embraced the bank then it would also extend to any other group of two or more persons who carried out together any crime on one or more occasions. Viewed in this way it is submitted that the purpose of the Article is to tackle those organised groups whose essential purpose is to carry out criminal enterprises. Did Kozlov create or manage a group to pursue a criminal purpose? Was his group desirous of registering as a political party, fielding candidates in elections, offering lawful advice and support to oil workers? Or was his group created or managed for

the criminal purposes alleged of inciting social enmity with violence or the threat of violence and exhorting the forcible seizure of power etc?

That Article 235 (1) is aimed at organised criminal groups *created* for the purpose of the commission of crimes is supported by the wording of Article 235 (2): *The creation of a criminal association (criminal organisation) for the commission of grave or especially grave crimes* etc. In section 2 a greater punishment is reserved for those creating and leading organizations created for the commission of grave crimes. This suggests that the purpose at the outset of the creation of an organized group in section one must also be criminal albeit for less serious crimes than envisaged in section 2. Having set that argument out it must, however, be conceded, that an individual who creates an organization for lawful purposes, say a restaurant, will not escape liability under the Article if that organization is then used by him as a vehicle for selling illegal drugs as a principal purpose involving the organization as a whole or a significant part of it. The moment the individual begins to pursue a criminal purpose in such a way through the organization is a moment when he is creating a different organization and a criminal one. Pursuing this line of reasoning leads one to consider that Article 235 may be in essence a law prohibiting criminal conspiracy between two or more persons who can together form a group. Nowhere in the Criminal Code is a definition of Group provided. However, such a conclusion does not sit comfortably with the full thrust of Article 235 (2) which goes on to prohibit: *the leadership of such an association (organisation), or of its structural subdivisions, as well as the creation of an association of organisers, heads, or other representatives of organised criminal groups.* These words are clearly directed as what we may commonly call "criminal gangs" (a word frequently used against Kozlov by the Prosecution in the Indictment) or mafia style organizations.

In this case Kozlov was charged under Article 235 on the basis of the commission of crimes under Articles 164 and 170.

From say March 2011 were Kozlov and his associates organised to pursue as their principal purpose the commission of such offences or indeed any other criminal offences? Was Kozlov the creator or manager for such purposes? Or were the acts stated to fall foul of Articles 164 and 170 on a par with the bank fraud committed by a few midst the mainstay of lawful activities of the organisation as a whole?

The answer to this and many other questions may only be reached by an evaluation of the facts.

Aspects of the Evidence

The Defendants Kozlov and Aminov were stated to be associated in "organised criminal groups" (not necessarily the same groups but denoted as the "Group" or "Groups" henceforth). Ablyazov was said to fund Kozlov's Group through Alga in order to pursue his own agenda that included pursuing his business interests and undermining the State. The history of Ablyazov's legal position was recited including a conviction for pursuing business interests when he was in Government, his imprisonment and subsequent Presidential conferred early release, his alleged theft of £5 billion from BTA Bank and his flight from Kazakhstan. At the time of the writing of our Report Ablyazov is still a wanted man in both Kazakhstan for the alleged bank fraud and in the United Kingdom. The High Court in London imposed upon Ablyazov a 22 month sentence of imprisonment for contempt of court by lying about his

UK based assets in a case brought for recovery of the stolen money by BTA Bank. The High Court has dismissed his appeal against the contempt order and described him as a liar. He has failed to attend the High court in London to defend the main action brought by the BTA Bank against him to recover the assets. Ketebayev is an opposition politician, and a member of Alga, who is currently outside the territory of Kazakhstan. He is charged (in abstentia) under Article 235 with "creating and leading an organized group with the aim of committing one or more crimes."

According to the Prosecution the Kozlov Group had a hierarchy with Ablyazov at the top giving orders, Ketebayev driving the "ideological" content and Kozlov organizing media exposure and pursuing opportunities on the ground to advance the Group's purposes.

The proof of the alleged intent in the charges rested on literature allegedly issued by the Alga party that used phrases such as "stand up from your knee"; "take power in your hands"; literature that referred to those in power. A "them and us" or "Good and bad" theme according to the Prosecutor's "philological expert". The expert also stated that such literature advocated violent overthrow of the State. That it sought to divide social groups. There followed intense debate on the definition of social groups and which social groups were being divided in the literature.

The Defence case was that the Alga Party was approached to provide advice and assistance to the striking oil workers; that they were not responsible for any error made in the calculation of what pay the workers were entitled to which may have unfortunately sustained the strike and protests; that the disorder of the 16th December 2011 was spontaneous and not in anyway a planned event or incited by any of their involvement, literature or actions.

The indictment in this case was a document of 677 pages written in both the Kazakh and Russian languages. Page references below are to the original Russian version.

The Indictment contained a detailed narrative of the Prosecution's case. Much of the text was written in a generalised style of accusation and contained prolific repetitions. We summarise some examples. We also give some examples of accusations that do not appear to bear any relation to the charges. We leave it to the reader to consider whether these examples are evidence of a political motivation behind the prosecution.

At Page 4 the purpose of the Group is described as having been:

> "to disrupt and fracture the social and political foundations of the constitutional system of the Republic of Kazakhstan…..by instituting civil strife and hatred, calls for the violent seizure of power, insecurity of the State and violent change of the constitutional system.."

A wider purpose is provided in this example of Ablyazov's objectives which the Group was accused of supporting: Page 4 –

> "……..including to meet business interests owned by him; maintain contacts with foreign politicians and the media in order to create a negative image of and discredit the leadership of the country in the eyes of the world……."

The Prosecution relied on a leaflet published and said to have been distributed that contained language of this nature:

> "Get up off his knees, Kazakh, throw by the neck the tyrant and thief!"

The Prosecution claimed:

> "contain..(ed..) elements inciting social hatred and strife in the form of negative characteristics of the Kazakh authorities, as well as statements giving a negative image of the stereotype of power and inciting illegal protest action and inciting participants to violent action against the government."

At issue in this case is whether the activities of the Group were carried out for the purpose of overthrowing the State by violent means (Art 170) and inciting social enmity or antagonism leading to serious violent consequences (Art 164 - 3). If these purposes were established it followed that if the activities were organised between, presumably, two or more persons, the creation of an "organized criminal group" under Article 235 had occurred. It remained unclear whether the foundation of the charge under Article 235 relied exclusively on the conduct prohibited by Articles 164 and 170 or whether other criminal conduct could form its foundation.

At page 5 the Group was accused of using media including:

> "TV K +, affiliated with the online video portal «www.stan.tv», printed publications with logos "Republic" and "The View" and the information and analytical portal "Republic» (www.respublika-kz.info)", …To discredit the "public authorities"

And the Group were accused of the:

> "management of persons …. so called activist provocateurs, and guiding their translation of labour disputes onto a political track, creating situations of conflict, open hostility, confrontation, violence, massacres and destruction of property."

According to the Prosecution the connection with events in Zhanaozen is evidenced through the establishment of an Alga office there and being involved in the organisation of the "Halyk Independence Square" – an ad hoc grouping of persons concerned with supporting the protests of oil workers centred in the square of Zhanaozen.

The members of the Group were accused in page 9 of using coded language in communications between them when furthering their "criminal" purposes. Allegations were made that Defendants and others targeted the oil workers, helped to organise them and escalated the labour dispute into a political conflict. That distorted information was disseminated through media outlets mentioned above. For example reference is made to 721 transmissions by TV K + of addresses and statements of Ablyazov, the content of which was described as "stark and extremely radical".

At page 12 Aminov's previous conviction is explained for leading strikes that were illegal on account of a failure to obtain the prescribed worker member support, failure to abide by conciliation procedures and to abide by the restrictions in law on strikes in the oil extraction industry. He is accused of exploiting vulnerable workers by advancing their claim to higher wages on a spurious basis. This led to strike action and ultimately the loss of jobs. The media mentioned above was used to promote these

claims and that media were under the influence of Ablyazov, Ketebaeyev and Kozlov. Kozlov is stated to have arrived in Zhanaozen in order to exacerbate the situation in order to cause violent disorder for political gain. After Aminov's arrest on 30th June 2011, for organising the illegal strike, others named in the indictment are stated to have moved the protest of sacked workers to the Independence Square of Zhanaozen. (Although elsewhere in the indictment the protest in the Square was described as lasting between 26th May and 16th December 2011.) The Group was accused of thwarting any progress in negotiations between employers and workers that included "repeated offers by the employer" to re-engage the workers. Further the Group was accused at page 18 of preventing discussions by noisy and disruptive behaviour and

> Promoting public calls for the violent seizure of power, insecurity of the State and violent change of the constitutional system.

At page 19 the nature of the accusation is described in these terms:

> "Production and distribution containing biased, negative and falsified information leaflets containing elements inciting social hatred and strife, propaganda through public calls for the violent seizure of power, undermine the security of the state, violent change of the constitutional order, including publications and leaflets produced and referred to them for distribution as directed by Kozlov".

On 17th August 2011 Aminov received a suspended sentence from the Zhanaozen City Court and was released.

At page 19 Aminov was accused of creating an organised criminal group on this basis:

> "Aminov …….created the individual members of a criminal group .and …..secretly participated in the unlawful arrangements for planning and organizing illegal protests."

The rather long and somewhat rambling indictment repeatedly referred to the distribution of the leaflet "Rise up form your knees Kazakh, throw by the neck the tyrant and thief" amongst the supporters of the protests continuing in the Square of the City of Zhanaozen.

At page 21 the Prosecution maintained that previous disputes had been resolved within a period of 1 to 20 days whereas the involvement of Kozlov and others in misleading the workers about their pay entitlement, undermining negotiations with employers and politicising the dispute, prolonged this one for many months and led to a "meaningless" protest. [The Court heard evidence concerning the workers' claim. They believed that they were entitled to a higher wage based on a complex formula. They were supported in their belief by the opinion of a union lawyer Natalia Sokolova. Though the opinion was honestly arrived at, she claimed, it is understood that a mistake was in fact made. The correct formula for the calculation of the wages due resulted in a lower figure, which the employers were prepared to pay. Sokolova was given a six year sentence for "inciting social discord" relating to the oil workers dispute for addressing workers about wage disparity and "actively participating in illegal gatherings" at the oil company.]

The Prosecution argued in the indictment that the culmination of the activities of the Groups had a direct causal connection with the disorder on 16th December 2011. The argument is put in the following terms at page 21:

> "…..resulted in ……a direct causal relationship with political extremism of the Group, mass disorders accompanied by violence, pogroms, arson devastation and destruction of property,…."

The Indictment confirmed that

> "… for taking part in that (riot) on June 4, 2012 the Aktau City Court convicted 34 people, including those recognized guilty of offences under Part 1 of the Criminal Code Article 241 and they were sentenced to various punishments as organizers and activists and participants in these riots.."

Article 241 concerns mass unrest offences relating to "violence, arsons, wrecking, destruction of property, the use of fire arms……."

Though lacking precision the Indictment at page 25 appears to found the charge under Article 164 (Deliberate actions aimed at the incitement of social, national, tribal, racial, or religious enmity or antagonism ….) with the following accusation :

> "…. provoking open conflict by instituting civil strife and discord between employees and employers and ……. instigated and misled workers to strike and made decisions and gave guidance on the time and place of the strike."

At page 26 it was suggested that:

> "….on the basis of assumptions about possible military action to disperse strikers by the police ……Ablyazov, Ketebayeva and Kozlov by artificially focusing on social tensions and creating the preconditions for mass riots controlled the process of preparing young people for resistance to the use of firearms in the form of shotguns…."

A flavour of the offence taken to alleged statements attributed to the Group is exemplified at page 27:

> "In March 2010 was made a criminal plan to undermine and destroy the social and political foundations of the constitutional order of the Republic of Kazakhstan, …….proceeding along the following lines:
>
> Discredit the family of the President of the Republic of Kazakhstan, whose name was linked with some oligarchs; …unreasoned rumours that they had allegedly stolen together and taken out of the country money belonging to the people, to buy their own property and get rich; discredit the family of the President of the Republic of Kazakhstan by the distribution of a disk to the program channel "K +", consisting of fraudulent and outright fraudulent serial and slanderous interviews with Aliyev, who is wanted as a criminal offender."

In the same vein the Prosecutor continued on the same page to allege that they had plans to disrupt power supplies and to replicate Tunisian and Egyptian style uprisings. That Ablyazov would use the media to portray his policies as "attractive".

The Indictment treats all of Ablyazov, Ketebayev and Kozlovs' activities as not merely illegitimate but criminal. Anything that they have done was part of a great criminal conspiracy, whether opening an office, providing a viewpoint to the media or any communications amongst themselves.

At page 29 the Prosecutor introduced the evidence of a Skype conversation between Ablyazov and Kozlov that took place on the 30th April 2010. [The evidence of the conversation was obtained by the investigators after the events of 16th December 2011 when offices of Alga were searched and the recordings, created at the instigation of Alga, were seized.] Here the Prosecutor claimed Ablyazov was giving orders to foment civil strife and the violent seizure of power and that Kozlov agreed.

From page 30 onwards Aminov is accused of recruiting to an organized criminal group several persons and using the labour dispute for political purposes to institute civil strife and preparing the striking workers to be ready for violence towards the local authorities. He was accused of being behind the hunger strike of women from vulnerable families and creating implacable hostility of the workers towards the local government and employers. This Group met in secret places. Aminov was accused of attempting to disrupt the 3rd April 2011 Presidential election. (The turnout in the area was nevertheless 94.4%.)

At page 36 the Prosecutor complains about Aminov's role in publishing information about the remuneration of the oil company executives and his drawing attention to the disparity of the workers' wages.

The indictment reproduces substantial extracts of a variety of recorded Skype conversations between various characters in the case.

The Judgment

THE JUDGMENT – SUMMARY AND ANAYLSIS

In the section of this Report on the Charges the basis of liability has been discussed. To justify convictions under Articles 164 (3), 170 (2) and 235 (1) the Court must be satisfied that the Prosecution has presented sufficient evidence to establish:

- Deliberate actions aimed at the incitement of social enmity or antagonism committed publicly or with the use of the mass media (and with violence or the threat thereof) that entailed serious consequences. (Article 164 (3))

- Public exhortations for the forcible seizure of power or forcible changing of the constitutional order or distribution of materials with such content for those purposes committed with the use of the mass media or by an organised group (Article 170 (2))

- The creation of an organised criminal group or the leadership of it (Article 235 (1))

We have repeated the essentials of the charges in the three points above as it is the Judge's findings of fact in support of these matters that must be kept uppermost in this evaluation. We emphasise that we do not seek to question the views of the Judge on matters that depend upon the credibility of witnesses who testified. We must respect his assessment of the demeanour of witnesses and their delivery of oral testimony directly in front of him. Though we do question the Judgment where he refers to his reliance on witness testimony to support given findings of fact where he does not explain which witness or what it is they have said to provide that support.

Page 1

The Judgment opens with a bold assertion that in March 2010 Kozlov voluntarily joined an "extremist organised criminal group", created by the bank defrauding fugitive Ablyazov. [Let us for the time being call the group the "Ablyazov Group".]

If this was true in March 2010 why was Kozlov not prosecuted under Article 235 before the tragic events of December 2011 in Zhanaozen for a leadership role in the Ablyazov Group? That he wasn't suggests that the authorities were either ignorant of any Ablyazov Group criminal intentions before March 2010 and up to December 2011 or the authorities chose to ignore any evidence of such intentions or that there was no such criminal intention. Rioters and police alike were prosecuted for their roles in the Zhanaozen events. In seeking others to blame it may be the case that the authorities first discovered evidence during the investigation that the Ablyazov Group was all along an organised criminal group.

What the criminal purpose of the Ablyazov Group was is not stated in this opening statement. However, Kozlov's criminal purpose in joining it is described in broad terms as "undermining and destroying the social and political foundations of the constitutional order". For the time being it is assumed the Judge is referring in summary to actions prohibited by Articles 164 and 170 of the Criminal Code.

Is the Judge asserting that before Kozlov joined it the Ablyazov Group was already an "extremist organised criminal group"? If so what were its criminal aims before Kozlov joined it? Were they the same as those aims attributed to Kozlov when he joined it? What was the evidence of its pre-existing criminal extremism? As we have stated elsewhere the Alga Party is tainted by the alleged grand theft of Ablyazov and its association with his financial support. However, the criminal purpose of the Ablyazov Group is not stated to include the laundering of stolen money or the use of stolen money. Though the possibility that the Alga Party may have received financial support derived from a very grand theft may be discomfiting for those who sympathise with Kozlov and the Alga Party this is only of some circumstantial significance in weighing up all the evidence. The questionable source of finance for Alga cannot displace the requirement for clear proof of the criminal intentions the Defendants were accused of which in its essence reduces to a matter of inciting violence.

Page 2

Sapargali is cited as one who consented to participate in the criminal activities of the Ablyazov Group.

The activities of Kozlov and the Alga Party are summarised and here are equated with the Ablyazov Group. Within this passage Kozlov is stated to have been responsible for disseminating leaflets and other printed material containing elements inciting social hatred (a presumed reference to Article 164) and inciting strikers to carry out violent acts against the authorities (a presumed reference to Article 164 (3) serious consequences or Article 170).

Kozlov's visit to Zhanaozen on 15th March 2010 is referred to as the beginning of the fulfilment of his criminal aspirations.

Here and throughout the Judgment any kind of support provided to the workers of the town by Kozlov is treated as evidence of his criminal purpose (presumably under Articles 164 and 170.)

Page 3

Kozlov is stated to have spoken in public when visiting the production plant of OzenMunayGaz (presumably on the 15th March 2010 as no other date is specified) and here spoke of people living in poverty "could rise up in support of oil workers". The Judge does not recite the actual words of the speech supporting such an interpretation.

The transcript starts on page 313 of the Indictment. Kozlov listens to a complaining wife of a striking oil worker. Kozlov lends a sympathetic ear and suggests that an economist and a lawyer are needed to advise the workers. There is no hint of any revolutionary intent whatsoever. If there was evidence elsewhere of violent intentions on his part then this item of evidence would have only some circumstantial value in demonstrating Kozlov's sympathy for the striking oil workers whose protest on 16th December 2011 was a factor in the violence of that night

The Judge refers to the organised criminal group established by Aminov and that following his arrest in January 2011 members of his group fell away and moved on to the Ablyazov Group which Kozlov is now described as heading.

Kozlov is stated to be responsible for delivering to the strikers in the square of Zhanaozen radicalised newspapers "Respublika" and "Vzglyad". Then with ambiguity the Judge refers to "leaflets and other printed materials containing elements dedicated to the incitement of social hatred and discord and the undermining of the state security, calls for a violent overthrow of the constitutional order". It is unclear whether the aforementioned newspapers are tarnished by the Judge with the same brush as the "leaflets and other printed materials". The Judge does not here recite the actual words of the materials supporting such an interpretation.

The Judge refers to a Skype conference call of 30th April 2010 between Kozlov, Ablyazov and other leading members of Alga. Here the Judge states that Kozlov was assigned the task to "overthrow the government of the Republic of Kazakhstan at any cost before the end of 2011". The Judge does not at this stage recite the actual words of the conversation supporting such an interpretation.

Page 4

Kozlov is stated to have facilitated the broadcasting of speeches by Ablyazov who is here described as the head of the organised criminal group. No offending words broadcast and attributable to Ablyazov are cited by the Judge.

The Judgment goes on: "*In particular, in 2011, the television station "TV company ' K +', the internet portal 'Stan TV', the newspapers 'Respublika' and 'Vzlgyad', controlled and affiliated with the heads of the organised criminal group, distributed a variety of materials, the content of which was aimed at the incitement of social hatred and discord, calls for violent seizure of power, undermining national security and violent overthrow of the constitutional order."*

The Judge does not recite the actual words of any broadcast or material supporting such an interpretation.

The following paragraph is another example of the making of a finding of fact without any specific evidence recited:

"On the 17th of June, 2011, the defendant, Kozlov continued his criminal activities. In an interview for the affiliated newspaper 'Golos Respubliki' he claimed close ties with the oil workers and promised to draw the attention of the European Parliament to the illegal industrial action, he publicly acknowledged his criminal actions associated with materials aimed at the incitement of social hatred and discord by creating a negative image of the employer and the government authorities as enemies of the strikers, propaganda to overthrow the government, undermining national security, violent change of the constitutional order. The materials were shown on TV and published in the printed newspapers."

Examples of this approach to fact finding are spread thoughout the entire judgment and only a small selection will be reprinted here. The original Russian language judgment and the English translation are both available via this web link:

https://sites.google.com/a/sihrg.org/kozlov/

Page 5

The Judge introduces two leaflets to which great attention needs to be given. He found as a fact that Kozlov was responsible for distributing them. At page 10 of the Judgment he refers to the testimony of Amirova who stated that at sometime before September 2011 Kozlov had sent to her the two leaflets by email.

We will give short titles to the two leaflets:

- *"Fighters"*
- *"Get up off your knees"*

The Judge does not explain with any precision which part of which Articles 164 and 170 he regards the leaflets as contravening. He merely states : "…containing elements of incitement of social hatred and discord in the form of the negative characteristics of the Kazakh authorities, instigating participants in the illegal protest action against the government…". This appears to be a reference to Article 164. We have discussed above the uncertainty of "*social … enmity or antagonism"* and its conflict with freedom of speech in a democracy.

It remains to be seen whether in later pages the Judgment provides a proper legal anlaysis of the basis of criminal liability for these leaflets. For the sake of argument we will consider here the leaflets and Articles 164 and 170.

The leaflet *Fighters of the sacred land of Mangistau* is reproduced in Appendix 3. In summary it calls upon in particular those who have been striking and perhaps a wider audience to follow the example of the Kyrgyz people who rose up and freed opponents of the Kyrgyz President from prisons. "*Armed with anything at hand, smashed prisons where the opposition leaders were detained, and freed them up. That is how Kyrgyz people annihilated the authoritarian regime."* The leaflet refers to the imprisonment of the lawyer Sokolova (who advised the striking oil workers) and other actions taken by the authorities against individuals associated with the dispute.

The ire of the leaflet is directed at the Kazakh authorities and the President. Article 164 does not specify the Government authorities or the President as a class of persons protected. If it was deemed to be the case as a matter of law that the Government authorities and the President were to be treated as a sub-category of the "social" or "national" categories in Article 164, (that are already categories bedevilled by uncertainty of meaning), the effect would be such a prohibitive curtailment of freedom of speech as to render the Article incompatible with the freedom of speech rights under both the Constitution of Kazakhstan and the International Covenant on Civil and Political Rights 1966.

Under Article 170 there would have to be evidence of "public exhortations". That is to say a public distribution or display of the leaflet. The Judge refers to the evidence of Amirova at page 10 that "*she was obliged to reproduce and distribute [the leaflets] among oil workers at the instruction of the latter"* [Kozlov]. The witness did not state that she in fact did distribute the leaflet even if she was asked to. At page 11 her evidence of a conversation with Z Saktaganova was to the effect that the latter told her not to copy them. Then her evidence is cited to the effect that oil workers in the Square did have possession of "the leaflets" (which of the two leaflets if not both is a vital issue and is not explained). Amirova testifed that oil workers commented *"This encourages us to engage in war"*. To establish that the *Fighter* leaflet was disseminated publically for the purpose of establishing liability under Article 170 this part of the evidence should have been examined thoroughly to achieve clarity on the facts. The evidence of Amirova is vague on this point and appears not to have been supported by any witness at the trial, such as an oil worker.

The Prosecution would have to show that the exhortation contained in the Fighter leaflet was for the "*forcible seizure of power, forcible retention of power, disruption of the safety of the state, or forcible changing of the constitutional order"*. The leaflet is an exhortation to march upon a prison and face down its guards to obtain the release of persons imprisoned. The question is "what is meant by power"? It is submitted that considering the whole Article the mischief aimed at relates to State power in its higher reaches. A shop owner has power over his shop. An armed robber who takes control of the shop is not contravening Article 170. A Government Post Office manager has power over the Post Office premises and distribution of mail. An armed robber who holds up the Post Office is not acting in contravention of Article 170. The Manager of a State television broadcasting company has power over his sphere and someone who forcibly takes control of the studios; is he guilty of the "forcible seizure of power"? If his act is isolated and not part of a greater plan to seize State power or to change the constitutional order then he would not be liable under Article 170.

The question in this case is where in the spectrum of State power does an action to seize control of a prison fall? We do not think it would be unreasonable to treat the seizure of a prison as falling foul of Article 170. "Disruption of the safety of the State" would be engaged at least. Our criticism of the Judgment on this matter is its failure to provide any legal reasoning.

The leaflet containing the words: *'Get up off your knees, Kazakh, throw the tyrant and thief off your neck!'* Leaving aside the issue of responsibility for its distribution the question is whether these words incite violence or force. In later pages the Judge relies on the opinions of experts as to the meaning of the words. Why could he not form his own view without the aid of experts? Does the Judge avoid responsibility by sheltering behind the opinion of experts hired by the Prosecution? Probably the most important legal issue in the trial of the charges is whether any of the actions of Kozlov entailed the deaths, injuries and property damage that took place on the 16th December 2011 in Zhanaozen.

Whether this particular leaflet acted on the minds of the civilians or police that were guilty of crimes of rioting, vandalism, unlawful use of firearms or killing on that date was never established by any evidence whatsoever. Thus the leaflet could not be relied upon to found a conviction under Article 164 (3). It may be relevant to Article 170 – "Public exhortations for the forcible seizure of power….forcible changing of the constitutional order ….by an organized criminal group".

"Get up off your knees" is a call for action but what action? Attending meetings, going to the voting station, distributing party leaflets in support of a candidate, rioting?

The word "tyrant" is directed at the President of the Republic of Kazakhstan. It may be offensive to him and those who support him or indeed to those who do not support him but do not regard him as one. The use of the word "tyrant" does colour the use of the word "throw" but it is not determinative of the meaning.

"Throw" denotes a physical action. To throw someone without his consent would involve the use of force or violence. Equally in English you can say "throw a President out of office at the next election."

The word "throw" presents a paradox. To exclude the reasonable possibility that the leaflet was intended to be an exhortation to the constitutional removal of the President implies a recognition that there is no realistic constitional route to his removal. "You cannot mean throwing him out of office at an election because we do not have real elections in Kazakhstan". Is that the position?

The President has been in office for a great many years and in a democracy respecting freedom of expression some discontents will occasionally use colourful language to express their opinion to the effect that the President has acquired a grip on power and a hold over the citizenry. Subject to the law of defamation you may even call your President a "thief". "Tyrant" is a strong word. Nevertheless, considered separately or together the words or phrases cannot be judged to be an exhortation to violence. For this leaflet to contribute to the conviction it would have to have been demonstrated to be connected with other exhortations or actions that prove the charges.

If I was to accuse Prime Minister Cameron of the United Kingdom of theft and issue a leaflet calling on the British to "Get up off your knees and throw him off your backs" would I be prosecuted for inciting violence? In any country with regular elections and freedom of expression would it not be assumed I was referring to voting at the next election? However, if my leaflet targetted people involved in a long standing demonstration near Government buildings the purpose of the leaflet might be treated differently. Hence in this case the importance of establishing whether the leaflet targetted the demonstrators in Zhanaozen square with sufficient proximity in time to the events of the 16th December 2011 to regard its purpose as inciting violence and whether as a fact it led to the serious consequences of that date. Even if there was evidence that it was distributed to demonstrators close in time to the 16th December 2011 it does not follow that its intention or effect was necessarily to exhort the violence.

We attach at appendix 3 the full leaflet. If read as a whole it appears to be unreasonable to take the eye catching and attention grabbing title *'Get up off your knees, Kazakh, throw the tyrant and thief off your neck!'* in isolation. The full 726 word leaflet is a detailed explanation of a language issue facing the country and boasts the writer's (Ablyazov) belief in democratic values and human rights. The main text does not mention any violence. The full text neutralises any inflammatory effect the title may have and stalls any suggestion that it motivated the rioters of 16th December 2011. Moreover, the issue addressed in the leaflet is the diminution of the Russian language in the State whereas the citizens of Zhanaozen

are predominantly Kazakh speakers and thus the leaflet would hardly have been one that would have stimulated their anger.

Kozlov is found to have politicised the labour dispute and deceived the workers into maintaining their protest. His various actions are compounded into a criminal design that led to the serious consequences of the 16th December 2011. However, nowhere in the Judgment is a proximate causal connection established between his actions and those events. Not a single piece of factual evidence is cited to etablish that but for Kozlov's support the demonstration would not have continued on 16th December 2011. Even if it was possible to reasonably infer that his support did enable the demonstration to continue on 16th December not a single piece of factual evidence is cited by the Judge that anything he did caused anyone to riot, use violence or kill.

That there were serious consequences on 16th December 2011 was clearly a matter that was agreed by the parties to this trial without the need to call evidence to prove them. However, what was clearly not a matter of agreement between Kozlov and the Prosecution was whether any of the actions alleged against him entailed those serious consequences. There was no factual evidence called by the Proecution in this trial to establish that any of his actions did so lead. In the Judgment it is merely assumed as a fact that Kozlov's actions entailed the serious consequences. There is no factual justification set out for this assumption.

Article 117 of the Criminal Procedure Code of Kazakhstan (CPCK) provides:

> Circumstances, Which Are Subject to Proof under Criminal Cases
> 1. The following shall be subject to proof in respect of criminal cases:
> 1) the event and the features provided for by the criminal law of composition of crimes (time, place, method and other circumstances of commission of a crime);

Pages 6 and 7

The Judgment deals with Aminov and the disputed calculation of the oil workers' wages. The Judge finds that Aminov's actions in promoting strike action and the Zhanaozen Square demonstration led to the violence etc of 16th December 2011. The Judgment provides no explanation for the causal connection stated. Aminov did plead guilty so the Judge may not have thought it necessary to do so.

Pages 7, 8 and 9

The Judgment deals with Sapargali and starts with his speech on the 25th June 2010 in Almaty (3500 kilometres from Aktau by road) in which it is stated he exhorted violence to change the Government.

On 17th December 2011 in Almaty Sapargali spoke publically and called for the violent seizure of power.

Kozlov gave evidence over three days and his testimony is summarised by the Judge in less than one page of the 43 page Judgment. Whereas the Judge's opening paragraph stated Kozlov joined Ablyazov's Group in March 2010 according to his summary of Kozlov's testimony Kozlov stated he

managed the Alga Party from the seond half of 2007. Kozlov's denial of Ablyazov's leadership of Alga is stated as are his statements that the Skype conference of 30th April 2010 was merely an exchange of views not a planning of action; that there was no mention of using violence; that he gave no instructions to Sapargali though financial assistance was given to him to visit Zhanaozen; that he had no communications with Aminov and had never met him [Aminov confirmed he had never communicated with Kozlov when questioned by Kozlov's lawyer during the trial.]; that Alga had no relation to the events that occurred in Zhanaozen; that he did not speak publically to oil workers but only spoke to them privately and helped them with lawyers; that he had no intention to initiate social discord or the violent overthrow of the state.

Page 10

The Judge states: "*The criminal acts committed by him [Kozlov] have been fully proven by material evidence, the collected materials of the case, the testimonies of the witnesses examined in the trial."*

The Judge then cites Decision of the Supreme Court of Kazakhstan of the 21st of June, 2001, № 2 *"On some issues of the use by the courts of the law on the responsibility for banditry and other crimes committed by association" (as amended), the stability of the organised criminal group and the gang is defined, namely, by the stability of its structure, close relationships between its members, consistency of the conducted activity, stability of form and methods of criminal activity, and the duration of its existence. The creation of an organised criminal group, a gang or a criminal community (criminal organisation) constitutes a component of the completed crime, regardless of whether any crimes have been planned or committed.*"

This citation lends support to the argument above at page 37 on legal liability that Article 235 is aimed at settled criminal gangs rather than lawful groupings that may have incidentally broken the law or where some individuals within the group may have committed a crime. For the Ablyazov Group or the Alga Party led by Kozlov to come within the cited decision of the Supreme Court it would have to be established that its mainstay was crime. The Alga Party had been seeking to obtain registration as a political party. By all accounts and from the occupation of witnesses who testified in the trial Alga was a party that was adhered to by intellectuals including lawyers. Excluding Ablyazov from the point it was not established that any of Alga's supporters were individuals with known criminal tendencies or criminal records. That does not mean to say it would not be possible for a grouping to be established by such persons who share the criminal purpose of overthrowing a state by force. Nevertheless, the decision cited pointed to a requirement on the trial court to give due weight to all the activities of the Alga Party not just those alleged by the Prosecution to have been unlawful. The Judge did not treat any of the Alga Party's activities as lawful. Any activity that in isolation would be regarded as lawful, such as providing a lawyer to advise the oil workers, was treated by the Judge as part of the criminal plan to steer the strike and demonstration to a violent end.

If a man has a plan to sell drugs his lawful purchases of a car, scales, pen and paper and a mobile phone could all be treated as done to pursue his criminal end. In this case we cannot accept that such logic can apply in the absence of clear evidence that the Alga Party and Kozlov in particular had been devoted over time and systematically to the forcible overthrow of the contitutional order of the Republic of Kazakhstan. Simply on account of some isolated instances of inflammatory rhetoric arising during the course of a Party's political agitations and internal discussions it should not follow that the Party's other activities (opening of offices, purchasing of computers, hiring of staff, setting up a regional

network, seeking to be registered and the offering of expert advice to striking oil workers) should be treated as the drug pusher's purchases might be. That is to say as evidence of the crime.

The Judge ruled that Kozlov *"for a long time has consistently performed acts aimed at the implementation of undermining state security, violent change of the constitutional order and the fomenting of social hatred and discord. In order to perform the planned tasks, they attracted to the group a large number of persons and they have planned and carried out various criminal acts."* If true this would justify the finding of guilt under Article 235 and allow for the finding that Alga's various activities were all towards such unlawful purposes. However, the Judge fails to cite any actual evidence that demonstrates *consistently performed acts "for a long time"*. At best he cites a few isolated items of evidence that are open to opposing interpretations and that are separated by time and circumstances. He taints with criminal intent all activity that passes in the meantime between these items.

The Judge refers to the testimony of Ayzhangul Amirova who stated Alga was supervised by Kozlov. She received from Kozlov by email in May 2011 a brochure entitled "Skillful organisation of mass disorders". See our comments on the Judgment pages 13 – 14 below where we demonstrate that the brochure in question did not contain the title "mass disorder" but the word "protest".

She claimed that Kozlov also sent her by email the leaflets *'Fighters of the sacred land of Mangistau!'*, and *'Get up off your knees, Kazakh, throw the tyrant and the thief off your neck!*' which she was "*obliged to reproduce and distribute among oil workers at the instruction of [Kozlov]"*

Page 11

The Judge continues with Amirova's evidence*: "Z. Saktaganova, having read the content of leaflets, said: "What is this? Is he calling us to war? Aizhan, do not copy them, we don't want to be involved in it." The oil workers, who were standing in the square and holding the leaflets in their hands, came up to her and using foul language, said: "This encourages us to engage in war,"."*

No oil worker was called to the trial to confirm that the leaflet gave them such encouragement.

The Judge refers to the evidence of witness Natalia Azhigaliyeva. She gave an opinion that Kozlov's "politicisation" of an ordinary labour dispute led to the serious consequences of 16th December 2011. The witness Talgat Saktaganov "*supposes that if they[Kozlov etc] had not intervened with such provocation, the tragic events of the 16th of December, 2011 would not have taken place."*

The Judge relied on such witnesses' opinion. Was the Judge right to accept such opinions about causation as a matter of law? Establishing that a particular source of support for a demonstration enabled it to continue to a date when violence took place is no proof of its causation. No more than saying that support is the cause of the loss of life that flows from an accidental aircraft crash into the Square on the night of 16th December 2011. The Judge would be wrong to treat such testimony as persuasive on the issue of causation. The violence and destruction and firing of guns have to be shown to have been caused by Kozlov's actions. The continuance of a demonstration for a long time does not lead inevitably to violence and destruction. Other factors must exist to make violence inevitable and this trial did not establish a connection between Kozlov's actions and the violence and shooting that took place that day.

Page 12

Here the Judgment deals with the recorded conversation between Kozlov and Atabayev of 25th October 2011. The Judge's version of this conversation describes Atabayev admitting involvement with a group of thugs prepared to shed blood in Zhanaozen. *"... they want [to do it] on the 1st of December, I say, let's [go for] the 31st of December, to surprise [them], they want to hold on for at least 3 days. During this time, Kazakhs in other towns and provinces will manage to rise up..."*. and that Kozlov states *"... In order for the Kazakhs to rise up in other provinces, it is necessary that they get information..."*

This statement attributed to Kozlov is clearly of importance. In addition to the distribution of the "Fighter" leaflet it appears to be the only evidence that might indicate Kozlov's support of an uprising of sorts. However, is the Judge's quotation accurate? Is his selection fair? In the Indictment the sentence spoken originally in Russian does not contain the words "to rise up". The indictment version is: *"To Kazakhs in other areas, it is necessary that the information received"*. This does not make much sense and it is possible that the indictment transcription did not contain every word spoken and that a gap was filled later. *"To Kazakhs in other areas [**to rise up**], it is necessary that the information [**is**] received"* would make more sense. But is Kozlov just discussing or encouraging?

Atabayev is reporting his knowledge to Kozlov and does appear to suggest he has sought to influence the "thugs" where he stated "*I say, let's [go for] the 31st of December, to surprise [them]"*. However, without his being required to attend the trial for questioning one cannot be certain what he meant and what the full context was. Was he seeking to dissuade violent tactics by supporting a new rally that might be more effective and better supported?

Tempting though it is to save the reader from excessive detail and to place the relevant transcript provided by the Prosecutor from page 603 onwards into an annex we are of the opinion that we should provide it here. A comparison of the original words with the Prosecutor's interpretation, unquestioningly accepted by the Judge, is central to our critique of this Judgment.

Kozlov – K, Atabayev – A

"A": Volodya [short form Vladimir], good day. The situation is like this: there will be "foofaraw" on 1st of December.
"K": what sort of "foofaraw"?
"A": In Zhanaozen. Therefore ... there... one person for reconnaissance... and one more we need to add ... just to check out the situation. They are waiting. There is a small group of athletes there, well, they are thugs. So they are waiting. Seryk Sapargali is ready to go, but I think it should be someone neutral [impartial], in order to realistically assess the situation on the ground, to see how serious it is, they have decided to do it, they are willing to make sacrifices, they do it intentionally. I supported them. They all took an oath on the Koran. Therefore, they do not know that I am going to talk to you, they actually wanted for "one" who lives abroad. I told him. He says if it's so serious, if the intentions are serious, then the support from abroad will be in place. But for this, I said, someone should be there. Seryk will go. But he thought you might go. Seryk can take the desired for real. Someone else has to be there with him... I do not know about this, he goes secretly, Rosa does not know Natasha does not know.... do not know about it. They keep it secret. But they call it "the other." Kurultai they created already, the meeting was held. People from Karazhanbas are the members of it. Therefore, I understand Volodya, there will be bloodshed, but it's their choice. What else can be done? How else can we tolerate all this?
"K": - I understand.
"A": - Therefore it will be good, if there is any doubt (I also had my doubts initially), but now, it seems, someone should go. Who can do that? It should be a person who will not blab, that ... will not sympathise, but that person will take the things calmly and really will be able to assess the situation. Who can do that?

"K": - I do not know, because here one needs to understand that it is all absolutely ... If this proves to be a provocation, organised by these guys, then we will all face criminal charges.
"A": - I understand, but this, no one would know. We hope so. This man has to go, really assess the situation on the ground. I have already spent many months with them. The last trip I met secretly with these guys.
"K": - I need advice about these things, because, you know this is a very...step
"A" - But we have to do it that way that it will look that you know nothing about it, you have to pretend you do not know about it, if anything you're not supposed to know about it. I already said, "Political organisations shall not be entangled in this matter at all "- I wrote them a long time ago, we do not know about it at all. They understand it perfectly. And you have to live after all of us. You are a leader... They understand it perfectly. They understand that there will be sacrifices. They understand it perfectly well.
[Page 604]
"K": - It is clear that there is need for a response.
"A": - So, who can we send someone who can realistically assess the situation on the ground, not thinking aloud, but critical thinking, access all "pros" and "cons." Who can go instead of Seryk? Seryk wants to travel by train, and he does not want to go to Aktau, he ...Shetpe, the station, which is the next station there, he will disembark there - he will be picked up.
"K": - Shetpe?
"A" - Shetpe, right? Is it the nearest station?
"K": - No, it is about two hundred kilometres away.
"A": - And, from there he says he will take the car. He does not want to go by plane ....And who could go from..?
"K": - I do not know, just totally controversial task. I am supposed not to know anything but I am to find a man to go there, totally incompatible input [task].
"A": - No. .. . I can speak myself for this person.
"K": - I just do not have people who would not have been associated with the party. I am not local, all my contacts are associated with party or with the life I lead.
"A": - Just to trust Seryk, all of this to trust Seryk completely, simply ...
"K": - No, Seryk, I do not want Seryk to do it, we just have to find a person, it should be another man, may be you have a man. We are ready to help to organise a trip there for such person, so that he can keep track of events. But, firstly, he is ... and how he will go there?
"A" - I wrote to them, that together will Seryk, there will be another person to assess the real situation, and you have to understand this, because to make a decision to go for such measure [step] - it's a huge responsibility. Just throwing words [talking]... I am not going to. I said that there will be a man, but you need to convince him first. Not to convince, but really ...situation. How many units you have at "hand" (Unintelligible) that you have collected.
"K": - Well, just....
"A": - I am not authority myself, it happens that sometimes I unrealistically overestimate opportunities .so I do not believe it myself. Should be a man, you see ... from the protection [security] unit, they say he is former KNB ... remember, he was here. The person who should really be ... without any bias, and can accurately assess the situation and see firsthand ... They want December 1, I say "let's do December the 31 to have an element of surprise" - they want to hold for at least 3 days. This will allow for Kazakhs other cities and regions to have time.
"K": - Something like this...For Kazakhs in other areas, it is necessary that the information is received.
"A": - To do this, I think we should go to the villages and remote regions and learn everything, clearly and judging by the results then to say to people we trust when we will be ready. You see, when people are going to make such sacrifices, willingly, quite calmly, steadily, I had a lot of time to talk about it, to listen to them about their problems. They do not trust Aizhangul'. I thought Aizhangul' will inform me about the whole situation, I wanted to do it with her help, but they are all strongly opposed to it. There was some Zhanara next to her, who is it? Allegedly she is associated with . . . (Unintelligible).
"K": - They are all fucking crazy there, all of them without exception. Their favourite entertainment is to talk crap about each other ... any nonsense, without any evidence, arguments, just idle talk.
[Page 605]

"A": - They say, "we can not prove, but do not want to risk" *[the expression in Russian does not make sense]* - once such words were said
"K": - ... One day the same would be said about themselves.
«A»: - I say that you can say the same about me.
"K": - Well, for example, is "Jacques" proxy and I do not understand whether there is some parallel organisation.
"A": - Here is the "Jacques" is absolutely ... and he has the right ...either through him, or ...Bolat.... blame on him ... nothing will result from it
"K": - It is not that easy. In fact it amounts to suicide.
"A": - Yes.
"K": - In terms of the benefits it is...
"A": - This is a signal.
"K": - Well, in there is the same situation in Aktobe, too.
"A" – No, it is not as big scale in Aktobe, but here ... it is very big.
"K": - Let's think about the candidate.
"A": - The person should be towards us as well...
"K": - He should be trusted, and from this side.
"A": - At least on this side, from your side the things should be clean. And realistically evaluate the situation. Therefore they rush the events. Apparently they communicate with Seryk, too. He is ready to leave, but....
"K": - .. while he has it ... trying to pull the blanket over himself .. to politicise everything, so to speak
"A" – But the most important things is that there must be a sober man. When we can provide an answer? ... They call this event the wedding.
"K": - I actually have doubts that they will be able to sustain the situation.
"A": -.... you communicate via Kalamkas; we will have a great event on December 1: Karazhanbas goes on Mangystau. I ask people, "Is it not" a bird? "... Karazhanbas declared 1 December general strike, they organised a "strike." They must stand such a long term. This is coming to an end in November.. .Karazhanbas will be the first day.
"K": - let's think.
Next conversation is held whilst the background noise, the conversation continues in whisper.
"A": -.... Money.... While we have to explain ... then they wanted to collect the fifth...
"K": - Over there, yes?
"A": - ... but I met with him, 38 people, from them I have met around 28-29 people.... And there is the second question: they wanted to organise everything through reputable [people] ... and to monitor everything ... and transfer money through them ... I met with them and then came back ... people.... four people, one of them, which organised Pavlodar, Karaganda and Semipalatinsk regions. And then the second question ... I met with him, he must give his consent. They have their own principles, they do not want to participate in the politics, they are doing business. My guys say, if they will speak to him, he will agree. His reputation is in the fact that he is respected ... he is afraid of "Mahmud", which you know...
"K": - Oh, yes, I know!
"A": -.... And I also met with “Bach", who controls ...
"K": - "Khorgos"?
[Page 606]
"A" - no. . They understand that if “Halyk Maidany” [People’s front] will demand...
"K": - Agreed.

The Judge fails to draw attention to critically important parts of Atabayev’s pre-trial statement that was read to the court. Featuring from page 287 of the Indictment Atabayev is reported to have explained that he was approached by an old lady in the Square who claimed to be aware of persons who would blow up pipelines if the stikers demands were not met. He stated that should not be allowed. His answers throw a different light on the intentions behind the conversation with Kozlov.

Here is the Prosecution's quotation in the Indictment of Atabayev's answers to questions as a witness (date not provided):

> Page 288
>
> When he [K] together with Mamay Z. arrived from Almaty for the second time in August 2011, they were picked up at the airport by the representative of the People's front Aizhangul' Amirova. He [Atabaev] does not know who gave her the orders to meet them at the airport. From the airport they went by taxi directly to Zhanaozen, where in Independence Square they met with sacked oil workers of "Ozenmunaigaz". The sacked oil workers told him that they will resort to extremity and open acts of violence if their problems will not be solved by their employers and the authorities.
> From the crowd in the Square, an old lady approached him [A] and told him that if the employer will not meet the demands of the strikers and will play for time, then young people will take up arms, will rise in revolt, and will blow up the oil pipelines around. There are rumours about it. Therefore she asked: you are a famous person, please direct them to calm down.
> In this respect, he gave his advice, that such actions should be prevented and if such steps will be taken, there would be bloodshed. He also told them that if the strike will end up in bloodshed then the WTO will not help them. Therefore do not exacerbate the situation. He did know the woman who told him about it, she did not introduce herself. She did not tell him either who of the young people was preparing for an armed uprising and for an organisation of pipelines blowing up; he did not ask neither.
>
> page 290
> He did not talk about the violent resolution of the dispute to anyone; there were no discussions about it. It never occurred to him to resolve the conflict with violent methods.

His attendance at court would have helped clear up his intentions and any ambiguities. What is to say that he was not just excited on 25th October 2011 or frustrated? We deal with his non-attendance on page 20 of the Report. Whether Kozlov was supportive of plans with a violent end is answered by the next conversation of 31st October 2011. The two conversations ought to have been considered together to fairly measure Kozlov's direction.

Page 13

Here the Judgment deals with a conversation held on 31st October 2011 between Kozlov and Atabayev (that also included Turusbekova according to the transcript appearing in the indictment from page 610 onwards). The Judge summarises the conversation and interprets it to mean that Kozlov is supporting Atabayev's activities that support the thugs and that an international terrorist group "Soldiers of the Caliphate" are a good example.

The Judge misrepresents the evidence. He is quoting not from Kozlov but from a version of events or narrative authored by the Prosecution contained in the Indictment at Page 615 which we re-produce here in Russian and the English translation:

> *Было бы целесообразным указать следующие факты, являющиеся доказательствами к словам, сказанным обвиняемым Козловым, в частности: в это же время, т.е. 31 октября 2011 года в городе Атырау, активные члены международной террористической организаций «Джунд аль-Халифат» («Солдаты*

Халифата») Усабеков М., Сагенов А. и Султангалиев Б. совершили террорстические акты возле зданий Атырауского областного акимата и прокуратуры, в результате один из террористов - Султангалиев в момент взрыва погиб. Один из активных членов указанной международной террористической организации Ли С.Б,. не повиновавшись требованиям органов внутренних дел, при оказании сопротивления, был уничтожен.
Также в августе-сентябре 2011 года задержаны 47 членов международной террористической организаций «Джунд аль-Халифат» и на основе приговора

Атырауского городского суда, они осуждены к различным срокам лишения свободы.

It is expedient to point out the following facts that are the evidence of the words by the accused Kozlov, in particular: at the same time on 31st October 2011 in the city of Atyrau, active members of international terrorist organisation "Djund Al' Khaliphat" ("Soldiers of Caliphate") Usabekov M, Sagenov A. And Sultangaliev B. Committed terrorist attacks near the buildings of regional Atyrau akimat (local authority) and near the local prosecutors' office. As the result one of the terrorists Sultangaliev was killed during the attack. One of the active members of the above mentioned international organization Lee S.B. was eliminated after resistance and declining the orders of the officers of the law enforcement agencies.

Also in August-September 2011 47 members of the international terrorist organization "Djund Al' Khaliphat" ("Soldiers of Caliphate") were arrested and subsequently sentenced to various imprisonment terms according to the verdict of the Atyrau district court

If the Judge's interpretation was true this is obviously very damning evidence against Kozlov. We include below the transcription of the version that was produced by the Prosecution within the 677 page indictment from Page 613. When the idea of others to blow up a pipeline is mentioned by Atabayev, Kozlov responds with an exclamation "*Terrorism!"* and that the Soviet Union changed without terrorism and with 50,000 people rallying terrorism is not needed. "*Those who come through the terror of power remain terrorists forever."* These words are the opposite of an endorsement of violent tactics to bring change to Kazakhstan and the Judge ignored them.

Page 613 of the Indictment:

Conversation that took place in the office of unregistered party «Alga» in the city of Almaty 31.10.2011 (15.15)
.... the conversation concerns making an application for a rally commemorating the 20th year of Kazakhstan's independence
Kozlov - «K» _____ Atabaev-«A» _____ Turusbekova — «T»
«K»: - There are some people that do real deeds, there was a blowing up in Atyrau today, nobody knows about these people, they do not discuss details amongst themselves over there, there is nothings like that over there, they just simply appear with an explosion device, i.e. there are other schemes and technologies.
«A»: - They have their own plans, too, but they do not talk about it, and nobody suspects that they want to blow up a pipeline.
«K»: - Terrorism!
«A»: - Hey, how terrorism appears, if I cannot change anything by legitimate methods, then I have to resort to terrorism, I will not prove anything by trial, I will not change anything in Kazakhstan by legitimate methods.
«K»: - If only they would have 50 thousand people there, we will never need any terrorism. 50 thousand people would have gone out into the streets and stayed there, as Solidarity did when changed the Soviet

system with no terror whatsoever, Andropov was General Secretary at the time, he could have suppressed them easily but he did not do it, as masses of people rose up and he understood that it was the end.

Page 614

«А»: - But I cannot call 20 thousand people, 30 thousand people «to gather for a rally ».
«К»: - Let's apply for permission for a legitimate rally and call everyone to come out for a rally.
«А»: - I will talk about it as of today, if we apply for a legitimate permission for a rally, you have to provide .... (someone interrupts).
«К»: - So you want to say whether we want to check out the readiness in general (Unintelligible), i.e. if there will be only 25 people – what is the point of this conversation in the first place. Are we Al Qaeda creating? Al Qaeda is nothing good, i.e, terror, "Those who come through the terror of power remain terrorists forever."
«А»: - OK, I have to go to work, good luck.

The Judge's summary of the conversation is misleading. He may have failed to fully read the 677 page indictment and through laziness or pressure of time allowed himself to make assumptions that were in tune with the thrust of the Prosecution's claims. He may have been prejudiced and deliberately misled what the evidence was. He may have yielded to external executive pressures in presenting a false impression of Kozlov's words. We do not know the explanation. Whatever the explanation may be the Judge made a very serious error.

Page 13 and 14

Deals with items seized from Amirova's workplace and they included 20 copies of the *Fighter* leaflet and 22 copies of the *Get up off your knees* leaflet. A brochure and 5 cards entitled "Skillful organization of protests". There is no reason to suppose this is not the brochure Amirova referred to in her evidence and was mentioned in the Judgment at page 10.

At page 10 of the Judgment the Russian is:

отправил б ей печатную продукцию (брошюру) под названием «Грамотная организация массовых беспорядков», а в сентябре 2011 года она

That translates as:

....sent her printed materials (brochure), entitled "Competent organizing of mass disorder....

At page 14 of the Judgment the Russian is:

5 листов под названием «Грамотная организация протестов» (л.д. 160-16 178-179, 52 том).

That translates as:

5 sheets named "competent organization protests" (pages 160-16 178-179, 52 volume).

There is a significant difference between "mass disorder" and "protests" which has far reaching implications for the verdicts in this case. The Judge may have faithfully stated what he was told by Amirova in the trial but where he had the actual material before him it appears to be misleading of him not to have pointed out the actual title when dealing with her evidence. Of course the possibility could be entertained that Amirova was referring in her evidence to a different document sent to her by Kozlov about the organization of "mass disorder." Nevertheless, in the absence of documentary proof of the existence of two different brochures it follows that the Judge may have misheard the testimony or it was mistranslated. Either way it was a matter that should have been subjected to close scrutiny by the Judge in order to ensure a fair trial. Additionally, we would comment that one would have expected that given the importance of the item, if it in fact contained instructions on organizing "mass disorder", either the Prosecution in its Indictment or the Judge in his Judgment would have demonstrated this by quoting excerpts from the brochure that proved it was concerned with the planning of crime.

Some of the leaflets were also found at the residence of Z Murynbayeva.

The witness B Kalzhanov established that in the Zhanaozen Square there was a glued part of a ripped off *Fighter* leaflet. However, on such a crucial point the Judgment fails to state when this was seen.

The Judge refers to the opinion evidence of experts on the leaflets. Examination number 683 of January 2012 is cited. The interpretation that can give the most offence is *"encouragement of active participation in the socio-political life in order to change the authorities in the Republic of Kazakhstan"* which hardly seems to be offensive at all in a democracy.

Examination number 3529 of the 23rd April 2012 is summarised and an opinion arching over all the materials, speeches and conversations etc is given that includes the conclusion that violence was being incited.

Page 15

Examination number 2054 of 1st January 2012 also provides a conclusion upon all the materials that there was propaganda inciting a violent overthrow of the constitutional order.

On such important points the Judge should have demonstrated why he concurred with such conclusions and what specific evidence justified the experts' positions.

With a very broad brush the various television programmes and newspapers featuring in the case (K+, Stan TV, Respublika etc) are tarnished with the objective of supporting an overthrow of the Government. Not a single quotation of any actual broadcast or newspaper article is given to support these sweeping condemnations. It may be the case that these media were opposed to the Government but in the absence of evidence of statements prohibited by Article 170 the Judge's remarks constitute a reaction to freedom of speech. Nor is there any legal analysis of any statement from these media demonstrating that Article 164 was contravened. This would be required in a judgment in a criminal case given the fraught uncertainty as discussed before of the "social enmity and antagonism" clause and its conflict with the right to freedom of expression.

The Judge concurs with the expert opinion that these media bear direct responsibility for the riots in Zhanaozen on 16th December 2011. The reasoning of the expert is not explained. If it is the legal culture in Kazakhstan for Judges to defer to experts then that culture must be changed. For a Judge to defer to experts without enquiry or analysis of his own is not compatible with the requirement that a Court be impartial and independent. If the Judge's decisions are guided by experts hired by the Prosecution then the Defendant is not truly being tried by an independent Court. He is being judged by whomsoever the Prosecution pay to give whatever opinion suits its purpose. The Judgment contains no indication that the Judge applied his own evaluation of the materials. Moreover, the Criminal Procedure Code provides:

Article 25. Evaluation of Evidence on the Basis of Internal Convictions.

1. The judge, the procurator, detective, investigator shall evaluate evidence on the bases of their internal convictions, based on a sum of evidence considered, guided in this respect by the law and their conference.

2. No evidence shall have predetermined force.

Articles 83 and 84 of the Criminal Procdure Code deal with the role, rights and duties of expert witnesses. The Code does not indicate that the opinion of any expert is binding on the court. The expert's role is to assist the court.

Whereas it would often be reasonable for a Court to respect the opinions of experts from specialist fields such as DNA and chemistry in which subjects the judge lacks experience, in this case the expertise related to the interpretation of words in a non-specialist context. Words claimed by the Prosecution to be directed at ordinary workers and the like. It would be a matter of considerable concern if any judge regarded himself as unqualified to decide for himself what the words meant.

Page 16

The Judge continues with his acceptance without anaylsis or reasoning the opinion of the political analyst R Akbarova that Ablyazov, Atabayev and Kozlov had a plan to violently overthrow the Government.

The *Fighter* leaflet is given closer attention by the linguist A Svankulov and he appears to conclude that it advocated the use of force against the Government and incited social discord. However, the Judge fails to analyse Articles 164 and 170 and apply the law to either the facts or the opinion.

Page 17

Another linguist D Mambekova who considered the leaflets is relied on and she is quoted as follows: *"these statements are aimed at seizing power, violent change of the constitutional order, and forcible retention of power, undermining national security, violent breach of the integrity of the Republic of Kazakhstan and the unity of its territory"*. This opinion contains a list of most of the objectives prohibited by Article 170. The Judge fails to analyse which phrases from which leaflets are aimed at which particular objectives.

Professor M Grachov is relied on to the effect the leaflets contain *"signs of an appeal to change the constitutional order…, the violent seizure of power."* What the expert meant by "signs" is of importance and the Judge does not explain what is meant by it.

The Skype conference of 30th April 2010 is referred to. This involved no less than 18 persons including Kozlov and Ablyazov. The latter is quoted in the Judgment: *"I'm also convinced now that by the end of next year we can overthrow this government"*. Is this quote taken out of context and is a misleading impression given? A transcript is provided in the 667 page Indictment from pages 326 – 338. No direction is given or expression made suggestive of the use of violence to achieve a change of Government. The contrary interpretation would only be unavoidable if it is accepted that there is no constitutional or peaceful means to change a Government in Kazakhstan and that therefore *any* advocacy of change implies the use of force. On reading the given transcript as a whole we are of the view that the Judge and expert have given a misleading impression of the purpose and content of the conference of 30th April 2010.

Here is the relevant extract translated from the Prosecutor's Indictment at page 335 - translator's comments in [ ] brackets:

> Ablyazov: I am here fighting against authorities for 10 years. But inside, I am sure; the government will fall not later than by the end of next year. That's it. In principle, it's realistic. Simply we just have to work for it. I personally was made sure of it at the beginning of the year, as soon as we started to disturb the government, it became wibbly-wobbly, and it became inadequate. It was inadequate last year. And there is lots of discontent, a lot of it, it is very important now not to face out and there will more people will join us. И And that is why I am sure that if we will persist by the end of next year we will be able to topple this government. This is like yesterday, recently... I told you that I see it from the outside that the government will fall. I am now convinced that we will be able to topple this government by the end of next year. Therefore I think we should find the weak points in the government: workers, miners and mortgage borrowers, so that all of it put together will have enormous power. Then somewhere discard the government. And after that the main point is how we are going to fit in this government. We 'are the participants of the process, to avoid the scenario of Kyrgyzstan, where the old policy simply remained unchanged. We need to talk about real changes. I consider it now the priority number one, our biggest priority. With reference to social projects. I understand that you work a lot in the regions with various groups of population, you provide legal and other assistance. I think this is necessary to do. I consider it correct, it will be necessary ....
> Ablyazov: I think it is time to topple down this government. Surely, it is necessary to receive support, but here it is actions. The main places are necessary there. We need to go to the places that are ready more than the others. So that we can /shake/ this government. I am sure it is Almaty and /rural/ regions. So these cities and the regions need to... But in this case perhaps... we will think ...
> Ablyazov: Therefore, talking about priorities, then I think ... I heard a phrase ... [impossible to translate – does not make sense][, это не , что она теряет, ну, скажем, много усилий,
> а-а, это в регионах, районах как бы так это]. But I would like to say that it is very complicated for people, in the regions it is anyway, to attract people... and to knock down the government...
>
> (Connection failure)

Fighting language is often used in politics without meaning violence. Ablyazov says he has been "fighting against the authorities for 10 years" – this cannot be meant literally.

Page 18

Psychologist N Abisheva is relied on: "*During a comprehensive examination it was established that the video transmission with speeches delivered by M. Ablyazov on the 'K+' TV channel contribute to the formation of a negative opinion of the authorities and about the political and economic situation of the state in the minds of people.*" This is one of many examples of the Judge's negative treatment of the exercise of freedom of speech in the context of a criminal trial. So what if Ablyazov expressed his opinions about the authorities? It is as if, for example, the *Fighter* leaflet was one bad apple in the barrel. In the mind of the Judge that one bad apple is enough to contaminate all the apples in the barrel. All speeches, all broadcasts and all newspapers associated with Ablyazov, Kozlov and the Alga Party are to be associated with a plan to overthrow the constitutional order by force. Given that the media so condemned possess the obvious means to make public exhortations it is a very serious error of the Judge to have failed to cite any statement carried by such media that could be said to constitute an offence under Articles 164 and 170. One is left to conclude that there were no such examples. And thus the verdicts on such materials as have been examined rest upon very insubstantial foundations. The materials and statements offending in the opinion of the Judge are invariably taken out of context and in any event have not been subjected to any careful legal analysis that explains what Article they contravene and why. Moreover, Kozlov denied that Alga was the author or distributor of the "Fighter" leaflet and his Defence presented technical evidence seeking to establish that the exhibited leaflets were not compatible with the Party's printers. If it was the only item overtly inciting force in all the evidence that must give weight to Kozlov's denial. A single leaflet overtly inciting force, as the Fighter leaflet undoubtedly was doing, hardly etsablishes a pattern of behaviour. Yet, the Judge regards all of the propaganda of Kozlov, Alga *et al*, however it was disseminated, as part of a pattern of criminal behaviour.

Askar Iskanderov was examined as a witness and the Judge refers to his evidence that in boxes he delivered from Aktau to Zahanoazen on the orders of Amirova were the *Fighter* and *Get up off your knees* leaflets. "*Similar testimony was given at the trial by witnesses Ramazan Baisarov and Amangeldy Lukmanov.*"

Page 19

Deals with the the financing of the Alga Party and the witness Sizov (former party deputy head) who stated his belief that Kozlov financed the Party from his savings and that he (Sizlov) wasn't aware of Ablyazov financing it. But the Judge refers to evidence of Skype calls including one as late as 19th June 2012 where Sizlov reports to Ablyazov on the finances.

Page 20 and 21

The Judge continues to summarise other sources of evidence from which he concludes, not unreasonably in our opinion, that Ablyazov financed aspects of Alga's operations.

The Judge continues "*..in the court it was well established that financial means in the amount of 7 billion U.S. dollars, illegally appropriated by M. Ablyazov from the BTA Bank were used through M. Ketebayev and V. Kozlov in the interest of the organised criminal group, established and controlled by them, in order to ensure smooth implementation of criminal activity and that he constantly monitored these activities.*"

We are in no position to challenge the allegation that Ablyazov misappropriated such sums of money but it was not established in the evidence. The Judge may have only intended to refer to the financing of Alga by Ablyazov as a matter established in the trial. The theft by Ablyazov may be well known and well believed but is was not proven in a court of law after a trial prior to the 8th October 2012 when this Judgment was given. Assuming it is true we can see how any Judge could be vulnerable to prejudice against anyone benefitting from the thief's ill-gotten largesse, especially where that thief is still at large.

The concluding explanation for the Court's verdict against Kozlov on all the three charges he faced was put with great brevity:

"Having comprehensively compared and examined these circumstances, the Court concludes that for the purpose of committing crimes, some of which were serious, the defendant V. I. Kozlov established an organised criminal group, which he himself directed. Along with other members of the group, by use of the mass media, he made public calls for the violent seizure of power, undermining national security, violent change of the constitutional system. In addition, he committed deliberate actions aimed at inciting social hatred and discord, entailing grave consequences."

"By use of the mass media he made public calls for the violent seizure of power" is repeated. Not a single shred of evidence is given to justify this finding.

Where it might be hoped that the Judge would provide some legal reasoning, some basic application of the criminal law to the facts as he found them to be, we find the Judgment wanting. This was a case involving substantial quantities of evidence, numerous witnesses, controversial "expert" evidence, extremely serious charges relating to the deaths of 15 people and the risk of substantial prison terms and forfeiture of personal property. It was incumbent upon the Court to provide to the accused an explanation of the legal basis for the verdict. The failure to do so renders the trial of Kozlov unfair.

Pages 21 to 31

This part of the Judgment deals with Aminov. This Defendant pleaded Guilty to all three charges he faced. As our purpose is to examine the fairness of a trial we will not analyse the Judgment of him. We note that despite the Guilty plea the Judge does summarise the evidence relating to Aminov including Aminov's own statements.

Pages 32 - 33

Here the Judge deals with Sapargali. This Defendant "*partly acknowledged the charges brought against him*." The Prosecution withdrew the charge under Article 164 (3) proceeding only with the charge under Article 170 (2).

The case against him under Article 170 (2) rested on two speeches. In Almaty on the 24th June 2010 when he responded to a proposal to form a customs union with Russia and used language inciting a violent overthrow of the Government. Secondly on the 17th December 2011 in Almaty in reaction to the deaths under police gun fire of civilians in the Zhanaozen he *"called for a violent seizure of power"*.

The liability of Sarpargali under Article 170 (2) rested not on the use of the mass media but the

alternative foundation of being committed by a member of an *"organised criminal group"*. The Judge found that he made his second speech following an instruction from Kozlov (described as "*one of the leaders of the extremist, organised, criminal group.")*

No evidence is referred to supporting the contentions that either he followed Kozlov's instruction to make a speech on that day or was instructed by Kozlov as to what to say. Sapargali, in mitigation of his behaviour, stated that he was depressed after the incidents in Zhanaozen of the day before. There was no evidence that his speech in Almaty on 17th December 2011 was part of a Group activity or in pursuance of a common criminal purpose shared with others belonging to the same established organized criminal group.

The Judge found him guilty of an offence contrary to Article 170 (2).

Page 34

Here the Judge deals breifly with motions on the inadmissibility of prosecution evidence by Kozlov's lawyers. The motions were denied and the evidences in question – voice recordings and seized items were ruled admissible on the grounds of legality stated.

The Judge confirms that a number of witnesses were exempted under Article 65 of the Criminal Code from prosecution under Articles 164 (3) and 170 (2). Article 65 effectively confers an exemption for those co-operating with the authorities. The witensses included Amirova and Atabayev. The Judge goes on to find that "*There are no grounds to believe that any violations of the law were committed or any influence was exerted on the witnesses by the pre-trial investigation bodies when interrogating those individuals who were released from criminal liability under Article 65 of the CC RK."*

The Judge stated "*there are no grounds to believe that the said testimonies are unacceptable"*.

Page 35

The Judge proceeds to comment on aspects of Kozlov's credibility. In relation to the financing of the Alga Party Kozlov's evidence that Ablyazov had not financed it since 2009 appears to be at variance to other evidence cited in the Judgment and it seems to us that the Judge was entitled to reject Kozlov's evidence on this point. Kozlov was not charged with any offence relating to the receipt or use of Ablyazov's allegedly stolen money. If Kozlov was in error on the financing of the Party since 2009 it does not follow that his answers to the charges he faced lacked credibility.

The Judge's rejection of Kozlov's evidence on issues pertaining to control of Alga and the issuing of instructions to subordinates does not establish Kozlov's guilt of the charges. The Judge did not refer to the evidence of numerous witnesses close to Kozlov who claimed he had never contemplated violence or extremism of any kind.

Pages 35 to 42

The Judge deals with consequential orders including the payment of expert witness fees, sentence, forfeiture of personal property and destruction or retention of exhibits in the case.

In short Kozlov was ordered to serve a prison term of 7 1/2 years and all his property forfeited. Sapargali and Aminov received suspended sentences.

Final Comments on the Judgment:

The Judge did not provide an interpretation of the Articles of the Criminal Code with which the Defendants were charged. He failed to explain with precision what his findings of fact were. He failed to explain how his findings of fact contravened the Articles in question. He failed to evaluate evidence and in respect of final issues of guilt relied on the opinions of Prosecution witnesses. He failed to specify examples of conduct that he found to contravene the Articles in question and relied on vague generalisations. In respect of important matters he misled as to what the evidence actually was. He omitted any reference to numerous Defence witnesses who testified to the innocence of Kozlov and failed to explain why their evidence was rejected.

Whether the sentence imposed on Kozlov is proportionate is to be judged on the basis of the Judge's findings of fact. In view of his findings (which we find flawed) that Kozlov led a grand criminal conspiracy to overthrow the constitutional order involving his unregistered party's machine and nationwide offices situated in properties owned by Kozlov, the party being financed from stolen money from a criminal fugitive and the numerous deaths and widespread destruction attributed to his leadership of this extremist criminal organized group etc., we couldn't say that the punishment was disproportionate. In fact one might have expected a longer sentence of imprisonment to follow convictions for such serious crimes.

The destruction of the Alga party through the imprisonment of one of its leading voices and the forfeiture of all properties and equipment used by the party is a measure that takes no account of any of its members' lawful political activities. All are punished on account of the actions of a few (as the Judge found them that is to say). This blanket punishment strikes a serious blow to freedom of association and freedom of speech in Kazakhstan.

If the motivation of the authorities was to avenge Ablyazov for his grand theft and recoup some assets by prosecuting Kozlov, applicable offences of financial dishonesty under the Criminal Code ought to have been investigated.

Conclusions

1. This was a case involving substantial quantities of evidence, numerous witnesses, controversial "expert" evidence, extremely serious charges relating to the deaths of 15 people and the risk of substantial prison terms and forfeiture of personal property. It was incumbent upon the Court to provide to the accused a full explanation of the legal basis for the verdicts. There was a failure to do so. The failure to do so renders the trial of Kozlov unfair.

2. In the opinion of the observers the verdicts of guilty against Kozlov were not justified by either the evidence presented to the Court or the reasoning in the final Judgment.

3. We observed the Judge ensure in most respects that the trial complied with procedural norms despite the trial's length and complexity. In this regard he displayed considerable trial management abilities.

4. Despite displaying stamina and intellectual capacity during the trial the Judge reached flawed verdicts. His Judgment included misleading impressions of the evidence. He failed to properly justify the Court's verdicts in law or fact. The Judge accepted opinion evidence of Prosecution witnesses on the ultimate issues of guilt without any evaluation of his own. Thus he demonstrably lacked independence from the Prosecution.

5. The 43 page Judgment displays a consistent hostility to any criticism of the authorities. It would not be unreasonable to infer that there was or might have been direct hidden political influence bearing upon the Judge that led him to the disputed verdicts in the manner he did. Whether there was political control over the Judge is not a matter that we can be certain about.

6. If Kazakhstan wishes to establish confidence in its legal system the judges must be independent and be seen to be independent from those in control of the executive power. Judicial independence is demonstrated through properly reasoned verdicts justified in law and by the evidence.

7. The forfeiture of all property and equipment owned by Kozlov and used by the party Alga is a blanket punishment that strikes a serious blow to freedom of association and freedom of speech in Kazakhstan.

Specific recommendations:

8. The Supreme Court should uphold any appeal of Kozlov against his convictions and order his immediate release. His appeal should be heard as soon as reasonably practical. Regardless of the Appeal's progress the President should pardon Kozlov and authorise his immediate release.

9. Kazakhstan should yield to the recommendation of United Nations High Commissioner for Human Rights Navanethem Pillay of 12th July 2012 for an independent international enquiry into the Zhanaozen events.

10. Overhaul the procedure for the training, selection and appointment of Judges in order that political influence is removed.

11. Extend the role of lay juries in the criminal justice system so that juries determine issues of fact in a much broader range of serious cases including Articles 164, 170 and 235.

12. Revise the Criminal Code of Kazakhstan to create legal certainty of the offences created by Articles 164, 170 and 235 and remove from those Articles provisions that conflict with the legitimate exercise of freedom of association and expression.

13. Revise the Criminal Procedure Code of Kazakhstan in order to provide clear provisions that comply with internationally recognised norms in respect of the following matters:

    i. A timetable for the service of evidence on the Defence so that there is adequate time for the preparation of the Defence before trial.

    ii. The periods accused persons may be kept in detention before trial.

    iii. Whether a witness statement may be read without the witness being called for examination and in what circumstances.

    iv. The admissibility of hearsay evidence.

    v. Whether a witness may give evidence via a video-link and in what circumstances.

    vi. The circumstances in which a Court may receive opinion evidence and confirmation of the requirement for judicial evaluation of expert opinion evidence.

End of conclusions.

Post script

An Appeal was lodged by Kozlov to the Regional Appeal Court and heard on the 19th November 2012 in Aktau. It was reported to us that the appeal was dismissed in short order. At the time of publication of this Report it is not known whether a full written justification will be issued by the Regional Appeal Court for the dismissal. The next level of appeal for Kozlov is to the Supreme Court of the Republic of Kazakhstan.

Country Information

Guidelines for trial observation reports recommend that observers provide general information about the human rights profile of the State in question. This is only a guideline and is not prescriptive. In this case we did not wish to be influenced by any assumptions about the ability of the justice system of Kazakhstan to afford a fair trial. We concentrated closely on what we could observe and read of the case alone. Thus, we are not overly concerned by our omission to provide the reader with a chapter on the wider issues of human rights in Kazakhstan. However, in relation to our stark conclusion concerning the failure of the trial Judge to demonstrate independence we do draw attention to some basic facts about the President of Kazakhstan whose very long reign in power is not inconsistent with the phenomenon of executive control over a state's judiciary.

Nursultan Nazarbayev – Kazakhstan's President has been in the top position of the State for over 22 years. He was first made President in April 1990 when Kazakhstan was still a Republic of the Soviet Union. He remained in power after independence was achieved in 1991 and has remained in power ever since. Presidential elections took place on April 3 2011. According to the Central Election Committee, the incumbent received 95.55 percent of the vote with an 89.99 percent turnout. January 2012's Parliamentary election saw three parties into Kazakhstan's parliament for the first time in 20 years of independence. The second and third placed parties are broadly sympathetic to Nazarbayev's ruling Nur Otan party, which itself won 81 percent of the vote.

The reader may find more information from the following sources:

US State Department and Human Rights Watch websites. The Norwegian Helsinki Committee visited the area in September 2011 and completed a report on the prevailing background to an earlier trial of trade union lawyer Natalia Sokolova. The First Report of the Republic of Kazakhstan to the United Nations Human Rights Committee Universal Periodic Review Procedure 2010. The submission on the List of Questions of the International Commission of Jurists to the previous report. The Report of the OSCE/ODIHRG Trial Monitoring Project 2005 – 2006 in Kazakhstan. The Bertelsmann Stiftung's Transformation Index (BTI) 2012 Country Report on Kazakhstan.

10th November 2012

Appendix 1 – Statement of Republic of Kazakhstan to the OSCE

1010 Vienna, Wipplingerstrasse 35/floor 3,

Statement by the delegation of Kazakhstan to the OSCE on the events in the town of Zhanaozen 26 January 2012

Dear Mr. Chairperson, dear colleagues,

I would like to bring the attention of the Permanent Council to the following statement of the Prosecutor General of the Republic of Kazakhstan on the events that took place in the town of Zhanaozen on 16 December 2011.

On 16 December 2011, in the town of Zhanaozen in Mangystau province, during the celebration of the Independence Day of the Republic of Kazakhstan in the Central Square, a group of former *(*previously fired*)* workers of the *OzenMunaiGaz* oil producing enterprise, supported by hooligan young people, started mass insurgencies leading to riots, looting, arson and violence against civilians and police officers. As a result, 125 facilities were set on fire, damaged and looted, including the offices of the mayors of the town of Zhanaozen and of Tenge village; the pension distribution centre; police stations; the office of *OzenMunaiGaz*; the Aruana hotel; the Sulpak, Atlant and Sholpan shopping centres; the offices of five banks; nine ATM machines; 21 vehicles; apartment buildings; and numerous facilities belonging to small and medium-sized businesses.
The damage caused to the State, companies and individuals is estimated at billions of tenges.
In order to end the mass disorders and to protect civilians, the command of the Department of Internal Affairs of the province sent to the scene of the events a police squad, which was attacked by the crowd using firearms and knives, stones, sticks and Molotov cocktails. Given the situation, the police squad, after firing several warning shots, had to use live ammunition against the activists of the insurgency.

As a result of the clashes, **64** persons received gunshot wounds, and **14** persons died. The deaths of two other persons were not related to the mass disorders on the streets. Thirty-five police officers received various bodily injures and wounds.

On the instructions of the Head of the State, in order to investigate the facts of the mass disorders as well as the reasons and conditions for their development, an inter-agency investigation team under a special prosecutor has been established and is now operating. As of today, **six** persons have been identified as the organizers of the mass disorders. Their names are: Saktaganov, zharylgasinov, Irmuhanov, Dosmagambetov, Utkilov and Tuletaeva. They have been charged under Article 241, part 1, of the Criminal Code and are all under arrest.
Along with the **23** active participants in the mass disorders, **11** individuals who set fires and looted have been identified and arrested. Most of them confirmed the fact of organizing and participating in the insurgencies. In particular, they stated that they had been preparing for the insurgencies in advance and had involved a group of young people who had prepared Molotov cocktails and armed themselves with improvised weapons.

In the course of the investigation, following the appeal of the specially established public commission, and taking into account the personal characteristics, extent of guilt and marital status of the individuals concerned, the measures of restraint for 11 individuals have been downgraded, to ones which do not involve arrest. The work to identify and detect other organizers and participants in the mass disorders continues.

Simultaneously, by order of the Head of State, the legitimacy of the actions of the police officers that took part in restoring public order is being ascertained. Special attention is being devoted to the use of weapons. The investigation has shown that, in most cases, the police officers acted in accordance with the law in the presence of a real threat to the lives and health both of the civilians and of the police officers themselves. Nevertheless, in some cases, the use of weapons and special devices by the police was disproportionate, and the reaction to the acts of the attackers was unequal to the threat, and led to the death and injury of people.
For the improper performance of his duties resulting in the absence of action to prevent illegal actions by his subordinate, the deputy head of the Department of Internal Affairs (DIA) of Mangystau province Mr. Utegaliev, who was in charge of the police squad, is being called to criminal account.
For the use of weapons with an excess of authority, leading to the death of people, the following are being called to criminal account:

- The head of the anti-extremist division of the DIA of Mangystau province, Mr. Bagdabaev;
- The first deputy head of the Office of Internal Affairs of the town of Zhanaozen, Mr. Bakytkaliuly;
- The police inspector of the DIA of Mangystau province, Mr. Zholdybaev.

An investigation has been carried out to evaluate the death of Kenzhebaev Bazarbai, who according to the statement of his relatives died because of the physical injuries that he suffered in the Temporary Detention Facility of the Office of Internal Affairs of the town of Zhanaozen. As a result, the Head of the Temporary Detention Facility of the Office of Internal Affairs of the town of Zhanaozen, Mr. Temirov, who permitted the illegal detention of Mr. Kenzhebaev and did not arrange timely hospitalization for the latter, is being called to criminal account. At the same time, measures are being taken to identify those who beat the deceased.

Illegal actions by the local executive officials and heads of oil enterprises contributed to the growth of social tension and the long-lasting strike of the oil workers that resulted in the mass disorders.
The financial police discovered that the above-mentioned officials, contrary to the interests of the people of the town, had for several years been stealing funds allocated for social and economic support of the local population and workers in the oil industry.

The investigation has revealed that both the former and the current mayors of the town of Zhanaozen, Mr. Babahanov and Mr. Sarbopeev, have been stealing funds through the *Zhanashyr* and *Zharylkau* public endowments. The endowments accumulated sponsorship money of JSC "EP *Kazmunaigaz"*allocated for the social support of the townsfolk. Most of the money would later on be turned into cash and embezzled. The officials and heads of endowments concerned are being called to criminal account. A criminal case based on Article 176, part 3, subparagraph b, of the Criminal Code has been started against the heads of JSC "EP *Kazmunaigaz*" and *Kompaniya Munai Ecologiya,* LTD *Miroshnikov* and *Baimuhambetov* for the theft of 335 million tenges that belong to JSC "EP *Kazmunaigaz*". A criminal case based on Article 176, part 3, subparagraph b, of the Criminal Code is under investigation against the former director of *OzenMunaiGaz,* Mr.Eshmanov, and his deputy, Mr. Markabaev, who are accused of stealing 127 million tenges that belong to JSC "*EP Kazmunaigaz*" in collusion with the director of *Burgylau* LTD, Mr. Seitmagambetov.

One of the reasons for the mass disorders was the active efforts of some individuals who persuaded fired workers to continue their protests and to violently oppose the authorities. Experts found evidence of the call to enflame social hatred in the propaganda materials that the individuals mentioned distributed. On the basis of this fact, the National Security Committee is carrying out investigations and has started a criminal case in accordance with Article 164, part 3, of the Criminal Code. During the investigation, a number of leaders and active members of the

unregistered public unions *Alga* and *Halyk Maidany,* Mr. Kozlov, Ms. Amirova and Mr. Sapargali, who are suspected of enflaming social hatred, have been detained.

***

The events that took place in the village of Shetpe require separate comment. On 17 December 2011, a group of people blocked the railroad connection, tore up railroad tracks and damaged transport infrastructure facilities at the railroad station of Shetpe in Mangystau province.

These actions interfered with normal transport operations, and seven passenger and nine freight trains were halted for several hours. When the police tried to prevent the illegal actions, they were attacked by individuals who used weapons, Molotov cocktails and stones; five police officers received various injuries and burns. After firing several warning shots, the police were forced to use live ammunition. Eleven of the attackers were wounded, and one died. The investigation reached the conclusion that, in this case, the use of weapons was legal.

As of today, three individuals – Mr. Bakytzhan, Mr. Sabirbaev and Mr. Zhilkishiev – are being called to criminal account for organizing mass disorders and for using violence against the representatives of authority. Another 12 individuals are charged with participating in the mass disorders, using violence against the representatives of authority and damaging means of transportation and railroads. Investigations into all the cases mentioned are ongoing. The results of the investigations will be reported regularly.

***

Concerning the arrest of the editor-in-chief of *Vzglyad* newspaper, Mr. Igor Vinyavskiy, a criminal case has been initiated under Article 170, part 2, of the Criminal Code (Article 170, part 2. exhortation to the forcible overthrow or changing of the constitutional order, or forcible disruption of the territorial integrity of the Republic of Kazakhstan by means of the mass media). The Prosecutor of Almaty authorized the search of Mr. Vinyavskiy's place of residence and work.

According to the findings of the investigation, the unlawful activity which Mr. Vinyavskiy is suspected of engaging in is not linked to his activity as a journalist or as the editor-in-chief of the *Vzglyad* newspaper. He is suspected of organizing the dissemination of leaflets, the content of which have been determined to break the laws of Kazakhstan. The investigation is still in progress and we will update the participating States on its course.

Thank you!

Appendix 2 - Laws

Article 1 of the Constitution of Kazakhstan provides in lofty terms the following:

> 1.The Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his life, rights and freedoms.
> 2. The fundamental principles of the activity of the Republic are public concord and political stability; economic development for the benefit of all the nation; Kazakhstan patriotism and resolution of the most important issues of the affairs of state by democratic methods including voting at an all-nation referendum or in the Parliament.

Kazakhstan ratified in April 2006 the International Covenant on Civil and Political Rights 1966 (ICCPR). The Constitution provides in Article 4 (3):

> International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law.

Relevant articles of the ICCPR provide (and areas of potential interest in this case are underlined):

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

……..

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

……

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

……

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Whether each of Kozlov's rights underlined above in the ICCPR have been met will be subject to analysis in this report.

The relevant articles of the Kazakhstan Constitution concerning the general human rights of the citizen are as follows:

Article 12

1. Human rights and freedoms in the Republic of Kazakhstan shall be recognized and guaranteed in accordance with this Constitution.
2. Human rights and freedoms shall belong to everyone by virtue of birth, be recognized as absolute and inalienable, and define the contents and implementation of laws and other regulatory legal acts.
3. Every citizen of the Republic shall have rights and bear responsibilities owing to his citizenship.
4. Foreigners and stateless persons in the Republic shall enjoy rights and freedoms as well as bear responsibilities established for the citizens unless otherwise stipulated by the Constitution, laws and international treaties.
5. Exercise of a citizen's human rights and freedoms must not violate rights and freedoms of other persons, infringe on the constitutional system and public morals.

Article 13

1. Everyone shall have the right to be recognized as subject of the law and protect his rights and freedoms with all means not contradicting the law including self-defense.
2. Everyone shall have the right to judicial defense of his rights and freedoms.
3. Everyone shall have the right to qualified legal assistance. In cases stipulated by law, legal assistance shall be provided free of charge.

Article 14

1. Everyone shall be equal before the law and court.
2. No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.

Article 16

1. Everyone shall have the right to personal freedom.
2. Arrest and detention shall be allowed only in cases stipulated by law and only with the sanction of a court or prosecutor of law. The detained person shall be provided with the right to appeal. Without the sanction of a procurator, a person may be detained for a period no more than seventy-two hours.
3. Every person detained, arrested and accused of committing a crime shall have the right to the assistance of a defense lawyer (defender) from the moment of detention, arrest or accusation.

Article 17
1. A person's dignity shall be inviolable.
2. No one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity.

Other articles from the Constitution that may be worthy of some comment in this report include:

Article 20

1.The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited.
2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.
3. Propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence shall not be allowed

Article 23

1. Citizens of the Republic of Kazakhstan shall have the right to freedom of forming associations. The activities of public associations shall be regulated by law

Article 24

1. Everyone shall have the right to freedom of labor, and the free choice of occupation and profession. Involuntary labor shall be permitted only on a sentence of court or in the conditions of a state of emergency or martial law.
2. Everyone shall have the right to safe and hygienic working conditions, to just remuneration for labor without discrimination, as well as to social protection against unemployment.
3. The right to individual and collective labor disputes with the use of methods for resolving them, stipulated by law including the right to strike, shall be recognized

Article 32

Citizens of the Republic of Kazakhstan shall have the right to peacefully and without arms assemble, hold meetings, rallies and demonstrations, street processions and pickets. The use of this right may be restricted by law in the interests of state security, public order, protection of health, rights and freedoms of other persons

Article 39

1. Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, defense of the public order, human rights and freedoms, health and morality of the population.
2. Any actions capable of upsetting interethnic concord shall be deemed unconstitutional.
3. Any form of restrictions to the rights and freedoms of the citizens on political grounds shall not be permitted. Rights and freedoms stipulated by articles 10-11; 13-15 paragraph 1 of article 16; article 17; article 19; article 22; paragraph 2 of article 26 of the Constitution shall not be restricted in any event

Section VII Court and justice

Article 75

1. Justice in the Republic of Kazakhstan shall be exercised only by the court.

Article 76
1. Judicial power shall be exercised on behalf of the Republic of Kazakhstan and shall be intended to protect the rights, freedoms, and legal interests of the citizens and organizations for ensuring the observance of the Constitution, laws, other regulatory legal acts, and shall ensure international treaties of the Republic.
2. Judicial power shall be extended to all cases and disputes arising on the basis of this Constitution, laws, other regulatory legal acts, international treaties of the Republic.

Article 77

1. A Judge when executing justice shall be independent and subordinate only to the Constitution and the law.
2. Any interference in the activity of the court in the exercise of justice shall be inadmissible and accountable by the law. Judges shall not be held accountable with regard to specific cases.
3. In application of law a Judge must be guided by the following principles:
1) a person shall be considered to be innocent of committing a crime until his guilt is established by a court's sentence that has come into force;
2) no one may be subject twice to criminal or administrative prosecution for one and the same offense;
3) no one may have his jurisdiction, as stipulated by law changed without his consent;
4) everyone shall have the right to be heard in court;
5) the laws establishing or intensifying liability, imposing new responsibilities on the citizens or deteriorating their conditions shall have no retroactive force. If after the commitment of an offense accountability for it is canceled by law or reduced, the new law shall be applied;
6) the accused shall not be obligated to prove his innocence;
7) no person shall be compelled to give testimony against oneself, one's spouse and close relatives whose circle is determined by law. The clergy shall not be obligated to testify against those who confided in them with some information at a confession;
8) any doubts of a person's guilt shall be interpreted in the favor of the accused;
9) evidence obtained by illegal means shall have no juridical force. No person may be sentenced on the basis of his own admission of guilt;
10) application of the criminal law by analogy shall not be allowed.
4. The principles of justice established by the Constitution shall be common and uniform for all courts and judges in the Republic.

Article 78

1. The courts shall have no right to apply laws and other regulatory legal acts infringing on the rights and liberties of an individual and a citizen established by the Constitution. If a court finds that a law or other regulatory legal act subject to application infringes on the rights and liberties of an individual and a citizen it shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that law unconstitutional.

Article 79

1. Courts shall consist of permanent judges whose independence shall be protected by the Constitution and law. A Judge's powers may be terminated or suspended exclusively on the grounds established by law.
2. A Judge may not be arrested, subject to detention, measures of administrative punishment, imposed by a court of law, arraigned on a criminal charge without the consent of the President of the Republic of Kazakhstan based on a conclusion of the Highest Judicial Council of the Republic or in a case stipulated by paragraph 3) of Article 55 of the Constitution; without the consent of Senate except for the cases of being apprehended on the scene of a crime or committing grave crimes.
3. Judges may be citizens of the Republic who have reached twenty-five years of age, have a higher juridical education, length of service of not less than two years in the legal profession and who have passed a qualification examination. Additional requirements to the judges of the courts of the Republic may be established by law.
4. The office of a Judge shall be incompatible with a deputy's mandate, holding other paid offices except teaching, research or other creative activity engaging in other entrepreneurial activity, or being a member of a managing body or supervisory board of a commercial enterprise.

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The Constitution and laws of Kazakhstan provide for an independent judiciary. The relevant article of the Constitution is **Article 82**

1. The Chairperson of the Supreme Court, the Chair-persons of the Collegiums and judges of the Supreme Court of the Republic of Kazakhstan shall be elected by the Senate at the proposal of the President of the Republic based on a recommendation of the Highest Judicial Council of the Republic.
2. The Chairpersons of oblast and equivalent courts, the Chairpersons of the Collegiums and judges of the oblast and equivalent courts shall be appointed by the President of the Republic at the recommendation of the Highest Judicial Court of the Republic.
3. The Chairperson and judges of other courts of the Republic shall be appointed by the President of the Republic at the proposal of the Minister of Justice based on a recommendation of the Qualification Collegium of Justice.
4. The Highest Judicial Council shall be headed by the Chairperson who is appointed by the President of the Republic and consist of the Chairperson of the Constitutional Council, the Chairperson of the Supreme Court, the Procurator General, the Minister of Justice, deputies of the Senate, judges and other persons appointed by the President of the Republic. The Qualification Collegium of Justice shall be an autonomous, independent institution formed from deputies of the Majilis, judges, public prosecutors, teachers and scholars of law and workers of the bodies of justice.

Appendix 3 – The *Fighter* and *Get up off your knees* leaflets

Text translated from Kazakh to Russian to English:

DEAR COMPATRIOTS!

FIGHTERS OF SACRED MANGYSTAU LAND!

Your uprising for justice and truth lasts now for three and a half months. Having been born out of the labour dispute, your strike is a unique event not only for Kazakhstan but for the whole world.

Notwithstanding the government's pressure and instigations you did not stop your strike. This is the evidence of the bravery and incomparable courage of Mangystau people!

Nevertheless, criminal regime declared an open war on its own people and caused you few heavy blows. Akorda [there is no such word in Russian, contextually that might mean the alliance of power or pact, but this is an assumption] punished your followers – defenders of people's interests. The lawyer Natalya Sokolova was imprisoned for 6 years, leader of the Zhanaozen oil-workers Akzhanat Aminov was bound over for two years and now the activist of the oil-workers movement Natalia Azhigalieva was imprisoned for 15 days. You also have to know that the defender of your interests on the republic and international level, member of "People's front" movement, young politician Zhanbolat Mamai was arrested illegally by authorities and detained for 10 days. Government wants to intimidate people and kneel them, will not stop at that. As the saying goes "One who fears first starts the fight", bloody regime tortured and killed Zhaksylyk Turubaev, who would be elected as a trade union leader, and the daughter of the activist Zhansaula Karabalaeva was also killed.

You could not defend these citizens from the bloody gangsters and their puppet-judges. It is necessary to actively defend your followers and those who risked lives for you. How long you are going to give away each other to bastards-dogs? Today all of you face a threat. If yesterday the leaders of the people's movement, today is the turn for ordinary fighter. Regime knows the rule well "Divide et impera" [Latin for Divide and Rule]. If you will not stand up for each other, will not show solidarity, then this fight will be won by the flagitious regime.

Our friends Kyrgyz people demonstrated how to win the battle with the power that wanted to suppress people and wanted to make them bond slaves. [Villainage]. What is the secret of their victory? Why armed cap-a-pie and well trained police was not able to master people? Because the people demonstrated unity. They did not allow the authoritarian power to tear to pieces their leaders. How did the Kyrgyz revolution start last year? It all started from the uprising against authoritarian style of ruling and crimes of dictatorship. Kurmanbek Bakiev's regime persecuted independent journalists and public figures, including the pressure on employees of information service "Stan TV" (partner company of the channel "K plus", that was supporting you), and then arrested the opposition leaders in Kyrgyzstan. Crowds of people armed

Armed with anything at hand, smashed prisons where the opposition leaders were detained, and freed them up. That is how Kyrgyz people annihilated the authoritarian regime.

Today's situation in Mangystau is similar to the one in Kyrgyzstan one year ago. Why the authority sentenced Sokolova? For being guilty in "inciting social discord"? No, she went for this step to test you. "What people will do?" She did it to get a reply to a question "Who are they - the potential force who will defend their leader or just loud-mouthed crowd?" Why did you write a letter to President and his son-in-law to free Sokolova? This same Government arrested the lawyer. Government that arrested Natalia Sokolova and Akzhanat Aminov killed peaceful citizens, and seeing your inactivity, they

started punitive campaign against other leaders as well. By this Akorda [wrong translation from Kazakh, there is no such word in Russian, contextually that might mean the alliance of power or pact, but this is an assumption] wanted to break your will. If you want to win, this is the time to stop unlawful actions on behalf of the power. Unite! Demand freedom for Sokolova and Azhigalieva! Power dogs will wait for you near prisons with guns and weapons. Do not be afraid of them! They would not dare shooting into their people! People – this is the God's name. People are a forbidding force. If people will rise no army or police will be able to stop them.

All summer you suffered heat. Now it is autumn and it is raining and it is cold. What are you waiting for? Act! Move forward! Free your leaders from their prisons! Do you need government that does not need its own people?! If you do not need it, then it is necessary to change it and to ascertain people's power! Surely this is not easy. But as in the saying "eyes are scared but hands are doing". It is necessary to conquer fear and to act.

Justice and truth are on your side! As our ancestors said: "God will reward those who live with Truth".

Respectfully yours,
Citizen of the Kazakh Republic Mukhtar Ablyazov
19.09.2011

Interpreter [Kazakh to Russian] A. Baydauletov]

RISE UP, KAZAKH, THROW EXECUTIONER OFF YOUR NECK!

Appeal

By Mukhtar Ablayzov to citizens of Kazakhstan in connection with the suggestion to withdraw section 3 article 7 of the Kazakh Republic Constitution

I hope that this letter with an offer to abolish Russian language as a government official language in relations between nations will be read by the citizens that wrote a letter to Nazarbaev and Maximov. Everybody knows that it was done on the instructions of the presidential office on the eve of the presidential elections with the purpose of scaring off the Russian speaking electorate from the democratic forces to vote instead for "Nur Otan".

This letter is also addressed to those who think that by means of creating united national state, by deporting non-Kazakhs from the territory of Kazakhstan and treating them as second-rate citizens and that would make Kazakhs happy.

Being Kazakh myself, I understand your concerns about future of Kazakh language; however it is impossible to solve these problems in administrative manner and by enforcement measures. In twenty years Kazakh people became creator of its own nation, the population has grown, but you see it correctly - Kazakh language is in distressful situation.

There are objective and subjective reasons for such distress. Objective reasons include: Kazakh language did not develop on industrial level, its usage remained mainly in everyday life sphere, its vocabulary and development in literature does not satisfy the current demands. It cannot provide for the new information, new technologies and knowledge requirements of new people living in the 21st century.

If the demands to abolish the use of Russian language as an official language will be satisfied then its usage will be restricted. In different economic spheres where people work Kazakh language cannot substitute Russian language as a whole, Kazakhs already now lost their opportunity to compete, and they are isolated from the rest of the world, lag behind progress.

The answer to the first question is clear. Who is the leader of Kazakhstan in the last 20 years? Who is the head` of state, the leader of the government and the guarantor of the Constitution? Nursultan Abishevich Nazarbaev. Thus, only Nazarbaev is responsible for a distressful situation with the Kazakh language.

Without the development of the Kazakh language it is impossible to develop Kazakh literature. Nowadays this sphere cannot sustain itself without the state support. Writers, poets, creative people, did you have any state support in the last 20 years? Or you were paid for adulation and eulogy? State budget always had money, especially in the last 10 years.

Nazarbaev's Government strives for division and contradistinguishing of Kazakhs. The problems of Kazakh language are discussed only on the eve of some big political events, for example, before the presidential or parliamentarian elections.

[in handwriting r.No 290 i.s. signature
06.04.2012]

And after the election campaign is over, the discussion is over, too. That is because Nazarbaev by scaring the Russian speaking population makes them vote for himself; firstly he antagonises patriots of Kazakh language against Russian speaking Kazakhs, then he puts a stop to all these problems. If Nazarbaev really wished for Kazakh language to become not only a state language but also a language that every citizen of the country would like to speak, then he could have achieved that goal with available to him money and position by now. However he did not do so, therefore he does not wish to do so.

As a citizen keeping to democratic values, I think that the main value is the human rights, including the right of every Kazakh to live on his own land, speak his own language, to have the right of choice of his religion or the right to remain atheist.

Therefore we, firstly, Kazakhs, have to build a democratic state, where everyone will live better than now. We are not for humiliation of other nations; we are for the better life of ALL KAZAKHS. We must build just, successful state, people should have just and happy lives. Only then the other nations would like to speak Kazakh language. Voluntarily. This is the duty of Kazakh people before their ancestors and the whole Kazakh nation.

I repeat your mottos and totally support them – Rise up Kazakh, throw executioner and thief off your neck!

Citizen of the Kazakh Republic Mukhtar Ablyazov

signature

[Interpreter [Kazakh to Russian] A. Baydauletov]