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Third Monitoring Report Shows Grievous Violations of the Right to a Fair Trial in Kozlov Process

Trial of Vladimir Kozlov
 Aktau, Kazakhstan
 October 8, 2012
 Report #3

Freedom House monitored the entire trial of Kazakhstani opposition leader Vladimir Kozlov, who was tried alongside activists Serik Sapargali and Akzhanat Aminov on charges of attempting to overthrow the government of Kazakhstan through agitation and organization of striking oil workers in the western city of Zhanaozen. Previous monitoring reports on the trial can be found [here](#) and [here](#). A final, comprehensive monitoring report will also be issued shortly.

This report covers the final period of the trial, from September 10th until October 8th. Questioning of the accused continued from September 10-14. From September 14-21 material evidence was examined. From September 21-28 final arguments were heard, and on October 1, the accused made their closing statements. On October 8, the court announced its sentence. Mr. Kozlov was found guilty and sentenced to seven and a half years in a penal colony, along with confiscation of property. Mr. Aminov was found guilty and conditionally sentenced to five years' deprivation of freedom. Mr. Sapargali was found partly guilty and conditionally sentenced to four years' deprivation of freedom.

During the period of this monitoring report, Freedom House observed flagrant violations calling into question the independence of the court, the presumption of innocence, and the right to defense. Grounds were also given to suspect falsification of evidence by the prosecution. Documented violations include:

- Presentation of evidence by the prosecution in the final statement that was not included in the judicial process.
- Prejudicial statements by the head of state of the Republic of Kazakhstan.
- Presentation as evidence of leaflets printed on a different machine than that used by Mr. Kozlov's party.
- Failure to maintain the chain of custody concerning these leaflets.
- The presentation of the testimony of witnesses for the prosecution who are not made available for questioning by the defense.

Throughout the trial of Mr. Kozlov and his co-defendants, Freedom House has raised severe doubts about the conduct of the trial as well as the basis of the accusations. Unfortunately, the conclusion of the process only confirmed those doubts and established the political nature of the trial against Mr. Kozlov, Mr. Aminov, and Mr. Sapargali.

Doubts about the independence and impartiality of the court; violation of presumption of innocence

- In its closing statement, the prosecution included a documentary film that purported to show how Muktar Ablyazov [NB: the exiled oligarch named in the indictment as organizing the criminal group led by Mr. Kozlov] planned to seize power in Kazakhstan. This film was not previously presented as evidence in the earlier stages of the process, and thus was legally inadmissible as part of the closing statement of the prosecution.
- On October 8th, immediately following the reading of the sentence, this exact documentary film concerning Mr. Ablyazov and Mr. Kozlov's plan to seize power was shown on several national television stations, among them *Kazakhstan*, *Khabar*, and *KTK*. The presentation of such a film, based upon evidence discovered in the course of the criminal investigation and produced long before the verdict and sentencing, gives grounds to suspect the verdict and sentence had been prepared well beforehand.
- On October 7th, one day before the reading of the sentence, at approximately 10:00pm Astana time, *Sunday Time* on Russia's Channel One aired an interview by the journalist Irada Seinalova with the President of Kazakhstan Nursultan Nazarbaev. The president was asked about the events in Zhanaozen:

*Irada Zeinalova: It has been nearly a year since the chaos in Zhanaozen. **The guilty have already been named.** There has been a serious investigation. Who was behind the events?*

Nursultan Nazarbaev: This was a commonplace dispute between workers and employers. But people with evil intentions used this in order to further their criminal goals. Look, why else did these events immediately start with the robbing of stores and banks?

IZ: Who was it? Was it from abroad or was it the technique of an orange revolution?

*NN: It was a crime. The puppeteers sat on the sidelines and directed all of these actions. **But they have all been arrested.** The process is ongoing. The investigation and the judicial process are approaching the end and **we will make an announcement.** Everything is calm in Zhanaozen now. People are working. Until the process is finished, I won't say anything. **Although I could say. But we already know.***

Presentation of material evidence

- On 18 September, during the presentation of material evidence by the prosecutors, Mr. Kozlov and his lawyers called the attention of the court

to the fact that the leaflets presented as material evidence in the case had been produced on a printer, when the leaflets that the party Alga prepared had in fact been produced on a specific kind of high-speed copy machine, a Risograph. In addition Mr. Kozlov and his lawyers called the attention of the court to the fact that among the leaflets presented as material evidence there were leaflets in Russian, when in fact such leaflets had never been produced [NB: the workers in Zhanaozen were nearly all Kazakh, which language Mr. Kozlov does not speak], and the Russian version had appeared only after Mr. Kozlov had requested translations of the leaflet into Russian during the course of the investigation. Mr. Kozlov and his lawyers also called the attention of the court to the fact that all of the leaflets had been produced on a single printer, which was evident because they all contained an identical defect from the printer's cylinder.

- The prosecution could not explain how, where, and on what printer these leaflets – which were purportedly material evidence in the case – had been produced, or how they had wound up in the possession of the people from whom they were taken. Such a failure to maintain the chain of custody or to explain the leaflets' origins leads to strong suspicions of falsification of evidence.

- In their closing statements, the lawyers for Mr. Kozlov noted that the material evidence of audio recordings of Skype and telephone conversations obtained through secret means could only be admitted as evidence following examination of the employee or employees who installed the equipment for secret surveillance. Specifically, they cited Article 130 of the Criminal-Procedural Code, Part 2 of which states: "Factual evidence obtained in the course of operational-investigative events by an employee of an institution that carries out operational-investigative activities may be used as evidence following examination of the indicated employee as a witness." Such employees were not examined in the court, which means that this evidence, too, was inadmissible.

Right to defense

- On September 18 the prosecution, with the permission of the court, continued the practice of reading the testimony of witnesses without calling them to appear in court [for previous instances of this practice during the trial, see [the previous monitoring report](#)]. Specifically, the testimonies of T. Yergenova, R. Tuletaeva, and Zh. Saktaganova against the accused were read into the record. Such practice violates the right to defense of the accused.

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