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Open Letter to Askhat Daulbaev, Prosecutor General of the Republic of Kazakhstan, on the cases of Alexander Albrandt and Vitaly Donets, who allege to have been abused by police in the village of Kushmurun in Kostanay region¹

23 June 2015

Dear Prosecutor General,

This letter is submitted to you by a group of human rights organizations: the NGO coalitions against Torture in Kazakhstan, Kyrgyzstan and Tajikistan, the Helsinki Foundation for Human Rights (Poland), International Partnership for Human Rights (Belgium), the Norwegian Helsinki Committee, the International Federation for Human Rights (FIDH), the World Organisation Against Torture (OMCT) and over a dozen member organizations of the Civic Solidarity Platform from countries including Armenia, Azerbaijan, Belarus, Lithuania, Moldova and Russia.

By way of this letter we would like to bring to your attention the cases of Alexander Albrandt and Vitaly Donets from the village of Kushmurun in the Auliekol district of Kostanay region who allege to have been subjected to torture or other forms of ill-treatment by the same officers of the Kushmurun branch of Auliekol district police station on 23 August 2014 and during the night of 29 June 2014, respectively. Although both men lodged complaints and criminal proceedings were instigated, the officers have not been suspended from their duties and continue to work at Kushmurun police station.



Alexander Albrandt sustained bruises all over his body as a result of torture by police.
© Private

The case of Alexander Albrandt

On 23 August 2014, 51-year old Alexander Albrandt was detained by two police officers in plainclothes as he was returning from a friend in the village of Kushmurun. Police said they detained him for being drunk in a public place. He told the Kostanay branch of the Kazakhstan International Bureau for Human Rights (KIBHR) that the men

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subsequently took him to an office at the local police station, where they and one or two other policemen beat him. Then, two police officers took him to Auliekol Central Hospital to establish his alcohol intake. In the presence of the officers medical personnel recorded injuries to his head and chest and Alexander Albrandt complained that the injuries resulted from police beatings. When leaving the hospital one of the policemen beat him again, in retaliation for complaining about the beatings. He hit him on his back and grabbed his throat until Alexander Albrandt felt he was suffocating. The officer shouted at Alexander Albrandt, whose ancestors immigrated to Kazakhstan centuries ago: "You fascist, be off to your Germany!" Alexander Albrandt reported that a policeman "threw me on the ground, pushed his knee on my throat (...) and the other fanned some kind of gas in my face, then they (lit it and) burnt my face. I wasn't able to breathe." The officers dragged Alexander Albrandt to their car and one threatened: "We'll take you outside the village, dump you there and then we'll go home." Full of fear, Alexander Albrandt, who was handcuffed, unsuccessfully tried to escape from the car as they were driving. To punish him for his attempt to escape, the officers stopped the car, dragged him out and beat and kicked him all over his body as he was lying on the ground. He lost consciousness several times and eventually found himself in the temporary police detention facility (IVS) of the village of Auliekol late that night. He told KIBHR: "I regained consciousness when I was already in the IVS. I was handed over to the duty officer. (He) told the policemen they should check my pockets, which were bulging. The policemen explained they put cow dung on my groin to humiliate me." The next morning Alexander Albrandt requested that a medical examination be conducted and to file a complaint about the police violence with a prosecutor. However, IVS staff did not act on his requests and he was only able to file a complaint about torture late that night during an interrogation. On 25 August, Alexander Albrandt was taken to court, where he learnt that he was accused of having destroyed a car window with an empty beer bottle. Although he insists he is innocent he offered to pay for the damage in order to be released from custody. A forensic medical examination conducted on 29 August in the city of Kostanay recorded bruises on his right ear, his face, his arms, torso and left thigh and abrasions at the back of his head and his left knee joint.

There are allegations that, in order to evade criminal responsibility, police falsified evidence and put pressure on at least two men to provide false witness statements. Police reportedly falsified and submitted to Auliekol district court a letter in Alexander Albrandt's name stating that another person, not police officers, had caused Alexander Albrandt's injuries. However, the court refused to act on the letter. Additionally, a man informed the Prosecutor's Office that police forced him into giving false evidence against Alexander Albrandt.

The case of Vitaly Donets

Vitaly Donets reported that he left his house in Kushmurun village to look for his daughter at around 21pm on 29 June 2014. When he drove past the local police station on his motorbike he saw two or three men in plainclothes at the doorsteps. One of them whistled, but he paid no attention and drove past. When returning home he passed the police station again. One of the men in plainclothes, whom Vitaly Donets now recognized as a local police officer, whistled again. Now, he realized the whistling was addressed to him and stopped. The officer walked towards him with a furious face. Full of fear Vitaly Donets jumped on his motorbike and drove home. Later that evening he went to the yard to smoke a cigarette. Suddenly two police officers ran into the yard. Vitaly reported that the officer who had stopped him earlier held a pepper spray to his nose and pushed him to the ground. The officers kicked and beat him all over his body. At that point Vitaly's wife and his seven-year old daughter entered the yard. The wife shouted the officers should stop the beatings, but when she tried to help her husband stand up one officer sprayed pepper in his eyes and some of the spray also affected his wife and daughter. Shortly afterwards a police car arrived; the officers dragged Vitaly Donets inside and took him to the local police station, where, Vitaly reported, they continued beating him. Then police reportedly covered him with a blanket to make him unrecognizable, led him to a car, drove him outside the village, where they beat him severely. Later police took him to Auliekol Central Hospital to test his alcohol intake. According to Vitaly Donets, police threatened they would continue beating him if he complained about the abuse. Subsequently, he was placed into the IVS in



Vitaly Donets' hand was injured as a result of police abuse. © Private

Auliekol. On 30 June, Auliekol district court sentenced him to a fine for “putting up resistance to a representative of the authorities” (Article 355 of the Administrative Code of Kazakhstan).

Shortly afterwards Vitaly Donets was diagnosed with inflammation of nerves in his left shoulder and arm, believed to have been caused by the police violence. He had to undergo medical treatment for his left hand that did not function normally anymore. He also felt deeply humiliated because the officers abused him in the presence of his wife and daughter. Vitaly Donets urged that a forensic medical examination be conducted. However, he and his lawyer, who cooperates with KIBHR, were neither informed that his request was granted, nor when the examination was scheduled to take place. Eventually, they learnt that the forensic expert had drawn up his conclusions without examining Vitaly Donets.

As a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) Kazakhstan is obliged to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction” (Article 12).

In its 2014 Concluding Observations the United Nations (UN) Committee against Torture expressed concern about impunity for crimes of torture and other ill-treatment in Kazakhstan and pointed out that “data based on official sources reveal(ed) that less than 2 per cent of the complaints of torture received by the State have led to prosecutions”.

In the case of Alexander Albrandt criminal proceedings were opened against the alleged perpetrators on 19 September 2014 for “exceeding official authority” (Article 308 of the Criminal Code of Kazakhstan that was in force at the time), but police closed the case on 31 December for “lack of evidence of a crime”. In February 2015, Kostanay regional Prosecutor’s Office reopened the case and sent it to the Internal Security Department of the Ministry of Internal Affairs in Kostanay region for investigation. However, the investigation was closed two weeks later. When Alexander Albrandt’s lawyer lodged a complaint, the Prosecutor’s Office revoked the earlier decision to close the criminal case and sent the case for further investigation to the Anti-Corruption Agency.

In the case of Vitaly Donets the Prosecutor’s Office of Kostanay region decided on 5 March 2015 to open a criminal case for “exceeding official authority” (Article 362 of the new Criminal Code of Kazakhstan) and referred it to the regional Internal Security Department of the Ministry of the Interior for investigation.

We are concerned that employees of the Ministry of Internal Affairs were tasked with investigating Alexander Albrandt’s and Vitaly Donets’ allegations although employees of the same Ministry reportedly perpetrated the abuse. The Anti-Corruption Agency, that was ordered to conduct a further investigation into Alexander Albrandt’s case in May 2015, is not subordinate to the Ministry of Internal Affairs, but, to date, it has not undertaken any steps to effectively investigate the allegations of torture.

In its November 2014 Concluding Observations on Kazakhstan’s third periodic report to the UN Committee against Torture, the Committee urged Kazakhstan to ensure that effective investigations are conducted into allegations of torture and ill-treatment and highlighted that “they (must) never (be) undertaken by personnel employed by the same ministry as the accused persons” (Paragraph 8(a)). In addition, in decisions on the cases of two torture victims from Kazakhstan that the Committee against Torture issued under its Individual complaints procedure in 2012² and 2014³ respectively, the Committee stated that investigations into torture allegations conducted by police amounted to a violation of Kazakhstan’s obligations as a party to the Convention against Torture. In addition, it stated that such investigations cannot be considered impartial and are in violation of Article 12 of the Convention.

In November 2014, the Committee against Torture also called on Kazakhstan to “ensure that all persons accused of acts amounting to torture as defined by the Convention are prosecuted for the crime of (“torture”) rather than for offences of lesser severity.” We believe that the crimes committed by those

² See the case of Alexander Gerasimov, UN doc. CAT/C/48/D/433/2010:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KAZ&Lang=EN

³ See the case of Rasim Bayramov (or Bairamov), CAT /C/52/D/497/2012:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KAZ&Lang=EN

that allegedly abused Alexander Albrandt fall under the definition of torture as outlined in the Convention and should thus be punished under Article 146 ("torture") of the Criminal Code of Kazakhstan.

We urge you to open prompt, thorough, impartial and independent investigations into the allegations raised by Alexander Albrandt and Vitaly Donets and remove the alleged perpetrators from any position where they could repeat the alleged crimes, pending the outcome of the proceedings. It is crucial that the perpetrators are charged in accordance with the crimes committed and swiftly brought to justice. We also urge you to investigate allegations that in the case of Alexander Albrandt police fabricated evidence to evade responsibility for their crimes and, should these allegations be confirmed, to bring those responsible to justice.

We would also like to take this opportunity to draw your attention to a document issued by the Coalition against Torture in Kazakhstan, the Helsinki Foundation for Human Rights (Poland) and International Partnership for Human Rights (Belgium) in May 2015 that provides a brief assessment of the current situation of torture and other ill-treatment in Kazakhstan. It can be found on: http://www.iphronline.org/uploads/9/0/2/7/9027585/2015_05_03_kaz_final.pdf

We trust that you will take all necessary measures to address the above concerns and will be grateful to receive information on any steps your Office will take at: Coalition against Torture, 8th Mikrorayon 4a, office 423, 050035 Almaty.

Yours sincerely,

Roza Akylbekova
Coordinator of the NGO Coalition against Torture in Kazakhstan
(on behalf of the organizations joining this letter)

Organizations jointly issuing this open letter:

- **Belarusian Human Rights House in exile in Vilnius (CSP member)**
- **Bir Duino-Kyrgyzstan (CSP member)**
- **Center for Civil Liberties (Ukraine, CSP member)**
- **Center for National and International Studies (Azerbaijan, CSP member)**
- **Center for the Development of Democracy and Human Rights (Russia, CSP member)**
- **Helsinki Citizens' Assembly – Vanadzor (Armenia, CSP member)**
- **Helsinki Foundation for Human Rights (Poland, CSP member)**
- **Human Rights Monitoring Institute (Lithuania, CSP member)**
- **Humanrights.ch (Switzerland, CSP member)**
- **International Federation for Human Rights (FIDH)**
- **International Partnership for Human Rights (Belgium, CSP member)**
- **Kharkiv regional foundation Public Alternative (Ukraine, CSP member)**
- **Legal Transformation Center (Belarus, CSP member)**
- **Moscow Helsinki Group (Russia, CSP member)**
- **NGO Coalition against Torture in Kazakhstan**
- **NGO Coalition against Torture in Kyrgyzstan**
- **NGO Coalition against Torture in Tajikistan**
- **Norwegian Helsinki Committee (CSP member)**
- **Promo LEX Association (Moldova, CSP member)**
- **Public Verdict Foundation (Russia, CSP member)**
- **World Organisation Against Torture (OMCT)**