



## Statement on the right to a fair trial for oil industry workers from Zhanaozen

25 April 2012

The Civic Solidarity Platform<sup>1</sup> has established an **international observation mission** to monitor compliance with the international standards of fair trial in the judicial process against oil industry workers from Zhanaozen who are accused of organizing and participating in mass riots which took place on December 16, 2011 (criminal case number 11471803100615).

The trial began on March 27, 2012 and it is ongoing at the date of this publication. Representatives of the international observation mission have been present at the proceedings from the day the trial started and they intend to continue the observation until the final judgment is delivered.

First of all, it should be noted that until the judgment is delivered, it is too early to form any final conclusions on whether the process fulfills the standards of fair trial set forth in international documents concerning human rights. However, even at this stage, there are several elements that pose serious concerns on fundamental aspects of the process, as described below.

**1. The trial has started without a full and objective investigation of the events which took place on December 16, 2011 and the following days.** Even at this moment, from the testimonies of the victims, witnesses and defendants, it is clear that the course of events of December 16, 2011 has not been thoroughly established. In particular, further inquiry is necessary with respect to:

- The role of public authorities' actions in triggering the mass riots. As may be concluded from the testimonies given during the trial, the president of the local administration for the town of Zhanaozen (further: Akim) deliberately undertook the organization of holiday celebrations in the same place where the oil industry workers held their strike. For that purpose, Akim convinced businesspeople to put up yurts and ensured financial guarantees for them in case of any property damages. He also gave instructions to build a stage and set up a Christmas tree and to bring groups of pupils to the square.
- The role of young, fit and unidentified individuals, unknown to the workers on strike, in triggering the tragic events.
- The legal requirements for authorizing the use of force by the policemen, especially firearms with live rounds, as a result of which 14 people died and many were wounded. In this regard, it remains unclear whether the police performed its duties to ensure safety

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<sup>1</sup> The Civic Solidarity Platform consists of 38 non-governmental organizations protecting human rights from countries which are part of OSCE. Until now, the representatives of the following organizations have participated in the observation of judicial processes: Helsinki Foundation for Human Rights (Poland); Ukrainian Helsinki Human Rights Union, Norway Helsinki Committee, Association of Ukrainian Human Rights Monitors on Law-enforcement, Kazakhstan International Bureau for Human Rights and Rule of Law.

during mass gatherings, as part of the state's legal obligation to guarantee the right to peaceful assembly.

- The estimation of the exact number of people wounded and the character of the wounds they sustained. As the testimonies of the witnesses and defendants show, many people in Zhanaozen have bullet wounds in the back parts of their bodies which may suggest they were wounded while running away from the site of the event.

It should be emphasized that the insufficient clarification of all these events builds on the fact that the trial of the participants of the events was planned, from the start, as separate from the trials of the representatives of state authorities who took part in those events (Akim's trial, trials of the policemen charged with the abuse of power). It is also not clear why none of the defendants wounded during the events of December 16, 2011 have been granted victim status and called in as witnesses in the policemen's trial. The defendants have been denied the possibility to have the Akim or the policemen charged with the abuse of power as witnesses in their trial, which does not help in establishing all the circumstances significant for the trial.

**2. The majority of defendants testified that during interrogation law-enforcement agencies used torture and physical or psychological violence towards them.** Torture was used after the defendants' arrest, both before the indictment and ordering of a preventative measure, and after these stages – at the pre-trial stage of proceedings.

The international observation mission points out that, according to international standards, allegations of torture require careful investigation and the punishment of the officials responsible. The state should guarantee that any allegation of torture towards defendants during the investigation is examined. Furthermore, any evidence or statement obtained through the use of torture is inadmissible at judicial proceedings under international law. It should be noted that on April 17 the judge leading the trial ordered the prosecution to examine the facts of torture reported by the defendants within 10 days and to initiate criminal proceedings. Expressing doubts whether this period is sufficient for the examination of such numerous cases of torture, we call on Kazakh authorities to suspend the ongoing trial until these allegations are fully investigated and the determination of facts and responsibilities is concluded, so that they can be duly included to the trial.

**3. As the testimonies of the defendants and witnesses suggest, the pre-trial proceedings were conducted with various errors on the part of the prosecution.** For example:

- Individuals who were not on the square in Zhanaozen on December 16, 2011 were included among the defendants. They were captured randomly on the following days and, according to their statements, coerced to confess to their participation in the riots.
- The majority of the defendants were assigned a lawyer after they had been indicted and after the preventative measures had been ordered against them.
- In many cases, the arrests and interrogations of the defendants were conducted in violation of procedures and by officers who were not authorized to perform them (for example, policemen from different regions dealing with organized crime). During the arrests, the defendants were cruelly beaten and robbed of valuable possessions which they were carrying with them.

**4. Many witnesses (about 40 people) called in by the prosecution are policemen.** They took part in the pacification of the protests on December 16, 2011 and on the following days. The value of their testimonies raises doubts to the extent that:

- During the interrogation of certain witnesses who were policemen, the defendants began to recognize them as their torturers. They were able to provide numerous details concerning the place and the type of torture, and the people who took part in it, etc. The defendants also indicated that some of the policemen-witnesses used firearms during the pacification of the protests on December 16, 2011.
- The identity of 12 of the policemen who were witnesses is classified for the alleged necessity of protecting their safety. The observation mission points out that in certain cases classifying the identity of witnesses to protect their safety can be justified (for example, if a policeman conducts operations as an undercover agent, or when it is necessary to provide protection for a state witness). However, there are doubts concerning the necessity of this measure in the process at hand.

**5. During the trial, the prosecution is planning to question 154 people who suffered material losses as a result of the events on December 16, 2011 (the extent of the losses was tentatively estimated at more than 13,000 000 EUR).** The observation mission wishes to emphasize the unacceptability of imposing on the defendants a duty to rectify any of those losses, unless the direct cause and effect relation between the defendants' actions and the losses suffered is proven. It must be proven that a specific defendant is guilty of damaging specific property. Additionally, the role and responsibility of state authorities in the occurrence of specific damages to property requires clarification. In particular, the Akim's role needs to be elucidated as he actively encouraged the construction of yurts in the square and issued financial compensation in case of damages. Clarification is also needed with respect to the property damages that occurred after the law-enforcement agencies had taken over control of the town and the curfew had been introduced.

Considering all of the above, the observation mission holds that the lack of careful investigation and clarification of these elements will influence the assessment of whether the trial was conducted according to the international standards of fair trial. Moreover, it will affect conclusions regarding the compliance of Kazakhstan with international obligations on the right to life, freedom from torture, right to liberty and security and the freedom of peaceful assembly.

In order to avoid the continuity of procedures that may lead to unfair trials and have drastic consequences to defendants, we urge Kazakh authorities to:

- 1. Conduct a full and objective investigation aimed at establishing the course of events on December 16, 2011 and on the following days in Zhanaozen, as well as the role and responsibility of the representatives of state authorities in those events;**
- 2. Conduct a full and objective investigation concerning the cases of torture reported by the defendants and include the results of this investigation in the ongoing trial;**
- 3. Include the findings from the state officials' trials (Akim and the policemen) in the ongoing trial of the oil industry workers;**
- 4. Enable the defendants and their lawyers to question the defendants in other trials of Akim and of the policemen.**