



**Kazakhstan v.
Duman
Mukhammedkarim**

January 2025

TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE

A. ABOUT THE AUTHORS

Covington & Burling LLP is strongly committed to public service. The firm is frequently recognized for pro bono service, including 12 times being ranked the number one pro bono practice in the U.S. by The American Lawyer. Much of the firm's pro bono work is anchored in meeting local needs, serving economically disadvantaged individuals and families in our surrounding communities, in addition to its long history of serving vulnerable clients and important causes throughout the U.S. and the world.

B. ABOUT THE EXPERT

Vanja Skoric is the European Center for Not-for-Profit Law Program Director overseeing global and EU engagement programmes with over 22 years of experience in legal analysis, education and research. She mostly works on the UN and EU/Council of Europe-level support and legal enabling environment for civil society, as well as in EU member states, Western Balkan region, MENA, East Africa and Eurasia countries. She leads the work on securitisation and counter-terrorism / anti-money laundering measures that impact civil society, as well as ECNL's engagement in digital and artificial intelligence (AI) issues affecting civic freedoms. Vanja has been a civil society activist since 1999. Previously, she was a Legal Advisor at Croatian organisation GONG and a member of the Croatian Council on Open Government Partnership Initiative. She is also one of the founders and served as a board member of the Solidarna Community Foundation in Croatia. Vanja holds a LLM degree in Public International Law from the University of Amsterdam and a Law Degree from the University of Zagreb.

C. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

The legal assessment and conclusions expressed in this report are those of the authors and not necessarily those of the Clooney Foundation for Justice. Additionally, the Clooney Foundation for Justice assumes and accepts no responsibility for and gives no guarantees or warranties for the legal assessment, analysis, and opinion expressed herein. The views expressed are not necessarily those of CFJ, its Board of Directors, or its leadership.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND INFORMATION	5
A. POLITICAL & LEGAL CONTEXT	5
B. CASE HISTORY	13
METHODOLOGY	22
A. THE MONITORING PHASE	22
B. THE ASSESSMENT PHASE	22
ANALYSIS	23
A.APPLICABLE LAW	23
B.PRE-TRIAL VIOLATIONS	23
C.VIOLATIONS AT TRIAL.....	26
D.OTHER FAIRNESS CONCERNS	31
EXPERT CONCLUSION AND GRADE	41
A.The Right to a Public Trial.....	42
B.The Right to an Impartial Tribunal	42
C.The Right to a Reasoned Public Judgment and to Appeal	43

EXECUTIVE SUMMARY



Vanja Skoric, member of the TrialWatch Experts Panel, assigned this trial a grade of “F”:

This case presents multiple violations that cumulatively undermine the fairness of the proceedings. Notably, the charges appear to be driven by an "improper motive," as recognized under Article 18 of the European Convention on Human Rights. This raises serious concerns about the legitimacy of the prosecution. Furthermore, the legal framework and procedures employed in bringing these charges contravene established international human rights standards. The defendant's right to equality before the court was compromised, and his arbitrary detention both prior to and during the trial adversely impacted the proceedings. This detention, coupled with judicial harassment due to his activism, reflects a persistent violation of his fundamental rights. The improper motive behind the prosecution significantly and likely influenced the trial's outcome, contributing to an unjust result.

The proceedings in this case were marred by multiple violations that fundamentally compromised the due process aspect of the trial. Key rights were breached, including the right to be tried by an independent and impartial court, the right to a public trial, the presumption of innocence, and the right to a reasoned public judgment with an opportunity to appeal. These infringements collectively undermined the integrity of the judicial process. The lack of a reasoned justification for the judgment most certainly and significantly influenced the trial's outcome.

The extent of the harm to Mr. Mukhammedkarim is substantial, given his prolonged pre-trial detention, deteriorating health, and the severe limitations on his freedom. The severity of the sentence imposed further highlights the gravity of these violations and the urgent need for corrective measures.

From December 2023 to August 2024, the Clooney Foundation for Justice's TrialWatch initiative monitored the criminal proceedings against Duman Mukhammedkarim, a well-known independent journalist and activist in Kazakhstan. He was convicted in August 2024 under Kazakhstan's anti-extremism laws for posting a video interview with a prominent opposition figure.

Mr. Mukhammedkarim operated the "Ne Deidi?" ("What Are They Saying?") YouTube channel in Kazakhstan. In December 2022, he livestreamed a video interview with Mukhtar Ablyazov, an exiled critic of the Kazakh government and a leader of the opposition party Democratic Choice of Kazakhstan (DCK), which has been designated as "extremist" and banned in Kazakhstan. In the comment section of the video, Mr. Mukhammedkarim published an appeal by Mr. Ablyazov for funding to help with

Mr. Ablyazov's legal expenses. In January 2023, he re-uploaded the interview with Mr. Ablyazov to the ND channel and reposted the appeal from Mr. Ablyazov in the comment section. In April 2023, he also posted two videos about an upcoming political rally on May 1, 2023.

On this basis, Mr. Mukhammedkarim was prosecuted, convicted, and sentenced to six years' imprisonment for financing extremist activities in violation of Article 258 of the Kazakh Criminal Code, and to one additional year of imprisonment for participating in the activities of a banned extremist organization in violation of Article 405 of the Criminal Code. He was also prohibited from engaging in social and political activities in the mass media for three years under Article 405.¹

Articles 258 and 405 of the Criminal Code are among several provisions that purport to criminalize "extremism" in Kazakhstan. These laws have been decried by the international community for being vague and overbroad, and thus susceptible to arbitrary application by the authorities. The prosecution of Mr. Mukhammedkarim under these provisions further rested on strained interpretations of what constitutes "financing" and "participation" in "extremist" organizations. The court based its findings against Mr. Mukhammedkarim largely on reports prepared by government-appointed experts for the indictment, disregarding other evidence presented by the defense as irrelevant.

Mr. Mukhammedkarim's lengthy pre-trial detention was unlawful and arbitrary, and the trial violated his rights to equality of arms, to a public trial, to be presumed innocent, and to be tried before an impartial tribunal. His conviction was based on criminal provisions that are incompatible with the principle of legality and violated his rights to freedom of expression and to take part in public affairs.

This report first briefly addresses the background and political context to Mr. Mukhammedkarim's prosecution, including Kazakhstan's problematic "extremism" laws. It then summarizes the case history before addressing pre-trial and trial violations, along with other fairness concerns.

¹ Konaev City Court of Almaty Region, *Judgment*, Case No. 1916-24-00-1/12 (Aug. 2, 2024) [hereafter "Konaev City Court Judgment"]; see also *Kazakh Court Sentences Journalist to 7 Years in Prison*, RADIO FREE EUROPE (Aug. 2, 2024), <https://www.rferl.org/a/duman-mukhammedkarim-journalist-sentence-dvk-seven-years-prison-qonaev/33061183.html>; *Court Jails Journalist Duman Mukhammedkarim for Seven Years*, RADIO FREE EUROPE (Aug. 2, 2024) (translation), <https://www.azattyq.org/a/33061049.html>.

BACKGROUND INFORMATION

A. POLITICAL & LEGAL CONTEXT

Nursultan Nazarbayev, former head of the Communist Party of Kazakhstan, governed Kazakhstan for nearly three decades after the dissolution of the Soviet Union in 1991. During his tenure, Nazarbayev established an authoritarian regime that “persistently suppressed dissent, prolonged his time in office through undemocratic votes, and used the levers of power to neutralize potential opponents.”²

These practices have continued under Nazarbayev’s successor, Kassym-Jomart Tokayev, who took office in 2019. Although President Tokayev promised to recognize pluralism of opinion and to protect the rights of citizens, opposition parties have been banned, their leaders have faced criminal charges, and their followers have had their activities restricted.³ Tokayev’s government has frequently employed overbroad “extremism” laws to pursue dissidents.⁴ Mr. Mukhammedkarim’s prosecution, which criminalized protected journalistic and political speech, is an extension of these concerning practices.

Suppressing Political Opposition Through “Extremism” Laws

Kazakhstan’s law “On Countering Extremism” was adopted in 2005. It defines extremism as:

[A]ctions of individuals and (or) legal entities ... following extremist purposes ... : forcible change of the constitutional system, violation of the sovereignty of the Republic of Kazakhstan, integrity, inviolability and inalienability of its territory, disruption of national security and defense capacity of the state, forcible seizure of power or forcible retention of power, creation, management and participation in the illegal paramilitary forces, organization

² *Nazarbaev Becomes Security Council’s Chairman For Life*, RADIO FREE EUROPE/RADIO LIBERTY (July 12, 2018), <https://perma.cc/8LPU-RVVA>. See also, e.g., Marie Struthers et al., *Political Freedoms in Kazakhstan*, HUMAN RIGHTS WATCH (Apr. 5, 2004), <https://www.hrw.org/sites/default/files/reports/kazakhstan0404.pdf>.

³ *Freedom in the World 2024: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2024>.

⁴ See, e.g., *Kazakhstan: Crackdown on Government Critics, Over 130 Targeted for Alleged Membership in Groups Deemed ‘Extremist’*, HUMAN RIGHTS WATCH (July 7, 2021), <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics>.

of armed rebellion and participation in it, incitement of social ... strife (political extremism)....⁵

Under the auspices of preventing such “extremism,” the Kazakh Criminal Code establishes several offenses targeting “extremist” activities, including financing extremism, organizing or participating in an extremist group, and enlisting individuals for participation in extremism.⁶ Mr. Mukhammedkarim was prosecuted under two such provisions: Articles 258(1) and 405(2) of the Criminal Code.

Article 258(1) provides that the “[p]rovision or collection of money and (or) other property,” as well as donations, rendering of information and other services, including financial services, to a person or group of persons, or a legal entity, “by a person who was aware of the terroristic or extremist nature of their activity or that the provided property, rendered information, financial and other services will be used for carrying out terroristic or extremist activity or supporting a terroristic or extremist group ... shall be punished by deprivation of liberty for a term of five to nine years with confiscation of property.”

Article 405(2) provides that the “[p]articipation in the activities of a public or religious association or other organization,” which has been banned by a court decision in force in connection with such organization “carrying out ... extremism or terrorism, ... shall be punished by” a fine or correctional works, or by the “restriction of liberty for the term of up to two years, with deprivation of the right to hold determined posts or to engage in a determined activity for the term of up to three years.”

The international community has widely condemned the Kazakh authorities’ use of these broad and vaguely worded provisions to silence dissenting voices. The UN Human Rights Committee has expressed concern about the “broad formulation of the concept of ‘extremism’” under Kazakh law and “the use of such [criminal] legislation on extremism to unduly restrict freedoms of . . . expression, assembly and association.”⁷ The European Parliament has also stated that Kazakh authorities abuse such “vague and overly broad extremism laws to persecute opposition and human rights defenders” and called upon Kazakh authorities to stop using these laws against activists, bloggers, journalists, and

⁵ Law on Countering Extremism, Art. 1. An unofficial English translation of the Law on Countering Extremism is available at https://adilet.zan.kz/eng/docs/Z050000031_.

⁶ Kazakh Criminal Code, Arts. 182, 258-60, 405. An unofficial English translation of the Criminal Code is available at https://www.unodc.org/uploads/icsant/documents/Legislation/Kazakhstan/3_Penal_Code_of_the_RK.pdf.

⁷ UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Kazakhstan*, CCPR/C/KAZ/CO/2 (2016), ¶¶ 13, 49.

others exercising their right to freedom of expression.⁸ Similarly, the U.S. State Department has reported that NGOs and independent observers have criticized the use of Kazakhstan's terrorism and extremism laws to target political opponents and adherents of non-violent religious movements.⁹

The DCK opposition party has been one of the Kazakh authorities' principal targets. DCK was first formed in 2001 by a group of government officials and business leaders who had become disenchanted with the Nazarbayev regime. Among the founders was Mukhtar Ablyazov, a former government minister and banker who became one of Kazakhstan's most prominent opposition figures.¹⁰ DCK advocated for democratic reform, including of Kazakhstan's electoral and judicial systems, and for an independent media.¹¹ But the authorities quickly accused it of waging "an information war ... insulting and blackmailing the government and parliament."¹²

The government pursued Mr. Ablyazov in particular, as DCK's leader. In 2002, Mr. Ablyazov was convicted of abuse of office and misappropriating funds, but in 2003, he was pardoned and released from prison in exchange for giving up his political ambitions. He then served as chair of the board of directors for BTA Bank from 2005 until BTA was nationalized in 2009, after which he fled Kazakhstan and sought political asylum in France. The Kazakh authorities later accused Mr. Ablyazov of having embezzled more than \$5 billion from the bank,¹³ and they have continued to pursue legal action against

⁸ European Parliament, *Resolution of 11 February 2021 on the human rights situation in Kazakhstan* (2021/2544(RSP)), ¶¶ N, 7.

⁹ U.S. State Department, *2022 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/country-reports-on-terrorism-2022/kazakhstan>.

¹⁰ *Profile: Kazakh tycoon-dissident Mukhtar Ablyazov*, BBC NEWS (Jan. 9, 2014), <https://www.bbc.com/news/world-europe-25666111>.

¹¹ *Galymzhan Zhakiyanov: Overview of Interviews and Press Articles* (Mar. 2006), https://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/dcas20060425_06/dcas20060425_06en.pdf; *Profile on Mukhtar Ablyazov*, <https://perma.cc/52UR-EF6T>.

¹² Andriy Osavouliuk et al., *The story of 'The Democratic Choice of Kazakhstan' opposition movement*, OPEN DIALOGUE FOUNDATION (Jan. 29, 2016), <https://en.odfoundation.eu/a/7250,the-story-of-the-democratic-choice-of-kazakhstan-opposition-movement/>.

¹³ Andriy Osavouliuk, *Report: Kazakhstan pursues former top managers of BTA Bank in order to obtain their testimonies against Mukhtar Ablyazov*, OPEN DIALOGUE FOUNDATION (Feb. 10, 2017), <https://en.odfoundation.eu/a/8092,report-kazakhstan-pursues-former-top-managers-of-bta-bank-in-order-to-obtain-their-testimonies-against-mukhtar-ablyazov/>; Daisy Sindelar, *How Far Will Nazarbaev Go To Take Down Mukhtar Ablyazov?*, RADIO FREE EUROPE (June 7, 2013), <https://www.rferl.org/a/kazakhstan-nazarbaev-ablyazov/25010488.html>.

him in various jurisdictions.¹⁴ Among other measures, authorities unsuccessfully sought his extradition and pursued criminal charges against him in France, which were ultimately dismissed in January 2022.¹⁵

Mr. Abylazov has remained in exile, but re-established DCK in 2017.¹⁶ In 2021, the European Parliament and U.S. State Department characterized DCK as a peaceful opposition movement.¹⁷ However, in March 2018, a Kazakh district court ruled that DCK was an “extremist” organization and banned it from carrying out activities in Kazakhstan, whether in person or online.¹⁸ Two years later, in May 2020, Kazakh authorities banned another political party, the Koshe Party, on the grounds that it was a successor of the DCK.¹⁹ While the decisions have not been published,²⁰ the Kazakh government has pointed to Mr. Abylazov’s speeches, posted on his YouTube channel and Facebook and

¹⁴ See, e.g., Tom Burgis, *Spies, lies and the oligarch: inside London’s booming secrets industry*, FINANCIAL TIMES (Sept. 28, 2017), <https://www.ft.com/content/1411b1a0-a310-11e7-9e4f-7f5e6a7c98a2>.

¹⁵ *L’opposant Kazakh Moukhtar Abliazov obtient l’abandon des poursuites judiciaires le visant en France*, LE MONDE (Jan. 13, 2022), https://www.lemonde.fr/international/article/2022/01/13/l-opposant-kazakh-moukhtar-abliazov-obtient-l-abandon-des-poursuites-judiciaires-le-visant-en-france_6109336_3210.html.

¹⁶ *Ablyazov announced the creation of a new “Democratic Choice for Kazakhstan”*, RADIO LIBERTY (Apr. 20, 2017) (translation), <https://rus.azattyq.org/a/28441043.html>.

¹⁷ See e.g., European Parliament, *Resolution on the human rights situation in Kazakhstan, 2021/2544(RSP)*, (Feb. 10, 2021), ¶ 5; U.S. Department of State, *2020 Country Report on Human Rights Practices: Kazakhstan* (Mar. 2021), p. 40, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kazakhstan>.

¹⁸ *Kazakhstan: Crackdown on Government Critics*, HUMAN RIGHTS WATCH (July 7, 2021), <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics>; *Report: The persecution of the DCK activists in Kazakhstan*, OPEN DIALOGUE FOUNDATION (Apr. 2, 2018), <https://en.odfoundation.eu/a/8606,report-the-persecution-of-the-dck-activists-in-kazakhstan/>.

¹⁹ U.S. Department of State, *2020 Country Report on Human Rights Practices: Kazakhstan* (Mar. 2021), p. 40, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kazakhstan>. Like the previous decision regarding the DCK, the decision banning the Koshe Party was announced, but its reasons have not been published.

²⁰ Though neither has been published, some organizations appear to have seen or obtained copies of the two court decisions designating DCK and the Koshe Party as ‘extremist.’ See, e.g., *Kazakhstan: Crackdown on Government Critics*, HUMAN RIGHTS WATCH (July 7, 2021), <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics> (stating that the decisions to ban DCK and the Koshe Party “were based on state-commissioned psychological-linguistic analyses” by “government ‘experts’,” which were not made public, and noting that the “court rulings did not cite any other evidence showing that either group had advocated or engaged in violence”).

Instagram pages, which the government, supported by reports of forensic experts, claims evidenced his intent to incite violence in the country.²¹ As a result of these court decisions, even peaceful activities associated with DCK and the Koshe Party may be criminalized. In fact, Human Rights Watch reported that, as of July 2021, at least 135 people across the country had been targeted with criminal investigations and prosecutions for alleged participation in such banned extremist opposition groups.²²

In a 2021 case monitored by TrialWatch, for instance, Kazakh authorities prosecuted Askhat Zheksebaev under anti-extremism laws for publishing peaceful social media posts and Telegram messages in support of the Koshe Party.²³ The authorities did not cite any specific instance of Zheksebaev calling for violence or even any instance in which Zheksebaev's words or actions might be implicitly understood to be referring to violence; rather, the challenged activity had constituted protected political expression.²⁴

Tensions between the Kazakh government and dissenters came to a head in January 2022, when protests broke out over income inequality and fuel prices in the city of Zhanaozen.²⁵ President Tokayev responded by restricting internet access and reportedly ordering security forces to “shoot to kill without warning” into crowds of peaceful protestors.²⁶ Russian-led forces arrived in Kazakhstan as part of a “peacekeeping” mission²⁷ to help neutralize what Tokayev had labeled a “terrorist threat.”²⁸ Officially, 225

²¹ Letter from M. Beketayev, Minister of Justice of Republic of Kazakhstan, to Mr. Hugh Williamson of Human Rights Watch (Aug. 3, 2021), pp. 3-4, https://www.hrw.org/sites/default/files/media_2021/08/Letter%20to%20HRW%20from%20Ministry%20of%20Justice%20in%20Kazakhstan.pdf.

²² *Kazakhstan: Crackdown on Government Critics*, HUMAN RIGHTS WATCH (July 7, 2021), <https://www.hrw.org/news/2021/07/07/kazakhstan-crackdown-government-critics>.

²³ Stephanie Farrior & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022).

²⁴ *Id.* at p. 6.

²⁵ *Kazakhstan: Protestors Arbitrarily Arrested, Beaten*, HUMAN RIGHTS WATCH (Feb. 1, 2022), <https://www.hrw.org/news/2022/02/01/kazakhstan-protesters-arbitrarily-arrested-beaten#>.

²⁶ *Kazakhstan: Killings, Excessive Use of Force in Almaty*, HUMAN RIGHTS WATCH (Jan. 26, 2022), <https://www.hrw.org/news/2022/01/26/kazakhstan-killings-excessive-use-force-almaty>.

²⁷ Shaun Walker and Naubet Bisenov, *Russian paratroopers arrived in Kazakhstan as unrest continues*, THE GUARDIAN (Jan. 6, 2022), <https://www.theguardian.com/world/2022/jan/06/shots-heard-in-kazakhstan-as-protests-enter-third-day>.

²⁸ Lance Davies, *Russia's Response to Unrest in Kazakhstan: Risk Versus Reward*, RUSI (Jan. 10, 2022), <https://rusi.org/explore-our-research/publications/commentary/russias-response-unrest-kazakhstan-risk-versus-reward>.

people were killed and many more injured, and some 10,000 were detained.²⁹ The UN Special Rapporteur on counter-terrorism and human rights condemned Kazakhstan’s “overly broad use of the word ‘terrorism’ in this context against protesters, civil society activists, human rights defenders, journalists and political parties,” which appeared to be “aimed at instilling fear,” noting that “such use was inconsistent with international law and undermined human rights for all in Kazakhstan.”³⁰

The UN High Commissioner for Human Rights has also called for independent investigations into the January 2022 events. However, the government’s efforts have largely focused on prosecuting civilians and journalists, and not on law enforcement officials potentially responsible for the death of numerous protestors. Concerningly, over 1,200 civilians and journalists have been convicted because of their role in the 2022 protests, many of whom had been peacefully expressing their views.³¹

Meanwhile, the Kazakh authorities have continued using Articles 258 and 405 of the Criminal Code to target dissenting individuals. For example, Marat Zhylanbayev, leader of the unregistered “Alga, Kazakhstan!” opposition party, was charged under Article 258 in May 2023, for “financing extremist activities” based on fundraising activities on behalf of his unregistered party, and under Article 405(2) for allegedly participating in “unsanctioned protests” that coincided with those organized by DCK, despite not being a member of the party.³² In a closed trial, Mr. Zhylanbayev was convicted and sentenced to seven years in prison on November 30, 2023, and his sentence was upheld following his appeal in January 2024.³³

Due Process and Fair Trial Rights

Numerous international organizations have raised concerns about Kazakh courts’ deficiencies in respecting fair trial rights, such as prosecutor-dominated trials, harassment of defense attorneys by the authorities, lack of adequate time or facilities to prepare a

²⁹Abdujalil Abdurasulov, *Kazakhstan unrest: ‘If you protest again, we will kill you’*, BBC NEWS (Jan. 21, 2022), <https://www.bbc.co.uk/news/world-asia-60058972>.

³⁰ OHCHR, *Kazakhstan: UN experts condemn lethal force against protests, misuse of term ‘terrorists’*, (Jan. 11, 2022), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28019&LangID=E>.

³¹ Mihra Rittman, *UN Human Rights Chief Calls for Reforms in Uzbekistan and Kazakhstan*, HUMAN RIGHTS WATCH (Mar. 20, 2023), <https://www.hrw.org/news/2023/03/20/un-human-rights-chief-calls-reforms-uzbekistan-and-kazakhstan>.

³² *Kazakhstan: Government Critic on Trial for Extremism*, HUMAN RIGHTS WATCH (Nov. 8, 2023), <https://www.hrw.org/news/2023/11/08/kazakhstan-government-critic-trial-extremism>.

³³ *Kazakhstan: Baseless ‘Extremism’ Case Heads to Court*, HUMAN RIGHTS WATCH (Feb. 8, 2024), <https://www.hrw.org/news/2024/02/08/kazakhstan-baseless-extremism-case-heads-court>.

defense, and failure of judges to investigate allegations that authorities extracted confessions through torture or duress.³⁴

Freedom House, for instance, has noted that “[p]olitically motivated prosecutions and prison sentences against activists, journalists, and opposition figures are common,” and that “[j]udges are subject to political influence, and corruption is a problem throughout the judicial system.”³⁵ Human Rights Watch has observed “disproportionate use of force against protesters, arbitrary arrest and imprisonment, and ill-treatment and torture of detainees.”³⁶ Citing Freedom House’s Nations in Transit Report for the year 2022, the U.S. State Department commented:

[W]hile the constitution provides for judicial independence, courts had yet to prove this independence in cases involving high-profile officials, political activists, and independent NGOs. Evaluators from the Group of European States Against Corruption noted the president heavily influenced key appointments in the judiciary, prosecution, specialized anticorruption bodies, and law enforcement.³⁷

According to the U.S. State Department, defense lawyers are additionally faced with “lack of access to government-held evidence, frequent procedural violations, [and] denial of defense counsel motions.”³⁸ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has criticized the authorities’ “overreliance on ‘judicial experts,’” noting that the weight Kazakh courts give

³⁴ U.S. State Department, *2020 Country Report on Human Rights Practices: Kazakhstan* (Mar. 2021), p. 14, (Domestic and international human rights organizations reported numerous problems in the judicial system, including lack of access to court proceedings, lack of access to government-held evidence, frequent procedural violations, unfair denial of defense counsel motions, and failure of judges to investigate allegations that authorities extracted confessions through torture or duress.), <https://www.state.gov/wp-content/uploads/2021/10/KAZAKHSTAN-2020-HUMAN-RIGHTS-REPORT.pdf>.

³⁵ *Freedom in the World 2020: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2020>.

³⁶ *World Report 2023: Kazakhstan, Events of 2022*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2023/country-chapters/kazakhstan>.

³⁷ U.S. State Department, *2022 Country Reports on Human Rights Practices: Kazakhstan*, <https://www.state.gov/reports/country-reports-on-terrorism-2022/kazakhstan>.

³⁸ U.S. State Department, *2020 Country Report on Human Rights Practices: Kazakhstan* (Mar. 2021), p. 14, <https://www.state.gov/wp-content/uploads/2021/10/KAZAKHSTAN-2020-HUMAN-RIGHTS-REPORT.pdf>.

to such expert opinions “per se violates the principle of equality of arms and has profound implications on fair trials.”³⁹

These fair trial violations appear particularly prevalent in cases involving Kazakhstan’s anti-extremism laws—several of which have been monitored by TrialWatch. In one case discussed above, for instance, Askhat Zheksebaev was convicted of organizing and participating in the banned Koshe Party, although he was not given access to the decision laying out the reasoning for its designation as extremist.⁴⁰ Additionally, the court refused the defense’s requests to question the government experts whose conclusions formed a key part of the prosecution’s case, holding that the availability of the experts’ written opinions sufficed.⁴¹ In another case, Aigul Utepova, an independent journalist, was convicted under Article 405(2) for supporting DCK and the Koshe party, after the court consistently and unreasonably ruled against the defense, relying almost entirely on the flawed findings of the prosecution’s experts.⁴² And in Marat Zhylanbayev’s case, discussed earlier, the court closed the trial proceedings based solely on unsubstantiated allegations of two anonymous witnesses who testified against the defendant.⁴³ As mentioned, Mr. Zhylanbayev was ultimately convicted under Articles 258 and 405 and sentenced to seven years in prison.⁴⁴

Mr. Mukhammedkarim’s arrest and trial thus took place against a backdrop of suppression of political opposition and limited democratic freedoms in Kazakhstan. His case further reflects the worrying trend of Kazakh authorities using “anti-extremism” laws to target journalists and dissidents.

³⁹ UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46/Add.1, (Jan. 22, 2020), ¶ 39, https://digitallibrary.un.org/record/3852204/files/A_HRC_43_46_Add-1-ES.pdf.

⁴⁰ Stephanie Farrow & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022); TrialWatch Fairness Report, *Kazakhstan v. Aigul Utepova* (Apr. 2022), p. 37.

⁴¹ Stephanie Farrow & TrialWatch Initiative, TrialWatch Fairness Report, *Kazakhstan v. Askhat Zheksebaev et al.* (Nov. 2022), pp. 4-5.

⁴² TrialWatch Fairness Report, *Kazakhstan v. Aigul Utepova* (Apr. 2022), p. 3.

⁴³ *Kazakhstan: Government Critic on Trial for Extremism*, HUMAN RIGHTS WATCH (Nov. 8, 2023), <https://www.hrw.org/news/2023/11/08/kazakhstan-government-critic-trial-extremism>.

⁴⁴ *Kazakhstan: Government Critic on Trial for Extremism*, HUMAN RIGHTS WATCH (Nov. 8, 2023), <https://www.hrw.org/news/2023/11/08/kazakhstan-government-critic-trial-extremism>.

B. CASE HISTORY

Mr. Mukhammedkarim is a well-known journalist and political activist in Kazakhstan. After working for the national broadcasting corporation for twenty years, he founded the independent YouTube channel “Ne Deidi?” (“What are They Saying?”) in 2015, covering current events in Kazakhstan.⁴⁵ Notably, Mr. Mukhammedkarim was one of few journalists who reported on the 2022 “Bloody January” protests.⁴⁶ In March 2023, Mr. Mukhammedkarim also ran as an independent candidate in a local election, but was not elected.⁴⁷ His reporting and activism increasingly made him a target of the authorities.

Postings on the ND Channel

The case against Mr. Mukhammedkarim was based on four videos posted to the ND YouTube channel. In December 2022, Mr. Mukhammedkarim livestreamed a video titled “#ND EXCLUSIVE! CHESS PLAYER IN REMOTE. LIVE WITH MUKHTAR ABLYAZOV— 20.12.2022 (16:00),” in which he interviewed Mukhtar Ablyazov.⁴⁸ As noted above, Mr. Ablyazov is the exiled co-founder of the banned DCK opposition party that was designated extremist in 2018. During the interview, Mr. Mukhammedkarim asked Mr. Ablyazov about his personal background, the history of opposition politics in Kazakhstan, and his current political views.⁴⁹ He also questioned Mr. Ablyazov about the

⁴⁵ *Думан Мухаметкарим под арестом. Как журналист оказался «экстремистом» и при чём тут критика Токаева?* (Duman Mukhammedkarim under arrest. How did the journalist become an “extremist” and what does his criticism of Tokaev have to do with it?), AZATLYK RADIOSY, (June 26, 2023), <https://rus.azattyq.org/a/32475697.html>.

⁴⁶ *Id.*

⁴⁷ *We Are Not Going to the Elections Because We Want to Become Deputies – Candidates Form Temporary Bloc for Election Campaign*, SAILAU NEWS, (Feb. 20, 2023), <https://web.archive.org/web/20231229193759/https://sailaunews.kz/we-are-not-going-to-the-elections-because-we-want-to-become-deputies>; *Kazakh Journalist Jailed After Expressing Plans To Hold Rally Against Election Results*, RADIO FREE EUROPE / RADIO LIBERTY, (Mar. 22, 2023), <https://www.rferl.org/a/kazakhstan-elections-rally-jailed/32329407.html>; *Сайлау нәтижесіне қарсы митингіге шықпақ болған журналист Думан Мұхаммедкәрім 25 күнге қамалды* (Journalist Duman Mukhammedkarim was sentenced to 25 days in Kazakhstan), AZATLYK RADIOSY, (Mar. 21, 2023), <https://www.azattyq.org/a/32327785.html>.

⁴⁸ Konaev City Court Judgment.

⁴⁹ A.K. Kairzhanov, *Expert Opinion* (Aug. 21, 2023). A full transcript of the interview is included in the report of the expert retained by Mr. Mukhammedkarim’s lawyers for the trial.

government's allegations that Mr. Abylazov had embezzled funds from BTA Bank, as well as about other activists' criticisms of him.⁵⁰

When Mr. Abylazov mentioned that he needed money to pay for legal expenses, Mr. Mukhammedkarim said, "Dear people, the former banker, oligarch, politician is asking for help. Please donate even if it's 500 tenge [USD \$1]. I will donate. But we have another problem, Mukhtar Kabyluly. Did you know that people who shared your post were called 'extremists'? If we donate to you, are we going to be funding an extremist?" Mr. Abylazov replied that it was the DCK, and not himself personally, who had been declared extremist, and that the funds would not reach him personally because he does not have an account.⁵¹ At the conclusion of the interview, Mr. Mukhammedkarim said, "We can only change through a revolution. But no bloodshed. Peace. Right?" Mr. Abylazov answered, "Yes, correct."⁵²

In the comment section of the video, Mr. Mukhammedkarim shared eight methods for sending financial support, including by transfer to bank accounts in Kazakhstan, Lithuania, and the U.S., via PayPal, and to Bitcoin, Monerop and USDT cryptocurrency wallets.⁵³ He also posted an appeal from Mr. Abylazov cited in the indictment and the court's judgment as follows:

Dear friends, I am grateful for your support and for organizing these requests and challenges. The current situation is as follows: in France and other countries' jurisdictions, to combat the various false accusations made by the Nazarbayev-Tokaev regime for Kypecy, we need to pay at least \$500,000 for our lawyers to work. I need to pay for the lawyers' work to win asylum cases in the Supreme Administrative Court of France, and also, after winning at the Paris Court of Appeal, I need to overcome the cassation appeal filed against me by Kazakhstan. Currently, about \$15,000 has been collected. Kaspi Bank and Kairat Satybaldy Bank are obstructing the transfer of funds in all respects. Consequently, if your transfers via Kaspi do not go through, please send me copies of these transfer attempts directly. We are preparing a legal case against the bank abroad and also collecting all these facts so that various international organizations will include the

⁵⁰ See, e.g., *id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Konaev City Court Judgment.

owners of Kaspi Bank in the sanctions list. Send copies of the transfer attempts to Instagram, Facebook, and also Telegram . . .⁵⁴

On January 27, 2023, Mr. Mukhammedkarim republished the video interview on the ND YouTube channel under the title “ND OPENING 10 CELLS DAILY: WE WILL BE 20,000 by 03/19/23 – WITH MUKHTAR ABLYAZOV (FULL VERSION).”⁵⁵ Mr. Ablyazov’s appeal for funds was again included in the comment section, with the same information on how to send funds.⁵⁶

On April 29 and 30, 2023, Mr. Mukhammedkarim published two further videos, entitled “ND DON’T ATTEND THE RALLY ON MAY !. LET’S STAY ON THE COUCH ALL TOGETHER, THE WHOLE NATION ...” and “ND MAY 1 IS THE HOLIDAY OF MOCKING KAZAKHS. DO NOT LEAVE HOME, DO NOT GET OFF YOUR SOFA. BUT I WILL GO!”⁵⁷ In the videos, Mr. Mukhammedkarim criticized the government and suggested, with apparent sarcasm, that the viewers should not attend peaceful protest rallies planned for May 1, 2023.⁵⁸

Administrative Arrests, Expert Reports and Criminal Charges, and Pre-Trial Detention

Mr. Mukhammedkarim was first detained on March 21, 2023 — the day after his unsuccessful run for office — for announcing his intention to protest violations during the electoral process.⁵⁹ After being released on April 15, he was arrested again on May 1 for posting the April 29-30 videos.⁶⁰ He was released on May 26, 2023, but was again

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Z. Abdulzhanova, A. Aydarbekova and A. Mirzakhodjaev, *Expert Conclusion No. 4107* (Sept. 8, 2023) (identifying Mr. Mukhammedkarim’s statements to his audience to not attend the rallies and “remain a slave forever” as potential sarcasm).

⁵⁹ *Journalist Duman Mukhametkarim and his father go on hunger strike*, EXCLUSIVE.KZ (June 2, 2023), <https://exclusive.kz/zhurnalists-duman-mukhametkarim-i-ego-otecz-obyavili-golodovku/>; *Kazakhstan: Third arrest for journalist sparks hunger strike*, INTERNATIONAL FEDERATION OF JOURNALISTS (IFJ) (June 16, 2023), <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/kazakhstan-third-arrest-for-journalist-sparks-hunger-strike>.

⁶⁰ *Kazakh Journalist Sentenced To 25 Days After Online Call For Protest*, RADIO FREE EUROPE / RADIO LIBERTY (May 2, 2023) <https://www.rferl.org/a/kazakhstan-journalist-protest-prison/32388997.html>; see also Алматыда журналист Думан Мұхаммедкәрім ұсталды

detained two days later for “violating the order of a peaceful assembly.”⁶¹ This third administrative detention was set to expire on June 22, 2023, but on that day, he was charged under Articles 258 and 405 of the Criminal Code and placed in pre-trial detention.⁶² He has remained imprisoned since then.

Mr. Mukhammedkarim’s pre-trial preventative custody was initially set for a two-month period.⁶³ The June 22 order cited various grounds for the detention: the seriousness of the suspected crime, the possibility of escape, the possible obstruction of the investigation, and the possibility that the criminal conduct might otherwise continue.⁶⁴ His detention was then repeatedly (and routinely) extended until his indictment in January 2024, and continued throughout the proceedings.⁶⁵ Mr. Mukhammedkarim carried out repeated hunger strikes to protest his alleged ill treatment while in detention.⁶⁶

(*Journalist Duman Mukhammedkarim arrested in Almaty*), AZATLYK RADIOSY (May 1, 2023), <https://www.azattyq.org/a/32386896.html>.

⁶¹ *Kazakh Journalist Launches Hunger Strike Protesting Second 25-Day Jail Term*, RADIO FREE EUROPE / RADIO LIBERTY (May 29, 2023), <https://www.rferl.org/a/kazakhstan-journalist-mukhammedkarim-hunger-strike-jail/32432612.html>.

⁶² *Jailed Kazakh Journalist Charged Again Instead of Being Released After Serving Sentence*, RADIO FREE EUROPE / RADIO LIBERTY (June 22, 2023), <https://www.rferl.org/a/kazakhstan-journalist-charged-after-sentence/32470965.html>; see also Investigating Judge of Ile District Court of Almaty, *Order to Apply Pre-Trial Restriction Measure in the Form of Detention*, No 1968-22-00-2-3M/402 (June 22, 2023) [hereafter “June 2023 Pre-Trial Detention Order”].

⁶³ June 2023 Pre-Trial Detention Order.

⁶⁴ *Id.*

⁶⁵ See, e.g., Judge of the Specialized Investigative Court of Konaev City, Almaty Region, *Order*, No. 1992-23-00-2-3M/701 (Aug. 16, 2023); Judge of the Specialized Investigative Court of Konaev City, Almaty Region, *Order*, No. 1992-23-00-2-3M/785 (Sept. 8, 2023); Judge of the Specialized Investigative Court of Konaev City, Almaty Region, *Order*, No. 1992-23-00-2-3M/945 (Oct. 16, 2023); Judge of the Specialized Investigative Court of Konaev City, Almaty Region, *Order*, No. 1992-23-00-2-3M/1137 (Nov. 17, 2023); Judge of the Specialized Investigative Court of Konaev City, Almaty Region, *Order*, No. 1992-23-00-2-3M/1281 (Dec. 15, 2023).

⁶⁶ *Kazakh Journalist and Politician who was on Hunger Strike Potentially Facing 12 Years in Prison*, SOUTH EAST EUROPE MEDIA ORGANIZATION (SEEMO) (June 15, 2023), <https://seemo.org/ressources/15-06-2023-kazakh-journalist-and-politican-who-was-on-hunger-strike-potentially-facing-12-years-in-prison/>; Manshuk Asautai, *Jailed Journalist Mukhammedkarim Launches New Hunger Strike*, RADIO FREE EUROPE / RADIO LIBERTY (Apr. 17, 2024), <https://www.rferl.org/a/kazakhstan-journalist-hunger-strike/32909083.html>; *Imprisoned Kazakh Journalist Mukhammedkarim Launches Another Hunger Strike*, RADIO FREE EUROPE / RADIO LIBERTY (Aug. 12, 2024), <https://www.rferl.org/a/kazakhstan-mukhammedkarim-hunger-strike/33075498.html>.

The investigative resolution by which the police formally recognized Mr. Mukhammedkarim as a suspect, and which formed the basis for Mr. Mukhammedkarim's June 22, 2023 detention, was based on an expert report that had been commissioned by the police in early May 2023, as Mr. Mukhammedkarim was serving his second 25-day administrative detention.⁶⁷ The expert report was delivered on June 8, 2023, and contained the analysis of three government-appointed experts in philology, psychology and political science of the December 20, 2022 video interview with Mr. Ablyazov.⁶⁸ The expert in philology concluded that the video criticized the government and appealed for financial assistance, but stated that "it is necessary to implement political changes peacefully" and did "not contain calls to organize a protest or a violent seizure of power."⁶⁹ The expert in psychology concluded that some viewers could be influenced by the video.⁷⁰ The expert in political science concluded that the words spoken by Mr. Mukhammedkarim in the video contained "signs of propaganda of extremist ideas and views," as well as "signs of participation in the activities of the extremist organization 'DCK' ('Democratic Choice of Kazakhstan')" and "a call to financing the activities" of the "extremist" DCK, "as well as signs of organization of financing."⁷¹

A few weeks later, the police commissioned further expert reports with respect to the January 27 and April 29-30 videos. The same experts who authored the June 2023 report were requested, and they delivered their reports in early September. The conclusions expressed with respect to the January 27 video are the same as those with regard to the earlier report on the December 22 video.⁷² The reports on the April 29-30 videos found that those videos criticized the government and the infringement of journalists' rights, and informed viewers of the peaceful rally planned for May 1, 2023.⁷³ As was the case with the first two videos, the reports concluded that the April 29-30 videos did not contain calls

⁶⁷ T.B. Sagdolda, Senior Investigator of the Investigation Department of the Police Department of the Almaty Region, *approved by* B.B. Karyamskov, Assistant Prosecutor of the Criminal Prosecutor's Office, Almaty Region, *Resolution on Distinguishing Activities of the Suspect* (June 22, 2023).

⁶⁸ Z. Abdulzhanova, A. Aydarbekova and A. Mirzakhodjaev, *Expert Conclusion No. 2810* (June 8, 2023).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Z. Abdulzhanova, A. Aydarbekova and A. Mirzakhodjaev, *Expert Conclusion No. 4106* (Sept. 8, 2023).

⁷³ Z. Abdulzhanova, A. Aydarbekova and A. Mirzakhodjaev, *Expert Conclusion No. 4107* (Sept. 8, 2023) (discussing the April 30 video); Z. Abdulzhanova, A. Aydarbekova and A. Mirzakhodjaev, *Expert Conclusion No. 4108* (Sept. 8, 2023) (discussing the April 29 video).

for a violent seizure of power.⁷⁴ Moreover, they found that the April 29-30 videos “did not suggest the organization or encouragement of participation in the activities of an extremist organization,” nor did they contain signs of calling for and organizing the financing of extremist organizations.”⁷⁵ Nevertheless, the reports found that Mr. Mukhammedkarim’s statements in the videos exhibited “signs of propagating extremist views and ideas.”⁷⁶ On the basis of these reports, the charges against Mr. Mukhammedkarim were extended in October 2023, to cover the additional videos.⁷⁷

The prosecution issued its indictment on January 26, 2024.⁷⁸ Mirroring the wording of the expert reports, the indictment alleged that while Mr. Mukhammedkarim’s videos did not contain calls for the overthrow of the government by force, they nevertheless showed signs of “promoting extremist ideas and views,” of “participation in the activities” of the banned DCK party, and of “calling for financing” and “organizing financing” for the DCK.⁷⁹ It also alleged that some 207 individuals attempted 1,506 fund transfers, totaling KZT \$10,269,240.79 (approximately US \$23,000), to the Kazakh bank account mentioned in Mr. Abyazov’s appeal, noting that two of the attempted transfers, for KZT 9,312 (approximately USD \$19) and KZT 11,640 (approximately USD \$24), were successful.⁸⁰ Again based on the expert reports, the indictment alleged that the April 29-30 videos also showed signs of “promoting extremist ideas and views.”⁸¹

On the morning of February 12, 2024, the Konaev City Court of the Almaty Region held a preliminary hearing in Mr. Mukhammedkarim’s case.⁸² As documented in the press and

⁷⁴ *Expert Conclusion No. 4107.*

⁷⁵ *Id.*

⁷⁶ *Id.*; *Expert Conclusion No. 4108.*

⁷⁷ J.M. Yeszhanov, Investigator of the Police Department of the Almaty Region, *approved by* B.B. Karymsakov, Assistant to the Regional Prosecutor of the Criminal Investigation Department of the Almaty Region Prosecutor’s Office, *New Resolution on Distinguishing Actions of the Suspect* (Oct. 3, 2023).

⁷⁸ SS. Bakirov, Deputy Prosecutor of Almaty Region, *New Indictment Regarding Criminal Case No. 231900031000143* (Jan. 26, 2024) [hereafter “Indictment”].

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Kazakh Journalist Goes On Trial On Extremism Charges*, RADIO FREE EUROPE/RADIO LIBERTY, (Feb. 12, 2024), <https://www.rferl.org/a/kazakh-journalist-mukhammedkarim-trial-extremism/32815513.html>.

recounted by defense counsel,⁸³ civil rights activists and supporters of Mr. Mukhammedkarim gathered outside the courtroom, but most were not allowed inside. According to the defense, the presiding judge announced that the court proceedings were being audio-video recorded, and that any other photography and video recording in the courtroom was prohibited. Citing a request by an anonymous witness, the prosecution moved for the trial to be held in closed session, which the court granted over the defense's opposition. The court also denied Mr. Mukhammedkarim's request for his detention to be converted to house arrest. As some of the defense lawyers had not received the indictment and some of the case documents had not been made fully available, the court granted the defense's motion for more time to review relevant material. The defense filed a motion for recusal of the judge for bias, which was reserved for later consideration. Finally, Mr. Mukhammedkarim reportedly announced that he would be filing formal charges alleging psychological and physical pressure by the authorities during his pre-trial detention. Those charges were later dismissed.⁸⁴

Trial

Mr. Mukhammedkarim's trial began with a hearing on February 22, 2024. As recounted by the defense team, a defense motion to recuse the prosecutor was denied after less than five minutes of deliberation by the judge. Having previously used the term in official correspondence,⁸⁵ at the hearing the judge also reportedly referred to Mr. Mukhammedkarim as "сотталған," which translates to "convicted." This prompted a strong reaction from the defense as an expression of bias, but a motion to disqualify the judge was also reportedly denied after only brief deliberation by another judge. Mr. Mukhammedkarim denied the charges against him under Articles 258(1) and 405(2) and denounced what he considered violations of his fair trial rights. He expressed concern that his lawyers might lose their licenses for defending him.

Because the trial was held in closed session, TrialWatch was not able to monitor the proceedings in person. However, various aspects of the trial proceedings can be inferred from the court's final judgment. According to the judgment, over fifty witnesses testified at the trial.⁸⁶ Only one of the two individuals who successfully transferred money testified at the trial. That witness testified that he had seen a "fragment" of Mr. Mukhammedkarim's interview with Mr. Abyazov on Instagram. He did not testify that he watched any of Mr.

⁸³ *Id.*

⁸⁴ R.N. Sadyk, Head of the Pre-Trial Investigation Department of the Prosecutor's Office of Almaty Region, *approved by D.M. Kataev, First Deputy Prosecutor of Almaty Region, Ruling to Terminate the Pre-Trial Investigation* (May 10, 2024).

⁸⁵ See Letter from the Konaev City Court (Feb. 21, 2024).

⁸⁶ Konaev City Court Judgment.

Mukhammedkarim’s videos on YouTube or read the comment under those videos with account information. Rather, the witness testified that he had identified the relevant account number from “WhatsApp and Telegram chats.”

Of the twenty-five or so witnesses called to testify based on records that they had tried to transfer money to the accounts identified by Mr. Ablyazov, at least fifteen testified that they had not watched Mr. Mukhammedkarim’s interview with Mr. Ablyazov. At least seven witnesses testified that they had watched a clip of a journalist interviewing Mr. Ablyazov on the latter’s Instagram page. Additionally, at least ten witnesses denied transferring money to the accounts in question. According to the testimony of the seven witnesses who admitted that they transferred or attempted to transfer money, none had watched the interview on Mr. Mukhammedkarim’s YouTube account or read the comment on his YouTube video providing the account information. Rather, according to the witness testimony, Mr. Ablyazov’s Instagram page contained account information for supporters to transfer money. At least eighteen witnesses testified in support of Mr. Mukhammedkarim’s character and reputation. These witnesses repeatedly noted his honesty and impartiality as a journalist and his lack of involvement in the DCK.

Judgment

The court released its judgment on August 2, 2024, finding Mr. Mukhammedkarim guilty under both Articles 258(1) and 405(2) of the Criminal Code.⁸⁷ Like the indictment, the judgment recited the conclusions of the government-appointed experts to the effect that while the December 22 and January 27 videos contained no calls for violence, they contained “signs” of “promoting extremist views,” of “participation in the activities” of the DCK party, and of “an appeal to finance the activities” of the extremist DCK and of “organizing” such financing.⁸⁸ The judgment described the expert reports as “sufficiently clear and thorough, and ... well-substantiated, leaving no room for doubt.”⁸⁹ Indeed, the relevant conclusions in the judgment resemble a “cut and paste” of the text of the expert reports and the indictment, almost as if the trial itself had not taken place.

While the court admitted extensive evidence in addition to the reports submitted by the prosecution’s experts, it effectively ignored all evidence favorable to the defense. The court briefly summarized the testimony of the many witnesses called, but did not provide further evaluation of their testimony nor their impact on the charges.⁹⁰ It characterized Mr. Mukhammedkarim’s denials of the charges against him as “an attempt to evade

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

criminal responsibility in light of the overwhelming evidence,” without elaboration.⁹¹ It also dismissed a report submitted by a defense expert because, according to the court, the DCK’s “extremist” nature had been settled definitively by the 2018 court decision, while the defense’s expert report concluded that Mr. Ablyazov’s main political credo was a “peaceful transition of power from autocracy to democracy without bloodshed.”⁹²

The court claimed to have reached its conclusion after evaluating “each piece of evidence in the case for its relevance, admissibility, and reliability and considering the totality of the collected evidence.”⁹³ As the Kazakh government has explained, no evidence has a predetermined force under domestic law and expert opinions have no greater weight than other evidence.⁹⁴ But that does not comport with the judgment in this case. Instead, the court appears to have reached its conclusions based solely on the government’s experts’ reports, which it felt left “no room for doubt.”⁹⁵ In brief, the result of the trial appeared preordained based on these conclusory reports that had been produced for the indictment.

The court sentenced Mr. Mukhammedkarim to six-year and one-year terms of imprisonment under Article 258(1) and Article 405(2) of the Criminal Code, respectively, for a combined sentence of seven years, and to a three-year deprivation of the right to engage in socio-political topics in the mass media.⁹⁶

Appeal

Following the judgment, Mr. Mukhammedkarim’s lawyers appealed his conviction and sentence. The appeal was denied on November 7, 2024, and at the request of the prosecution, the appellate court broadened the three-year ban on political activity to include participation in conferences, debates, interviews, peaceful gatherings, activities of public organizations (including political parties), and other similar matters.⁹⁷

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Letter from M. Beketayev, Minister of Justice of Republic of Kazakhstan, to Mr. Hugh Williamson of Human Rights Watch (Aug. 3, 2021), pp. 5-6, https://www.hrw.org/sites/default/files/media_2021/08/Letter%20to%20HRW%20from%20Ministry%20of%20Justice%20in%20Kazakhstan.pdf.

⁹⁵ Konaev City Court Judgment.

⁹⁶ *Id.*

⁹⁷ Appellate Panel on Criminal Cases, Almaty Regional Court, *Decision*, Case No. 1999-24-00-1a/307 (Nov. 7, 2024) [hereafter “Appeal Decision”]; see also *Kazakh Journalist Mukhammedkarim’s*

METHODOLOGY



A. THE MONITORING PHASE

TrialWatch monitored the case through a variety of means, including through review of available court documents (including the police resolutions, the indictment, the expert reports commissioned by the prosecution and the defense, and the judgment), and information from defense lawyers. The trial itself was closed to the public, meaning TrialWatch was not able to use an in-person monitor, and there were no independent media reports covering the trial proceedings.

B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade, TrialWatch Expert Vanja Skoric reviewed an unofficial translation of the indictment and trial judgment, and an initial draft of this report. She concluded that the case involves multiple violations that undermine the fairness of the proceedings, including charges driven by an improper motive and breaches of international human rights standards. Key rights, such as the right to a fair trial, public judgment, and presumption of innocence, were compromised. Mr. Mukhammedkarim faced arbitrary detention and judicial harassment, severely affecting his health and freedom. The lack of a reasoned judgment and the improper motive behind the prosecution likely influenced the unjust outcome, highlighting the need for scrutiny and redress.

Appeal of Prison Sentence Denied, RADIO FREE EUROPE/RADIO LIBERTY (Nov. 8, 2024), <https://www.rferl.org/a/kazakhstan-appeal-rejected-journalist-mukhammedkarim/33194631.html>; *Court of Appeal did not change sentence for Duman Mukhammedkarim*, RADIO LIBERTY (Nov. 8, 2024), <https://www.azattyq.org/a/33193756.html>.

ANALYSIS



A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on January 24, 2006; jurisprudence and commentary from the UN Human Rights Committee, tasked with interpreting and monitoring implementation of the ICCPR; commentary from UN Special Procedures; and the Kazakh Constitution and Criminal Code. Notably, Article 4 of the Kazakh Constitution recognizes ratified international treaties as having primacy over domestic law. While the Republic of Kazakhstan is not party to the European Convention on Human Rights (ECHR), jurisprudence from the European Court of Human Rights (ECtHR) also offers persuasive authority where relevant.⁹⁸

B. PRE-TRIAL VIOLATIONS

Arbitrary Detention

Article 9(1) of the ICCPR provides that “[n]o one shall be subject 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.”⁹⁹

The UN Human Rights Committee has noted that with respect to detention, the concept of “arbitrariness” must be “interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as of reasonableness, necessity and proportionality.”¹⁰⁰ Not only should pre-trial detention be the exception and as short as possible, but detention must also be “lawful” (in accordance with domestic law) and “reasonable and necessary in all circumstances.”¹⁰¹

In evaluating the reasonableness and necessity of detention, courts must undertake an individualized determination of the accused’s particular circumstances. Vague and

⁹⁸ Kazakhstan is not a member of the Council of Europe, although it does collaborate with the Council on regional initiatives. See, e.g., Directorate of Programme Co-ordination, *Central Asia*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/programmes/central-asia>.

⁹⁹ ICCPR, Art. 9(1).

¹⁰⁰ UN Human Rights Committee, *İsmet Özçelik et al v. Turkey*, UN Doc. CCPR/C/125/D/2980/2017 (Sept. 23, 2019), ¶ 9.3.

¹⁰¹ UN Human Rights Committee, *Cedeño v. Bolivarian Republic of Venezuela*, UN Doc. CCPR/C/106/D/1940/2010 (Dec. 4, 2012), ¶ 7.10.

expansive justifications such as “public security” do not meet this standard.¹⁰² Reference to the severity of the charges is likewise insufficient to justify pre-trial detention.¹⁰³ Pre-trial detention should not be mandatory for all defendants charged with a particular crime without regard to individual circumstances, and courts must examine whether non-custodial alternatives, such as bail and monitoring devices, would render detention unnecessary in a particular case.¹⁰⁴ If exceptional circumstances exist that warrant detention, the accused is entitled to periodic review of whether detention is still necessary.¹⁰⁵ A judge “must order release” of an accused “[i]f there is no lawful basis for continuing the detention.”¹⁰⁶

As explained by the UN Working Group on Arbitrary Detention (UNWGAD), if the government does “not explain the threat posed by the conduct” of the accused “to the legitimate interests that States might invoke ... namely respect for the rights, freedoms or reputations of others, national security, public safety, public order, [and] public health or morals,” then “the arrest, trial and subsequent detention ... is consequently arbitrary.”¹⁰⁷

Mr. Mukhammedkarim’s pre-trial detention was not based on individual consideration.¹⁰⁸ The June 2023 detention order simply noted the seriousness of the alleged crime (considering the allegations against Mr. Mukhammedkarim to be well-founded based primarily on the prosecution’s expert reports), the possibility of escape, and the possible obstruction of the ongoing investigation if Mr. Mukhammedkarim remained at liberty, but without any individualized determination in light of the circumstances of his case. For instance, the order did not explain why Mr. Mukhammedkarim might present a flight risk, noting instead that “bail will not be set if there is evidence of continued activity[,]” despite the fact that some five months had passed since Mr. Mukhammedkarim had last posted the video of his interview with Mr. Ablyazov. The suggestion that Mr. Mukhammedkarim might obstruct the investigation appears particularly dubious given that the indictment was based almost entirely on the conclusions of government-appointed experts whose

¹⁰² UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, (Dec. 16, 2014), ¶ 38.

¹⁰³ See *id.*; UNWGAD, *Concerning Thiansutham Suthijitseranee (Thailand)*, Opinion No. 56/2017, UN Doc. A/HRC/WGAD/2017/56 (Oct. 13, 2017), ¶ 68.

¹⁰⁴ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, (Dec. 16, 2014), ¶ 38.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*, ¶ 36.

¹⁰⁷ UNWGAD, *Concerning Azamat Umbetaliyev, Beket Mynbasov, Samat Adilov, Zhuldyzbek Taurbekov, Zhasulan Iskakov, Nazim Abdrakhmanov, Ernar Samatov and Bolatbek Nurgaliyev (Kazakhstan)*, Opinion No. 33/2021, UN Doc. A/HRC/WGAD/2021/33 (Oct. 14, 2021), ¶¶ 69–70.

¹⁰⁸ June 2023 Pre-Trial Detention Order.

reports could not have conceivably been tampered with by Mr. Mukhammedkarim. The pre-trial detention was repeatedly and routinely extended based on the prosecution's requests for more time to complete their investigation, again without any evaluation of Mr. Mukhammedkarim's circumstances.¹⁰⁹

Likewise, Mr. Mukhammedkarim's detention was not based on an individual consideration of the circumstances of his case. The severity of the alleged crime cannot be grounds for pre-trial detention under international standards, and the court's stated concerns as to the alleged risk of abscondment, continued criminal activity, and interference with the investigation were not substantiated. In sum, Mr. Mukhammedkarim's detention did not satisfy the requirements of Article 9(3) ICCPR and was thus arbitrary.

Unlawful Detention

Article 9 of the ICCPR recognizes and protects the liberty and security of person. As stated by the UN Human Rights Committee with respect to Article 9:

Any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application. Deprivation of liberty without such legal authorization is unlawful.¹¹⁰

This principle of legality is also enshrined in Article 15 of the ICCPR. Laws must be formulated with sufficient precision, as vague and overbroad provisions can otherwise be used to deprive individuals of their liberty without a specific legal basis, and individuals should be able to access and understand the law so that they can regulate their conduct accordingly.¹¹¹

As will be explained in greater detail below, Kazakhstan's anti-extremism laws are prime examples of such vague and overbroad laws that are susceptible to abuse and in fact are routinely abused by the authorities to suppress dissent. This, too, renders Mr. Mukhammedkarim's detention unlawful.¹¹²

¹⁰⁹ Judge of the Specialized Investigative Court of Konaev city, *Orders*, No. 1992-23-00-2-3m/701 (Aug. 16, 2023), No. 1992-23-00-2-3m/785 (Sept. 8, 2023), No. 1992-23-00-2-3m/945 (Oct. 16, 2023), No. 1992-23-00-2-3m/1137 (Nov. 17, 2023), and No. 1992-23-00-2-3m/1281 (Dec. 15, 2023).

¹¹⁰ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35 (Dec. 16, 2014), ¶ 22.

¹¹¹ UNWGAD, *Concerning Serikzhan Bilash (Kazakhstan)*, Opinion No. 43/20, UN Doc. A/HRC/WGAD/2020/43 (Dec. 14, 2020), ¶ 66.

¹¹² *Id.* at ¶¶ 69-70 (vague definitions of "inciting social or class hatred" and "religious hatred or enmity" the criminalization of conduct "promoting social, national, generic, racial, class or religious

C. VIOLATIONS AT TRIAL

Right to Equality of Arms (Use of Government Experts)

The principle of the equality of arms is guaranteed by Article 14(1) of the ICCPR and requires “that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.” The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has raised concerns about:

[The Kazakh authorities’] overreliance on ‘judicial experts’, notably those dealing with theology, philology and politics, in both pre-trial and trial phases of extremism and terrorism procedures. Criminal charges of extremism are often brought solely on the basis of the opinions of experts whose requisite qualifications, independence and neutrality has not been established. ... [T]he weight given to evidence analysis per se violates the principle of equality of arms and has profound implications on fair trials.¹¹³

The case against Mr. Mukhammedkarim exemplifies this overreliance on government-appointed experts. The prosecution obtained an expert report with respect to each of the four video postings by Mr. Mukhammedkarim on his ND channel. Both the indictment and the final judgment quoted extensively from those experts’ reports. As noted above, the final judgment also expressly found those reports to have settled the relevant factual questions, “leaving no room for doubt,” disregarding all contrary evidence.

Moreover, the court’s reliance appears to have extended to ultimate questions of law in the case, *i.e.*, whether posting Mr. Abylazov’s appeal for funds for his legal expenses in foreign countries constituted “financing” the banned DCK and whether interviewing Mr. Abylazov amounted to “participating” in the DCK’s activities. This is particularly concerning given the broad, non-statutory definitions applied by the experts. For example, the experts’ definitions included “deviation from the center” and:

a person who does not recognize the general order and acts only according to his own opinion. The cause of extremism is the attitude of a person adapted to ignorance and superficiality. Another form of extremism comes from people who cannot see, understand or do not want to understand one another. Terrorists don’t listen to the advice of people who point them in the

discord” were overly broad and lacked the requisite degree of legal certainty, rendering detention unlawful).

¹¹³ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46/Add.1, (Jan. 22, 2020), ¶ 39.

right direction. They consider themselves the most correct and pure, attribute all others to delusions and do not recognize people who know better.¹¹⁴

Similarly, the definition of “participate” is cited as “1. To be enthusiastic about something; to be with the crowd. 2. Commuting; socializing,” and “participation” in the DCK is explained as including:

promotion of the movement’s idea, preparation, publication, reproduction and distribution of its announcements, leaflets, posts and opinions, other information materials. In addition, the organization and holding of rallies, marches, public actions and other mass events in support of the movement and its leader Ablyazov is considered participation.¹¹⁵

Lastly, “funding” is defined as “giving or collecting money, other property, giving, exchanging, donating, offering, sponsoring and charitable assistance, providing information and other services to the movement with Ablyazov.”¹¹⁶

The ECtHR encountered very similar reliance by domestic courts on expert reports in the case of *Dmitriyevskiy v. Russia*.¹¹⁷ In that case, during the Russian-Chechen war in the early 2000s, a Russian newspaper had published articles authored by Chechen leaders. The first called for peace and for a vote against Putin in upcoming elections, while the second was more harshly critical of Russia, calling the Kremlin the “center of international terrorism” and Russia’s campaign against Chechnya a “genocide.”¹¹⁸ For publishing the articles, the chief editor of the newspaper, Mr. Dmitriyevskiy, was prosecuted and convicted for “inciting hatred or enmity” under Article 282 of the Russian Criminal Code.¹¹⁹

¹¹⁴ *Expert Conclusion No. 2810*. The subsequent reports, prepared by the same experts, also cite these definitions, while also adding “actions that use illegal, violent means to achieve political and other goals. It incites ethnic hatred, restricts democratic principles, destabilises the country, and prevents the peaceful resolution of political tensions.” *Expert Conclusion No. 4106*; *Expert Conclusion No. 4107*; *Expert Conclusion No. 4018*.

¹¹⁵ *Expert Conclusion No. 2810*. See also *Expert Conclusion No. 4106*; *Expert Conclusion No. 4107*; *Expert Conclusion No. 4018*.

¹¹⁶ *Expert Conclusion No. 2810*; *Expert Conclusion No. 4106*.

¹¹⁷ ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06 (Oct. 3, 2017).

¹¹⁸ *Id.* at ¶¶ 7-9.

¹¹⁹ *Id.* at ¶ 47.

The conviction was based largely on reports by a linguistic expert.¹²⁰ The ECtHR's analysis applies equally to the judgment against Mr. Mukhammedkarim:

113. Firstly, whilst basing their guilty verdict on the above-mentioned expert reports, the courts failed to assess them and merely endorsed the linguistic expert's conclusions ... Thus, the crucial legal finding ... was, in fact, made by the linguistic expert who drew up the above-mentioned reports ... The relevant expert examination clearly went far beyond resolving merely language issues, such as, for instance, defining the meaning of particular words and expressions, and provided, in essence, a legal qualification of the applicant's actions. The Court finds that situation unacceptable and stresses that all legal matters must be resolved exclusively by the courts ...

114. Secondly, the courts in the applicant's case made no meaningful attempts to analyze the statements in issue. As can be ascertained from the relevant court decisions, the courts generally listed the statements examined in the above-mentioned expert reports and, in fact, limited their assessment to repeatedly reproducing the conclusions of those reports and the text of Article 282 § 2 of the Criminal Code ...

115. In the light of the foregoing, the Court is bound to conclude that the domestic authorities failed to base their decision on an acceptable assessment of all relevant facts and to provide "relevant and sufficient" reasons for the applicant's conviction.

The judgment against Mr. Mukhammedkarim exemplifies the concerns expressed by the Special Rapporteur and by the ECtHR. The court's unquestioning and conclusory reliance on the findings of the government-appointed experts' findings contravened the equality of arms principle and violated Mr. Mukhammedkarim's rights under the ICCPR.

Right to a Public Trial

Article 14(1) of the ICCPR provides that "everyone shall be entitled to a fair and public hearing." While this right is not absolute, the UN Human Rights Committee has made clear that even where a valid reason for excluding the public is invoked by a court, the exclusion must be narrowly tailored.¹²¹ For instance, the Committee found a violation of the right to a public trial in one case where "the State party failed to explain why it was

¹²⁰ *Id.* at ¶¶ 20-27.

¹²¹ See UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 29.

necessary to close the entire trial ... instead of closing only part of the trial in order to protect rights of minors, or intimate and personal information of parties in the trial.”¹²²

Based solely on the alleged security concerns of an anonymous witness, the court ordered Mr. Mukhammedkarim’s trial to proceed in closed session, without properly engaging with the defense’s objection. Even accepting purported security concerns, the court failed to provide any reason as to “why it was necessary to close the entire trial,” thereby failing to narrowly tailor the exclusion of the public from the proceedings. As a result, the court proceedings violated Mr. Mukhammedkarim’s right to a public trial.

Right to an Impartial Tribunal

Article 14(1) of the ICCPR mandates judicial impartiality. Impartiality has two important aspects:

First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.¹²³

The UN Human Rights Committee has held that unreasonable decision-making by judicial authorities can violate Article 14(1). In *Khostikoev v. Tajikistan*, for example, the Committee found such a violation where court rulings hindered the preparation of an effective defense, such as by “ignor[ing] [counsel’s] objections” and “refus[ing] to allow the possibility for the [defendant] to adduce relevant evidence.”¹²⁴ Similarly, in *Toshev v. Tajikistan*, the Committee concluded that the court lacked impartiality where “several of the [defense] lawyers’ requests were not given due consideration.”¹²⁵

A number of features of Mr. Mukhammedkarim’s trial as described above would give a reasonable observer grounds for doubting the court’s impartiality. *First*, the court closed the trial without adequate justification. *Second*, the court did not order the prosecution to

¹²² UN Human Rights Committee, *Y.M. v. Russian Federation*, UN Doc. CCPR/C/116/D/2059/2011 (May 13, 2016), ¶ 9.2. See also UN Human Rights Committee, *Saidov v. Tajikistan*, UN Doc. CCPR/C/122/D/2680/2015 (Sept. 20, 2018), ¶ 9.3.

¹²³ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 21. See also UN Human Rights Committee, *Karttunen v. Finland*, UN Doc. CCPR/C/46/D/387/1989 (Nov. 5, 1992), ¶ 7.2; UNWGAD, *Ahmed Khaloui v. Tunisia*, Opinion No. 12/1994, UN Doc. E/CN.4/1995/31/Add.2 (Nov. 18, 1994), ¶ 6.

¹²⁴ UN Human Rights Committee, *Khostikoev v. Tajikistan*, UN Doc. CCPR/C/97/D/1519/2006 (Dec. 3, 2009), ¶¶ 7.2-8.

¹²⁵ UN Human Rights Committee, *Toshev v. Tajikistan*, UN Doc. CCPR/C/101/D/1499/2006 (Apr. 28, 2011), ¶ 6.6.

provide the defense with the earlier court decision banning the DCK as extremist. As a result, the prosecution, but not the defense, could see what specific conduct had attracted the “extremist” label, and why, thereby undermining the defense’s ability to defend against the charge. Indeed, the court saw the earlier judgment as precluding further discussion of whether the DCK is an “extremist” organization. *Third*, the court’s judgment effectively ignores the substantial evidence presented in favor of the defense. Instead, like the Russian courts in the *Dmitriyevskiy* case discussed above, the judgment relies almost entirely on the reports of government-appointed experts presented by the prosecution in connection with the indictment. In sum, there are strong bases for a reasonable observer to see the court that convicted Mr. Mukhammedkarim as not having been impartial.

Right to Be Presumed Innocent

Article 14(2) of the ICCPR guarantees that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” Article 77 of the Constitution of the Republic of Kazakhstan establishes that “a person shall be presumed innocent of having committed an offence until his or her guilt has been established by a final court decision.”¹²⁶ Mr. Mukhammedkarim’s prosecution and conviction both violate this principle in two respects.

First, the right to be presumed innocent “imposes on the prosecution the burden of proving the charges, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt[.]”¹²⁷ While the UN Human Rights Committee has noted that it generally will not evaluate facts and evidence or the interpretation of domestic law by national courts and tribunals, it may choose to intervene where “it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice.”¹²⁸ In its judgment against Mr. Mukhammedkarim, the court ignored extensive witness testimony in Mr. Mukhammedkarim’s favor and instead relied solely on the unreasoned and unexplained conclusions of government-appointed experts, while overlooking glaring gaps in the prosecutor’s allegations regarding the “financing” of and “participation” in a banned organization. This violated Article 14(2) of the ICCPR.

Second, the UN Human Rights Committee has made clear that “it is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making

¹²⁶ An unofficial translation of the Kazakhstan Constitution is available at <https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912>.

¹²⁷ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32 (Aug. 23, 2007), ¶ 30

¹²⁸ UN Human Rights Committee, *Ashurov v. Tajikistan*, UN Doc. CCPR/C/89/D/1348/2005 (Mar. 20, 2007), ¶ 6.7.

public statements affirming the guilt of the accused.”¹²⁹ According to the defense, during the first session of Mr. Mukhammedkarim’s trial, the presiding judge referred to Mr. Mukhammedkarim by the Kazakh term for “convicted.” Such behavior would be indicative of how the judge viewed Mr. Mukhammedkarim’s guilt at the outset and would constitute a further violation of Article 14(2) of the ICCPR.

D. OTHER FAIRNESS CONCERNS

Principle of Legality

As noted above, the principle of legality is fundamental to criminal law. It requires that laws be formulated with sufficient precision, so that individuals are able to understand the law and regulate their conduct accordingly, and so that vague and overbroad laws do not provide authorities with unfettered discretion to punish individuals or restrict freedoms without a specific legal basis.¹³⁰ The laws under which Mr. Mukhammedkarim was prosecuted and convicted raise serious concerns in both of these respects.

Abuse of Vague and Overbroad “Extremism” Laws

It is well known that vague and overbroad anti-extremism laws in particular are subject to arbitrary application and may be used as tools to suppress dissent. Criminalizing “extremism” is particularly problematic when the term is used in a manner that may extend to non-violent conduct. As explained by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

The category of “extremist” crimes is particularly vague and problematic. Absent the qualifier of “violent extremism conducive to terrorism”, the term remains broad and overly vague and may encroach on human rights in profound and far-reaching ways. The Special Rapporteur takes the view that the term “extremism” has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights.¹³¹

¹²⁹ *Id.*

¹³⁰ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35 (Dec. 16, 2014), ¶ 22; UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (12 September 2011), ¶ 25; UNWGAD, *Concerning Serikzhan Bilash (Kazakhstan)*, Opinion No. 43/20, UN Doc. A/HRC/WGAD/2020/43 (Dec. 14, 2020), ¶ 66.

¹³¹ Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46 (Feb. 21,

These concerns have often been expressed specifically with respect to Kazakhstan’s anti-extremism laws, including by the Special Rapporteur,¹³² the UN Human Rights Committee,¹³³ and by the OSCE.¹³⁴ They also motivated the UNWGAD’s finding in 2020 that an arrest and detention under Article 174 of the Kazakh Criminal Code lacked legal basis because the definitions of “inciting social or class hatred” and “religious hatred or enmity” and the criminalization of conduct “promoting social, national, generic, racial, class or religious discord” lacked the requisite degree of legal certainty.¹³⁵ UN institutions have long voiced these concerns with regard to Russia’s similar anti-extremism laws — *i.e.*, that they are so vague and overbroad as to be open to arbitrary application by the authorities, and fail to give notice regarding actions for which persons may be held criminally liable¹³⁶ — and the use of such laws to suppress religious organizations has

2020), ¶ 14. See also Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/31/65 (Apr. 29, 2016) ¶ 21 (well-founded concerns regarding “extremism” being designated as an offense in itself because the vagueness of the concept can lead to its use against members of political opposition, human rights defenders and others).

¹³² Human Rights Council, *Visit to Kazakhstan, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/43/46/Add.1 (Jan. 22, 2020), ¶ 14 (Article 258 of the Kazakh Criminal Code is wide and raises concerns of legal certainty, and broad formulations of the concept of “extremism” can be used to unduly restrict protected freedoms).

¹³³ UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Kazakhstan*, CCPR/C/KAZ/CO/2 (Aug. 9, 2016), ¶¶ 49-50.

¹³⁴ *Preliminary Opinion on the Draft Amendments to the Legal Framework ‘On Countering Extremism and Terrorism’ in the Republic of Kazakhstan*, OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (Oct. 6, 2016), ¶¶ 21-24 (explaining that expression should be restricted only if it is intended to incite imminent violence, is likely to incite such violence, and there is a direct immediate connection between the expression and the likelihood of occurrence of such violence; that possibility to peacefully pursue political or other agendas must be protected, even if critical of the government; and recommending that Kazakhstan’s “extremism” laws be more strictly circumscribed to ensure that only acts connected to violence are criminalized), <https://www.osce.org/files/f/documents/7/4/313091.pdf> . See also Peter R. Neumann, *Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region* (Sept. 28, 2017), pp. 15-16.

¹³⁵ UNWGAD, *Concerning Serikzhan Bilash (Kazakhstan)*, Opinion No. 43/20, UN Doc. A/HRC/WGAD/2020/43 (Dec. 14, 2020), ¶¶ 65-70.

¹³⁶ UN Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, CCPR/C/RUS/CO/7 (Apr. 28, 2015), ¶ 20 (vague and open-ended definition of “extremist activity” does not require any element of violence or hatred to be present and reports indicate that it is increasingly used to curtail freedom of expression, including political dissent, and freedom of religion); UN Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of the Russian Federation*, CCPR/C/RUS/CO/6 (Nov. 24, 2009) ¶ 24; UN Human Rights

repeatedly been held to be unlawful.¹³⁷ Kazakhstan and the Russian Federation cooperate on anti-terrorism and anti-extremism matters through the Shanghai Cooperation Organization (SCO).¹³⁸

From the perspective of foreseeability, the (unpublished) court decision in 2018 banning the DCK may be seen as having put Mr. Mukhammedkarim on notice as to how the organization is viewed by the Kazakh authorities. However, that decision is predicated on, and is tainted by, Kazakhstan's vague and overbroad definitions of "extremism." The scope for arbitrary application of such laws to suppress dissent is particularly great where, as is reportedly true in Kazakhstan, "the judiciary is effectively subservient to the executive branch[.]"¹³⁹

Committee, *Concluding Observations on the Fifth Periodic Report of the Russian Federation*, CCPR/CO/79/RUS (Dec. 1, 2003) ¶ 20. The Russian Federation's 2001 Law on Combating Extremist Activities may have served as an inspiration for Kazakhstan's 2003 Law on Countering Extremism.

¹³⁷ See ECtHR, *Taganorog LRO and Others v. Russia*, App. Nos. 32401/10 & 19 others (June 7, 2022), ¶¶ 134-136, 157-159; UNWGAD, *Concerning Dimitriy Mikhaylov (Russian Federation)*, Opinion No. 11/2019, UN Doc. A/HRC/WGAD/2019/11 (June 12, 2019), ¶ 52; UNWGAD, *Concerning Vladimir Alushkin (Russian Federation)*, Opinion No. 34/2019, UN Doc. A/HRC/WGAD/2019/34 (Sept. 20, 2019), ¶¶ 51-52; UNWGAD, *Concerning Aleksandr Solovyey and others (Russian Federation)*, Opinion No. 10/2020, UN Doc. A/HRC/WGAD/2020/10 (May 22, 2020), ¶¶ 67-71. See also ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06 (Oct. 3, 2017).

¹³⁸ The SCO relies on broad definitions of "extremism" and "extremist acts" that encompass a range of non-violent conduct. See Shanghai Convention on Combating Terrorism, Separatism and Extremism, Art. 1 (June 15, 2001), <https://www.refworld.org/legal/agreements/radr/2001/en/66812>; Convention of the Shanghai Cooperation Organization on Combating Extremism, Article 2 (June 9, 2017), https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/_f_html/Convention_of_the_Shanghai_Cooperation_Organization_on_combating_Extremism.pdf. This approach does not comply with international human rights standards, and the SCO has faced criticism for facilitating human rights violations. See Hellen Duffy & Alan Greene, *Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism*, OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (Sept. 21, 2020), pp. 11-13, 17-19; Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46 (Feb. 21, 2020), ¶ 13 & FN 25; *Shanghai Cooperation Organisation: A vehicle for human rights violations*, FIDH (2012), https://www.fidh.org/IMG/pdf/sco_report.pdf.

¹³⁹ *Freedom in the World 2024: Kazakhstan*, FREEDOM HOUSE, <https://freedomhouse.org/country/kazakhstan/freedom-world/2024>.

Overbroad Application of “Financing” Extremism under Article 258(1)

Even assuming the designation of DCK as “extremist” can withstand scrutiny under international human rights law, the prosecution of Mr. Mukhammedkarim under Article 258(1) of the Criminal Code reflects an arbitrary and unforeseeable expansion of the law.

First, there is support for the proposition that extremism financing offenses should be limited to financing of violent conduct.¹⁴⁰ No such conduct on the part of the DCK, Mr. Ablyazov or Mr. Mukhammedkarim is alleged by the prosecution in this case. On the contrary, even the government-commissioned expert reports on which the indictment and judgment relied explicitly stated that the reviewed videos did not contain calls for a violent seizure of power. Instead, the indictment and the judgment are supported only by those experts’ conclusory findings, without further reasoning, that the videos “contain signs of an appeal to finance the activities” of the banned DCK and “also signs of organizing such financing.”

Second, the application of Article 258(1) in this context is arbitrary.¹⁴¹ As noted in the judgment, several witnesses who watched the interview with Mr. Ablyazov confirmed that there was no discussion about fundraising for DCK in the interview itself, nor was there any encouragement to contribute to DCK. Mr. Ablyazov’s appeal was directed towards raising funds for his own legal expenses, not for the DCK. Specifically, Mr. Ablyazov’s appeal called for funds to cover his legal fees in France and other jurisdictions where the Kazakh authorities have been pursuing him personally. Neither the indictment nor the judgment identified any specific call in the videos for funds for the DCK (which had by then been banned in Kazakhstan for over a year and a half), for any political or other activity that might legitimately be deemed “extremist,” or indeed for any other activity at all in Kazakhstan. As noted above, during the interview, Mr. Mukhammedkarim asked whether Mr. Ablyazov knew “that people who shared your post were called ‘extremists’?”

¹⁴⁰ See Organization for Security and Co-operation in Europe (OSCE), *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism, A Community-Policing Approach* (2014) p. 42 (“extremism” should not be criminalized unless it is associated with violence or other unlawful acts as legally defined in compliance with human rights law); Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/8/13 (June 2, 2008), ¶ 23 (States should “ensure that various non-violent conducts are not inadvertently criminalized by vague formulations” of financing laws).

¹⁴¹ As explained by the Supreme Court of Kazakhstan, the criminal offense under Article 258(1) requires (1) an act (*actus reus*) of “providing or collecting money or providing financial or information services to an individual or legal entity,” and (2) an awareness (*mens rea*) of the “extremist nature of their activity or that the given property, provided information, financial and other kind of services will be used to carry out” extremist activities or provide support for an extremist group. Supreme Court of the Republic of Kazakhstan, *Normative Decree No. 11 On some questions of court practice on application of the legislation on terrorist and extremist crimes* (Dec. 8, 2017), ¶ 23.

If we donate to you, are we going to be funding an extremist?” Mr. Abylazov replied that it was the DCK, and not himself personally, who had been declared extremist by the court, and that the funds would not reach him personally.¹⁴²

In brief, the court did not establish why support for Mr. Abylazov’s personal legal expenses, in countries other than Kazakhstan, should be considered funding for the DCK. There was no evidence, nor even any allegation by the prosecution, that funds for Mr. Abylazov would be used, or were intended by Mr. Mukhammedkarim to be used, for violent purposes. Rather, at the conclusion of the interview, Mr. Mukhammedkarim said, “We can only change through a revolution. But no bloodshed. Peace. Right?” Mr. Abylazov answered, “Yes, correct.”¹⁴³ At the very least, the application of Article 258(1) in Mr. Mukhammedkarim’s case raised serious questions of law that, under the fair trial principles of the ICCPR, cannot be left by a court to determination by a government-appointed expert which, as noted above, is precisely what the court did here. In sum, Mr. Mukhammedkarim’s prosecution and conviction was based on an overbroad and arbitrary application of Article 258(1) and thus contrary to international law.

Overbroad Interpretation of “Participation” in “Activities” of a Banned Organization under Article 405(2)

Article 405(2) criminalizes the “participation” in the “activities” of a banned extremist organization. Those terms are not defined further in the law.¹⁴⁴ Their application to Mr. Mukhammedkarim’s postings on the ND YouTube channel is strained at best. Mr. Mukhammedkarim is a well-known journalist and was acting in his professional capacity when interviewing Mr. Abylazov, including by asking serious questions about Mr. Abylazov’s past activism and the allegations against him by the government. As noted in the judgment, several witnesses testified that Mr. Mukhammedkarim is known as a journalist in Kazakhstan, has no association with the DCK or Koshe parties, and did not

¹⁴² A.K. Kairzhanov, *Expert Opinion* (Aug. 21, 2023).

¹⁴³ *Id.*

¹⁴⁴ As explained by the Supreme Court of Kazakhstan, the criminal offense under Article 405(2) includes two elements. There must be (1) an act (*actus reus*) of “[p]articipation in the group’s activities,” *i.e.*, direct performance by a person of the actions aimed at the functioning of the organization recognized by the court as extremist, including “joining the group (for example, taking an oath, membership in an organization engaged in . . . extremist activities, performing tasks and instructions of the group leader);” and (2) specific intent (*mens rea*) to participate in extremist activities or in the preparation or commission of one or more criminal offenses of an extremist nature. Supreme Court of the Republic of Kazakhstan, *Normative Decree No. 11 On some questions of court practice on application of the legislation on terrorist and extremist crimes* (Dec. 8, 2017), ¶¶ 19-21.

encourage others to join these parties.¹⁴⁵ As noted in the defense expert’s report, the interview focused on clarifying Mr. Ablyazov’s views, and not on the DCK.¹⁴⁶ There was therefore no clear basis for concluding that the interview of Mr. Ablyazov constituted “participation” in the “activities” of the banned DCK.

In any event, Mr. Mukhammedkarim’s reporting on Mr. Ablyazov amounted to protected journalistic speech, without calls for violence. Such speech is protected even if the journalist expresses support for the individual or organization in question.¹⁴⁷ Laws may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.¹⁴⁸ At minimum, the application of Article 405(2) with respect to Mr. Mukhammedkarim raised serious questions of law that under fair trial principles may not be left to determination by a government-appointed expert, as the court did in this case.

Right to Freedom of Expression

Mr. Mukhammedkarim’s prosecution and conviction are inconsistent with international human rights standards protecting the right to freedom of expression. The right under Article 19 of the ICCPR encompasses “political discourse, commentary on one’s own and on public affairs ... discussion of human rights, [and] journalism.”¹⁴⁹ In interpreting Article 19, the UN Human Rights Committee has emphasized the importance of safeguarding political debate and the ability to criticize public officials. For example, the Committee has stated that “[t]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.”¹⁵⁰ Further, “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”¹⁵¹

¹⁴⁵ Konaev City Court Judgment.

¹⁴⁶ See, e.g., UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 42 (“The penalization of a ... journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”); see also ECtHR, *Dmitriyevski v. Russia*, App. No. 42168/06 (Oct. 3, 2017), ¶¶ 34, 103–110 (punishment of the chief editor of a monthly newspaper for republishing two articles by leaders of the Chechen separatist movement was in violation of the ECHR, despite having expressed his support at trial for the points of view reflected in the articles).

¹⁴⁸ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34 (Sept. 12, 2011), ¶ 25.

¹⁴⁹ *Id.* ¶ 11.

¹⁵⁰ *Id.* ¶ 13.

¹⁵¹ *Id.* ¶ 38.

According to the Committee, restrictions on protected speech under Article 19(3) must (i) be provided by law, without conferring unfettered discretion, (ii) serve a legitimate objective, and (iii) be necessary to achieve and proportionate to that objective, *i.e.*, they must be the least intrusive instrument amongst those which might achieve their protective function.¹⁵² The only legitimate objectives for such restrictions under the ICCPR are (a) respect for the rights and reputation of others, and (b) the protection of national security, public order, or public health or morals. Article 19(3) “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”¹⁵³ Moreover, “[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat ... in particular by establishing a direct and immediate connection between the expression and the threat.”¹⁵⁴

Considering the above standards, the charges against Mr. Mukhammedkarim violate his right to freedom of expression.¹⁵⁵ *First*, as noted above, Articles 258(1) and 405(2) are impermissibly vague, such that the restriction on Mr. Mukhammedkarim’s freedom of expression cannot be considered “provided by law.” *Second*, even the government-commissioned psychological and philological expert reports state that the challenged videos discussed only how to effect political change in a peaceful way and did not contain calls for a violent seizure of power.

The ECtHR, emphasizing the importance of free press and journalistic speech, has repeatedly found violations of the right to free expression where journalists were criminally prosecuted for publishing interviews with or statements given by members or leaders of terrorist groups, where the material did not amount to incitement to violence.¹⁵⁶ As stated by the ECtHR:

¹⁵² *Id.* ¶¶ 22, 25.

¹⁵³ *Id.* ¶ 23.

¹⁵⁴ *Id.* ¶ 35.

¹⁵⁵ It should be noted that fundraising activities may, in certain appropriate cases, be distinguishable from protected speech under freedom of expression principles. However, in Mr. Mukhammedkarim’s case, the alleged “fundraising” activity for which he was charged under Article 258 is effectively being merged with Mr. Mukhammedkarim’s protected political and journalistic speech. Thus, Mr. Mukhammedkarim was prosecuted and convicted under Article 258(1) for exercising his right to free expression, giving rise to violations of international human rights law.

¹⁵⁶ See ECtHR, *Demirel v. Turkey*, App. No. 11976/03 (Dec. 9, 2008), ¶¶ 23, 26–27; ECtHR, *Özgür Gündem v. Turkey*, App. No. 23144/93 (Mar. 16, 2000), ¶¶ 61–64; ECtHR, *Dmitriyevskiy v. Russia*, App. No. 42168/06 (Oct. 3, 2017), ¶¶ 91–92, 103, 109, 117–119.

22. The Court has on many occasions stressed the essential role the press plays in a democratic society. It has, inter alia, stated that although the press must not overstep certain bounds set, for example, for the protection of vital interests of the State such as national security or territorial integrity, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest, including divisive ones ... Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them ...

23. In addition, the Court reiterates that news reporting based on interviews or declarations by others, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog”. The punishment of a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to the discussion of matters of public interest, and should not be envisaged unless there are particularly strong reasons for doing so ... The Court reiterates that, in cases concerning the press, the national margin of appreciation is circumscribed by the interest of a democratic society in ensuring and maintaining a free press ...

27. ... [T]he fact that interviews or statements were given by a member of a proscribed organisation cannot in itself justify a blanket ban on the exercise of freedom of expression. Regard must be had instead to the words used and the context in which they were published, with a view to determining whether the impugned text, taken as a whole, can be considered an incitement to violence ... When a publication cannot be categorized as such, Contracting States cannot with reference to national security or territorial integrity restrict the right of the public to be informed by bringing the weight of the criminal law to bear on the media.¹⁵⁷

Where the ECtHR has found violations of free expression for journalists reporting on or broadcasting the views of terrorist groups, whether expressing agreement with such views or not, the impugned content was found to constitute incitement to violence and the journalist had not been subject to a penalty of imprisonment/deprivation of liberty.¹⁵⁸

¹⁵⁷ ECtHR, *Demirel v. Turkey*, App. No. 11976/03 (Dec. 9, 2008), ¶ 22-27.

¹⁵⁸ See ECtHR, *Sürek v. Turkey*, App. No. 26682/95 (8 Jul. 1999), ¶¶ 62–65 (finding no violation, even though the journalist had not agreed with the published views, because the material constituted incitement to violence and the punishment had been only a fine which was “later halved”); ECtHR, *Roj TV A/S v. Denmark*, App. No. 24683/14 (17 Apr. 2018), ¶¶ 46–49 (finding no violation where the applicant was a media company that had its license revoked and a fine imposed, where the

Mr. Mukhammedkarim was prosecuted and convicted simply for interviewing an opposition figure who is critical of the government. Engaging in a political dialogue with an opposition leader, advocating for peaceful democratic reform, and disseminating political commentary are activities protected under international human rights law. Kazakhstan has not articulated a legitimate objective, nor has it demonstrated any precise or immediate threat posed by the video postings. The prosecution and conviction of Mr. Mukhammedkarim under Articles 258(1) and 405(2) are violative of international human rights law.

Right to Take Part in Public Affairs

Article 25 of the ICCPR entitles “every citizen ... without unreasonable restriction ... [t]o take part in the conduct of public affairs, directly or through freely chosen representatives.” The Human Rights Committee has emphasized that authorities may not ban an individual from engaging in peaceful political activities just because their views do not align with those of the State: “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of . . . political or other opinion.”¹⁵⁹ It has also stated that citizens take part in public affairs by exerting influence through public debate:

In order to ensure the full enjoyment of the rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 25 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.¹⁶⁰

In applying Article 25, the Committee has stated that “citizens, in particular through the media, should have wide access to information and the opportunity to disseminate

challenged programming contained incitement to violence and the company had been “financed to a significant extent” by the terrorist organization during the years the programming had aired).

¹⁵⁹ UN Human Rights Committee, *General Comment No. 25*, UN Doc. CCPR/C/21/Rev.1/Add.7, (Aug. 27, 1996) ¶ 3.

¹⁶⁰ *Id.* ¶ 25.

information and opinions about the activities of elected bodies and their members.”¹⁶¹ It has further noted that:

The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.¹⁶²

As discussed, Mr. Mukhammedkarim’s prosecution was based on protected journalistic and political speech—interviewing an opposition leader who is critical of the government, engaging in and sharing political commentary, and expressing support for peaceful political change are entitled to heightened protections under international law. His conviction under Kazakhstan’s vague and overbroad anti-extremism laws and sentencing to seven years’ imprisonment and three years’ deprivation of the right to engage in public and political discourse in the mass media, as well as to participate in, *inter alia*, the activities of political parties, therefore violate Mr. Mukhammedkarim’s right to take part in public affairs.

¹⁶¹ UN Human Rights Committee, *Gauthier v. Canada*, U.N. Doc. CCPR/C/65/D/633/1995, ¶ 13.4 (May 5, 1999).

¹⁶² UN Human Rights Committee, *General Comment No. 25*, UN Doc. CCPR/C/21/Rev.1/Add.7, ¶ 26 (Aug. 27, 1996).

EXPERT CONCLUSION AND GRADE



In Kazakhstan, based on numerous published reports from international and regional bodies and human rights experts, the term "extremism" has become a convenient and broad tool for the government to repress dissent, criminalize political opposition, target journalists, and suppress civil society activities. The lack of clear definitions and the broad scope of anti-extremism laws make it easy for authorities to label any form of opposition, including peaceful protests, as extremism. This has resulted in widespread violations of human rights, including the right to free expression, the right to peaceful assembly, and the right to a fair trial.

Specifically, Articles 258 and 405 of the Criminal Code, which criminalize "extremism," have been criticized internationally for their vague and overbroad language, enabling arbitrary application by authorities to suppress dissent. The UN Human Rights Committee has expressed concerns about the overly broad definition of "extremism" in Kazakhstan laws and its use to unjustly restrict freedoms of expression, assembly, and association. Similarly, the European Parliament and the UN Special Rapporteur on counter-terrorism and human rights have condemned the misuse of these laws to target activists, journalists, and opposition figures, highlighting their inconsistency with international legal standards. Consequently, these laws' application is inherently incompatible with the protection and exercise of certain fundamental human rights. Further, Mr. Mukhammedkarim's prosecution under these provisions relied on tenuous interpretations of "financing" and "participation" in "extremist" organizations.

In addition, Mr. Mukhammedkarim interviewing an opposition figure constitutes protected freedom of expression. The activities in question—political dialogue, advocacy for reform, and commentary—are protected rights. Kazakhstan has shown no legitimate objective or immediate threat to justify the prosecution under Articles 258(1) and 405(2). Moreover, even if the designation of DCK as "extremist" were valid under international law, Mr. Mukhammedkarim's prosecution under Article 258(1) constitutes an arbitrary and unforeseeable application of the law. Extremism financing offenses are generally limited to funding violent conduct, which is neither alleged nor evidenced in this case. Government-commissioned expert reports state that Mr. Mukhammedkarim's videos contained no calls for violent action, yet the prosecution relied on vague assertions that the videos "promoted extremist ideas" and "called for financing" the DCK. The indictment failed to substantiate why support for Mr. Ablyazov legal expenses abroad should qualify as financing the DCK, and no evidence links the funds to violent purposes. The seven-year sentence and restrictions on public participation unlawfully infringe on Mr. Mukhammedkarim right to engage in public affairs.

Mr. Mukhammedkarim's conviction, rooted in laws incompatible with the principle of legality, violated his rights to freedom of expression and participation in public affairs. Under Article 19 of the ICCPR, these rights include political discourse, human rights

commentary, and journalism. The UN Human Rights Committee has emphasized the importance of protecting political debate and criticism of public officials, further underscoring the incompatibility of Mr. Mukhammedkarim's prosecution with international human rights law.

Mr. Mukhammedkarim's pre-trial detention, initially set for two months, was unlawfully and arbitrarily extended multiple times because there was no individualized consideration of his circumstances. The detention order lacked justification for claims such as flight risk and obstruction, particularly given the lengthy time since his last video post (that was the basis for indictment) and the reliance on expert reports in the indictment. Extensions were granted based solely on the prosecution's requests, without assessing Mr. Mukhammedkarim's specific situation.

The trial also violated numerous fair trial standards. The court's reliance on government-appointed experts' findings, without apparent critical examination, violated the principle of equality of arms and Mr. Mukhammedkarim's rights under the ICCPR. Witness testimony confirmed Mr. Mukhammedkarim's reputation as a journalist, with no ties to the DCK or Koshe parties, nor any effort to encourage others to join them. The defense expert's report further established that Mr. Mukhammedkarim's interview with Mr. Abyazov aimed to clarify his views, not promote the DCK. The court lacked a clear basis to conclude that the interview constituted "participation" in the activities of the banned DCK.

The court's actions violated Mr. Mukhammedkarim rights in three key ways: first, it closed the trial without sufficient justification; second, it failed to require the prosecution to provide the defense with the earlier court decision banning the DCK as extremist, thereby limiting the defense's ability to challenge the charge; third, the court's judgment disregarded substantial evidence presented in the defense's favor.

A. The Right to a Public Trial

The prosecution requested a closed session based on the alleged request of an anonymous witness, which the court granted despite the defense's opposition. The court provided no further justification for closing the entire trial, failing to narrowly tailor the exclusion of the public from the proceedings.

B. The Right to an Impartial Tribunal

The court did not order the prosecution to provide the defense with the court decision banning the DCK as extremist. As a result, the prosecution, but not the defense, could see what specific conduct had attracted the "extremist" label, and why.

C. The Right to a Reasoned Public Judgment and to Appeal

The court's findings against Mr. Mukhammedkarim were primarily based on reports from government-appointed experts, disregarding other evidence presented by the defense.

The judgment closely mirrored the text of the expert reports and the indictment, suggesting the trial itself was not thoroughly considered. The court appeared to rely exclusively on the prosecution's expert reports, which it deemed indisputable. While it admitted extensive evidence from the defense, the court largely ignored it, offering only a brief summary of witness testimony without evaluating its relevance to the charges. Several witnesses testified that Mr. Mukhammedkarim is a journalist with no ties to the DCK or Koshe parties, and the defense expert clarified that the interview focused on Mr. Ablyazov's views, not the DCK. Thus, there was no basis for concluding that Mr. Mukhammedkarim's interview constituted participation in the banned DCK's activities. Moreover, the key conclusion of the court was based on the prosecution's expert reports that the words of "D" (Duman Mukhammedkarim) showed "signs of promoting extremist ideas and views" and "signs of organizing financing" for DCK. However, it was not clearly delineated what the "signs" were and how these promoted extremist ideas or contributed to organizing or financing of the organization, which was not mentioned in the interview. In addition, there was no clear connection as to how the legal definitions of the offences from the Criminal Code related to the facts of the case, and how exactly the accused participated in the collection of funds for or in the activities of the DCK – *the missing link between the "signs" of banned activities and actual activities.*

Mr. Mukhammedkarim's arrest and trial occurred amid political repression in Kazakhstan reflecting the misuse of "anti-extremism" laws to target journalists and dissidents. His prosecution, criminalizing protected speech, is part of a broader pattern. Human Rights Watch reported that, by July 2021, at least 135 individuals had faced prosecution for alleged links to banned opposition groups. On later occasions, over 1,200 civilians and journalists were convicted for their role in the 2022 protests, highlighting continued repression of free expression. Mr. Mukhammedkarim's prosecution, criminalizing protected speech, is thus part of a broader pattern.

GRADE:

F