

INFORMATION NOTE

on the visit to detainee Iskander ERIMBETOV by the monitoring group represented by Zhemis TURGMAGAMBETOVA, Executive Director of the Public Foundation “Charter for Human Rights”, member of the Public Council under the Ministry of Internal Affairs of the Republic of Kazakhstan, and Yevgeniy ZHOVTIS, Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law, co-chair of the Working Group of the Consultative Advisory Body “The Dialogue Platform on Human Dimension” under the Ministry of Foreign Affairs of the Republic of Kazakhstan

Background information

The visit was carried out following an inquiry from Nils MELZER, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, dated 26 January 2018 (Ref. UA KAZ 2/2018), which was filed with the Government of the Republic of Kazakhstan in connection with the treatment of Mr. I. Erimbetov which allegedly had the elements of torture and other cruel or degrading treatment and punishment.

The visit was organized by the authorities who invited us, independent human rights defenders, which could be considered as a positive step on the part of the Government of the Republic of Kazakhstan to ensure objective and unbiased evaluation of information contained in the Special Rapporteur’s inquiry.

We also note and welcome promptness and cooperation on the part of the Ministry of Foreign Affairs of the Republic of Kazakhstan, the Ministry of Justice of the Republic of Kazakhstan, and the Ministry of Internal Affairs of the Republic of Kazakhstan, which was extended in putting together this visit.

We also note preparedness of the leadership of the Committee of Criminal Executive System of the Ministry of Internal Affairs of the Republic of Kazakhstan (CCES MIA RoK) and administration of the facility where Mr. Erimbetov is being held, to extend cooperation, provide all documents and materials that were requested by the monitoring group, and answer our questions.

During the visit which took place on February 1st, 2018 from 10:30 am to 12:40 pm, we had the opportunity to review a number of documents pertaining to Mr. Erimbetov, including his medical history, court ruling and other documents relating to his disciplinary punishment—placement in solitary confinement (an isolation box) for a period of seven days, as well as other documents pertaining to Mr. Erimbetov’s arrest and placement into the Almaty city detention centre, CI-1.

We were also given the opportunity to conduct a confidential meeting with Mr. Erimbetov, which lasted over an hour.

Besides that, when drafting this Information Note we had the opportunity to receive information from Mr. Erimbetov's attorney.

We also note with satisfaction the information on a criminal case being initiated on the basis of information on torture and other cruel or degrading treatment of Mr. Erimbetov, and hope for an independent and unbiased investigation with independent experts being involved.

Summary of the visit

While it was not possible for us to fully confirm or disprove the information contained in the Special Rapporteur's inquiry on the basis of indubitable material or other evidence obtained during the visit—which would require an independent full-scale investigation with independent experts, including psychologists—we were still able to draw a number of conclusions which reflect our grave concern about the situation in which Mr. Erimbetov finds himself now.

1. In the course of our confidential meeting with Mr. Erimbetov we noted that he was in a state of extreme dejectedness, was scared and had serious concerns for his safety, even though he essentially confirmed the information contained in the Special Rapporteur's inquiry. He has serious trust issues, be it with the pre-trial investigation group, the administration of the facility in which he is being held, or the bodies that are investigating the claim about the alleged torture and other cruel or degrading treatment he has been subjected to, all of which is seriously hampering an efficient investigation.

2. Mr. Erimbetov was detained on 13 November 2017 and, after a search in his house, placed in the Almaty city detention centre, CI-1. A criminal case was initiated and is being investigated by the National Anti-Corruption Bureau of the Agency for Civil Service Affairs and Anti-Corruption (ACSA). The Bureau does not have its own premises to hold detainees, so they are placed in the facilities operated by the CCES MIA RoK.

The investigation group that was put together for this case, in addition to ACSA agents also includes representatives from the Department of Investigations of the Ministry of Internal Affairs, the Department of Investigations of the Committee for National Security (CNS RoK), and the Committee of State Revenues of the Ministry of Finance of the Republic of Kazakhstan.

CI-1 is part of the CCES MIA RoK. According to a general rule, any persons who have been arrested and whose case is investigated by the Department of Investigations of the MIA RoK or ACSA in the city of Almaty, are placed in CI-1.

However, in Mr. Erimbetov's case, for some unknown reasons from 14 November to 15 December 2017 he was placed in a special unit of CI-1, which is a unit under

the jurisdiction of CNS RoK. During this period, the CNS RoK's investigation detention unit was under repair so the persons arrested in the cases investigated by the CNS RoK were placed in a special unit of CI-1 which was under "lease" by CNS RoK and was not reporting to CCES MIA RoK.

We were not able to ascertain the grounds for the decision to move Mr. Erimbetov from the main unit of CI-1 where all the persons whose criminal cases are investigated by ACSA are being held and which is under the jurisdiction of CCES MIA RoK, and instead place him in a special unit that reports to CNS RoK, which essentially is a CNS RoK's detention unit. In addition, once the repairs in the CNS RoK's detention unit were completed, all detainees whose cases are investigated by CNS RoK were move back to that unit, while Mr. Erimbetov was still held in CI-1, which reports to CCES MIA RoK.

As a result, for a period of one month Mr. Erimbetov was not under the control and responsibility of the administration of CI-1, which is a CCES MIA RoK entity, but was held in a special unit which reports to CNS RoK, which might have created grounds for pressure to be exerted on him by the CNS RoK officers. This is what Mr. Erimbetov essentially confirmed to be the case, during his meeting with the monitoring group.

3. A review of the materials of the disciplinary process as a result of which Mr. Erimbetov was placed into a disciplinary box from 28 November to 5 December, left us with a number of questions since the way this process was followed did not comply with any standards of proof.

4. The work of the facility's medical unit raises serious concerns. During the confidential meeting, the monitoring group noted Mr. Erimbetov's extremely unhealthy appearance—he had a fever, a dry cough, and red eyes. However, the medical unit has failed to act up until now. A review of Mr. Erimbetov's medical card showed that he had been examined during the first admission to the facility, i.e. on 14 November 2017, then they took his blood for analysis, and the next entry was dated 11 January 2018.

However, on 30 November 2017 his attorney filed a complaint; starting 12 December 2017 information on cruel treatment of Mr. Erimbetov began to appear in social networks; and on 12 December, 14 December, 16 December and 17 December 2017 written complaints about possible torture and cruel treatment of Mr. Erimbetov were filed with the General Prosecutor's Office of the Republic of Kazakhstan (forwarded to the Almaty City Prosecutor's Office and then to the Almaty City Department of Criminal-Executive System), the Almaty City Prosecutor's Office, the Committee on National Security of the Republic of Kazakhstan, and the Ombudsman of the Republic of Kazakhstan.

Despite all those complaints and statements, no medical examination of Mr. Erimbetov, including one with independent experts, has been conducted.

In fact, the first time Mr. Erimbetov was examined by a medical specialist was on 11 January 2018, or almost a month after the first messages and communications of possible torture and cruel treatment started to appear. Therefore, any possibility of confirming or disproving the already-made communications was lost.

At the same time, the medical examination conducted on 11 January 2018 did show certain bodily injuries on his hands and head.

Although Mr. Erimbetov verbally explained that those injuries resulted from his falling from the overhead bed onto a bed-side table, and in writing that some injuries were the result of bedbug bites, the monitoring group maintains that the authorities failed to take the necessary measures to investigate the communications received in mid-December 2017, which messages and communications as well as the facts recorded on 11 January 2018 require a thorough and independent investigation.

The next medical examination of Mr. Erimbetov, outside the facility, was on 18 January 2018. That examination did not reveal any bodily injuries.

5. The monitoring group established discrepancies between the logs of cells in which Mr. Erimbetov was held and his own recollections as well his attorney's information. According to the logs, from 14 November to 15 December 2017 he was placed in cell 177 in the CNS RoK-controlled section of CI-1, and after that in cell 94 in a section which was under the control of CCES MIA RoK. However, based on information in the Special Rapporteur's inquiry which was also confirmed by Mr. Erimbetov, he was moved several times from one cell to the other, including cell 94, right after his release from the isolation box. The same information of him being held in cell 94, where he allegedly was intimidated and beaten by cellmates, was confirmed by his attorney after her meeting with Mr. Erimbetov on 12 December 2017, i.e. at the time when he was supposedly held in cell 177, according to the logs.

The monitoring group did not have the opportunity to confirm or disprove this information; however, it maintains that it is possible to ascertain it with the relevant video recordings, unless they (the recordings) were destroyed.

7. The monitoring group noted with concern the information that Mr. Erimbetov's close relatives, who have the right to be recognized as his defenders, were not able to receive the relevant status from 14 December to 21 December 2017, even though they had filed applications in a timely manner. It is the monitoring group's opinion that the delays in recognizing the close relatives as defenders of a detainee creates conditions for possible violations of the right of such person.

6. The monitoring group noted with concern the information that on 17 December 2017 a group of the National Preventive Mechanism, which carried out an ad-hoc (unscheduled) visit to CI-1 facility following the instruction of the Ombudsman of the Republic of Kazakhstan, was not able to meet with Mr. Erimbetov, for the reason that he allegedly “was outside participating in an investigative reconstruction.” At the same time, the so called “investigative reconstruction” which allegedly was conducted on a statutory holiday, did not have Mr. Erimbetov’s attorney or defenders in attendance. In other words, it bears admitting that either the investigative reconstruction was carried out without an attorney in attendance, which is against the law, or it was not carried out at all. The monitoring group notes that, according to the information in the inquiry of the Special Rapporteur, which was confirmed by Mr. Erimbetov, such “investigative reconstructions” when he was taken outside the facility without his attorney in attendance, took place on more than one occasion.

7. The monitoring group did not visit the cells in which Mr. Erimbetov was actually or allegedly held, it did not meet with other detainees with whom he did or might have shared common space, and did not have the possibility to ascertain with any degree of certainty all of the information it received or had access to; therefore, our conclusions are based only on the results we were able to obtain during our two-hour visit to CI-1.

Recommendations

1. Given the state of health of Mr. Erimbetov, we believe emergency medical assistance is required, including, possibly, to put him in a detention centre hospital and an examination by an independent medical professional.

2. The administration of the facility carried the full responsibility for safety and well-being of detainees. To this end, we believe Mr. Erimbetov must be placed in conditions that he will find to be satisfactory from the point of view of ensuring his safety and well-being.

3. It must be ensured that no investigative actions are carried out without Mr. Erimbetov’s attorney in attendance.

4. Given the psychological state of Mr. Erimbetov, an examination by, and assistance from, an independent psychologist is required.

5. The investigation of the criminal case following a communication of torture and other cruel treatment must be supported by an independent psychological expert examination.

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Yevgeniy Zhovtis

Almaty, 1 February 2018