

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 25/18, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention, ill-treatment and failure to conduct a fair and lawful trial to avoid the involuntary detention, and forced psychiatric confinement of a human rights lawyer.

Ms. **Zinaida Mukhortova** is a human rights lawyer who has provided free legal aid, and works to fight against corruption and political interference in the judiciary.

Ms. Mukhortova was the subject of a joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 August 2013.

We regret that to this date we have not received a response from your Excellency's Government regarding the case of Ms. Mukhortova. We remain seriously concerned about her situation, particularly in the light of the new information received.

### Summary of the case of Ms. Zinaida Mukhortova

It is reported that on 30 July 2009, human rights lawyer Ms. Mukhortova, along with three other lawyers, sent a complaint to your Excellency's Government alleging that there had been interference in the administration of justice by a member of parliament. According to sources, a criminal investigation was launched against Ms. Mukhortova in response to this complaint for the "deliberate filing of a knowingly false complaint".

Reportedly, on 12 February 2010 Ms. Mukhortova was arrested in court and detained in pre-trial detention facilities. On 7 July 2010 she underwent a psychiatric examination in the Almaty psychiatric clinic and was diagnosed with "chronic delusional disorder". Subsequent to this diagnosis, on 5 August 2010 the Balkash city court exempted Ms. Mukhortova from the criminality liability of her charges under Article 351 § 2 of the Code of Criminal Procedure of Kazakhstan (hereinafter "CCrP"). Sources indicate that she was referred for involuntary treatment to a prison mental hospital located in the Almaty Region (Republican Specialised Psychiatric Hospital of Intensive Care) where she was kept between 12 January and 22 September 2011. Allegedly, during the time, Ms. Mukhortova was forcibly administered unknown medication and underwent three medical examinations that unofficially confirmed her sanity, but was not given a changed diagnosis by doctors due to external pressure.

On 12 December 2011 she was admitted for involuntary treatment for a term of two weeks. On 9 January 2012 the Supreme Court ordered a new examination of Ms. Mukhortova's case and her diagnosis was confirmed by the Almaty psychiatric clinic. From May 2012 to June 2012 Ms. Mukhortova was detained in a mental hospital in Almaty for one month and was subjected to an expert examination pursuant to the Balkhash City Court's order. Reportedly, in October 2012 an independent psychiatrist certified that Ms. Mukhortova was mentally fit.

According to the source, on 26 July 2012 Ms. Mukhortova was exempted from criminal liability and no involuntary treatment was ordered in her respect by the court under Article 517 §2 of CCrP. A decision by the court of appeal on 13 September 2012 to grant Ms. Mukhortova's complaint quashed the prior judgment rendered on 6 September 2011.

However, it is reported that in 2013 nurses from the Balkhash mental hospital came to Ms. Mukhortova's residence on a monthly basis in an attempt to take her to the hospital against her will. Ms. Mukhortova would not open the door. On 9 August 2013, four police officers, two male hospital attendants, two nurses and one doctor allegedly burst into the home of Ms. Mukhortova. Ms. Mukhortova was admitted to the mental hospital that day, against her will, on the basis of the 6 September 2011 judgement that had already been quashed. Once admitted, it is alleged that Ms. Mukhortova was forced to take medicine that caused her to suffer a severe headache and that produced a rash all over her body. According to the source, representatives and close relatives of Ms. Mukhortova were denied access to the hospital.

According to the new information received:

On 20 August 2013, the Balkhash City Court upheld the decision to admit Ms. Mukhortova for involuntary treatment to a mental hospital and stated that the decision was final since it had been upheld by both the appeal court and cassation courts. Ms. Mukhortova was released from the hospital on 31 October 2013.

It is reported that, in November 2013, Ms. Mukhortova travelled to Brussels, Paris and Warsaw for various engagements and returned to Kazakhstan in December 2013. Ms. Mukhortova did not return to Balkhash, but stayed with relatives in the Almaty Region where she was forced to live in hiding. Ms. Mukhortova had to conceal and change her cellular telephone number periodically since she was wanted by the police pursuant to the request of the Chief Doctor of the Balkhash mental hospital, Mr. [REDACTED].

It is reported that the last remedy available to Ms. Mukhortova is a complaint to the Supreme Court. The preliminary hearing was scheduled for 17 April 2014, at which time the Supreme Court was due to render a decision on whether it should initiate supervisory proceedings or not. Allegedly, Ms. Mukhortova's representative made a motion for recusal of the Supreme Court's supervisory panel in light of the fact that the panel was composed of the same judges that had already dismissed an earlier complaint of Ms. Mukhortova's in her appeal against the unlawful involuntary admission to a mental hospital for two weeks in December 2011. The hearing at the Supreme Court reportedly took place on 22 May 2014, at which time the court rejected the appeal.

According to the latest information received, on 1 July 2014, Ms. Mukhortova was detained by plain clothes police agents in the city of Balkhash. It is reported that she and her grandson were assaulted by the police during her arrest. Ms. Mukhortova has reportedly been detained and taken to the Psycho-Neurological Clinic of Balkhash Town, where she had earlier been hospitalized. It is alleged that her legal counsel requested to meet her but this visit was not allowed on the premise that she has been placed in the Intensive Care Unit, to which visitors are not permitted entry. However, it is reported that close relatives have been able to visit her.

Very serious concern is expressed about the physical and psychological integrity of Ms. Zinaida Mukhortova in connection to her recent detention and in the light of the court decision of involuntary psychiatric confinement, which if enforced while she is sane, would amount to torture or other cruel, inhuman or degrading treatment. Serious concern is also expressed at the allegations received indicating that the lack of fair and lawful judicial hearings may be connected to her work in the defence of human rights.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of Ms. Mukhortova is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of her liberty as well as the right to fair proceedings before an independent and impartial

tribunal, as set forth in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 2, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Regarding the allegations of lack of fair and lawful judicial hearings, they also appear to be in contravention with UN Principles, on the Independence of the Judiciary and, in particular principles 1, 4, 6 and 17.

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government acceded on 26 August 1998.

Regarding the alleged forced psychiatric hospitalization and treatment of Ms. Moukhortova, we would like to refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by Kazakhstan on 24 January 2006). Moreover, we would like to refer to paragraphs 8 and 34 of General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, as well as to Principle 4 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991).

We would also like to draw the attention of your Excellency's Government to relevant reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council, which state that involuntary treatment and other psychiatric interventions in health-care facilities can constitute forms of torture and ill-treatment (A/HRC/22/53, para. 64), and that to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41).

Regarding allegations received indicating that the situation of Ms. Zinaida Moukhortova could be related to her human rights activities as a lawyer, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1, 2 and 12.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) /can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Mukhortova in compliance with international instruments.

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. We would be grateful for your cooperation and observations to clarify the following elements:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. In particular, please provide information regarding the state of health and conditions of detention of Ms. Mukhortova. Has she been able to access a doctor, and a lawyer of her choice?

3. Please provide information concerning legal grounds for the arrest and detention of Ms. Mukhortova and how these measures are compatible with the aforementioned international human rights standards. Please provide information on whether Ms. Mukhortova has access to legal counsel.

4. Kindly provide information on the current status of Ms. Mukhortova's trial.

5. Please explain in greater depth the processes of the psychiatric evaluation and how the conflicting diagnoses between expert examiners can be reconciled with fair and proper judicial decision making regarding the sanity of Ms. Mukhortova.

6. Please indicate what measures have been taken to ensure that human rights defenders, including human rights lawyers, can operate in a safe and enabling environment, and can carry out their legitimate activities and discharge their functions without fear of harassment, stigmatization, criminalization or detention of any kind.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Mukhortova are respected, and in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also respectfully request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We are considering to express our concerns publicly in the near future on the issues raised in this communication as we are of the view that they warrant immediate attention, and the information upon which they are based has been verified and is sufficiently reliable. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the  
highest attainable standard of physical and mental health

Michel Forst  
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