

(Translated from Russian)

Response to the Special Rapporteurs' letter of inquiry concerning Talgat Ayanov and Max Bokaev

Further to the questions raised by the Special Rapporteurs, namely **questions 1 and 2** concerning the grounds for instituting criminal proceedings against Mr. Ayanov and Mr. Bokaev and the request for clarification of "how they are in line with the obligations undertaken by Kazakhstan under international human rights law, in particular the links between the action taken against the two human rights defenders and their peaceful and legitimate human rights work", the Office of the Procurator General of Kazakhstan wishes to provide the following information.

It should be noted that the persons in question were prosecuted for committing acts aimed at inciting social and ethnic hatred that are categorized as crimes against the peace and security of humanity under criminal law.

Fighting hate crimes is an obligation of States parties under the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) on 21 December 1965, which recognizes all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination as a crime.

Article 20 of the International Covenant on Civil and Political Rights, adopted pursuant to General Assembly resolution 2200 A (XXI) of 16 December 1966, states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

In Kazakhstan, any unlawful acts that discriminate on the basis of ethnicity, race, language or attitude to religion are criminal offences punishable by law.

The Criminal Code of Kazakhstan (art. 174 (1)) establishes liability for committing intentional acts aimed at inciting social, ethnic, clan, racial, class or religious hatred, insulting national honour and dignity or promoting the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, class, or ethnic, clan or racial affiliation if such acts are committed in public or through the news media or information and communications networks. There are considered to be aggravating circumstances if these acts are committed by a group, by prior conspiracy or repeatedly (art. 174 (2)), or if they are committed by a criminal group or have serious consequences (art. 174 (3)).

Incitement to social, ethnic, clan, racial, class or religious hatred means the attempt to create conflict between persons from different ethnic backgrounds, clans, races, classes, faiths or social groups.

Information that contains a negative view of and stirs up prejudice against a particular social, ethnic, class or religious group or its members and calls for the imposition of restrictions on their rights or violent acts against them amounts to such incitement. The main feature of incitement to ethnic hatred is the creation and perpetuation of negative ethnic, national or racial stereotypes.

On 28 November 2016, Max Bokaev and Talgat Ayanov were found guilty by court No. 2 of Atyrau of committing offences covered under articles 174 (2) (Incitement to social and ethnic hatred), 274 (4) (2) (Dissemination of information known to be false), 400 (Organizing, holding and attending unlawful rallies) of the Criminal Code, and each were sentenced to 5 years' deprivation of liberty and 3 years' deprivation of the right to engage in social activism.

The sentences have not come into force because the convicted persons' lawyers are appealing against the rulings. The case is pending before the Atyrau provincial court.



During the trial, the court of first instance established that Mr. Bokaev and Mr. Ayanov, acting by prior conspiracy in a group, repeatedly carried out deliberate acts intended to incite social and ethnic hatred and insult national honour and dignity, thereby violating article 174 (2) of the Criminal Code, by means of the news media and information and communications networks, namely Facebook and the mobile application WhatsApp, posted and disseminated among their acquaintances information on the 25-year lease of 1 million ha of land to China and called on people to take part in a rally to amend the Land Code of 2 November 2015.

Under article 39 of the Constitution, human and civil rights and freedoms may be restricted only as provided by law and solely to the extent necessary to maintain the constitutional system, preserve public order and protect public health and morals.

The dissemination of information known to be false that threatens to disturb the public order or cause substantial harm to the rights and legitimate interests of State and society is a criminal offence under article 274 of the Criminal Code.

This provision is in keeping with article 19 of the International Covenant on Civil and Political Rights, which states that the right to freedom of expression and freedom to seek, receive and impart information and ideas of all kinds may be subject to certain restrictions that are provided for by law and are necessary for respect of the rights or reputations of others and the protection of national security, public order and public health or morals.

Acting in a group, by prior conspiracy, Mr. Bokaev and Mr. Ayanov disseminated information known to be false through the mass media and threatened to disturb the public order and cause substantial harm to the rights and legitimate interests of citizens or organizations or the interests of society and the State that are protected by law, namely by posting on their personal pages and the Atyrau Civil Initiative group page on Facebook, for which they were system administrators, information known to be false about the country's leaders' plans and intent to transfer ownership of agricultural land to foreign companies and nationals; such an act is a criminal offence under article 274 (4) (2) of the Criminal Code.

For example, discussions were held in the mass media and social networks on the amendments to the Land Code under Act No. 389 of 2 November 2015, which entered into force on 1 July 2016; under the amended Code, the period in which agricultural land may be leased to foreign nationals has been extended to up to 25 years.

Aware that articles 23 and 24 of the Land Code that had been in force since 2011 provided that agricultural land may be leased to foreign companies and nationals for up to 10 years, with a view to arousing public interest in this issue and encouraging people to take part in a rally, Mr. Bokaev and Mr. Ayanov entered into a prior conspiracy to disseminate information known to be false about the plans and intent of the country's leaders to transfer such land to foreign companies and citizens under the amendments to the Land Code adopted on 2 November 2015. By agreeing to jointly hold a rally on the "land issue", Mr. Bokaev and Mr. Ayanov allowed for unlawful acts directed against the national interests of Kazakhstan to be committed and threats to national security to be presented.

Under article 4 of the National Security Act of 6 January 2012, among the national interests of Kazakhstan are the protection of human and civil rights and freedoms, the preservation of social harmony and political stability in the country, strict compliance with the law and the maintenance of law and order.

Under article 5 of the Act, threats to the national security of Kazakhstan means the weakening of the rule of law, disruption of the work of State bodies, interruptions to their regular functioning, incitement of social or ethnic animosity or strife, aggravation of the social and political situation resulting in ethnic and religious conflicts, mass riots, unauthorized meetings, rallies, marches or demonstrations and illegal picketing and strikes.

Mr. Bokaev and Mr. Ayanov filed an application with the local authorities (*akimat*) in Atyrau to hold a rally on Isatay-Makhambet Square on 24 April 2016 for the purpose of drawing public attention to the shortcomings and contradictions that, in their view, are contained in the land law, particularly those involving the massive sale of agricultural land through auctions and long-term leases of land to foreign nationals.

However, without receiving a reply from the authorities, Mr. Bokaev and Mr. Ayanov publicly posted on their personal pages and Atyrau Civil Initiative group page of Facebook false information on the plans and intent of the country's leaders to transfer agricultural land to foreign companies and nationals while appealing to citizens' sense of patriotism and induced them to take part in the rally.

On 18 April 2016, the Atyrau local authorities rejected the application of Mr. Bokaev and Mr. Ayanov to hold a rally, because Isatay-Makhambet Square is not included in the list established pursuant to decision of the Atyrau local representative body (*maslikhat*), No. 125 of 21 June 2013 (in force at the time), specifying places where rallies may be held. On the day that the application was rejected, the head of local authorities (*akim*) of Atyrau, Mr. [REDACTED], invited Mr. Bokaev and Mr. Ayanov to his office in order to explain the reasons for the rejection. The meeting was attended by Mr. Ayanov, who was told why the application had been turned down and offered other places for holding the rally that were included in the list; it was also proposed that he put forward his demands regarding the Land Code to the local authorities with a view to bringing them to the central authorities' attention.

However, Mr. Ayanov refused to enter into constructive dialogue, insisting on holding the rally on 24 April 2016 at Isatay-Makhambet Square itself.

As part of the Atyrau Civil Initiative-Atyrau Azamattyk bastamasy group, Mr. Ayanov published information on his meeting with the local authorities in Atyrau on Facebook, where he knowingly posted the following false information: "It will be recalled that ownership of 1.7 million ha of land have been transferred and another 1 million ha leased for 25 years to foreign nationals."

Acting with criminal intent to disturb public order and cause substantial harm to the legitimate interests of State and society protected by law, with a view to attracting a large number of participants in the rally, by prior conspiracy with Mr. Bokaev, Mr. Ayanov sent out the following message over WhatsApp to 20 of his acquaintances: "To the residents of Atyrau: Rally! As you know, the Government is preparing to grant China a 25-year lease on 1 million ha of agricultural land as of 1 June. The time has come to meet and call for the repeal of the amendments to the Land Code! Otherwise, it will be too late, we shall lose the land and become slaves, and you and your children will have to study Chinese! ... An unauthorized rally to call for cancelling the transfer of native land to China will take place on 24 April 2016 at 2 p.m. on Batyrs Makhambet and Isatay Square! Please forward this message via WhatsApp, VK, Facebook." On 19 April, a screenshot of Mr. Ayanov's message was posted on the Civil Initiative of Atyrau-Azamattyk bastamasy Atyrau group page and, on 20 April 2016, on his personal page on Facebook, making it available to an unlimited number of other users.

Mr. Ayanov and Mr. Bokaev called for the content posted by them to be shared as widely as possible through the use of information and communication technologies, social networks and Internet services, resulting in the bulk messaging of tendentious information known to be false to a great number of users.

Under the law of Kazakhstan, highly specialized experts (philologists, political analysts, psychologists, linguists and others) are to determine whether public statements or printed material show evidence of animosity or strife. Accordingly, the prosecution of cases under article 174 of the Criminal Code is brought only when there are expert opinions to the effect that the acts imputed to the accused person show evidence of incitement to hatred.

According to the findings of the comprehensive psycholinguistic forensic assessments (Nos. 3535 of 20 May 2016, 4528 of 8 July 2016 and 4649 of 12 July 2016), in which political analysts took part, the information and posts published on Mr. Ayanov's and Mr. Bokaev's personal pages on Facebook were intended to arouse animus towards the Land Code, the current authorities and police operations and towards Chinese farmers, to mobilize people to attend rallies and to shape opinion on the need for a change of power. The information contains appeals aimed at inciting social and ethnic strife, insulting national honour and dignity and citizens' feelings and advocating exclusivity, superiority or inferiority on ethnic grounds.

In accordance with article 32 of the Constitution, citizens of Kazakhstan have the right to assemble peacefully and without arms, and to hold meetings, rallies, demonstrations, marches and pickets. This right may be restricted by law to preserve national security, public order and health and to protect the rights and freedoms of others.

The procedures for organizing and holding peaceful assemblies are established under the Act on the Procedures for the Organization and Holding of Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations in the Republic of Kazakhstan of 17 March 1995; under article 2 of the Act, authorization for holding such events must be obtained from the local executive body (*akimat*).

Under article 9 of the Act, the violation of the established procedures for organizing and holding meetings, rallies, marches, pickets and demonstrations is punishable by law.

Organizing, holding or participating in illegal meetings, rallies, marches, pickets, demonstrations or other illegal public events is subject to criminal liability if substantial harm is caused to citizens' or organizations' rights and legitimate interests or to the interests of State and society protected by law.

Mr. Bokaev and Mr. Ayanov organized, held and directly participated in an illegal rally on 24 April 2016, which was attended by several thousand persons, thereby posing a real threat to the public order and causing substantial harm to citizens' and organizations' rights and legitimate interests and the interests of State and society protected by law; by doing so, they committed a criminal act covered under article 400 of the Criminal Code. The act is punishable under this article by either a fine, correctional labour, community service or short-term rigorous imprisonment (for a period of 75 days).

Article 21 of the International Covenant on Civil and Political Rights states: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

Mr. Bokaev and Mr. Ayanov violated the procedures for organizing and holding rallies by holding one on Isatay-Makhambet Square in the centre of Atyrau, assembling more than 4,000 persons, and thereby posing a threat to public order and safety.

At the illegal rally that took place, Mr. Bokaev, Mr. Ayanov and other unidentified persons persisted in taking an unfavourable position on the amendments made to the Land Code purported to be in the interests of foreign nationals. Furthermore, Mr. Ayanov directly focused the attention of those attending the rally on the supposed "union" between the Government and China and the consequent "extermination" of the citizens of Kazakhstan.

The actions of Mr. Bokaev and Mr. Ayanov at the rally destabilized the social and political situation in the country, fuelled unwarranted protest sentiment and prompted people to engage in unlawful acts; in other words, they caused substantial harm to the interests of State and society protected by law, as is attested by the fact that the accusation against them for committing an offence under article 400 of the Criminal Code was substantiated.

According to the findings of the comprehensive psycholinguistic forensic assessment (No. 4509 of 8 July 2016), in which a political analyst took part, the information contained in the speeches at the rally on 24 April 2016 point to negative feelings and a negative attitude towards social groups, opposing the authorities and the people. The setting off of citizens in opposition to others on social grounds and the negative attitude towards persons exercising public authority is viewed, from a political point of view, as evidence of a threat to social stability.

The video footage of the 24 April 2016 rally on Isatay-Makhambet Square was disseminated in the social media and drew the attention of a wide public in the country.

It is worth noting that, by Presidential Decree No. 248 of 6 May 2016, a moratorium on the application of the provisions of Act No. 389 of 2 November 2015 amending the Labour Code concerning granting foreign nationals, stateless persons, foreign legal persons

and legal persons with more than a 50 per cent share of its authorized capital belonging to foreigners, stateless persons or foreign legal persons the right to use agricultural land temporarily under a lease and the right to private ownership of plots of agricultural land belonging to the State and natural and legal persons of Kazakhstan.

The Government ordered a commission on land reform to be formed in order to discuss and clarify the provisions of the Land Code and put forward proposals.

The Commission is made up of members of the Government, deputies, members of State bodies, scholars, civil society leaders and agricultural experts. In addition, Mr. Bokaev was proposed as a member of the Commission from Atyrau province. However, while continuing to pursue the goal of destabilizing the social and political situation and create divisions in society, Mr. Bokaev categorically refused to take part in the land reform process. Furthermore, despite the moratorium on the entry into force of the amendments to the Land Code declared by the Head of State and the holding of a national discussion, Mr. Bokaev and Mr. Ayanov persisted in actively calling on the population to hold a nationwide rally on 21 May 2016 on the question of land reform.

With a view to organizing illegal rallies nationwide in other cities in the country, Mr. Bokaev visited Uralsk on 6 May, Aktobe on 7 May, Almaty on 9-11 May and Astana on 12 May. With this same goal in mind, from 30 April to 11 May, Mr. Ayanov visited Almaty, where he met with his supporters.

As for instituting administrative proceedings against Mr. Ayanov and Mr. Bokaev, we wish to provide the following information.

On 6 May 2016, Mr. Bokaev filed an application with the head of the local authorities of Atyrau to hold a public event on Isatay-Makhambet Square on 21 May 2016 in the form of a rally concert for the purpose of "helping to bring about land reform and foster greater social harmony".

On 13 May 2016, the head of the local authorities of Atyrau, [REDACTED], held a meeting with Mr. Bokaev and Mr. Ayanov, during which they were denied authorization to hold a rally on Isatay-Makhambet Square, as the square was not included in the list established pursuant to decision No. 13 of 28 March 2016 of the Atyrau local representative body, specifying the places where such events may be held. Once again, other places for holding a rally that were included in the list were proposed to them, but they did not agree to them. Furthermore, they were warned that the holding of an illegal rally was prohibited, as it might result in a breach of public safety. Moreover, Mr. Bokaev was offered the opportunity to take part in the work of the Commission on Land Reform, where he could defend and call public attention to his position.

On 13 May 2016, by order of the head of the local authorities of Atyrau, Mr. Bokaev and Mr. Ayanov were denied authorization to hold a rally on the grounds mentioned above, and they received an official response to that effect on 16 May 2016.

Notwithstanding the refusal of the executive body to authorize a rally, from 24 April to 17 May 2016, Mr. Ayanov and Mr. Bokaev, contrary to the Act on the Procedures for the Organization and Holding of Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations in the Republic of Kazakhstan, in their capacity as organizers, called for in the social media an unlimited number of people to take part in the unauthorized rally scheduled for 21 May 2016 in Atyrau.

In this connection, in an order by the special administrative court of Atyrau on 17 May 2016, administrative proceedings were brought against Mr. Ayanov and Mr. Bokaev under article 488 (3) of the Code of Administrative Offences, and an administrative penalty in the form of short-term rigorous imprisonment for a period of 15 days was imposed.

As a result of the measures taken by the country's leadership to maintain social and political stability, the declaration of a moratorium on the entry into force of amendments to the Land Code until the end of the year and the preventive measures taken against Mr. Bokaev and Mr. Ayanov, their plans to organize an illegal rally nationwide on 21 May 2016 with a view to destabilizing the social and political situation and disturb the public order foundered, and the public showed them no support.

Concerning the appeal lodged with the court by the defendants and their counsel, we wish to state the following.

It is stated in the Special Rapporteurs' communication: "On 12 October 2016, the first hearing took place at the Court No. 2 of Atyrau City. Mr. Talgat Ayan filed a motion for the judge to recuse herself from the case on the basis of procedural violations, particularly regarding the falsification of the date on which the judge had set the date and time for the first hearing, in an alleged attempt to avoid considering Mr. Ayan's application to dismiss the case altogether and to prevent his release from pretrial detention. However, the judge reportedly dismissed the motion for recusal."

On 12 October 2016, during the trial, Mr. Ayanov's lawyer challenged Judge [REDACTED], stating that the judge had brought proceedings in the case in violation of article 319 of the Code of Criminal Procedure, since the case had been referred to the supervising (procedural) procurator on 29 September 2016 and, on 3 October 2016, he was informed that a request for a preliminary hearing had been made. However, on 30 September 2016, the judge had handed down an order for proceedings to be brought before her and set a date for a trial on 12 October 2016; the order was then posted on the Torelik electronic database for court decisions on 3 October 2016; in other words, on 3 October 2016, the court issued ex post facto the decision of 30 September 2016 to commence proceedings.

The lawyer's challenge to the judge on 12 October 2016 was considered and dismissed by order of another judge, [REDACTED]. The arguments regarding the falsification of the date on which Judge [REDACTED] had brought the case before the court were found to be unsubstantiated, as it was established that the relevant order of the judge was handed down and signed on 30 September 2016 and the order was entered into the Torelik database on the following working day, namely 3 October 2016. The date on which the judge had ordered the case to be brought before the court is 30 September 2016, and the date on which the order appeared in the electronic database of court decisions is 3 October 2016.

The Special Rapporteurs' communication states: "During the second hearing on 13 October 2016, the two human rights defenders filed another motion to obtain more information about the experts of the Forensic Centre of the Republic of Kazakhstan, who had provided part of the materials submitted by the prosecution. In the course of research on the background of those experts, it was reportedly ascertained that one of the experts had been dismissed by the Centre, while the other had never been a staff member of the Centre. This motion was also dismissed by the judge."

On 13 October 2016, the lawyers requested a summons and examination of the experts who conducted the psycholinguistic assessment.

As it appears from the record of the trial on 13 October 2016 (drawn up electronically), this request was granted, and all the experts were summoned to appear and were questioned in court, where they presented their personal details and explained the substance of the expert assessment that they had conducted. The lawyers' assertion that one expert had been dismissed and another had never been a staff member is misleading, as all the experts who conducted the analysis were working at the Centre at the time that they were carrying out the forensic analysis for the branches of the Ministry of Justice for Astana and Almaty. One expert, [REDACTED] was not examined because of a serious illness and her departure for treatment in Moscow. Thus, all eight experts who conducted the analysis for the case were examined in court, with the exception of one expert for the foregoing legitimate reason.

The Special Rapporteurs' communication states: "During the second hearing, the lawyers requested to replace the pretrial detention with house arrest or bail for the two individuals, in particular considering the deteriorating health of Mr. Bokaev. However, the request was dismissed as well."

The request was dismissed by the court given that the defendants underwent a medical examination by doctors at the Atyrau province clinic following their request to replace pretrial detention and were given a clean bill of health (medical certificate). Having reviewed the doctors' medical certificate as it appears from the record of the trial on 13

October 2016, the court found that there was no reason to change the preventive measure. Furthermore, detailed information on Mr. Bokaev's health from the time that he was taken into custody is presented on pages 11 and 12 of this response to the letter of inquiry.

The Special Rapporteurs' communication states: "The subsequent hearings took place on 17 and 18 October and were dedicated to the examination of witnesses. During the hearing on 18 October, Mr. Bokaev requested a break during the hearing because he did not feel well, but the judge dismissed his request arguing that he was 'simulating faintness'."

This assertion is without merit. As it appears from the record of the trial of 18 October 2016, Mr. Bokaev requested a break during the hearing because he did not feel well. In this connection, the judge announced a break and called for emergency care service doctors, who, after examining Mr. Bokaev, found no reasons for admitting him to a health facility.

The criminal case against Mr. Ayanov and Mr. Bokaev was considered by the court in an objective and thorough manner; moreover, not a single argument on the part of the defence was overlooked. All evidence and requests from the parties to the proceedings were considered in accordance with the requirements of the criminal procedural law of Kazakhstan. The provisions of article 14 of the International Covenant on Civil and Political Rights are observed in Kazakhstan.

Thus, criminal proceedings were instituted against Mr. Ayanov and Mr. Bokaev not for their "peaceful and human rights" work but rather, as stated earlier, for committing intentional illegal and criminally punishable acts. No violation of the international human rights obligations of Kazakhstan was allowed.

Question 3: Please provide information about the legal basis for the court order issued in relation to the raid on the houses of eight human rights defenders and confiscation of their personal belongings and explain how this is compatible with the obligations of Kazakhstan under international human rights law. Please also provide information about whether any investigation has been carried out in relation to the physical injury sustained by the mother of Mr. Bokaev in the course of the raid on 20 May 2016. If no inquiries have taken place, please explain why.

Reply: The warrants granted by court No. 2 of Atyrau on 19 May 2016 to search the places of residence of the following eight persons — suspects M. Bokaev, T. Ayanov, [REDACTED], [REDACTED] and [REDACTED] and witnesses entitled to protection [REDACTED], [REDACTED] and [REDACTED] — were executed in strict compliance with the requirements of criminal procedural law as it pertains to the provision of comprehensive, full and objective investigation into the circumstances (Code of Criminal Procedure, art. 24). The searches were carried out on the grounds of evidence received by the procurator authorized to conduct investigations.

During the search, which was done in the manner prescribed by the Code of Criminal Procedure, laptop computers, data storage devices and documents were seized and subsequently returned to and signed for by their owners (entered into the record) after they were examined to see whether they were of relevance.

The mobile telephones of the persons listed above were retained as exhibits in the case.

The allegation of "physical injury sustained by the mother of Mr. Bokaev in the course of the raid" is untrue.

As the video recording of the investigative measures attests, there was no illegal action whatever taken against Mr. Bokaev's mother, [REDACTED], by the officers of the department of the national security committee who carried out the search of his apartment. A copy of the video recording could be provided if necessary.

Question 4: Please provide information as to how the judicial proceedings against Mr. Bokaev and Mr. Ayanov meet the requirements of international fair trial norms and standards, in particular with regard to the conduct of closed hearings.

Reply: The proceedings were carried out in the open and transparency was guaranteed throughout the trial, which was attended by members of the news media. The hearings were broadcast live.

Under article 29 (1) of the Code of Criminal Procedure, proceedings in criminal cases in all courts and at all judicial levels of review are conducted in the open. Limitations on the openness of proceedings are allowed only when such openness would run counter to the interests of protecting State secrets and other secrets protected by law.

Justice is carried out on the basis of the equality of all persons before the law and before the courts (Code of Criminal Procedure, art. 21).

In its statement of reasons for the judgment, the court stated: "Under article 14 (1) of the International Covenant on Civil and Political Rights, done at New York on 16 December 1966 and ratified by Kazakhstan on 28 November 2005, in the determination of any criminal charge against him, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The court, having carefully considered the facts and circumstances of the case, verified the testimony of the defendants and other facts and assessed each piece of evidence from the point of view of admissibility, relevance and credibility and all the evidence gathered as a whole in a manner sufficient to rule on the case, and guided by the law and inner conviction, has found that the commission of the crime by the defendants under the circumstances laid out in the descriptive part of the judgment has been established objectively and beyond doubt by the evidence."

Question 5: Mr. Bokaev suffers from chronic [REDACTED] and needs constant health care. After more than three months' detention, on 7 September 2016, Mr. Bokaev was allowed to undergo a medical check at the regional hospital of Atyrau. Doctors reportedly raised serious concern about his health and their recommendation was to provide urgent medical treatment. At the time of this communication, Mr. Bokaev has allegedly been denied access to such health care.

Please provide information concerning the alleged denial of medical treatment to Mr. Bokaev, despite the deteriorating state of his health as reported by medical professionals.

Reply: The allegations concerning the denial of access to medical services and failure to provide Mr. Bokaev with medical treatment are untrue.

Upon arrival at penal institution (remand centre) UG-157/1 of the Department of the Penal Correction System for Atyrau province on 3 June 2016, Mr. Bokaev was examined by doctors of the institution's medical unit. By his own account, he has [REDACTED] and is on file for [REDACTED] with an [REDACTED] specialist. With a view to making an objective assessment of his health, he was sent to a civilian medical institution, city clinic No. 2, where, on 28 June 2016 (and not three months later), he underwent a preventive health check by qualified specialists and tested [REDACTED].

He was also examined in the Atyrau province hospital on 13 September 2016 and was advised that he was [REDACTED].

Mr. Bokaev insisted that further comprehensive examinations and additional analyses should be conducted. In that connection, at his request, on 23 December 2016, the administration of the institution sent him to the private laboratory [REDACTED], where he underwent all the necessary tests (the results of which are expected).

Currently, the convicted person's state of health is satisfactory, and no complaints on that account have been lodged.

Question 6: Please provide information about measures taken to bring the Code of Administrative Offences and the Criminal Code, as well as their implementation, into line with the obligations of Kazakhstan under international human rights law.

Reply: 1 January 2015 saw the adoption of a new Code of Administrative Offences, which provides for a new set of rules aimed at enhancing the protection of citizens' rights and freedoms, the interests of State and society and the rule of law when cases involving administrative offences are considered.

For example, the number of articles that provide for the use of administrative detention has been significantly reduced; under the new Code, this kind of penalty is provided for only in 29 articles (as opposed to 69 in the old one). Administrative detention is imposed by judges in exceptional cases only within the bounds specified in the articles of the special section of the Code (Code, art. 50 (1)).

The maximum period of administrative detention has been reduced to 30 days and, in exceptional cases during emergencies, to 45 days, whereas the maximum period under the previous Code was 45 days. The maximum period for administrative arrest has also been reduced, from 72 to 48 hours.

Provision has been made for reviews of decisions in cases involving administrative offences that have entered into force when new evidence comes to light, and natural and legal persons now have a real opportunity to defend their rights by filing applications for the review of a judicial decision that has been made.

With a view to further improving the law on administrative offences and bringing it into line with international human rights obligations, a bill to amend the Code of Administrative Offences has been developed aimed at humanizing and increasing the effectiveness of proceedings in cases involving such offences.

Under the criminal law and criminal procedural law of Kazakhstan, international agreements ratified by Kazakhstan take precedence over codes and are to be applied directly (Criminal Code, (1) (3) and Code of Criminal Procedure (2) (3)).

The new model of criminal proceedings brought into effect in connection with the entry into force of the new version of the Code of Criminal Procedure on 1 January 2015 has significantly strengthened the mechanism for protecting constitutionally guaranteed human rights and, at the same time, simplified criminal proceedings themselves by making them more efficient.

The introduction of investigative judges has strengthened judicial oversight during the pretrial investigation stage.

The system of recording criminal violations has largely changed, pre-investigation checks have been eliminated, and a range of simplified forms of investigation, such as a fast-track pretrial investigation process and a form for recording criminal accusations ("protocol form for criminal acts"), have been introduced. Several acts have been decriminalized.

The practice of imposing preventive measures has been fundamentally reviewed and the use of bail has been increased, which has led to a decrease in the number of persons held in custody before trial.

The introduction of new provisions is aimed at strengthening the protection of citizens' rights and freedoms, simplifying procedures and facilitating implementation of the United Nations human rights instruments ratified by Kazakhstan.

The Government provides detailed information on the measures taken to meet its international human rights obligations to the treaty bodies of the United Nations in its periodic reports and on the status of implementation of their recommendations.

Question 7: Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan, including environmental and land rights defenders, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and persecution of any sort.

Reply: All citizens, including those engaged in human rights activities, have equal rights.

Article 14 of the Constitution guarantees the equality of all citizens before the law and before the courts. No one, including human rights defenders, may be subjected to any form of discrimination for reasons of descent, social status, official position, material circumstances, sex, race, ethnic background, language, attitude to religion, opinions, place of residence or any other consideration. The State guarantees equality of human and civil rights and freedoms, regardless of sex, race, ethnic background, language, descent, material

circumstances, official position, place of residence, attitude to religion, opinions, membership of voluntary associations or other considerations.

Everyone has the right to recognition as a person before the law and the right to defend his or her rights and freedoms by all lawful means.

The violation of the equal rights of the person and citizen, i.e. the direct or indirect restriction of the rights and freedoms of persons (citizens) on the grounds of descent, social status, official position or material circumstances, sex, race, ethnic background, language, attitude to religion, opinions, place of residence, membership of voluntary associations or any other consideration is liable to criminal prosecution (Criminal Code, art. 145).

Everyone is guaranteed judicial protection from any unlawful decisions or actions by State bodies, organizations, officials and other persons which violate or restrict a person's rights, freedoms or legitimate interests as provided for by the Constitution and national laws.

In accordance with article 19 of the Code of Criminal Procedure, everyone is presumed innocent until proved guilty of a crime in the manner prescribed by the Code and until the court's judgment has entered into force.

The law of Kazakhstan also guarantees protection of the rights to freedom of assembly and association.

Such guarantees are provided for by the Constitution and the Act on the Procedures for the Organization and Holding of Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations in the Republic of Kazakhstan, which establishes the procedures organizing and holding such events.

These guarantees are bolstered by the criminal liability entailed for direct or indirect restrictions on human rights and freedoms on various grounds and for unlawful interference in the holding of or participation in meetings, rallies, demonstrations, marches and pickets (Criminal Code, arts. 14 and 155).

The Constitution also guarantees the rights and freedoms of voluntary associations. State bodies prohibit interference in the activities of such associations.

Thus, the current law guarantees the rights and freedoms of citizens and associations to engage in human rights activities.

By the same token, human rights activists must carry out their work in accordance with the Constitution, the legislative acts of Kazakhstan and the provisions of international human rights agreements.

**Office of the Procurator General
Republic of Kazakhstan**
