

(Translated from Russian)

Response to the request of United Nations Special Rapporteurs regarding termination of the State registration of the Confederation of Independent Trade Unions of Kazakhstan

In June 2004, the new Law on Professional Unions of the Republic of Kazakhstan (*hereafter, the Law*) entered into force. It provides for implementation of the “strong social partnership” model, which in turn allows for development of a robust and efficient system for the trade union movement in Kazakhstan on the basis of affiliation.

The Law establishes a legal basis for expanding the representation of trade unions and their participation in social dialogue at all levels of the social partnership.

In that context, the model that has been adopted does not restrict the right of workers to establish a trade union.

Trade unions are not obliged to be a member organization of any specific trade union association. They may freely choose to join other trade unions or independently to establish trade union associations.

Under article 10 (2) of the Law, *within six months* of its date of registration, a national trade union association shall provide its registration authority with copies of documents confirming its compliance with article 11 (3) of the Law, **which requires it to have member organizations in more than half of the nation’s regions and towns of national importance and in the capital.**

Under article 10 (3) of the Law, failure to comply with these requirements will cause the State registration of the trade union in question to be revoked, in accordance with the procedure laid down by the legislation of the Republic of Kazakhstan.

The Confederation of Independent Trade Unions of Kazakhstan (*hereafter, the Confederation*) (registered by Order No. 306 of the Ministry of Justice of the Republic of Kazakhstan of 15 February 2016) **did not comply** with this provision of the Law, and the registration authority was therefore obliged to file a lawsuit for termination of the Confederation’s State registration.

In its ruling of 4 January 2017, the Special Interregional Economic Court for the Southern Kazakhstan Region **granted in full** the application by the Ministry of Justice to rescind Ministry of Justice Order No. 306 of 15 February 2016 on State registration of the Confederation of Independent Trade Unions of Kazakhstan and to dissolve the Confederation and remove its information from the National Registry of Business Identification Numbers.

Moreover, with regard to the three trade unions that were affiliated with the Confederation and which had not complied with the status requirements under article 10 of the Law, **a lawsuit was filed to revoke** their State registration in accordance with the procedure as laid down by law:

- Regarding the civil society association “ [REDACTED] (a member of the Confederation of Independent Trade Unions of Kazakhstan, [REDACTED]), the Special Interregional Economic Court for the Southern Kazakhstan region, in its decision of 5 January 2017, granted the application and ruled to rescind the order on State registration and to require compulsory disestablishment. The ruling came into force on 8 February 2017.
- Regarding the civil society association “ [REDACTED] (a member of the Confederation of Independent Trade Unions of Kazakhstan, headed by L.N. Kharkov), the Astana Special Interregional Economic Court, in its decision of 6



January 2017, granted the application and ruled to rescind the order (appeal filed on 3 February 2017).

- Regarding the civil society association the “ [REDACTED] (not a member), the Special Interregional Economic Court for the Karagandinsk Region, in its decision of 10 January 2017, granted the application and ruled to rescind the order on State re-registration. The ruling has not come into force.

To date, legal actions have also been filed in relation to trade unions that are members of the Federation of Trade Unions of the Republic of Kazakhstan and the Kazakh Confederation of Labour.

These court decisions comply with the legislation of the Republic of Kazakhstan.

Under article 2 of the Law of the Republic of Kazakhstan on Civil Society Associations, trade unions and other citizens’ associations that are established on a voluntary basis for the purpose of attaining common goals and *which are not in contravention of the legislation* are recognized as civil society associations.

However, under article 6 of the Law on Civil Society Associations, civil society associations are equal before the law and *carry out their activities within the framework of the Constitution and other legislation of the Republic of Kazakhstan*.

Article 34 of the Constitution of the Republic of Kazakhstan stipulates that all citizens shall be responsible for upholding the Constitution and legislation of the Republic of Kazakhstan, on the basis of which we consider that all trade unions in Kazakhstan, in carrying out their activities to protect workers’ rights, must act within the legal framework and have a legitimate status under national law.

Moreover, article 8 (1) of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) stipulates that, in exercising the rights provided for in this Convention, workers and employers and their respective organisations, like other persons or organised collectivities, **shall respect the law of the land**.

These legislative provisions, including ILO Convention No. 87, testify to the fact that the ruling on compulsory dissolution of the Confederation for infringement of the Law did not violate the law of the land.

For its part, within the framework of the social partnership mechanisms, the Ministry of Labour and Social Protection is prepared to provide legal support to the dissolved trade unions in connection with their registration with the judicial authorities as newly established trade unions. Furthermore, the Ministry will create a working group, formed of representatives of interested bodies, with the aim of studying international experience in order to amend national legislation and harmonize it with international standards.

At present, in accordance with the remarks on compliance with the requirements of ILO Conventions Nos. 87 and 96 made by the ILO Committee of Experts on the Application of Conventions and Recommendations at the 105th session of the International Labour Conference (2-10 June 2016), the Ministry of Justice of the Republic of Kazakhstan is considering the principles of a bill on the introduction of amendments and additions to certain legislative instruments of the Republic of Kazakhstan on matters relating to the activities of trade unions (hereafter, the principles).

The principles of the bill have been occasioned by the need to refine existing legislation, in order to improve the quality of legal regulation of the social relations concerning trade union activities, as well as to ensure compliance with international labour standards.