

*(Translated from Russian)*

## **1. Information on the Confederation of Independent Trade Unions of the Republic of Kazakhstan**

*(Please provide any additional information and any comment you may have on the Confederation of Independent Trade Unions of the Republic of Kazakhstan)*

The activities of trade unions are regulated by the Trade Unions Act of 27 June 2014.

The Ministry of Justice acts as the registration authority for trade unions.

The main requirement of the Trade Unions Act is to determine the status of trade unions, from primary organizations to the national association.

The national trade union association, the Confederation of Independent Trade Unions of the Republic of Kazakhstan (hereafter, the association), was registered by the Ministry of Justice on 15 February 2016 with the business identification number 160240015353.

The head of the civil society association is Ms. L.N. Kharkova.

This association was created by four founding sectoral trade unions:

- The civil society association “the Sectoral Trade Union of Mass Media and Telecommunications Workers”;
- The civil society association “the “Fairness” (“Spravedlivost”) Sectoral Trade Union of Social and Domestic Workers”;
- The civil society association “the Sectoral Trade Union of Health-care and Social Welfare Workers”; and
- The civil society association “the Sectoral Trade Union of Fuel and Energy Workers”.

Under article 11 (3) of the Trade Unions Act, a national trade union association is created as a non-commercial organization by sectoral (industrial) trade unions with different organizational and legal characteristics in over half of the nation’s regions and major cities.

Under article 10 (2) of the Act, within six months of its date of registration, a trade union shall provide its registration authority with copies of documents confirming its national status and documenting that it has structural subdivisions and member organizations in more than half of the nation’s regions and major cities.

From the time of registration until 15 August 2016, this requirement was not fulfilled by the association, and the period in which the association was required to confirm its status expired on 15 August 2016. In view of the fact that the documents (record) confirming the membership status of the association’s affiliate organizations had not been received by the judicial authorities, the failure to comply with the stated requirement of article 10 (3) of the Act led to State registration of the trade union association being rescinded in accordance with the legally established procedure. The rescission of a trade union’s State registration means that it must be dissolved, as regulated by the relevant legislation.

The association did not comply with this provision of the Act, which led the registration authority to apply to the courts for rescission of the association’s State registration.

In its ruling of 4 January 2017, the Special Interregional Economic Court for the South Kazakhstan Region granted in full the application by the Ministry of Justice against the association to rescind Ministry of Justice Order No. 306 of 15 February 2016 on State registration of a national trade union association, the Confederation of Independent Trade Unions of the Republic of Kazakhstan, and to dissolve the Confederation and remove its information from the National Registry of Business Identification Numbers. The appeal body



met on 28 March 2017, and the Court's ruling of 4 February 2017<sup>1</sup> was upheld without amendment.

On 5 April 2017, under Order No. 598r, the association was forcibly dissolved and removed from the National Registry of Business Identification Numbers.

This court decision does not contravene national legislation or international agreements.

Furthermore, under article 8 (1) of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in exercising the rights provided for in this Convention, workers, employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. Such legislative provisions, including Convention No. 87, testify to the fact that the ruling on compulsory dissolution of the Confederation for infringement of the Act did not violate the law of the land.

**2. The legal basis of the sentence against Ms. Kharkova, including the acts that allegedly amount to “abuse of office”, the evidence available and the compatibility of the procedures with articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) are related to the international obligations of Kazakhstan in the field of human rights governing freedom of association**

*(Please explain the legal basis of the sentence against Ms. Kharkova including the acts that allegedly amount to “abuse of office”, the evidence available, and the compatibility of the procedures with articles 19 and 22 of the ICCPR)*

Under article 250 (1) of the Criminal Code, it is an offence for individuals, in the exercise of their managerial functions in a commercial or **other organization**, to use their powers against the lawful interests of that organization and **with the aim of gaining advantages or benefits for themselves** or other persons or organizations, or of causing harm to other persons or organizations, if that causes substantial harm to the rights and lawful interests of citizens or organizations, or damages the lawful interests of society or the State.

As a result, according to the verdict in the trial of Ms. Kharkova, who was president of an association of legal entities, the Confederation of Free Trade Unions in the South Kazakhstan Region (hereafter KSPUKO) and head of the national trade union association, the Confederation of Independent Trade Unions of the Republic of Kazakhstan (hereafter KNPRK), in the performance of her managerial functions Ms. Kharkova used her powers against the lawful interests of those two non-commercial organizations with the aim of gaining advantages and benefits for herself and other persons, thereby causing substantial harm to the rights and lawful interests of those organizations.

The evidence provided by the injured person, [REDACTED], indicates that she is the head of the trade union for emergency medical workers in Shymkent. An agreement was concluded between their organization and KSPUKO, under which Ms. Kharkova pledged to provide them with legal advice and assistance and to protect workers' rights in labour relations. They transferred 10 per cent of the total trade union contributions to the account of the organization headed by Ms. Kharkova (a total of 2,560,394 tenge (T) was transferred). However, no legal or other assistance was provided from her side, and her obligations under the agreement were not fulfilled. In addition, Ms. Kharkova did not provide any reports on how the funds of the trade union were spent.

[REDACTED], a witness, indicated that she had worked as an accountant in the organizations run by Ms. Kharkova. All financial decisions related to spending money were taken by Ms. Kharkova alone, while cost plans and expenditure reports for funds were not drawn up.

On the basis of the auditors' report and the conclusions of expert evaluations, it appears that KSPUKO received funds amounting to T 29,271,532 and KNPRK received T 19,096,168. Not all of the documents on financial spending required for the audit were

<sup>1</sup> *Translator's note:* This is the date given in the Russian original.

provided. Of the total amount received, Ms. Kharkova transferred T 5 million to her personal deposit account at Bank RBK Joint-Stock Company.

Without drawing up accounting documents, Ms. Kharkova diverted T 8,825,953 from KSPUKO, T 5,627,314 from KNPRK and T 2,560,394 from the trade union for emergency medical workers in Shymkent.

In light of this, the court found Ms. Kharkova guilty and, by order of Yenbekshi Regional Court in Shymkent on 25 July 2017 and pursuant to article 250 (1) of the Criminal Code, she was sentenced to 4 years' restriction of liberty with confiscation of property and deprivation of the right to hold leadership positions in public associations and other non-commercial organizations for a period of 5 years (under article 44 of the Criminal Code, probation controls are in place for the specified period).

In its decision of 29 September 2017, the appellate body of the Regional Court upheld the verdict of the court of first instance and rejected Ms. Kharkova's appeal (the matter was not reviewed by the Court of Cassation).

On 13 December 2017, based on the results of his examination of the criminal case and the petition of Ms. L. Kharkova, Mr. M.M. Akhmetzhanov, Deputy Prosecutor-General of the Republic of Kazakhstan, informed the petitioner that there were no grounds for bringing a cassation appeal.

In view of the fact that the response to Ms. L. Kharkova's petition was signed by Mr. M.M. Akhmetzhanov, the Deputy Prosecutor-General, it follows that she has the right to reappeal to the Prosecutor-General with a petition for a challenge and a response signed by the Prosecutor-General personally.

### **3. Regarding the incident of 12 September 2017**

*(Please provide information on any concluded or ongoing investigation concerning the incidents of 12 September 2017 and 14 September 2017, as well as on the measures adopted to ensure the safety of the members of KNPRK and their families)*

On 12 September 2017, the District Internal Affairs Authority of Bostandyk district in Almaty received a message that an unknown man, approaching a Subaru Forester vehicle belonging to [REDACTED] (an acquaintance of Ms. L. Kharkova), placed a box under the said vehicle at the following address: 15, Kazakhfilm micro district, Almaty, near School No. 70.

On the same day, this incident was registered at the District Internal Affairs Authority of Bostandyk district in Almaty under No. 177514030021126. Bomb disposal experts found no explosives when examining the contents of the box.

On 13 September 2017, the message was filed as an indexed registered record owing to the absence of signs of a criminal offence. There are no grounds for initiating a pretrial investigation.

The Regional Prosecutor agreed with the decision made by the Prosecutor.

Moreover, according to the data of the Almaty Prosecutor's Office and Ms. L. Kharkova's own petitions, there are no criminal cases concerning Ms. L. Kharkova with the prosecutorial authorities in Almaty.

### **Regarding the arson of the car belonging to Ms. L. Kharkova's son**

On 15 September 2017 at 11.13 a.m., the Al'-Farabi police department at the District Internal Affairs Authority in Shymkent received a message that in the evening of 14 September 2017 a Fiat Bravo car (with registration X 018 PCN) had been set on fire in the courtyard of 91a, Perov Street, Shymkent.

It has been established that this car belongs to [REDACTED] (Ms. Kharkova's son), who indicated that the car had spontaneously combusted owing to a fault in the electrical system. His mother had then called the fire brigade, who extinguished the fire (the total damage was approximately T 400,000).

Owing to the spontaneous combustion, he is not filing a claim.

On 15 September 2017, this incident was registered with Al'-Farabi police department, and on 16 September 2017, the material was filed as an indexed registered record (No. 175112030033878).

The Regional Prosecutor agreed with this decision.

**4. Information on the measures taken by the Government of Kazakhstan to ensure that labour rights defenders can perform their activities without risk of threats or persecution of any type**

*(Please provide information on the measures adopted by your Excellency's Government to ensure that labour rights defenders can perform their activities without risks of threats or persecution of any type)*

In Kazakhstan, trade unions are established as public associations and are non-commercial organizations. The conditions for their creation, reorganization and dissolution, as well as for their activities, are regulated by the Trade Unions Act (hereafter, the Act).

Trade unions are founded on the basis of the equality of their members, and there is no restriction on the number of trade unions that can be created in a single sector or organization.

All trade unions are provided with equal legal opportunities. It is prohibited to obstruct the creation of a trade union, oppose its activities or unlawfully interfere in its affairs (article 4 of the Act).

No prior authorization is required to establish a trade union organization in Kazakhstan.

Article 8 (1) of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) states that, in exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land.

Article 17 of the Act has a similar norm, whereby trade unions shall comply with the legislation of the Republic of Kazakhstan, the provisions of their charter and the decisions of trade union bodies.

In that regard, Kazakhstan has created sufficient conditions and guarantees for the activities of public organizations, including trade unions.

The Ministry of Labour and Social Protection has drafted the framework of a bill on amendments and additions to certain legislative acts of the Republic of Kazakhstan on issues of trade union activity, which has been considered by the Ministry of Justice within the limits of its competence.

The framework draws attention to the shortcomings of the current Trade Unions Act in relation to the obligation on trade union organizations to confirm their compliance with legal requirements within a period of six months, which gives rise to the possibility of registering sham trade unions who do not have the corresponding membership base, while also constituting an additional barrier in the form of a "two-step registration procedure".

In this regard, in order to simplify the procedure for registration of trade unions, amendments to the Act have been put forward whereby the documents necessary for State registration of trade unions shall be submitted to the registration authority no later than two months after the day on which the founding assembly (conference, meeting) of the trade union is held, with due regard for compliance with the requirements set out in articles 11 (3), 12 (3), 13 (2), 13 (3) and 13 (4) of the Act.

**Regarding the rights of rights defenders**

All citizens of the Republic of Kazakhstan, including those engaged in human rights activities, enjoy equal rights.

In accordance with article 19 of the Code of Criminal Procedure, a person is presumed innocent until proven guilty of a criminal offence in a manner prescribed by the Code and in accordance with an enforceable sentence handed down by a court.

