

(Translated from Russian)

Information regarding the joint communication from the United Nations Human Rights Council special procedure mandate holders concerning Elena Semenova

We have the honour to provide the following information in response to the joint communication concerning Ms. Elena Semenova from 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 rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

According to information from the Supreme Court of the Republic of Kazakhstan, Elena Semenova was found guilty of an administrative offence under article 488 (1) of the Administrative Offences Code of Kazakhstan by a decision of 25 October 2016 of the Atyrau Special Administrative Court, which was upheld in full by a decision of 16 November 2016 of the appellate division of Atyrau Provincial Court, and she was ordered to pay a fine of 20 times the monthly calculation index, in the amount of 42,420 tenge.

According to the court rulings, Ms. Semenova violated the requirements of the Act of 17 March 1995 on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations.

In accordance with article 32 of the Constitution, citizens of Kazakhstan have the right to assemble peacefully and unarmed and to hold assemblies, rallies, demonstrations, marches and pickets.

The courts found that at approximately 10.05 a.m. on 25 October 2016, Ms. Semenova had held up a placard in front of Atyrau City Court No. 2 without a permit for picketing.

These actions by Ms. Semenova show that she had organized an unauthorized picket, without the local authorities' approval.

Ms. Semenova holds that her right to peaceful assembly was unduly restricted.

The fact that Ms. Semenova is guilty of committing an administrative offence is confirmed by an 06 administrative offence form No. 328148 of 25 October 2016, a report, a record, a video recording, a statement by the official who completed the administrative offence form [REDACTED] and other evidence in the case.

The provisions of article 21 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan in Act No. 91 of 28 November 2005 state that the right to 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.

The modalities and procedures for expressing public, group or individual interests in public places, as well as some restrictions on this, are set out in the Act, article 9 of which provides that persons who violate the established procedure for organizing and holding assemblies, rallies, marches, pickets and demonstrations are liable to penalties in accordance with the law of Kazakhstan.

In accordance with article 2 of the aforementioned Act, public actions in the form of rallies, pickets, demonstrations and marches are authorized once permission has been received from the local authorities.

Therefore, the actions of Ms. Semenova fall under the corresponding provision of the Administrative Offences Code and the decisions of the first instance and appellate courts are final.



Furthermore, on 25 July 2017, an Act came into effect that amended and supplemented various pieces of legislation in order to harmonize them with the Constitution, thereby providing for fundamental changes to the Administrative Offences Code.

These included a new procedure for cassation appeals in administrative cases.

Whereas before the adoption of this Act, final decisions on administrative cases could be reviewed in the Supreme Court only when challenged by the Procurator General or deputy procurators, other persons, as long as they comply with the requirements of the Administrative Offences Code, may now independently petition the court of cassation to have the final court order in an administrative case reviewed.

In accordance with article 851 (4) of the Administrative Offences Code, in addition to the procurator who has the right to submit a cassational protest, the following persons have the right to file a petition:

- The person who has been penalized under administrative law
- The victim
- Their legal representatives and counsel
- Representatives of legal entities
- The competent authorities (officials) who brought the proceedings, through their central authorities

The petition or protest, together with the case file, is referred for consideration to a special chamber of the Supreme Court.

In accordance with article 851 (5) of the Administrative Offences Code, the only grounds for review are that:

- (1) Carrying out the decision could lead to serious and irreversible consequences for human life or health or for the economy or security of the Republic of Kazakhstan.
- (2) The decision violates the rights and lawful interests of the general public, or is otherwise counter to the public interest.
- (3) The decision violates the principle of uniform interpretation and application of the law by the courts or competent authorities (officials).

In keeping with this provision, the petition must always indicate:

- Which serious and irreversible consequences for human life or health, or for the economy or security of the country could result from the execution of the decision
- Which rights and lawful interests of the general public the order violates, or in what other way it is contrary to the public interest
- How the decision violates the principle of uniform interpretation and application of the law by the courts or competent authorities (officials)

In the absence or non-indication in the petition of these grounds or the other information stipulated in article 848 (8) of the Administrative Offences Code (*name of official to whom the petition is addressed; name of the party submitting the petition; address and procedural status of the party submitting the petition; the courts that considered the case in the first instance and on appeal and the content of their decisions; the court ruling to which the petition refers*), the petition is returned to the person who filed it without being considered.

Therefore, in accordance with article 851 (4) of the Administrative Offences Code, an offender who disagrees with a court ruling has the right to petition the Supreme Court for a cassation review of a final court ruling if the requirements of the Administrative Offences Code are met.

Moreover, according to information from the Ministry of Internal Affairs, on 3 July 2018 a video was posted on Ms. Semenova's page, in which she assures her audience of the accuracy of the information she had disseminated regarding the self-harm that had occurred among prisoners in facility AK-159/1 of the Penal Correction Department in Karaganda province.

On 4 July 2018, a video was posted on the same page, in which Ms. Semenova talks about the incapacity of the Government of Kazakhstan to rectify the situation regarding torture and the use of “*genocide against its own people*”.

On this basis, on 12 July 2018, the Department of Internal Affairs of Karaganda province initiated a pretrial investigation under article 274 (2) of the Criminal Code (*dissemination of information known to be false through the mass media or information and communication networks*).

According to the Ministry of Internal Affairs, work to conduct all the necessary investigative procedures and expert appraisals for the criminal case is ongoing; a legal assessment of the actions of Ms. Semenova and other persons will be made on the basis of the results. The Ministry of Internal Affairs Investigation Department is overseeing investigation of the criminal case.

According to information from the Procurator’s Office of Karaganda province, work is continuing on all the necessary investigative and operational measures in the case and the appropriate expert appraisals have been commissioned.

According to further information from the supervising authority, preventive measures have not been taken against Ms. Semenova and so she has not been detained.

The results of the investigation concerning Ms. Semenova will be communicated by the prosecuting authority. The provincial procurator’s office is overseeing the investigation.
