



MISSION PERMANENTE  
DE LA RÉPUBLIQUE DU KAZAKHSTAN  
AUPRÈS DE L'OFFICE DES NATIONS UNIES  
ET DES AUTRES ORGANISATIONS  
INTERNATIONALES AYANT LEUR  
SIÈGE A GENÈVE

Réf. № 20-404

The Permanent Mission of the Republic of Kazakhstan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and in reference to letter AL KAZ 4/2019 from 25/10/2019 has the honor to transmit the following response of the Minister of Justice of the Republic of Kazakhstan H.E. Mr. Marat Beketayev to Joint communication from Special Procedures.

*Enclosure: as stated, 101 pages.*

The Permanent Mission avails itself of this opportunity to renew to the OHCHR the assurances of its highest consideration.

**Geneva, December « 23 », 2019**



**Office of the High Commissioner for  
Human Rights**

**Geneva**

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December 19, 2019

On behalf of the Republic of Kazakhstan (the “Republic”), I write in response to the October 25, 2019 letter to Ms. Zhanar Aitzhanova, Ambassador Extraordinary and Plenipotentiary of the Republic. The Republic appreciates the opportunity to respond to the letter and provide information on the Republic’s longstanding commitment to freedom of opinion and expression.

At the outset, I note that the Constitution of the Republic guarantees the rights of its citizens to the freedom of speech and of assembly. *See* Art. 20, ¶¶ 1-2, Art. 32. The Constitution also establishes that the Republic’s citizens enjoy the right to have diversity of ideology and political thought. *See* Art. 5, ¶ 1 (guaranteeing that the Republic recognizes “ideological and political diversity”). In addition, the Republic’s Constitution guarantees its citizens’ rights of free opinion and expression by making clear that they “shall have the right to freedom of forming associations.” Art. 23, ¶ 1. The Constitution further establishes a guarantee of protection against any form of discrimination. *See* Art. 14, ¶ 2 (“No one may be subjected to any discrimination on the grounds of origin, social, official and property status, gender, race, nationality, language, religion, beliefs, place of residence or any other circumstances”).

Moreover, the Republic’s Criminal Code makes it illegal to use force or the threat of force to prevent any citizen from exercising rights guaranteed by the Constitution. *See* Criminal Code, Special Part, Ch. 3, Art. 145. This provision ensures that all Constitutional rights of the Republic’s citizens are broadly protected. Under the Republic’s Criminal Code, it is a crime for any citizen, acting either in a private capacity or as a public employee, to directly or indirectly restrict rights guaranteed by the Constitution “on grounds of origin, social, official or property status, sex, race, nationality, language, attitude to religion, beliefs, place of residence, membership of public associations, or any other circumstances.” *Id.* Such protections are extended to all persons, independent of “origin, social, official and property position, sex, race, nationality, language, religion, beliefs, membership of public associations, place of residence or any other circumstance.” *See* Criminal Code, § 1, Art. 16, ¶ 4.

In addition to the protections provided under its own laws, it is also important to note that the Republic is committed to complying with international treaties and agreements. Article 4, ¶ 3 of the Constitution provides that, when the Republic ratifies an international treaty, that treaty will preempt any law of the Republic that is related to the same subject matter as the treaty. For example, on November 28, 2005, the Republic ratified the International Covenant on Civil and Political Rights (the “ICCPR”), thereby giving it full legal force under the Republic’s Constitution. Article 19 of the ICCPR guarantees the universal right of freedom of opinion and of expression, including the right to “seek, receive and impart information and ideas of all kinds.” ICCPR, Art. 19, ¶ 2. The ICCPR further

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protects the right to assemble peacefully. *See* ICCPR, Art. 21. By virtue of ratifying the ICCPR, the Republic committed to enforcing these and all of its provisions.<sup>1</sup>

In furtherance of the goal to ensure that citizens may assemble in public safely, the Republic requires prior application and approval of public meetings and rallies, which is a procedure commonly adopted by many countries throughout the world. *See* Law On the Procedure for Organizing and Conducting Peaceful Meetings, Rallies, Marches, Pickets and Demonstrations. This application requirement is administered without consideration of the content or purpose of any proposed assembly. In administering this approval process, the Republic takes steps to ensure that those engaging in public assembly do so in a way that is otherwise consistent with the laws of the Republic. The purpose of these administrative requirements is to ensure the ability of the citizens of the Republic to safely exercise the rights set forth in the Republic's Constitution.

I note that in 2019 year to date, more than 130 separate public gatherings and rallies have been held by various women's groups. These include meetings decrying violence against women, supporting mothers, and promoting the rights of individuals from all sexual orientations. I firmly believe the record establishes that the Republic is a place where all people enjoy the right of free speech and assembly, and the Republic will continue to ensure that such rights are maintained for future generations.

With this introduction, I turn to the specific questions your letter:

**Question 1:** *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

**Response:** Please see the detailed responses below.

**Question 2:** *Please explain how the grounds evoked for the discontinuation of the registration process of "Feminita" as a legal entity are compatible with Your Excellency's international human rights obligation, particularly with regard to the right to freedom of expression and association.*

**Response:** The Republic's Law on State Registration of Legal Entities and the Registration of Branches and Representative Offices of April 17, 1995, (the "Law on State Registration") governs the process by which organizations and associations form and operate. One such requirement is that all associations, regardless of their form, purpose, members, or activities, must apply for registration. *See* Law on State Registration, Art. 3. Applications are accepted if they meet registration requirements, including that the association's Charter must comply with the laws of the Republic. An additional requirement

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<sup>1</sup> While the ICCPR provides strong protections of the rights of free expression, free speech, and free association, it also recognizes that those rights may "be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health and morals." ICCPR Art. 19 ¶ 3.

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for non-profit associations is that their applications must include an organizational purpose and proposed activities that align with that purpose. The organizational purpose must be designed “to achieve social, cultural, scientific, educational, charitable, managerial goals,” and satisfy “the spiritual and other needs of citizens.” *See* Law on Non-Profit Organizations, Art. 4.

The Kazakhstan Feminist Initiative (“Feminita”) is an association founded in 2017 by Gulzada Urbalakyzy Serzhan (Ms. Serzhan) and Zhanar Sansyzbaevna Sekerbaeva (Ms. Sekerbaeva) for the purpose of protecting “the rights and legitimate interests of individuals, namely, to promote the protection of the rights of women with physical and mental disabilities, LGBTIQ (lesbian, bisexual, trans people, intersex, queer) communities, sex workers, raising awareness in the field of human rights.” *See* Exhibit 1, Feminita Charter, § 2. On December 27, 2017, Feminita submitted its application for registration as a Public Fund—a form of non-profit association—to the Republic’s Department of Justice (the “Department”).

On January 9, 2018, the Department denied Feminita’s application, without prejudice (meaning Feminita retained the ability to resubmit its application), because the Department determined that the organization’s Charter did not satisfy the registration requirements for non-profit associations. *See* Exhibit 2. Specifically, the Department denied the application because the application lacked sufficient information for the Department to determine whether the purpose stated in Feminita’s Charter to “promote the protection of the rights of [. . .] sex workers” was consistent with the laws of the Republic prohibiting the practice of prostitution. I emphasize that the denial of Feminita’s initial application was without prejudice, meaning that Feminita could submit a further application once the deficiencies in the application were corrected.<sup>2</sup> Further, shortly after the Department issued its order denying Feminita’s application without prejudice, the Department informed Feminita that the organization’s purpose, as defined in the Charter, needed to be clarified in order for the Department to evaluate whether its application comported with the laws of the Republic.

Feminita subsequently re-submitted its application twice, on February 13, 2018, and December 20, 2018. *See* Exhibit 2. Neither submission contained any changes to the application materials or its Charter, and neither clarified the meaning of the organization’s stated purpose of promoting the rights of sex workers. Because there was no difference between these applications and the one previously submitted, both were also denied without prejudice, on February 20, 2018, and January 3, 2019, respectively. *Id.* Again, the Department returned all application materials and informed Feminita of the deficiencies that needed to be corrected. Importantly, Feminita still retained the ability to amend its Charter to bring it into compliance with the Republic’s laws. Feminita also retained the ability to file an administrative appeal with the Ministry of Justice, which would have reviewed the

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<sup>2</sup> That the denial was due to legal deficiencies in Feminita’s Charter, rather than any discrimination based on the subjects of which Feminita was advocating, is evidenced by the successful registrations of other associations with purposes and activities similar to Feminita’s. Such associations include the Gay and Lesbian Alliance (BIN 011040008019, registered October 16, 2001); Community Foundation (BIN 100540005544, registered May 12, 2010); OO Zhemchuzhina (BIN 971140002687, registered March 11, 1997); and Amulet (BIN 081240011049, registered December 18, 2008).

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application materials and made a determination about whether Feminita met the requirements of registration.

However, rather than amend its Charter to comply with the Republic's laws or pursue available administrative avenues, Feminita instead chose to file an appeal of the denial of its registration with the Republic's independent judicial system. After reviewing the merits, on May 27, 2019, the Medeu District Court of Almaty (the "District Court") upheld the denial of Feminita's registration, reasoning that Feminita's Charter did "not meet the requirements of the law," and that the deficiencies indicated in the previous denial had not been corrected. *See* Exhibit 3, Court Decision, case No. 7517-19-00-2/10338, May 27, 2019. Feminita subsequently appealed the District Court's judgment, which was upheld by the appellate court. *See* Exhibit 4, Decision of Judicial Chamber, No. 2a-6757/19, September 3, 2019. While Feminita retains the right to further appeal to the Supreme Court, it has not yet done so.

Even following these court decisions, Feminita retains the ability to amend its Charter to comply with the law and reapply for registration. To that end, on October 14, 2019, the head of the Department met with Ms. Serzhan (one of Feminita's co-founders) to discuss potential next steps for correcting the issues with Feminita's application. At that meeting, Ms. Serzhan expressed her intention to consult experts to ensure that when the Fund re-submits its materials, it will comply with the Republic's laws regarding such applications. To date, rather than clarify its Charter to avoid provisions potentially advocating positions that conflict with the Republic's ban on prostitution, Feminita has instead spent considerable energy falsely suggesting to the international community that the denial of its registration stems from a bias against the LGBTQ community. That is simply untrue. The Republic remains ready to approve Feminita's application once it follows through on its commitment to disavow any position that advocates, implicitly or explicitly, for the promotion of prostitution.

Finally, the Republic notes that Feminita retains the ability to operate, including the ability to organize events and apply for permits to hold rallies in support of the causes it supports. Indeed, Feminita successfully applied for and conducted a rally in support of equal rights for women on December 8, 2019.

**Question 3:** *Please indicate the measures taken to ensure that human rights defenders, including those working towards the protection from violence and discrimination based on sexual orientation, gender identity and for gender equality in Kazakhstan are able to carry out their human rights activities, including the exercise of their right to freedom of expression, peaceful assembly and association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.*

**Response:** In addition to the specific provisions of the Republic's laws guaranteeing the right of free expression, assembly and association, the best evidence of such groups being able to carry out their activities safely is the ample record of such groups doing so. For example, in 2019 alone there have been several rallies successfully held advocating for women's and LGBT rights, and against discrimination:

- On August 18, 2019, members of the association “Tiner Zhayzer” held a rally in Almaty to raise awareness about domestic violence against women;
- On September 28, 2019, students held a demonstration against sexual and domestic violence; and
- On December 8, 2019, Feminita held a demonstration in support of equal rights for women. *See Exhibit 5, Approved Permit Applications.*

This activity was carried out peacefully and successfully, and no legal actions were taken against organizers or participants. And as referenced in the response to Question 2, Feminita was able to obtain a permit to hold its rally despite not having successfully registered as a Public Fund. I respectfully submit that these examples are a reflection of the Republic’s longstanding protection of the rights of free expression, assembly and association.

**Question 4:** *Please provide further information on the legal grounds for denying permission to hold a Women’s March, and the summoning of Ms. Veronica Fonova, and explain how these measures are compatible with Kazakhstan’s international human rights obligations.*

**Response:** Ms. Fonova first applied for a permit to organize a march in support of women’s rights in the Republic on February 13, 2019. *See Exhibit 5.* The application requested access to Astana Square in Almaty, from 11:00am-12:00pm for purposes of holding a rally. However, under the laws of the Republic, events of this kind are approved to be held only in specific locations, and Astana Square is not one of those locations.<sup>3</sup> Thus, Ms. Fonova’s application was denied on the basis of the proposed location of the march, and not on the content of the proposed protest.

Ms. Fonova subsequently applied to hold a march on April 17, 2019, May 6, 2019, May 30, 2019, and July 17, 2019. *Id.* Each application requested access to an approved location, but those dates were unavailable because of prior commitments (for example, one of the requested facilities had already been booked for a national sports competition on the requested date; another was unavailable because of previously scheduled maintenance of the requested facility).

The denial of Ms. Fonova’s application had nothing to do with the substance of the planned protest. Indeed, an application for a protest to advocate for similar issues (i.e., raising awareness of domestic violence and advocating for crisis centers to aid abuse survivors), submitted on August 23, 2019, by a group which had requested an available venue on September 28, 2019, was approved. *Id.* This rally, which attracted over 100 people, was successfully conducted without incident.

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<sup>3</sup> The Law on the Procedure for Organizing and Holding Peaceful Meetings, Rallies, Marches, Pickets, and Demonstrations grants local authorities the power to regulate the procedures for such events within their boundaries. Almaty has designated two locations: the square behind the Sary-Arka cinema and Yuzhnyi Park. *See Maslikhat City Council Resolution No. 6-33/1323CK, December 15, 2017.*

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Moreover, Feminita's December 8, 2019, rally was organized with the purpose of celebrating diversity and advocating for "equal rights and opportunities for women in society." *Id.* Given the similarity of topics between these approved events and Ms. Fonova's proposed event, I respectfully submit that this constitutes strong evidence that Ms. Fonova's application was handled appropriately and without consideration to the substance of the planned protest.

**Question 5:** *Please provide information on the legal grounds for the arrest and detention and the judicial procedures introduced against Ms. Zhanar Sekerbayeva, and explain how those measures are compatible with international human rights norms and standards.*

**Response:** On August 8, 2018, Ms. Sekerbayeva planned and conducted a rally on a public street, despite not having obtained or even applied for a public use permit. At the rally, Ms. Sekerbayeva engaged in disruptive behavior by displaying a sign depicting an image of a naked woman in menstruation, bleeding on a traditional Kazakhstan home structure (i.e., a yurt) and further harassing individuals within earshot of her demonstration. Police officers on the scene determined that Ms. Sekerbayeva was harassing those around her and that the sign she carried was designed to offend and incite individuals in her general vicinity. Ultimately, the police officers on the scene concluded that Ms. Sekerbayeva had violated administrative prohibitions against petty hooliganism by seeking to harass and incite individuals around her.

After an investigation revealed that Ms. Sekerbayeva had orchestrated the unapproved rally, on August 15, 2018, local law enforcement detained her and notified her of charges against her relating to her unpermitted use of public property and disruptive behavior, both offenses under the Republic's Code of Administrative Offenses. *Id.* Notably, no other participants were charged with these offenses because they did not engage in the conduct at issue. It is also important to note that Ms. Sekerbayeva's arrest had nothing to do with her gender or sexual orientation. Any individual who had engaged in similar conduct would have been equally subject to prosecution for violating the laws of the Republic.

Ultimately, Ms. Sekerbayeva was fined a statutory amount of the equivalent of \$30 USD. *Id.* Ms. Sekerbayeva appealed the fine, but as there was no dispute that she had participated in the march or that she had behaved disruptively, her appeal was denied.

**Questions 6 and 7:** *Please indicate what measures have been taken or are envisaged to be taken to ensure that women and other persons are not discriminated against based on their perceived or actual sexual orientation or gender identity and to ensure enjoyment of all human rights, including their legitimate rights to freedom of assembly, association, expression and opinion.*

*Please provide information on any other measures taken by the authorities to prevent calls for, and acts of discrimination, incitement, hostility and violence against women and other persons based on their perceived or real sexual orientation or gender identity.*

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**Response:** As discussed above, the laws of the Republic form the basis of its guarantees that its citizens enjoy freedom of assembly, association, expression and opinion. Such protections from discrimination on any basis, including the basis of sexual orientation or gender identity, flow from the Republic's Constitution and are found in many aspects of the Republic's law, including the Criminal Code. In addition to these broad protections, in 2009 the Republic adopted the Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women. This legislation creates a framework for protecting citizens from discrimination on the basis of sex or gender in many areas, including public and private employment, access to healthcare, and in local and state regulation. *See* Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women, Art. 4, 9, 10, 12.

Further, the Republic has recently instituted an administrative mechanism by which individuals may report specific instances of discrimination on the basis of sex or gender. Such instances may be reported to national human rights groups, prosecutors, or directly to judges to ensure that the victim is able to enforce protections of the rights guaranteed by the Constitution and other laws. This reporting mechanism is being used with increased frequency, and has resulted in further protections being established through the courts. For example, on July 30, 2019, in a case initiated through the aforementioned reporting mechanism, the Republic's Supreme Court declared a Constitutional right to privacy that ultimately flowed from the Constitution's protections against discrimination.

**Question 8:** *Please provide information on any plans to enact legislation that would include the grounds of sexual orientation and gender identity as prohibited grounds for hate speech, incitement to discrimination, and incitement to violence and hate crimes.*

**Response:** Because the Republic is committed to protecting the values of equality and liberty and ensuring that its laws reflect that commitment, the Republic actively studies ways in which it can improve the legal framework in place to protect those values. The National Commission for Women and Family and Demographic Policy, which recently released a series of observations and recommendations, is just one example. *See* Exhibit 6. Based on that Commission's work, the Republic is in the process of drafting legislation to amend several statutes in order to introduce the concepts of both direct and indirect discrimination into many areas of law. When enacted, new protections against discrimination will be added to the Republic's Administrative Code, the Labor Code, the Code On Marriage (Matrimony) and the Family, the Laws on Education, the Laws on State Guarantees of Equal Rights and Equal Opportunities for Men and Women, the Law on Trade Unions, and others.

The Republic also takes into account developments in international law in assessing whether further steps can be taken to protect important freedoms. For example, on November 7, 2019, the Republic underwent a third review under the Universal Periodic Review, which is a unique mechanism of the Human Rights Council, within which member states give recommendations regarding potential improvements to national legislation on the topic of human rights. Under this third review, 93 member states provided recommendations to the Republic regarding ways the Republic could improve its policies and legal protections regarding gender equality and non-discrimination based on sexual

orientation and gender identity. *See* Exhibit 8. The Republic has charged the Ministry of Justice with the development and adoption of an inter-agency Plan which would implement these regulations in the Republic.

**Question 9:** *Please provide further information on measures taken by your Excellency's Government to foster, embrace and celebrate a diverse society.*

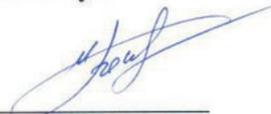
**Response:** In addition to the information above, those citizens of the Republic who advocate for family and gender issues are frequently celebrated and recognized by the government and in society. For example, since 2017 the Republic has awarded prizes to fifteen categories of non-governmental organizations which work to protect rights, with the minimum prize set at USD 10,000 total per category. *See* Law On the State Social Order, Grants and Prizes for Non-Governmental Organizations, Art. 5, ¶ 10. In 2018 the Republic awarded four such prizes within the category of "promotion of social-demographic and gender issues," in the amount of approximately USD 3,000 per organization. In 2019, three organizations received prizes of approximately USD 6,000 per organization.<sup>4</sup>

The Republic is also coordinating with members of the National Public Trust Council, representatives of international organizations, and non-profits to develop and draft a new law which would govern the procedures for organizing public meetings in the Republic. The law, which would be titled "On the Procedure for Organizing and Conducting Peaceful Meetings," will simplify the application and approval procedures for public gatherings, and introduce categories that will help applicants explain what type of gathering they desire to plan. The law is scheduled for adoption in 2020.

The Republic is grateful for the opportunity to provide information about its longstanding commitment to freedom of expression and opinion. I would welcome the opportunity to engage with UN Special Procedures further on these important topics. Thank you for your prompt attention to this letter.

**Respectfully Submitted,**

**Minister of Justice  
of the Republic of Kazakhstan  
Marat Beketayev**



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19.12.19

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<sup>4</sup> Two "Public Organizations," the Club of Women Politicians of Zhambyl Region and the Association of Business Women in Atyrau Region, and one "Public Fund," the Institute of Equal Rights and Equal Opportunities of Kazakhstan.