



ПОСТІЙНЕ ПРЕДСТАВНИЦТВО УКРАЇНИ ПРИ  
ВІДДІЛЕННІ ООН ТА ІНШИХ МІЖНАРОДНИХ  
ОРГАНІЗАЦІЯХ У ЖЕНЕВІ

MISSION PERMANENTE DE L'UKRAINE AUPRES  
DE L'OFFICE DES NATIONS UNIES ET DES AUTRES  
ORGANISATIONS INTERNATIONALES A GENEVE

14, rue de l'Orangerie – 1202 Genève,  
Tél. 022 919-87-20 Fax. 022 734-38-01

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The Permanent Mission of Ukraine 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, with reference to the Joint appeal UA UKR 1/2020 of 24 January 2020, has the honour to transmit herewith information submitted by the relevant authorities of Ukraine.

The Permanent Mission of Ukraine avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Encl.: as stated, on 5 pages.



Geneva, 7 October 2020

Office of the United Nations  
High Commissioner for Human Rights  
Geneva

## **RESPONSE OF UKRAINIAN PUBLIC AUTHORITIES**

### **on joint communication from the Human Rights Council Special Procedures with regard to Zhanara Akhmetova's case**

#### **Regarding additional information and comments of Zhanara Akhmetova's case**

The State Migration Service of Ukraine (hereinafter – the SMSU) during the examination of the application found that in the circumstances of the case of Zhanara Akhmetova there is no clear and direct causal link between the crime, for which she was convicted to 7 years of imprisonment in 2009 in Kazakhstan (Article 177 (3, b) “fraud committed repeatedly in large sizes”, Article 325 (3) “use of forged documents” of the Criminal Code of Republic of Kazakhstan) [https://online.zakon.kz/document/?doc\\_id=1008032#pos=4:227](https://online.zakon.kz/document/?doc_id=1008032#pos=4:227)), and her political activity as a supporter of a banned opposition organization in Kazakhstan, which she started after her conviction. Thus, the SMSU believes that it does have a reason to apply to Zhanara Akhmetova paragraphs 56, 59 of the UNHCR's Guide to Procedures and Criteria for Determining Refugee Status (under the 1951 Convention and the 1967 Protocol Concerning Refugee Status) which interprets the provisions of the 1951 Convention: persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees (<https://www.unhcr.org/4d93528a9.pdf>).

According to Article 6 of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" a person who, in particular, committed a crime of a non-political nature outside Ukraine before coming to Ukraine for the purpose of being recognized as a refugee or a person in need of additional protection cannot be recognized as a refugee or a person in need of additional protection if such an act under the Criminal Code of Ukraine belongs to the grave or especially grave crimes.

Upon the analysis of the extradition case of Zhanara Akhmetova, it was established that the country of citizenship does not require the return of Zhanara Akhmetova for reasons other than the need to serve her sentence for a crime that was postponed until her small child reached the age of 14 years.

The SMSU keeps receiving appeals of the citizens of Kazakhstan – plaintiffs in the case against Zhanara Akhmetova, who demand from her the return of embezzled funds. According to the information given in these appeals, the said person abducted people during 2005-2008, the total number of victims of her fraudulent actions exceeded 10 people.

According to other citizens of Kazakhstan who are protection seekers in Ukraine, Zhanara Akhmetova establishes contacts with citizens of Kazakhstan through the Internet, encourages them to come to the territory of Ukraine, financing their residence in Ukraine. Thus, Zhanara Akhmetova creates the image of the leader of the “Democratic Choice of Kazakhstan” party in the territory of Ukraine in order to manipulate public opinion, influence on the decisions of the SMSU

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and the courts of Ukraine and to create an impossibility of her to return to the country of citizenship for serving a sentence.

**On the risk assessment carried out by Ukrainian authorities to ascertain whether Ms. Akhmetova is at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, if she is extradited and how this decision is compatible with the international law standards**

According to reports of independent international human rights organizations, Kazakhstan does not differ from other countries by mass and systematic use of torture in places of pre-trial detention and imprisonment (which could serve as grounds for providing additional protection), Amnesty International report 2017/18: Human Rights in the Modern World; [https://www.refworld.org.ru/country/COI/AMNESTY\\_KAZ\\_5adef3ae4.0.html](https://www.refworld.org.ru/country/COI/AMNESTY_KAZ_5adef3ae4.0.html); Human rights Watch, 2019 World Report: Kazakhstan, 01/14/2020, <https://www.refworld.org.ru/topic/51dc066a1,51dc10513c,5e2551da7,0,...html>.

According to the Zhanara Akhmetova extradition case, Kazakhstan provides diplomatic assurances on the implementation of international treaties in the field of extradition that in the case of her return to the country of citizenship affiliation, she would not be subjected to torture or to inhuman or degrading treatment or punishment, and would be entitled to a fair trial.

In the personal questionnaire enclosed to her profile, Zhanara Akhmetova noted and informed during interviews that members of her family (mother, sister, brother, adult son and daughter) who reside in Kazakhstan, periodically visit her in Ukraine, leaving and returning freely to Kazakhstan. There is no information on the persecution of her family members in Kazakhstan in the materials of Zhanara Akhmetova personal file and in open information sources.

**On measures taken by Ukrainian authorities to fulfil obligations under the principle of non-refoulement**

Taking into account Ukraine's international law obligations and national legal norms in the sphere of refugees and persons in need of additional or temporary protection, the right of Zhanara Akhmetova to apply for protection and to appeal against the decision in court was granted by the competent authorities of Ukraine.

Following the consideration of Ms. Akhmetova's application for recognition as refugee or person in need of additional protection the SMSU has taken decisions on the basis on comparison of the subjective side of the application (the applicant's claims) and the objective side of the application (the materials provided by applicant, reports of international human rights organizations, information from open sources and extradition case materials).

The District Administrative Court of the city of Kyiv by decision of March 27, 2018 in the case No. [REDACTED] dismissed the appeal of Zhanara Akhmetova on illegality and cancellation of the SMSU decision of October 18, 2017 [REDACTED] on refusal to recognize her as refugee or person in need of additional protection.

The Kyiv Administrative Court of Appeal by the Order of July 31, 2018 cancelled the decision of the District Administrative Court of the city of Kyiv of March 27, 2018 in the case No. [REDACTED], as well as declared unlawful and cancelled the SMSU decision of October 18, 2017 [REDACTED]. The SMSU was obliged to reconsider Zhanara Akhmetova's application for recognition as refugee or person in need of additional protection.

The Supreme Court did not consider the case of Zhanara Akhmetova [REDACTED] on its merit due to the grounds specified in p.2 of the part 5 and p.11 of the part 6 of Article 12, Article 328 of the Code of Administrative Procedure of Ukraine, which stipulate that judgments in cases of insignificant complexity are not subject to appeal in cassation.

By the decision of the District Administrative Court of the city of Kyiv of September 19, 2019 in case [REDACTED] Zhanara Akhmetova was denied in the satisfaction of an administrative claim for recognition as illegal and the cancellation of the decision of the SMSU of December 22, 2018 [REDACTED] on refusal to recognize her as a refugee or a person in need of additional protection, adopted following the result of a reconsideration of her application.

The Sixth Administrative Court of Appeal by its Order of February 25, 2020 in case No. [REDACTED] partially satisfied Zhanara Akhmetova's claim; the decision of the District Administrative Court of the city of Kyiv of 19.09.2019 was revoked; the decision of the SMSU of December 22, 2018 [REDACTED] was declared unlawful and cancelled. The SMSU was obliged to reconsider Zhanara Akhmetova's application for recognition as a refugee or as a person in need of additional protection.

On the result of examination of the application, court decisions and appeals during the first appeal of Zhanara Akhmetova to SMSU, the Supreme Court of Ukraine by the Ruling of May 14, 2020 satisfied the cassation appeal of the SMSU and overturned the decision of the Sixth Administrative Court of Appeal of February 25, 2020.

By the order of the Central Interregional Department of SMSU in Kyiv of June 15, 2020 Akhmetova Zhanara Botaevna and her minor child [REDACTED] had been refused of the applications.

On June 15, 2020 Zhanara Akhmetova appealed to the Central Interregional Department of the SMSU in Kyiv and Kyiv region for the second time, citing the newly revealed circumstances for the appeal, in particular the threat to her life and safety if she returns to Kazakhstan because of her journalistic and opposition activities in Kyiv, namely: in 2018 she became a member of the organizing committee of the "Democratic choice of Kazakhstan" party, coordinator of the "Democratic choice of Kazakhstan" headquarters and headed the information channel 16/12.

On June 17, 2020, the SMSU had received a complaint from lawyer Skorbach O.I., acting in the interests of Zhanara Akhmetova, submitted pursuant to Article 12 of the Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection" (hereinafter – the Law) against the Central Interregional Department of SMSU in Kyiv order of June 15, 2020 refusing the application.

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According to Article 12(5) of the abovementioned Law, the central executive body responsible for implementation of the state policy in the field of refugees and persons in need of additional or temporary protection must decide on complaint within one month from the date of receipt of the personal file.

The SMSU has examined comprehensively the documents contained in the personal file of Zhanara Akhmetova received on July 3, 2020 to determine the evidence and conditions (circumstances) needed to meet the satisfaction of Zhanara Akhmetova's complaint. Relevant applications were also submitted to the law enforcement agencies in order to obtain information regarding Zhanara Akhmetova during the decision making process.

Given the quarantine restrictions established in Ukraine in order to prevent the spread of COVID-19, the consideration of the complaint by SMSU was held on August 11, 2020 through videoconference with the participation of the parties involved: Akhmetova Zh.B., lawyer Skorbach O.I. and representative of the SMSU.

Due to the need for additional examination of court records with respect to the case of Zhanara Akhmetova, and other circumstances on which re-application are based, the deadline for decision on this complaint was extended till October 3, 2020.

According to Article 590(4) of the Criminal Procedural Code of Ukraine, the decision on the extradition of a person cannot be taken if that person has applied for recognition as refugee or person in need of additional protection, or has used the right under the law to appeal against the decision on these statuses, pending final consideration of the application, in accordance with the procedure established by the legislation of Ukraine.

**On steps taken by the Government of Ukraine to support, promote and protect the right of human rights defenders to carry out their legitimate activities, including women human right defenders**

Article 21 of the Constitution of Ukraine (hereinafter – Constitution) declares that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable.

According to Article 22 of the Constitution, human and citizen' rights and freedoms affirmed by this Constitution are not exhaustive. The constitutional rights and freedoms are guaranteed and shall not be abolished. The content and scope of the existing rights and freedoms shall not be diminished by an adoption of new laws or in the amendment of laws that are in force.

Article 24 of the Constitution states that citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

The Law of Ukraine "On Bar and Practice of Law" provides for rights, professional duties and guarantees of the practice of law. According to the Article 45 (2) of the Law, the Ukrainian

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National Bar Association (hereinafter – UNBA), namely Committee on protection of advocates' professional rights and guarantees created within UNBA, is mandated to protect the professional rights of attorneys and provides guarantees of practice of law.

In order to ensure the guarantees provided by the above Law, the Criminal Code of Ukraine stipulates criminal liability for:

- violation of the right to defense through the failure to provide access to a defense lawyer and also any other serious violation of the right of a suspected, accused or defendant to defense, if committed by investigator, prosecutor or judge (Article 374);

- interference with activity of a defense lawyer or a legal representative of a person impeding the lawful activity of a lawyer or a legal representative of a person on the provision of legal aid or violation of legal guaranties of their activity and professional secrets (Article 397);

- threats or violence against a defense lawyer or a legal representative of a person (Article 398);

- willful destruction or impairment of property owned by a defense lawyer or a legal representative of a person (Article 399);

- trespass against life of a defense lawyer or a legal representative of a person in connection with their activity related to the provision of legal aid (Article 400).

Furthermore, the Law of Ukraine "On Ensuring the Safety of Persons Involved in Criminal Proceedings" guarantees the right to legal, organizational, technical and other measures aimed at protecting life, housing, health and property from unlawful encroachments.

The legislation of Ukraine in terms of identifying and securing rights of lawyers and guarantees of advocacy and accountability for the violation of such rules is in line with international standards.

Investigation of criminal offenses committed against journalists and civic activists is under constant control of the National Police of Ukraine. The National Police of Ukraine is carrying out a range of organizational and practical measures to ensure the full protection of human rights.

Awareness raising activities on inadmissibility of human rights violations, especially in a realm of professional activity, are carried out permanently among law enforcement officials and civil servants.

The legislation of Ukraine does not differentiate the concept of protection of human and citizen's rights from the protection of rights of human rights defenders. All rights, freedoms and responsibilities of the individual and the citizen are inalienable, inviolable and protected by law. The Ukrainian legislation also does not differentiate human rights defenders by gender.

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