



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

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Enclosed: 8 pages

The Permanent Mission of the Republic of Kazakhstan to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in reference to the Joint Communication of Special Procedures AL KAZ 1/2021 dated 25.01.2021 has the honour to transmit the response of the Government of the Republic of Kazakhstan.

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

Geneva, March «22», 2021



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



**ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ПРЕМЬЕР-МИНИСТРІНІҢ ОРЫНБАСАРЫ -
СЫРТҚЫ ІСТЕР МИНИСТРІ**

**DEPUTY PRIME MINISTER,
MINISTER OF FOREIGN AFFAIRS
REPUBLIC OF KAZAKHSTAN**

**Nur-Sultan
March 19, 2021**

Your Excellencies,

On behalf of the Republic of Kazakhstan I have the honor to provide you with a formal response to your joint letter № AL KAZ 1/2021 of January 25, 2021, related to the arrest and detention of Mr Shukhrat Kibirov, Kazakhstan citizen charged with «incitement to social, national, tribal, racial, class or religious discord» (*article 174 of the Kazakhstan Criminal Code*) and «propaganda of terrorism or public calls for commission of terrorism with the use of mass media or telecommunications networks» (*article 256 of the Kazakhstan Criminal Code*).

The enclosure to this letter contains detailed and comprehensive responses of the line state institutions of Kazakhstan – General Prosecutor’s Office, Supreme Court, National Security Committee and Ministry of Internal Affairs – to the questions raised in your address.

Mr Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Ms Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

Ms Irene Khan

**Special Rapporteur on the promotion and protection of the
right to freedom of opinion and expression**

Mr Fernand de Varennnes

Special Rapporteur on minority issues

Ms Fionnuala Ní Aoláin

**Special Rapporteur on the promotion and protection of human
rights and fundamental freedoms while countering terrorism**

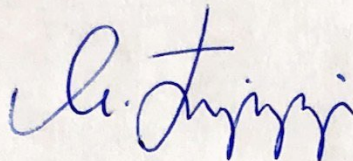
Geneva

I express my sincere hope that the information provided by the Kazakh authorities in an open and transparent manner would be sufficient to offer you more clarity on Mr Shukhrat Kibirov's case and address all your concerns.

On my personal behalf, I would like to reconfirm Kazakhstan's firm commitment to the protection of fundamental rights and freedoms, as well as willingness to further develop close and fruitful cooperation between the Republic of Kazakhstan and the United Nations.

Please accept the assurances of my highest consideration.

Enclosure: 8 pages.



Mukhtar TILEUBERDI

**Response to the questions
raised in the letter №AL KAZ 1/2021 of January 2021**

1. Please provide any additional information and any comments you may have on the above allegations.

Further information and comments:

Convicted Kibirov Shukhrat Adiljanovich (hereinafter - Shukhrat Kibirov), born on 20 April, 1985, in Almaty, is a citizen of the Republic of Kazakhstan of Uighur origin, he has higher education, not married (divorced).

Shukhrat Kibirov, after graduating from high school in Almaty, went to college, after which he entered the part-time department of the A. Kunanbayev Almaty State University. He worked in a mail delivery company, as a courier and as a market vendor. Before his arrest, he was involved in charity work with a certain "Abdullah Ustaz", a Hafiz (knew the Koran by heart). Since 2013, Shukhrat Kibirov began studying and practicing Islam by listening to audio-video lectures by Salafist preacher Rinat Abu Muhammad (Rinat Zainullin, born 1976).

On 27 November 2017, Shukhrat Kibirov was convicted by the Almalinsk district court in Almaty under Article 164 Part 1: incitement of social, national, tribal, racial or religious hatred, 233-1 Part 2: propaganda of terrorism or extremism or public calls for an act of terrorism or extremism of the Criminal Code of the Republic of Kazakhstan as revised in 1997, and sentenced to 6 years and 8 months in prison. In particular, Shukhrat Kibirov was found guilty of deliberate acts aimed at inciting religious discord, insulting the religious feelings of citizens, as well as propaganda of exclusivity, superiority and inferiority of citizens on the basis of their attitude to religion, committing these acts through the use of the media. He was also found guilty of spreading terrorism propaganda by disseminating materials with the above-mentioned content through the mass media.

The term of imprisonment began on 19 April 2017; it will end on 31 July 2023. Shukhrat Kibirov was given credit for the time spent in custody before the sentence became enforceable – 4 months and 18 days.

The judgment of the court of appeal of the Almaty City Court, dated 19 April 2018, upheld the judgment.

The judicial acts were not appealed in cassation proceedings.

The formal term of conditional release is 1 April 2020; however, Shukhrat Kibirov did not apply for the conditional release.

During the judicial debate, the defendant Shukhrat Kibirov directly questioned the objectivity of the investigation in the present case, as well as the judicial process, simply because all the officials leading the criminal proceedings, including employees of the Department of the National Security Committee (DNSC) and the Prosecutor's Office, were ethnic Kazakhs, while not a single Uighur was involved in the investigation and the judicial process. With these words, Shukhrat Kibirov actually incited inter-ethnic discord by taking advantage of the presence of representatives of other nationalities, including Uyghurs, in the courtroom. This was reflected in the court verdict.

During the investigation, Shukhrat Kibirov did not deny that he had posted religious nasheeds (songs) on social media. However, he stated that he did not know Arabic and therefore

did not know the content of the songs. He claimed that people usually dance to the music he uploaded to his website.

However, during the investigation and the trial, his allegations were totally refuted.

For instance, his ex-wife D. Kibirova, who was married to him from 2010 to 2016, confirmed that in 2010 Shukhrat Kibirov started to study Islam and the Arabic language and went to religious classes.

According to witness F. Hasanov, who was Shukhrat Kibirov's assistant, the latter knew Arabic with a grade of "4" on a five-point scale. Shukhrat Kibirov attended language courses in Arabic several days a week.

According to the witness M. Uderbaev, who knew Shukhrat Kibirov at work, Kibirov studied Arabic with him in a learning group for adults, and could read, write, parse texts and was a capable student.

Witness A. Maksutov, director of the "Furkan" centre, said that Shukhrat Kibirov had taken Arabic lessons from him at Daryn College and subsequently attended Arabic lessons at his centre.

The fact that Shukhrat Kibirov had knowledge of Arabic is also evident from the testimony of witness M. Nematov and several other witnesses questioned.

2. Please provide information on the legal and factual grounds for the arrest, detention and conviction of Mr. Shukhrat Kibirov and how they comply with Kazakhstan's obligations under international human rights law.

On 17/01/2017, citizen J. Kurbanaisov applied to the DNSC of Almaty regarding the posting of nasheed songs with the words of jihad on the social network "Vkontakte", on the page of "Alim Akhmetov".

On the same day, a pre-trial investigation was initiated by the DNSC of Almaty on this fact (case number ERDR No. 177500041000018) under Art. 164 part 1 and 233-1 part 2 of the Criminal Code of the Republic of Kazakhstan.

On 19 January 2017, after the pre-trial investigation, Shukhrat Kibirov was detained by officers of the DNSC of Almaty in accordance with Article 128 of the Criminal Procedure Code of the Republic of Kazakhstan. A decision of the investigative court of the Almalinsk district of Almaty dated 22 April 2017 authorised a preventive measure in the form of detention of Shukhrat Kibirov for a period of 2 months.

In accordance with Article 136 of the Criminal Procedure Code of the Republic of Kazakhstan, the grounds for the arrest were the carrying out by Shukhrat Kibirov of a severe crime for which the punishment is at least 5 years' imprisonment, as well as a threat to avoid punishment by hiding from the investigation and the court.

3. In particular, please provide Mr Kibirov with detailed and accurate information confirming the ownership of the social media account on which the incriminated songs were posted.

On 25/10/2014, Shukhrat Kibirov, through an employee of the Islamic Training Centre "Furkan" purchased subscriber numbers of mobile operator "Tele-2", after which he registered in the social network "VKontakte" under a fictitious name "Alim Akhmetov".

In court, Shukhrat Kibirov said that subscriber number +7-707-215-50-07 used for registration in the social network "VKontakte" under the username "Alim Akhmetov" did not allegedly belong to him, but to the Center "Furkan", and he registered this number under his name only in 2016.

Meanwhile, the court reliably established that the subscriber number +7-707-215-50-07 was registered to Shukhrat Kibirov, which he used initially, i.e. even before his registration in the social network "VKontakte". The "VKontakte" account under the fictitious username "Alim Akhmetov" was registered precisely from the number belonging to him.

The court based its conviction against Shukhrat Kibirov on the following evidence

- Testimony of witnesses A. Kazagulov, F. Khasanov, M. Uderbav, D. Kibirova, A. Maksutov, also under the pseudonym "Stark", "Romeo", which confirmed that Shukhrat Kibirov used subscriber number +7-707-215-50-07, from which the above religious songs were published, and knows Arabic, and that the "Vkontakte" page under the alias "Alim Akhmetov" belongs to Shukhrat Kibirov;

- a protocol of a personal search of the detainee on 19 April 2017, according to which a mobile phone Samsung S-3 mini with a SIM card with the subscriber number +7-707-215-50-07 was found and seized from Shukhrat Kibirov;

- A. Kazagulov's statement that mobile operator Tele-2's number +7-707-215-50-07 was re-registered in the name of Shukhrat Kibirov;

- the response of Mobile Telecom-Service (mobile operator Tele-2) to the lawyer's enquiry, the date of activation of the subscriber number +7-707-215-50-07 is 26 October 2014 in the name of A. Kazagulov, and from 16 March 2016 - in the name of Shuhtrat Kibirov;

- the testimony of witness J. Kurbanaisov, who confirmed that he contacted the DNSC of Almaty on the fact of posting on the social network "Vkontakte" on the page "Alim Akhmetov" nasheeds with the words of jihad;

- protocol of confrontation on 20 May 2017 between witness A. Kazagulov and Shuhtrat Kibirov, according to which the witness said that he bought two subscriber numbers of mobile operator Tele-2 on behalf of Shuhtrat Kibirov, which were registered in his name as a buyer, with the money for the purchase of telephone numbers belonging to Shuhtrat Kibirov, to whom he later gave these phone numbers;

- Protocol of inspection of items and documents dated 29 January 2017, according to which a page registered under the name "Alim Akhmetov" with the personal data "Alim Akhmetov" was viewed on the Internet site of the social network "VKontakte". Five suspicious audio recordings in Arabic (nasheeds) were selected and seized from the viewed materials, including: 1) Ali Dimayev. Chechen nasheed "Nochkhi Choi", size 6.32 MB; 2) nasheed "nasheed best", size 710 KB; 3) nasheed "All power belongs to Allah", size 6.13 MB; 4) nasheed "Nasheed", size 3.30 MB; 5) nasheed "Umar", size 2.77 MB.

In addition, Lieutenant Colonel R. Rustemov, Senior Investigator for Special Cases of the DNSC in Almaty, testified that during initial interrogations in the presence of a lawyer Shukhrat Kibirov voluntarily admitted that he personally created a page "Alim Akhmetov" on the social network "VKontakte" and that the mobile phone number in this case belongs to him, but later refused to give this testimony.

4. Please provide details about the incriminated songs. How these songs contain "signs of religious discord" and their publication on a social network is of such a nature as to constitute a criminal offence and how this is compatible with Kazakhstan's international obligations under the ICCPR.

Shukhrat Kibirov, on his personal page on the social networking site "VKontakte" published nasheed songs in Arabic, the titles of which are translated as "The right word - the word of austerity", "Companions with beautiful, big and shining eyes", "My mother", "Umar".

Conclusion of the forensic religious examination No. 994 dated 24.03.2017 with the involvement of a political scientist as an expert has established:

Content analysis of the materials indicates the presence of signs of military jihad propaganda in them. In the context of the translation of the nasheed, "The right word is the word of austerity", it refers to the defensive struggle of Muslims against non-believers. The author urges to counteract the aggressors with the "sword" and raises the fighting spirit of the believers.

In the texts of translations of the nasheeds "Umar" and "Companion with big, beautiful and shining eyes" the image of a shahid is mythologised, and the warrior-Muslim is made a hero. The

texts under consideration contain the concept of military jihad. The presence of the content of armed action in the texts is indicated by constructions with a corresponding meaning: "Blazing battles and combat", "We are from the ranks of combat", "soldiers of heaven". At the same time, the metaphor "soldiers of heaven" performs a propaganda function, as here there is a mythologisation of the image of a warrior fighting in the name of a religion, for whom eternal life in heaven is prepared.

Armed jihad in the interpretation of radical Islam ideologists implies military action against non-believers in order to seize power in a particular state and establish a form of government based on Shariah.

The identified content within the framework of political science research is seen as propaganda of religious extremism and its practical component of terrorism.

Thus, the texts of these songs contain signs of inciting religious hatred, discord, insulting religious feelings of believers, the propaganda of exclusivity, superiority and inferiority of citizens on the grounds of their attitude to religion.

In the nasheed, Muslims that are referred to as "lions", "the generation that walks with the light!" are opposed to the rest of society, declared "unbelievers", "godless", "cattle", and "the dirtiest of bandits". In the analysed texts of songs N. 1, 2 and 4, the negative designations "horse" (a cross between a stallion and a donkey), "monkey" and "cattle" are used against Muslim opponents. In the radical interpretation of Islam, such definitions are addressed to citizens subjectively labelled as non-believers, including Jews and Christians. Labelling, in this way, helps to create a sense of moral superiority of Muslims over others. The author of the nasheed, interpreting the tenets of Islam from an extreme position, encourages the audience to return to the environment of the time of the Prophet Muhammad, in particular the period of militant Islam, in order to destroy the world of "infidels" and to establish an "Islamic order" in the world. This, in turn, implies seizing power in secular states by violent means and establishing a theocratic form of government.

The content identified in the study is seen as propaganda of religious extremism and its practical component of terrorism.

The texts of the studied songs №1,2,4 contain ideas of jihad and self-sacrifice on religious grounds, as well as readiness to participate in jihad (so let me go, oh Mother, let me go) and encourage a voluntary desire to become a shahid.

The lyrics of Song No. 3 do not contain the ideas of armed jihad and self-sacrifice on religious grounds.

In addition, expert G. Mukhataeva, who worked as an expert at the Centre for Forensic Expertise in Almaty between 2004 and 2014, and since 2014, in a private examination fully confirmed the objectivity of the forensic religious examination report No. 994 of 24/03/2017 and also gave her detailed opinion.

5. Please provide detailed information on the disciplinary sanctions imposed on Mr Shukhrat Kibirov between May and August. What sanctions are prescribed by prison rules and regulations for what appear to be minor breaches of discipline? How do these breaches of discipline affect Mr Kibirov's eligibility to apply for parole?

Shukhrat Kibirov was detained in facility LA- 155/14 of the Department of the Criminal Executive System for the Almaty region during the period from 22 May 2018 to 9 October 2020. According to the assessment of the educational services, Shukhrat Kibirov was characterised negatively, had a first negative degree of behaviour. In total, Shukhrat Kibirov has 2 encouragements and 2 penalties:

- On 19 September 2018, a commendation for active participation in the life of the group and a good attitude to work (LA-155/14) was given;
- 20 December 2019, commendation for good behaviour and in honour of the celebration of the "Independence Day of the Republic of Kazakhstan" (LA-155/14 (LA-155/14);

- 3 June 2019, reprimanded for leaving the local area without permission from the administration of the institution (LA-155/14); on 2 December 2019, the penalty was withdrawn;
- On 18 August 2020, a reprimand was given for leaving the local area without permission of the institution's administration (LA-155/14); on 17 February 2021, the penalty was withdrawn.

Disciplinary sanctions in the form of a reprimand for violation of the boundaries of the local area (guard line, the territory of the institution, climbing on the roofs of buildings, etc.), not allowed by the internal regulations of the institutions (part 2 of Article 130 of the Criminal Executive Code of the Republic of Kazakhstan), is consistent with the requirements of the Criminal Executive Code.

From 24 October 2020 up to the present time, Shukhrat Kibirov has been serving his sentence in establishment ES-164/3 of the Department of the Criminal Executive System of the North Kazakhstan region, where he is held under normal conditions and no measures of encouragement or punishment have been applied.

In accordance with the requirements of the legislation of the Republic of Kazakhstan, consideration of issues of parole (Article 72 of the Criminal Code of the Republic of Kazakhstan), falls within the competence of the court under Article 476 of the Code of Criminal Procedure of the Republic of Kazakhstan.

Along with it, we inform that according to article 76 of the Constitution of the Republic of Kazakhstan, judicial power is carried out on behalf of the Republic of Kazakhstan, and its purpose is the protection of rights, freedoms and legitimate interests of citizens and organisations, enforcement of the Constitution, laws, other normative legal acts, international treaties of the Republic of Kazakhstan.

Under article 77 of the Constitution, any interference in the activities of the courts in administering justice shall be inadmissible and punishable by law.

In the future, in the absence of violations of the prisoners' detention order and positive assessment of their behaviour, in accordance with Article 88, part 4-1 of the CCP, convicted Shukhrat Kibirov may apply to the authorised body - the Committee of the Penitentiary System for consideration of the issue of his transfer to another institution in order to maintain socially useful ties.

6. Please explain the reasons and legality of the transfer of Mr Kibirov from prison colony LA-155/14 to prison colony EC-164/3, which is far from Almaty, where Mr Kibirov's family lives, and explain measures taken to ensure his access to his relatives and lawyers.

On 18 August 2020, the commission of LA-155/14 made the decision to transfer Shukhrat Kibirov from light conditions to ordinary conditions of detention, following confirmation of the first negative degree of behaviour.

The Constitution of the Republic of Kazakhstan establishes the protection of human rights and legitimate interests as a priority for the State. This requirement also applies to convicted persons who are part of Kazakhstan's society. Therefore, along with coercive measures, other means of influence are applied to them. One of them is to encourage law-abiding behaviour of convicted persons by implementing a progressive system while serving a sentence.

With the introduction of the new Penal Enforcement Code of the Republic of Kazakhstan, the legislation provides for the institution of a progressive system for correction of the convicted person, which includes a division into grades of behaviour.

Extension or restriction of the legal status, including the number of visits, packages, parcels, the amount of expenditure on food and basic necessities, funds available in temporary

deposit cash checking accounts and by transfer to certain conditions of confinement, depends entirely on the behaviour of the convicted person.

Shukhrat Kibirov, being in facility EC-164/3 of the Department of the Criminal Executive System, is entitled to short and long visits, parcels and packages, telephone conversations and the exercise of other rights provided for by the penal law for inmates held in medium-security facilities.

According to data from facility EC-164/3, inmate Shukhrat Kibirov makes weekly telephone and video calls with close relatives. There are no restrictive measures in maintaining socially useful ties with relatives.

7. Please explain how Kazakhstan's national security and counter-terrorism legislation and policies are compatible with the protection of all human rights, as outlined in the United Nations Global Counter-Terrorism Strategy and relevant Security Council resolutions, which insist on the necessary conformity of counter-terrorism policies, laws and practices with international human rights law, including the right to freedom of expression, thought, conscience, religion or belief, rights on fair legal action and rights of persons belonging to ethnic and religious minorities.

The Constitution prohibits the establishment and activities of voluntary associations whose aims or actions are aimed at a violent change of the constitutional order, violation of the integrity of Kazakhstan, undermining the security of the State, inciting social, racial, ethnic, religious, class or tribal strife, and the creation of paramilitary formations not provided for by law.

Pursuant to article 20, paragraph 3, of the Constitution, propaganda or agitation for changing the constitutional order by force, violating the integrity of the country, undermining the security of the State, war, social, racial, national, religious, class or clan superiority or the cult of cruelty and violence is prohibited.

According to article 2 of the Universal Declaration of Human Rights, everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.

The International Covenant on Civil and Political Rights, while proclaiming the freedom of expression, specifically states that the exercise of this right "carries with it special duties and responsibilities", and "may therefore be subject to certain restrictions. These restrictions may be imposed "for the respect of the rights or reputations of others" and "to protect national security, public order, public health or morals".

In Kazakhstan, incitement of social, national, tribal, racial, class or religious discord, under Article 164 of the Criminal Code of the Republic of Kazakhstan, as amended in 1997, is classified as a criminal offence punishable by imprisonment.