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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 High Commissioner for Human Rights and in reference to the Joint Communication from Special Procedures AL KAZ 2/2022 dated 18 March 2022, has the honour to transmit the attached 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, 16 May 2021



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

The Government of Kazakhstan has considered the enquiry of the special procedure mandate holders regarding the administrative sanctions imposed on Lukpan Akhmedyarov.

Freedom of speech and the right to receive and impart information by any means not prohibited by law are enshrined in the Constitution. Censorship is prohibited.

The exercise of human and civil rights and freedoms must not violate the rights and freedoms of others or infringe on the constitutional order and public morals.

Accordingly, these rights and freedoms may be restricted only by law and only to the extent necessary for the protection of constitutional and public order, human rights and freedoms or public health and morals.

Article 19 of the International Covenant on Civil and Political Rights provides for similar restrictions on this right, such as are laid down by law and necessary in any democratic society.

Everyone has the right to freely receive and impart information by any means that are not prohibited by law.

The exercise of this constitutional right is guaranteed through criminal liability for obstruction of the legal professional activity of journalists and other members of the media (Criminal Code, art. 158).

In accordance with article 20 of the Media Act, journalists are entitled to attend peaceful assemblies or other forms of expression of public, group and personal interests without restriction, upon presentation of a press card or other media credentials. The reason for these requirements is primarily to ensure the safety of the media members themselves and also to identify journalists. Similar practices relating to reporting on peaceful assemblies are widely used internationally.

Moreover, under 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 exercise of this right may be restricted by law in the interests of national security, public order, public health or the protection of the rights or freedoms of others.

Article 21 of the Covenant provides for similar restrictions on this right, such as are laid down by law and necessary in any democratic society.

They are enforced in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Bearing in mind these provisions of the Constitution and the Covenant, on 25 May 2020, a new Act on the Procedure for Organizing and Holding Peaceful Assemblies, was adopted, pursuant to which a notification procedure for the conduct of peaceful assemblies has been introduced.

Legislation on peaceful assemblies will be further improved, taking into account the practical implementation of the legislation and international law.

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Regarding the administrative sanctions imposed on Mr. Akhmedyarov under article 488 (6) of the Code of Administrative Offences, please note the following.

On 4 January 2022, Mr. Akhmedyarov, who was among a group of persons on Abai Square along Nursultan Nazarbayev Avenue in Uralsk, using a megaphone, took part in an illegal rally, which was being held without notification of the local authority (Act on the Procedure for Organizing and Holding Peaceful Assemblies, art. 4). During the rally, Mr. Akhmedyarov did not wear any visible media credentials (badge or press vest).

In this regard, on 7 January 2022, the Uralsk Specialized Court of Administrative Offences ordered that Mr. Akhmedyarov be held liable for an offence under article 488 (6) of the Code of Administrative Offences (Violation of the law on the procedure for organizing and holding peaceful assemblies) and imposed a penalty of 10 days' administrative detention. Mr. Akhmedyarov objected to the decision and lodged an appeal.

Mr. Akhmedyarov's arguments that he was at the rally as part of his professional journalistic activities and that his actions on that day were intended to prevent disorderly conduct on the part of the persons who had come to participate in a peaceful rally were not supported by the evidence presented in court.

The video recording presented in court established that he had actively participated in the protest rally, as it showed him proposing that participants set up a stage in the square for speeches and arrange for special loudspeaker equipment to be delivered to put forward their demands to the authorities.

The penalty of 10 days' administrative detention was imposed on Mr. Akhmedyarov, as no mitigating circumstances were established.

The court found that his continuation of the unlawful conduct despite the procurator's explanation of the law and the demand by authorized persons to cease and desist constituted aggravating circumstances.

On 10 January 2022, the appellate criminal division of West Kazakhstan Provincial Court upheld the court's decision.

Persons subject to administrative sanctions and any participants in proceedings are entitled to file an application for review and cassational protest, in accordance with chapter 46 of the Code of Administrative Offences. Mr. Akhmedyarov did not file a cassational appeal against these rulings.

In accordance with the above-mentioned court decisions, Mr. Akhmedyarov was placed in the special holding centre of the Uralsk Police Department from 7 to 17 January 2022.

He was released at the end of the period of administrative detention. He was not restricted in his access to a lawyer and used his constitutional right to a judicial remedy by filing an appeal. He did not submit any complaint about his detention conditions.

The allegation made in the third paragraph of the communication that Mr. Akhmedyarov was repeatedly subjected to unlawful arrest and detention for his human rights work is untrue.

On 27 February 2014, the Uralsk Specialized Administrative Court ordered him to pay a fine of 20 monthly notional units, or 37,040 tenge, under article 373 (3) of the Code of Administrative Offences (version of 20 January 2001).

It was found that, on 18 February 2014, Mr. Akhmedyarov published an article with a headline reading "Maybe we should stop being monkeys" on the website of the *Uralskaya Nedelya* newspaper, in which he called on citizens to take part in an unauthorized rally on 22 February 2014 at noon, in violation of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations. He did not appeal against the ruling.

On 19 May 2016, the Uralsk Specialized Administrative Court ordered that Mr. Akhmedyarov be held liable for an offence under article 488 (3) of the Code of

Administrative Offences (version of 5 July 2014) and imposed a penalty of 15 days' administrative detention.

On 16 May 2016, Mr. Akhmedyarov posted on Facebook a public call for citizens to take part in an unauthorized rally on 21 May 2016, thereby violating the requirements of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Pickets and Demonstrations.

In court, he confirmed that he was the author of the post, which he had addressed to his followers. The court took a critical view of his arguments that his post did not constitute an appeal, since it affirmed that the rally would definitely take place and that everyone should take part in it, which is to say that an appeal was widely circulated. The penalty of 15 days' administrative detention was imposed on Mr. Akhmedyarov, as no mitigating circumstances were established.

On 21 May 2016, the appellate administrative division of West Kazakhstan Provincial Court upheld the court's decision.

Regarding the assertions that Mr. Akhmedyarov was held in solitary confinement, without access to his family or a lawyer, we wish to report the following.

The requirements for the State to ensure that detained persons have access to a lawyer and uphold their right to receive visits from family members are provided for in principles 11 and 17 to 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The custody of persons in special holding centres for persons in administrative detention is regulated by Ministry of Internal Affairs Order No. 11 of 23 May 2012, pursuant to which no provision is made for visits with relatives.

Mr. Akhmedyarov faced no restrictions on his access to a lawyer.

In accordance with the above-mentioned Ministry of Internal Affairs order, video cameras are installed in special holding centres for the safety of detained persons and for the prevention of torture.

The Uralsk Police Department special holding centre for persons in administrative detention in West Kazakhstan Province, where Mr. Akhmedyarov was held, does not have any solitary confinement cells.

In accordance with the Uralsk Police Department logbook, three persons under administrative detention for other offences were held in the same cell as Mr. Akhmedyarov at the special holding centre.

The assertions that Mr. Akhmedyarov is under continued surveillance, that his WhatsApp and email accounts have been compromised and that his bank account is monitored are also false. Mr. Akhmedyarov has not made any such reports to the police.

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Regarding the reports that the authorities of Kazakhstan have summoned and questioned journalists who covered the recent nationwide protests and that at least three journalists were sentenced to administrative detention in apparent violation of journalists' rights during and after protests, and the statement by the Special Rapporteurs that investigations into the protests should not be used as a pretext to stifle critical journalism, please note the following.

During the January events, the following three journalists (including Mr. Akhmedyarov) were subject to administrative sanctions.

██████████ (reporter for *Shygys Aqqarat*)

On 5 January 2021, at approximately 1 p.m., he was participating in an illegal rally on Republic Square in Oskemen.

As explained by Mr. ██████████ himself, he arrived at the rally on his own initiative to cover the event without any assignment from the management of *Shygys Aqqarat*. He spent approximately eight hours at the rally (from 1 p.m. until 8 p.m.). He does not deny participating in the rally and admitted his guilt.

Moreover, Mr. ██████████ did not wear any visible media credentials (badge or press vest) during the rally.

On 9 January 2022, Oskemen Specialized Court of Administrative Offences ordered that Mr. ██████████ be held liable for an offence under article 488 (6) of the Code of Administrative Offences and imposed a penalty of 15 days' administrative detention.

On 17 January, upon application by the Oskemen procurator, the penalty of 15 days' administrative detention was reduced to 7 days and Mr. ██████████ was released on the same day.

██████████ (editor-in-chief of the Kokshetau Asia news agency).

On 12 January 2022, on his personal Facebook page, Mr. ██████████ published a post that subsequently causing a violation of law and order during a state of emergency.

On 12 January 2022, the Kokshetau Specialized Court of Administrative Offences ordered that Mr. ██████████ be held liable for an offence under article 478 (1) of the Code of Administrative Offences (Acts causing a violation of law and order) and imposed a penalty of 10 days' administrative detention.

On 17 January, upon application by the Kokshetau procurator, the penalty of 10 days' administrative detention was reduced to 5 days and Mr. ██████████ was released on the same day.

As can be seen from the cases described above, the administrative proceedings against the journalists were carried out in line with the legislation in force and international human rights standards. Investigations into the protests are not being used as a pretext to stifle critical journalism in Kazakhstan.

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Regarding psychological pressure and inhuman treatment, a previous letter from ██████████ reported on psychological pressure and inhuman treatment against the human rights defender Mr. Akhmedyarov by law enforcement officials during his time in the special holding centre of the Uralsk Police Department in January 2022.

By "psychological pressure and inhuman treatment", the authors of the communication were referring to the fluorescent ceiling lights in the facility not being turned off for three days.

National law provides that the intentional infliction of physical or mental suffering by investigators, persons conducting an initial inquiry, other officials or other persons, at their instigation of or with their consent or acquiescence, for the purpose of obtaining from the tortured person or a third person information or a confession, punishing the tortured person for an act he or she or a third person has committed or is suspected of having committed, or

intimidating or coercing the person, or for any reason based on discrimination of any kind, constitutes a criminal offence.

Moreover, pursuant to paragraphs 10 and 12 of the model internal regulations for special facilities, approved by Ministry of Internal Affairs Order No. 531 of 24 July 2018, special facilities are lit from dusk to dawn. A special facility must have artificial lighting. Electric lights are installed in recesses over the doors or on the ceiling and protected with metal grids or mesh or with shatterproof transparent material.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30 August 1955, do not contain any provisions on the illumination of prisoners' accommodation during the hours of darkness.

To date, the Human Rights Commissioner has received no complaints about artificial lighting during the hours when prisoners sleep or the resulting infliction of mental or other suffering or ill-treatment. The members of the national preventive mechanism have not issued any comments or recommendations on this subject.

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Under article 851 of the Code of Administrative Offences, final judicial acts may be reviewed either through a protest or upon application by the President of the Supreme Court or the President of a division of the Supreme Court, at the request of the offender, defence lawyer or other party.

In addition, in fulfilment of the address by the Head of State to the people of Kazakhstan of 1 September 2021, government agencies are working with representatives of non-governmental organizations and civil society to develop measures to ensure the safety of human rights defenders, including lawyers, and prevent illegal acts from obstructing their work.

In addition, in his address to the people of Kazakhstan of 16 March 2022, the Head of State announced a number of initiatives for reforms, including some intended to improve the competitiveness of the media and strengthen the role of civil society.

Pursuant to Presidential Decree No. 847 of 29 March 2022, with a view to realizing the address by the Head of State, a corresponding national plan was approved, containing specific deadlines and establishing the government agencies responsible.

It provides for a review of the Media Act, taking into consideration the interests of the State, the demands of society and media development trends, and for the elaboration of approaches to improve cooperation between the State and civil society, focused on the broad involvement of voluntary organizations and experts in the preparation and implementation of reforms.
