



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

**№ 30-44/127**

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 has the honour to transmit a letter of the Government, signed by H.E. Mr. Roman VASSILENKO, Acting Minister of Foreign Affairs of the Republic of Kazakhstan, in response to the joint communication AL KAZ 1/2024 dated March 18, 2024 of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls.

*Enclosed: 10 pages.*

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

**Geneva, May 27, 2024**



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

**Geneva**



*Roman Vassilenko*

*Deputy Minister of Foreign  
Affairs of the Republic of Kazakhstan*

Astana  
24 May 2024

**Your Excellences,**

The Republic of Kazakhstan welcomes your joint communication № AL KAZ 1/2024 of 18 March 2024.

We commend your contribution to the protection of human rights around the world, and we are grateful for the opportunity to provide the response to your communication in the Annex 1 to this letter.

I hope that the information provided by the Republic of Kazakhstan in an open and transparent manner is sufficient to offer you more clarity on the issues covered and addresses all of your concerns.

I would like to reconfirm Kazakhstan's commitment to the protection of fundamental rights and freedoms, as well as its willingness to further develop close and fruitful cooperation with the United Nations human rights bodies and mechanisms.

Please accept the assurances of my highest consideration.

**Acting Minister  
Roman VASSILENKO**

**Ms. Mary LAWLOR  
Special Rapporteur on the situation of human rights defenders**

**Mr. Clement Nyaletsossi VOULE  
Special Rapporteur on the rights to freedom of peaceful assembly  
and of association**

**Ms. Reem ALSALEM  
Special Rapporteur on violence against women and girls, its  
causes and consequences**

**Mr. Dorothy ESTRADA-TANCK  
Chair-Rapporteur of the Working Group on discrimination against  
women and girls**

Ref: AL KAZ 1/2024, dated 18 March 2024

As a party to the main international human rights treaties, Kazakhstan is committed to fulfilling its obligations and improving national legislation and law enforcement practice in accordance with international standards.

Given the serious concern expressed by the distinguished representatives of the special procedures of the Human Rights Council concerning the initiation of criminal proceedings against Dinara Smailova (also known as Dina Tansari), the founder and leader of the #NeMolchi.KZ foundation, we have the honour of bringing the following to your attention.

**On the first point of the request**

Against the background of the criminal case of ██████████, an orphanage leaver (who was an adult at the time), a dispute arose between Ms. Smailova, the leader of the #NeMolchi.KZ movement, and ██████████ who held opposing positions on the issue. Neither Ms. Smailova nor ██████████ were participants in the criminal trial in which ██████████ was sentenced to a 15-year term of imprisonment on rape charges. The conflict between Ms. Smailova and ██████████ took place on social networks, where the #NeMolchi.KZ foundation claimed that the convicted man, ██████████, was the victim of slander.

In this conflict, ██████████ was supported by other human rights organizations, which, in 2017, filed a collective complaint with the police in Almaty concerning a violation of ethical standards and of current legislation on the protection of confidential data concerning child victims of violence (Criminal Code, art. 274 (2)). ██████████ then posted an open appeal to the National Security Committee of Kazakhstan on the social network with a request to verify the activities of the #NeMolchi.KZ movement. However, the criminal case against Ms. Smailova was dismissed for lack of evidence that a crime had been committed.

At the time of the civil dispute between the activists, ██████████ was the director of a voluntary association. She only took up the post of Commissioner for Children's Rights of Kazakhstan two years later, in 2019, and thus, at the time, was acting as an ordinary citizen of Kazakhstan.

Furthermore, in 2017, former members of the #NeMolchi.KZ movement organized a press conference for journalists to make a public statement about Ms. Smailova's activities. At the press conference, they reported that the foundation had announced a fundraising drive to hire a lawyer who could represent the interests of ██████████ in court. However, according to several former co-founders and participants of the #NeMolchi.KZ foundation, it was revealed that the voluntary donations were not used for their intended purpose and that the lawyer had worked on a pro bono basis.

Further, in 2019, a civil dispute occurred between Ms. Smailova and a blogger, ██████████, on social media during the examination of a criminal case concerning rape on a train. At the time of this conflict, ██████████ was no longer a deputy, a position he had held in the lower house of the fifth convocation of Parliament, from 2013 to 2016. In response to the public statements Ms. Smailova had made against him, ██████████ charged her with insulting his honour and dignity (arts. 130 (2) and 131 (2)). But the court did not find Ms. Smailova guilty.

A number of citizens brought a civil suit before Bostandyk District Court No. 2 in Almaty against Ms. Smailova for the dissemination of unfounded information and defamation of honour and dignity. The Court, in a decision dated 9 February 2022, found that the information posted on Ms. Smailova's Facebook account (dated 28 June 2020, 17 July 2020, 9 August 2020, 5 September 2020, 6 September 2020, 8 September 2020 and 4 October 2020) was untrue.

She was ordered to pay a total amount of 560,000 tenge to the plaintiffs for moral harm. No preliminary investigation was conducted in this criminal case, and it took place exclusively under civil law.

On 16 October 2023, the Ust-Kamenogorsk Police Department opened a preliminary investigation on the basis of statements made by citizens against Ms. Smailova concerning claims of fraud (Criminal Code, art. 190 (4) (2)). According to the Ministry of Internal Affairs, investigations and forensic examinations showed that the head of the #NeMolchi.KZ foundation, in addition to spreading false information on social networks, had announced the collection of funds allegedly to help victims.

As it was not possible to establish Ms. Smailova's actual whereabouts, and as she failed to appear before the preliminary investigation bodies, on 27 December 2023, the press service of the Ministry of Internal Affairs publicly announced that criminal proceedings had been initiated against her and she was declared a wanted person. Her lawyer, [REDACTED], was present at the court hearing at which Ms. Smailova was declared a wanted person.

Given that the preliminary investigation had not been completed, the allegations that her lawyer had been denied access to the materials are untrue. Ms. Smailova's representative received copies of the rulings indicating that she had been named as a suspect, classifying her acts in the record of arrest and selecting a preventive measure in accordance with Kazakh law (Code of Criminal Procedure, art. 64 (9) (7)).

According to the results of additional checks by the Office of the Procurator General on the court proceedings mentioned in your communication, there was no evidence of pressure being brought to bear on Ms. Smailova by representatives of the authorities.

Furthermore, we have no information about the possible reasons for the ban on Ms. Smailova and her husband crossing the Georgian border.

#### **Additional information**

Between 13 November 2022 and 26 January 2024, 1,097 posts were published on the Instagram page "nemolchikz\_official", 36 of them aimed at raising funds. A total of 18 criminal cases were opened in relation to the above-mentioned posts and various procedural decisions were taken. It has been established that, in four of the criminal cases, the victims concerned did not apply to Ms. Smailova for financial assistance and, accordingly, did not receive financial assistance from the funds she said had been collected.

Information known to be false was also disseminated on Dina Tansari's social pages in respect of a rape in the town of Talgar, violent acts of a sexual nature in Yenbekshikazakh district and an attack in Iliysk district on two minors, an examination of whom allegedly showed indications of sexual violence. When checked by the criminal prosecution authorities, the claims were not borne out.

On 16 May 2022, citizen N.A. applied to the Almaty Police Department in respect of Ms. Smailova, who, on 12 May 2022, had disseminated on social networks personal information and video materials involving her son, who was a minor. A preliminary investigation was opened under article 147 (5) of the Criminal Code (dissemination of information about a person's private life, which constitutes his or her personal or family secret, without consent, in the mass media). On 27 May 2022, Ms. Smailova was named as a suspect and her criminal acts were classified under articles 147 (5) and 274 (2) (3) (dissemination of information known to be false) of the Criminal Code. Because Ms. Smailova was outside the country, she was declared a wanted person and the investigation was therefore suspended (Code of Criminal Procedure, art. 45 (7) (3), suspect absconded from the criminal prosecution authorities). The investigation in the criminal case was interrupted 19 times because forensic and philological examinations were ordered of all the posts published by Ms. Smailova on social networks.

### **On the second point of the request**

The legislation of Kazakhstan establishes that public associations are associations of citizens established on a voluntary basis to achieve statutory objectives that do not contravene the country's legislation.

All the criminal cases against Ms. Smailova were registered solely on the basis of the statements made by injured citizens as a result of the dissemination by the #NeMolchi.KZ foundation of incorrect information or of individuals' personal information that created a negative opinion in society.

In accordance with article 17 of the International Covenant on Civil and Political Rights, no one shall be subjected to arbitrary or unlawful interference with his or her privacy or family, nor to unlawful attacks on his or her honour and reputation. Everyone has the right to protection of his or her honour and dignity.

In this regard, the above provisions of the legislation of Kazakhstan fully comply with international human rights law and, in particular, with regard to international treaties to which the Kazakhstan is a party.

### **On the third point of the request**

The legislation of Kazakhstan also establishes that the State does not interfere in the affairs of public associations, nor do public associations in the affairs of the State, and it does not assign to public associations the functions of State bodies.

The review by the Procurator General's Office did not find any connection between the criminal investigations against Ms. Smailova and her human rights activities.

The Government of Kazakhstan thus did not put any pressure on the activities of the #NeMolchi.KZ foundation.

Nor was there any reason to believe that Ms. Smailova's safety in Kazakhstan could have been threatened in any way.

### **On the fourth point of the request**

Six criminal cases were opened against the founder and director of the #NeMolchi.KZ foundation, Dinara Smailova, by the Police Departments of Almaty, Almaty Province and East Kazakhstan Province for the dissemination of information known to be false, violation of privacy and fraud (Criminal Code, arts. 147, 190 and 274).

In accordance with national legislation, Ms. Smailova has the right to receive copies of the rulings naming her as a suspect, classifying the acts in the warrant of arrest and selecting a preventive measure (Code of Criminal Procedure, art. 64 (9) (7)).

In this regard, the above-mentioned documents were provided to Ms. Smailova's representative in accordance with the procedure established by law. Other information from the preliminary investigation may not be disclosed (Code of Criminal Procedure, art. 201).

The preliminary investigation is not completed. The suspect has the right to familiarize herself with other materials from the criminal case file after the end of the preliminary investigation has been announced.

The right to familiarize oneself with all materials of a criminal case after the completion of the investigative actions, i.e. access to evidence that may be used against her in court, is guaranteed by law (Code of Criminal Procedure, arts. 64, 294 and 296).

### **On the fifth point of the request**

Kazakhstan continues to implement a series of measures aimed at developing a sustainable civil society.

On the path to building an open and just society, Kazakhstan is consistently implementing the political modernization of the country on a step-by-step basis. The main goal of this process is to build a fair, competitive and transparent State.

To mark the seventy-fifth anniversary of the Universal Declaration of Human Rights, Kazakhstan adopted its third Plan of Action on Human Rights and the Rule of Law, pursuant to Presidential Decree No. 409 of 8 December 2023. The Action Plan is intended, in particular, to promote equal rights and opportunities for men and women, and to improve legislation related to the right to freedom of assembly, the right to work and trade union rights.

In addition, the freedoms of speech and expression of one's views and convictions and to receive and disseminate information in any manner not prohibited by law are guaranteed in the Constitution. Kazakhstan ensures respect for the right of every citizen to freely express his or her opinion through various platforms, including in the media and on social networks. One of the significant measures aimed at protecting the rights of civil activists and journalists was the decriminalization of libel (Criminal Code, art. 130) through its categorization as an administrative offence.

Over the past 30 years, the number of non-governmental organizations in Kazakhstan has grown from 100 to 23,000, most of which are functioning and providing a wide range of services. In practical terms, civil society institutions are active every year in political, social, economic, cultural and humanitarian spheres of life of the State and society.

The most significant developments include the adoption in 2020 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies in Kazakhstan, under which the rights of participants in peaceful assemblies were significantly expanded.

The Framework Plan for the Development of Civil Society up to 2030 defines the main tasks and priorities in the sphere of interaction between the civil sector and the State.

All the relevant basic laws concerning civil society have been adopted: on public associations, political parties, trade unions, non-profit organizations, the State social order, grants and prizes for non-governmental organizations, public councils and the procedure for organizing and holding peaceful assemblies.

The Public Oversight Act was adopted on 2 October 2023, along with amendments, to create a single legitimate institution for online petitions. The Act provides definitions of the basic concepts in the field of public oversight, the actors in and subjects of that system and their rights and obligations, it describes approved forms of public oversight and norms for reviewing their outcome, and regulates the conditions for participation in public oversight.

Human rights institutions have been established and are functioning in the country; they include the Presidential Commission on Human Rights, the National Commission on Women's Affairs and Family and Demographic Policy, the institutions of the Commissioner for Human Rights and the Commissioner for Children's Rights, the Commissioner for the Rights of Socially Vulnerable Categories of the Population and specialized ombudsmen; hundreds of non-governmental human rights organizations also work in the country.

Since 2022, a working group on the protection of human rights defenders has functioned under the Commissioner for Human Rights. It includes representatives of State bodies, the National Bar Association and civil society representatives working in the area of human rights protection.

Kazakhstan thus attaches great importance to ensuring the rule of law, observing the constitutional rights of citizens, building a democratic society, and establishing a legal culture in society in accordance with the country's international obligations.

Kazakhstan is open and welcomes constructive cooperation with international human rights organizations and United Nations institutions, and is ready to contribute to the best of its ability to supporting measures aimed at observing international human rights law.