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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the sentencing of Mr. **Vladimir Ivanovich Kozlov**, chair of the Co-ordination Committee of the People's Party "Alga!". People's party "Alga!" is a public association, currently in the process of registration with the Ministry of Justice of the Republic of Kazakhstan, which provides free legal services regarding property rights, health services, safe labour, taxes, retirement allowances, etc. Furthermore, we would also like to bring to the attention of your Excellency's Government information we have received concerning the **lawsuit against independent media outlets, including the newspapers Respublika and Vzglyad; the TV station K+ and the online video portal Stan.tv, initiated by the Prosecutor's Office of the Republic of Kazakhstan in the wake of Mr. Kozlov's trial.**

According to the information received:

On 8 October 2012, Mr. Vladimir Kozlov was found guilty by the first instance court of Aktau city and sentenced to seven and a half years of imprisonment with confiscation of property in connection to the following charges:

- instigating social, ethnic, tribal, racial or religious enmity (p. 3, art. 164 of the Criminal Code of the Republic of Kazakhstan);
- calling for forcible overthrow or change of constitutional order or for forcible disruption of the territorial integrity of the Republic of Kazakhstan (p. 2, art. 170 of the Criminal Code of the Republic of Kazakhstan); and
- creating and leading of an organized criminal group (p. 1, art. 235 of the Criminal Code of the Republic of Kazakhstan).

According to the authorities, the investigation revealed that actions of Mr. Kozlov had contributed to the strike and subsequent protest of workers from the OzenMunayGas oil producing enterprises, which ended in confrontation with the authorities. Mr. Kozlov is now in the pre-trial detention centre of Aktau city awaiting for appeal court hearings.

According to reports received, the trial of Mr. Kozlov suffered from important shortcomings, including reported violations of rights enshrined in the International Covenant on Civil and Political Rights, as well as in the Constitution and the Criminal Procedural Code of the Republic of Kazakhstan affecting the defendants' right to a fair trial.

The judicial shortcomings reported are listed below:

- violation of presumption of innocence: the verdict has not yet entered into legal force. According to the Criminal Procedural Code of Kazakhstan, it means Mr. Kozlov is still considered to be innocent. However, the official statement of the Office of the Prosecutor General issued on 9 October 2012, and information contained in TV programmes broadcasted on national channels on 7 and 8 October, could violate Mr. Kozlov's right to be considered innocent;
- Mr. Kozlov and his defense did not have an opportunity to question several witnesses in court. The Prosecutor General requested to read aloud the testimony of witnesses for the prosecution who were not present;
- throughout the process, the judge did not provide explanations for denial of requests of the defense, which could be a violation of the Art. 102 of the Criminal Procedural Code that states that "in confirming a request, or denying a request in full or in part, the party supervising a criminal process will provide a justified decree to the party making the request";
- throughout the course of the trial, it is alleged that the judge received notes from the bailiffs and secretaries of the court, which is a violation of the Art. 22 of the Criminal Procedural Code, as "Any interference in the activity of the court's administration of justice is unallowable and carries punishment by law";

- the material evidence of audio recordings of Skype and telephone conversations obtained through secret means could only be admitted as evidence following examination of the employee or employees who installed the equipment for secret surveillance. It is reported that such employees were not examined in the court, which is a violation of the Art. 130 of the Criminal Procedural Code, and raises questions over admissibility of the evidence presented by the State prosecution; and

- the defense of Mr. Kozlov was reportedly not informed beforehand that Mr. Mikhail Grachev, an expert from the Russian Federation, who together with national experts found signs of instigation of social enmity and of calls for violent overthrow of the Government in the leaflets distributed among the fired workers and statements of the defendant, would testify in court on 6 September 2012. The motion to reschedule the questioning of the mentioned expert so that the defense could prepare and to get a copy of the case record of Mr. Grachev's testimony was overruled and the judge proceeded immediately to questioning the expert, which could violate the defendants' right for defense.

Reports received indicate that the reiterated use of art. 164 of the Criminal Code of the Republic of Kazakhstan -instigating social, ethnic, tribal, racial or religious enmity- is adversely affecting the legitimate exercise of freedom of opinion and expression as well as of peaceful assembly and association partly due to the vague nature of the formulation of the concept "social discord" in the mentioned provision.

Additionally, on 20 November 2012, in the wake of Mr. Kozlov's trial, the Office of the Prosecutor of the Republic of Kazakhstan initiated a lawsuit against a number of independent media outlets, including the newspapers Respublika and Vzgl'yad; the TV station K+ and the online video portal Stan.tv, in connection with their role in reporting on the violent breakup of demonstrations by striking oil workers in Zhanaozen in December 2011, as well as on the reportedly unfair trials of those accused of having organized the demonstrations. The Prosecutor's Office based their request on the Law on Countering Extremism and on article 13 of the Mass Media Law and the motion sought the banning of the activities in Kazakhstan of the above-mentioned media outlets, as well as their recognition as being "extremists". According to the above-mentioned provisions, the propaganda of extremism could constitute grounds to shut down a media outlet. On 21 November 2012, the Medeu district court of Almaty ordered the seizure of the latest edition of the newspaper Golos Republiki at the airport.

Background:

On 26 January 2012, Mr. Kozlov was arrested on charges of instigating social enmity following the incidents and public unrest that occurred on 16 December 2011 in Zhanaozen town of Mangistau province, in western Kazakhstan. The

unrest had been preceded by the strike of workers from the OzenMunayGas oil producing enterprise which started in May 2011. The strike was declared illegal by the local court and the OzenMunayGas company fired about 1,000 workers, who later occupied the town square to protest against this alleged act of retaliation against them for exercising their right to strike.

On 16 December 2011, during the celebration of the Independence Day of the Republic of Kazakhstan, a group of former OzenMunayGas workers and hooligan youngsters committed violent acts and the police opened fire on them. According to the official statement of Prosecutor General of Kazakhstan on 25 January 2012, 64 persons were injured and 14 people killed. The death of two more people was reportedly not connected to the clashes. As a result of this social unrest, 125 facilities were set on fire, damaged and looted, including the local authority office, police station, office of OzenMunayGaz company, a hotel, stores, bank offices, etc.

A joint urgent appeal from the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of expression; the Special Rapporteur on the rights to peaceful assembly and of association; the Special Rapporteur on extra-judicial, summary or arbitrary executions; and the Special Rapporteur on torture, cruel and other inhuman or degrading treatment or punishment was sent on 13 January 2012. To date, no response has been received to this communication.

Concern is expressed at the sentencing of Mr. Vladimir Kozlov as well as allegations received indicating important shortcomings regarding his right to a fair trial and guarantees of due process. Concern is expressed that the conviction of Mr. Kozlov may be directly related to his work in the defence and promotion of human rights, more specifically his connection to the workers from the OzenMunayGas oil producing enterprise.

Further concern is expressed that the newspapers Respublika and Vzglyad; the TV station K+ and the online video portal Stan.tv appear to be targeted solely as a result of their legitimate human rights work, in particular their reporting on the demonstration in Zhanaozen and on the trials of those accused of organizing the unrest. Serious concern is expressed at the fact that anti-extremism laws are used in order to justify restricting the right to freedom of opinion and expression.

Moreover, a specific concern is expressed about reports received indicating that the reiterated use of art. 164 of the Criminal Code of the Republic of Kazakhstan is adversely affecting the legitimate exercise of freedom of opinion and expression as well as of peaceful assembly and association partly due to the vague nature of the formulation of the concept of “social discord” in the mentioned provision. Mindful of the fact that these rights can be subject to certain limitations, we are concerned that this particular provision could be used to unduly restrict and silence the work of human rights defenders

and activists, associations, media and others who may want to express legitimate dissenting views about public affairs.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

Regarding the allegations received indicating shortcomings in the legal proceedings against Mr. Kozlov, violations of the right to a fair trial and due process in the legal proceedings against Mr. Kozlov, we would like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." We would also like to refer your Excellency's Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular principle 5, which states: "Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office."

In this context, we would like to refer your Excellency's Government to article 14(2) of the International Covenant on Civil and Political Rights, which states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." The Human Rights Committee explained in its General Comment that: "It is the duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused." The Human Rights Committee further stated that: "The media should avoid news coverage undermining the presumption of innocence."

In this connection, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; and (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." In its General Comment No. 32, the Human Rights Committee further indicated that: "Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory."

The right to access information is also recognized in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 21, which states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession

or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”

Furthermore, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 1, which states: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”; and principle 6, which states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

In this connection, we would like to refer your Excellency's Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular the following principles regarding the impartiality and integrity of judges:

- Principle 2.1, which states: “A judge shall perform his or her judicial duties without favour, bias or prejudice.”
- Principle 2.2, which states: “A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”
- Principle 3.1, which states: “A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

Moreover, we wish to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance

with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In connection with the lawsuit initiated against the newspapers Respublika and Vzglyad; the TV station K+ and the online video portal Stan.tv, we would like to draw the attention of your Excellency’s government to the principle that any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression of information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

Furthermore, in connection to the allegations indicating that the situation of Mr. Kozlov is related to his work in the defence and promotion of human rights, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government article 9 para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the right of Mr. Kozlov to a fair trial, in compliance with the above international instruments. In addition, we would like a response regarding the alleged restrictions on freedom of expression or information on grounds of national security.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide detailed information on the trial of Mr. Kozlov, and indicate in particular how all trial proceedings complied with his right to a fair trial and due process guarantees as enshrined, among other, in article 14 of the International Covenant on Civil and Political Rights.
3. Has a complaint been lodged by or on behalf of the alleged victim?
4. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information concerning the national legislation related to freedom of opinion and expression, including freedom of the press, its conformity with article 19 of the International Covenant on Civil and Political Rights and with other relevant provisions included in international treaties.
6. Please indicate what measures have been taken to ensure that the legitimate right to freedom of opinion and expression as well as to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
7. More specifically, kindly comment on allegations received indicating that the reiterated use of art. 164 of the Criminal Code of the Republic of Kazakhstan is adversely affecting the legitimate exercise of the rights to freedom of opinion and expression as well as to meet and assemble peacefully.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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