

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:
AL KAZ 2/2017

16 June 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged judicial harassment of human rights organisations, including the Liberty Foundation, the International Legal Initiative Foundation and the Public Association Kadyr Kassyet**.

The Liberty Foundation is an Almaty-based human rights organisation that promotes freedom of speech, assembly, and association, as well as human rights standards in general, in addition to assistance to, and protection for, human rights defenders in Kazakhstan.

The International Legal Initiative Foundation was established in 2010 with the aim of protecting and promoting human rights in Kazakhstan. The organisation also works on legislative reforms in the country and provides free legal aid for the victims of human rights violations.

The Public Association Kadyr Kassyet is an Astana-based human rights organisation established in 2010 that conducts systematic monitoring and documentation of human rights violations; reviews the compliance of the Kazakh legal system with the standards of international human rights law, and contributes to the empowerment and development of civil society.

Kadyr Kassyet has been the subject of a previous communication, KAZ 4/2016, sent on 20 December 2016. We thank your Excellency's Government for the response provided on 27 February 2017.

According to the information received:

In accordance with the Kazakh legislation, only for-profit organisations are required to pay corporate tax. The human rights organisations in question are non-profit organisations. Therefore, reportedly in accordance with article 134 Part 2 of the Internal Revenue Code, the organisations are not liable for corporate taxation.

In August 2016, the Department of State Taxes of the Ministry of Finance of Kazakhstan initiated tax investigations into the finances of the Liberty

Foundation, the International Legal Initiative Foundation, and the Public Association Kadyr Kassyet, following a complaint filed on 3 August 2016 to the Almaty city prosecutor's office. In the complaint, the human rights organisations in question were accused of receiving foreign funding through their human rights work in order to destabilise Kazakhstan and "influence its political processes," and the authorities were requested to verify whether these organisations have been paying taxes in accordance with the law.

In December 2016, the tax authority issued a conclusion in relation to two of the inspected organisations, the Liberty Foundation and the International Legal Initiative, stating that receiving foreign funds by the organisations should be considered as profiting and therefore, in accordance with Article 96 of the Internal Revenue Code, ordering them to pay fines to the amount of 8.300 and 3.700 Euros respectively for failing to pay corporate tax. Since then, the bank account of the Liberty Foundation has been frozen, followed by a temporary suspension of the organisation's activities.

On 6 April 2017, the Inter-District Economic Court of Almaty found the International Legal Initiative guilty of failing to pay taxes and fined them as well. The Liberty Foundation is still in the process of disputing the decision of the tax authority. In the case of Kadyr Kassyet, the tax inspection has reportedly not found any violations in their activities.

On 22 May 2017, the Interdistrict Economic Court of Almaty city, during its second hearing in relation to the case of the Liberty Foundation, allowed the organisation to provide justifications to the fact that they do not profit from the grants they receive from the European Commission and international foundations, and therefore should not be subject to taxation. The Court also allowed representatives of the donors to present their positions and provide clarifications regarding the funds provided to the Liberty Foundation at the next hearing.

Concern is expressed about the judicial harassment of these non-governmental organizations, which appear to be connected to the organizations' legitimate human rights activities, including the protection of human rights defenders in the country. Further concerns are expressed regarding the application of Article 134 Part 2 of the Internal Revenue Code to target the credibility and financial viability of organizations that receive foreign funding.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the judicial proceedings against the Liberty Foundation, the International Legal Initiative Foundation and the public association Kadyr Kassyet and explain the reasoning behind the charges against these organisations.
3. Please provide information on the justification to apply Article 134 Part 2 of the Internal Revenue Code on non-governmental organizations that receive foreign funding, and explain how these prosecutions are compatible with applicable international standards under Kazakhstan's international human rights obligations.
4. Please indicate what measures have been taken to ensure that human rights defenders and organisations in Kazakhstan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment, and prosecution of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

We would like to refer your Government to article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006, which guarantee the right to freedom of opinion and expression, including the right to seek, receive and impart information, as well as the right to freedom of association. In particular, we would like to remind your Government that any restrictions to these rights may only be imposed for one of the grounds set out in article 19 and subparagraphs (a) and (b) of paragraph 3 and in article 22, and must conform to the strict tests of necessity and proportionality. In this regard, we reiterate the principle in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on reporting on human rights; discussion of government policies and political debate; government activities and corruption in government; and peaceful demonstrations or political activities.

We would also like to refer your Excellency' 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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. Furthermore, we would like to bring to the attention of your Excellency's Government to article 5 (b) of the Declaration, which provides for the right to form, join and participate in non-governmental organizations, associations or groups; and article 13 that provides for the right to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

Moreover, we would also like to refer to Human Rights Council Resolution 22/6, which calls upon States to ensure "(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy"; and (b) "that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto". (OPs 8 and 9)

Additionally, we would like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon States to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign governments and aid agencies; the private sector; the United Nations and other entities². (para 82 (b)).

Finally, we would also like to remind your Excellency's Government of Human Rights Council resolution 22/6, which states that domestic laws should create a safe and enabling environment for the work of human rights defenders. (PPs 10-13).