

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL KAZ 3/2017

12 December 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of Ms. **Larisa Kharkova** under counts of "abuse of office", as well as threats against one fellow trade unionist and her son, allegedly in relation to her activism as labour rights defender and President of the Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK).

KNPRK is one of Kazakhstan's largest independent trade union confederations. Under the presidency of Ms. Kharkova, KNPRK has been active in questioning and voicing dissent of the legal framework of trade unions in the country, including by attending the International Labour Conference in Geneva earlier this year.

The confederation was the object of one previous communication sent to your Excellency's Government on 23 January 2017, concerning its permanent dissolution for failing to comply with the requisites of article 10(2) of the Law on Professional Unions, which establishes a high threshold of necessary membership base and affiliation (case KAZ 1/2017). While we thank your Excellency's Government reply of 20 March 2017, we regret that it failed to explain how the provisions of the Law on Professional Unions are compatible with article 22 of the International Covenant on Civil and Political Rights (ICCPR).

According to the new information received:

On 9 January 2017, a case was brought against Ms. Kharkova on charges of "embezzlement of assets" and "fraud" for alleged misuse of trade union funds. The charges were later revised by the prosecutor to "abuse of office." On the same day, Ms. Kharkova's home was searched, her personal computer confiscated, and she was brought to interrogation, where agents allegedly threatened her with further action unless she resigned from the presidency of KNPRK.

On 25 July 2017, the Enbekshi District Court sentenced Ms. Kharkova on counts of "abuse of office" to 100 hours of forced labour per year during four years, four years of restricted movement, and imposed an injunction on holding office in any

public organization. The South Kazakhstan Regional Appeal Court upheld the sentence on 29 September 2017, confirming the restrictive measures against Ms. Kharkova.

During the time when these legal procedures were taking place, two threats were reported against individuals related to KNPRK and Ms. Kharkova. The first one happened on 12 September 2017 in Almaty, when a device was found under the car of a relative of a member of KNPRK's leadership, and was later found to not be explosive by the authorities. The second incident happened on 14 September 2017, when the car of Ms. Kharkova's son caught fire while being parked, with no apparent reason.

Concern is expressed about the sentencing of Ms. Kharkova under counts of "abuse of office" and the threats against a fellow trade unionist and her son, which seem to have the intention of keeping her from engaging in trade union activities, and intimidating other trade unionists and labour rights defenders.

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 and labour 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain the legal basis of the sentence against Ms. Kharkova, including the acts that allegedly amount to "abuse of office", the evidence available, and the compatibility of the procedures with articles 19 and 22 of the ICCPR.
3. Please provide information on any concluded or ongoing investigation concerning the incidents of 12 September 2017 and 14 September 2017, as well as on the measures adopted to ensure the safety of the members of KNPRK and their families.
4. Please provide information on the measures adopted by your Excellency's Government to ensure that labour rights defenders can perform their activities without risks of threats or persecution of any type.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure the rights of Ms. Kharkova and other trade unionists to associate freely and voice dissent, as well as to guarantee the safety of all the members of KNPRK and their families.

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

David Kaye

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In relation to the allegations indicated in this letter, we would like to refer your Excellency's Government to the rights to freedom of expression and association as set forth in articles 19 and 22 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan on 24 January 2006.

In this vein wish to recall the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration on Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We could also like to recall resolution 24/5 of the Human Rights Council, where it “[r]emind[ed] States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely (...) including (...) trade unionists and others (...) 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” (operative paragraph 2). We would also like to remind your Excellency's Government of Conventions 87 and 98 of the International Labour Organization (ILO), ratified by Kazakhstan on 13 December 200 and 18 May 2001 respectively.

Finally, we would like further 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, 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 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.