

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 3/2021

12 February 2021

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; 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 41/12, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the prosecution and suspension of several NGOs, including *Echo*, *Kazakhstan International Bureau for Human Rights and Rule of Law*, *International Legal Initiative*, *Kadyr Kassyet*, *Erkindik Qanaty*, *Legal Media Centre* and *MediaNet International Centre for Journalism*, for alleged irregularities in their tax filing. Kadyr Kassyet had already been the subject of two previous communication, KAZ 4/2016, sent on 20 December 2016 and KAZ 2/2017, sent on 16 June 2017. International Legal Initiative had also been subject of the latter communication. We thank your Excellency's Government for the response provided to these communications, received on 27 February 2017 and 8 September 2019 respectively.

According to the information received:

At least 13 NGOs have received notices in the last months by the tax authorities, alleging that they have filled their tax declaration forms incorrectly. The NGOs are accused of inaccuracies in their filing of reception and spending of funds from foreign sources. None of the NGOs are accused of misusing funds or tax fraud. They are however accused of presenting "false information", "falsities" or "discrepancies" in their written exchanges with the tax authorities. If the NGOs are found guilty of such "inaccuracies" or "falsities" in their report filling, they may face fines of up to 500,000 Tenge (about 1,200 USD) and suspension of activities for up to 3 months, according to article 460-1 of the Administrative Code of the Republic of Kazakhstan.

On 25 January 2021, the NGOs *Echo* and *International Legal Initiative (ILI)* received a fine of 1.1 million Tenge (about 2,750 USD) each and all their activities were suspended for three months by different offices of the Almaty City Department of the State Revenue Committee, which is part of the Ministry of Finance. The same department fined *Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR)* for 2.3 million Tenge (about 5'500 USD) and suspended all its activities for three months. It is reported that the NGOs were not given the possibility to present closing arguments and in the cases of *ILI*, *ECHO* and *KIBHR* the ruling erroneously stated that the organizations were small businesses. All three NGOs were allowed to continue their activities while appeals on the fines and suspension

have been underway. The NGO *Erkindik Qanaty* was also fined 277'800 Tenge (about 650 USD) on the above-mentioned account. All NGOs that got their activities suspended were reportedly called to meet with tax authorities between 1 February 2021 and 4 February 2021 and were orally informed that their suspensions and fines have been annulled.

The NGO *Kadyr Kassyet* received a warning for violation Art. 460-2 of the Administrative Code but the State Revenue Department of the city of Nur-Sultan annulled the warning because of procedural violations committed by the lower level department. However, the State Revenue Department confirmed the above-mentioned violation by *Kadyr Kassyet*. The organization appealed the ruling by the State Revenue Department and the responsible court decided that no violation had taken place.

It appears that the government has used the administrative persecution, the fines and suspensions as a pretext to intimidate and punish these and other NGOs for their legitimate human rights work.

Kazakhstan amended its legislation regarding the reporting requirements by NGOs in 2016 and 2017 in the Administrative Code and the Tax Code of the Republic of Kazakhstan, amongst others. Additional reporting obligations and penalties in connection with foreign funding were added. According to the amendments, all individuals and legal entities must notify the tax authorities about the receipt of money or assets from foreign sources for certain activities. In these cases, the individual or organization has to provide the tax authorities with receipts and expenditures of said money or assets. However, the conditions for such notifications are defined broadly. Failure to comply, for example in the form of untimely submission of information or providing “inaccurate or false information” on the receipt and expenditure of foreign funds, leads to heavy fines or suspension of activities for up to 3 months. However, neither the Administrative Code nor the Tax Code of the Republic of Kazakhstan define the term “false information” or “falsities”, giving the tax authorities extensive power to decide if an NGO has breached the law.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concerns regarding the recent administrative prosecution of human rights NGOs in Kazakhstan. We are concerned that the prosecution of the 13 NGOs and the sentences against four of them may be connected to the organizations' legitimate human rights activities, including in relation to the protection of human rights defenders in the country. The investigation seems to aim at undermining the financial viability and the overall running of the organizations, curtailing and obstructing their work in promoting human rights and supporting human rights. We are concerned that human rights defenders, including the directors and members of these NGOs, are adversely affected by the targeting and constraining of these organizations, precluding them from carrying out their legitimate human rights work. High fines and suspension of activities of four NGOs seem disproportionate penalties for inaccuracies in filing of administrative records. This is all the more concerning as none of the NGOs seem to be accused of misusing or misappropriating any of the funds received.

We welcome the annullement of the suspensions and fines of three NGOs and hope that further annullements of fines will follow. However, we remain worried

about the extensive reporting requirements that NGOs face and which go beyond the requirements for other sectors, such as businesses. While the legislative amendments of 2016 and 2017 do not explicitly mention NGOs by name, it is apparent that the laws are targeted at NGOs, civil society organizations and individuals working in the field of human rights. The far reaching reporting requirements, the legal uncertainty caused by vague wording of the laws and the vast powers of the tax authorities to proclaim what can be considered “false information” or “falsities” has a direct impact on the right to association and could amount to violations of Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

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 proceedings against the 13 NGOs and explain the reasoning behind the charges against these organisations.
3. Please explain why such heavy fines and suspensions have been handed down to some of the organizations, when simple corrections or resubmission of the documents could have rectified the “falsities”.
4. Please provide information as to how Kazakhstan is providing an enabling environment for NGOs and other civil society organizations according to Article 22 ICCPR.
5. 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.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to

indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Mary Lawlor
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 you Excellency's Government to the article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006, which guarantees the right to freedom of association.

In addition, in his report (A/HRC/23/39), the Special Rapporteur on the rights to freedom of peaceful assembly and of association 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 entities" (para. 82(b), emphasis added).

We would like to refer 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 wish to refer 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.

Finally, we would also like to remind your Excellency's Government of the 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).