

Committee on the Application of Standards

Date: 13 May 2021

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

► Information on the application of ratified Conventions supplied by governments on the list of individual cases

Kazakhstan (ratification: 2000)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

Concerning Mr E. Baltabay's and Ms L. Kharkova's criminal cases

The criminal cases against Mr Baltabay and Ms Kharkova are not caused by "participation in lawful trade union activities", but initiated due to common crimes.

Currently, Mr Baltabay and Ms Kharkova enjoy freedom.

Mr Baltabay, Local Trade Union, Decent Work of Petrochemical Industry Employees, NGO Chairman, misappropriated 10,800,000 Kazakhstani tenge (KZT) entrusted to him through abuse of his official position.

On 17 July 2019, Mr Baltabay was found guilty by the verdict of the Enbekshi District Court of Shymkent, under paragraph 2, part 4, of Article 189 of Kazakhstan's Criminal Code (hereinafter the CC) (misappropriation or embezzlement of entrusted property) and sentenced to seven years imprisonment and deprived of the right to hold senior positions in public associations and other non-profit organizations for seven years. The sentence shall be served in a medium security penal system institution.

The verdict has not been appealed within the established deadlines.

On 2 August 2019, Mr Baltabay admitted guilt and filed a petition for a pardon to Mr K. K. Tokayev, the President of Kazakhstan.

Mr Baltabay was pardoned on 9 August 2019, by Presidential Decree, and the unserved part of the sentence was replaced by a fine.

According to the decision of the Al-Farabi District Court of Shymkent, adopted on the same day, the unserved 2,528 days of imprisonment were recalculated as a fine amounting to KZT1,595,800, which Mr Baltabay is obliged to pay within a month of the decision date.

At the same time, Mr Baltabay was released from the Shymkent IS-167/11 Department of Criminal Justice Institution of the Ministry of Internal Affairs.

On 11 September 2019, enforcement proceedings were initiated against Mr Baltabay to recover the KZT1,595,800 fine owed to the State, which he had failed to pay.

On 1 October 2019, a submission was made to the Al-Farabi District Court of Shymkent to replace the fine imposed on Mr Baltabay by the court verdict with another punishment, due to the failure to pay the fine .

For reference: under paragraph 3 part 6 of Article 41 of the CC, the sentence (verdict) shall be enforced subject to the failure to pay the fine within the prescribed period, the pending amount of the fine shall be replaced by a term of imprisonment, calculated as one imprisonment day equal to four MCIs to be paid by the person convicted of a grievous crime.

The above sanction was replaced by five months and eight days of imprisonment by decision of the Al-Farabi District Court of Shymkent (court decision of 16 October 2019). The court sentenced Mr Baltabay to be taken back into custody in the courtroom.

Mr Baltabay was released from IS167/3 on 20 March 2020, upon the expiry of the sentence and filed a petition to the court requesting the restoration of the appeal deadlines, two months after the date of the entry into legal force of the verdict (7 October 2019).

The Enbekshi District Court of Shymkent denied the request to restore the missed deadline in its decision dated 31 October 2019.

On 24 September 2020, Mr Baltabay, with Mr Abishev representing him, appealed once again to the court against the court verdict of 17 July 2019.

The Enbekshi District Court of Shymkent dismissed the appeal due to the missed deadline to appeal the verdict in a decision dated 28 September 2020.

The additional sanction depriving him of the right to hold senior positions in public associations and non-profit organizations was not appealed by Mr Baltabay.

Moreover, until today, no petition challenging the lawfulness and validity of the trial court verdict has been filed with the Supreme Court by him or his defence.

Ms Kharkova, former leader of the Confederation of Independent Trade Unions of Kazakhstan (CITUK).

On 25 July 2017, she was sentenced to four years of restriction of liberty, confiscation of property and five-years deprivation of the right to hold senior positions in public associations and non-profit organizations due to abuse of office (Part 1 of CC Article 250), resulting in damage exceeding KZT12,000,000.

According to the CITUK Chapter, the organization was non-profit, it did not pursue profit. Despite this, Ms Kharkova, abusing her powers, concluded contracts with third-party organizations in order to extract benefits.

The funds were illegally accrued to herself and her closest employees as "bonuses", causing the union KZT2,500,000 damage.

Moreover, she placed KZT5,000,000 in her bank deposit at 13.2 per cent per annum, having withdrawn the amount from the union's account.

During the accounting audit, she failed to present documents to support the KZT8,000,000 transfer.

Investigation and forensic inquiry findings proved Ms Kharkova's guilt (accounting examinations confirming the transfer of funds, bank documents, witness statements, constituent documents of the trade union movement limiting the convict's authority to disburse funds).

On 29 September 2017, the South Kazakhstan Regional Court Appeal Panel found the verdict lawful and justified, and left it unchanged. The Appeal Panel concluded that the trial court's assessment of each piece of evidence and of the case materials was correct and reliable. The court observed the general principles of sentencing and considered mitigating circumstances for guilt and punishment.

The appeal decision indicates the court's verdict, reflecting the court's conclusions on the alleged reports on the work done in 2009–15, as submitted by the defence to the court, which were not signed or approved, nor were the minutes of their discussions submitted to the court, so the reports could not be regarded as evidence. In addition, the court noted that, during the investigation, Ms Kharkova always rejected the repeated questions on the availability of the documents pertaining to the activities of the organizations she led, and provided no reports or documents for audit and expert checks.

On 9 November 2017, Ms Kharkova was registered with probation service No. 1 of the Enbekshi District of the Department of Criminal Justice of Shymkent.

For reference: restriction of liberty consists of probation control over the convict for six months to seven years and performance by the convict of 100 hours of compulsory labour annually during the term of the sentence. The restriction on freedom shall be served at the convict's place of residence without isolation from the community.

Probation control shall be performed by the competent authority and, if the court so decides, include the convict's duties: avoidance of changing the place of permanent residence, work or study, without notification to the competent authority; monitoring of the convict's behaviour; avoidance of visiting certain places; treatment for mental and behavioural disorders (diseases) associated with abuse of psychoactive substances, and sexually transmitted diseases; provision of financial support to the family; other duties contributing to the convict's correction and preventing the convict from committing new criminal offences.

The convict petitioned for a review of the judicial acts in cassation.

The cassation petition was subject to preliminary examination by a Supreme Court judge, who requested and studied the criminal case files and rejected the referral of the convict's petition for reconsideration to the court of cassation due to the lack of grounds for review of the judicial decisions.

Ms Kharkova's petition to the Supreme Court Chairman for the submission of the verdict for a cassation review was rejected due to the absence of grounds for such submission.

It has been possible to file a conditional early release petition since 9 November 2018. Subject to Ms Kharkova's application, the restriction of freedom could be replaced by a fine (approx. KZT800,000). To allow the above, complete compensation for the damage (approx. KZT5,000,000) is required, but this right has not been exercised.

The deadline to file the conditional early release petition expired on 9 February 2019, and according to the Prosecutor General's Office, no application was submitted.

The term of Ms Kharkova's restriction of freedom expires on 9 November 2021.

With regard to the criminal case of Mr Dmitry Senyavsky, who suffered injuries, criminal intelligence measures were taken to investigate the offence.

On 15 February 2019, the criminal case was suspended due to the failure to identify the person who committed the crime.

Efforts to investigate the crime continue.

Regarding the registration of the Congress of Free Trade Unions of the Republic of Kazakhstan (CFTU)

As reported earlier, the judicial authorities refused to register the national association of trade unions "CFTU" on four occasions.

The first registration of CFTU was rejected due to the similarity to the already registered legal entity the "Confederation of Free Trade Unions of Kazakhstan". Moreover, the Charter provisions indicated its succession to the forcibly liquidated republican association of trade unions "CITUK".

According to Article 38 of Kazakhstan's Civil Code, "The title of a legal entity may not fully or substantially duplicate the title of legal entities registered in the Republic of Kazakhstan".

The deficiencies specified in the initial rejection were not remedied in the subsequent applications for registration (on 17 August 2018, 18 September 2018 and 14 November 2019). At the same time, all the irregularities are of a remediable nature.

However, to date, the violations identified have not been eliminated and the reapplication for state registration has not been submitted to the judicial authorities.

On the suspension of the activities of the Sectoral trade union of fuel and energy complex employees (STUFECE).

In accordance with the decision of the specialized inter-district economic court of Shymkent on 5 February 2021, the activities of STUFECE were suspended for six months due to the trade union's failure to confirm its status.

For reference: according to paragraph 2 of Article 13 of the Law on Trade Unions (hereinafter the Law), a sectoral trade union shall have structural units and (or) affiliated organizations in the territory covering more than one half of the total number of regions, cities of national status and the capital.

Under Article 10, paragraph 2, of the Law, sectoral trade unions must submit their registration authority with the copies of the documents certifying their compliance with the requirements of Article 13, paragraph 2, of the Law before the end of the year following registration.

Under Article 10, paragraph 3, of the Law, failure to certify a sectoral trade union's status within one year of its registration results in the suspension of its activities by judicial procedure upon application by the local executive authorities.

In March 2021, the Ministry of Labour and Social Protection of the Population of Kazakhstan (MLSP) and the representatives of the Ministry of Justice, the national trade union associations, the Federation of Trade Unions, the Kazakhstan Confederation of Labour, and the Commonwealth of Trade Unions "Amanat", organized a meeting with the head of STUFECE, Mr Koshygulov, and its representatives Ms Kharkova and T. Erdenov, to provide practical assistance on trade union registration procedures in a working group on problematic issues in trade union registration.

On 25 March 2021, STUFECE filed an appeal with the Shymkent Appeal Panel.

The session of the court of appeal was scheduled for 21 April 2021, and postponed until 29 April 2021.

The court session rescheduled for 29 April 2021 was also postponed due to the request from the representatives of the STUFECE for the recusal of the judge.

For information, on 13 January 2021, Mr Kosshygulov was appointed STUFECE Chairman according to the application made to the state service for the registration of the constituent documents, amendments and additions of legal entities.

Moreover, a working group on trade union registration issues comprising the MLSPP, the Ministry of Justice and representatives of national trade union associations has been active since 2019.

To date, problems relating to the registration of trade unions have not been reported or written or verbal complaints received.

Should complaints on trade union registration arrive, they will be duly addressed by the working group.

Concerning the activities of national associations of employers

The General Agreement for 2021–23 (hereinafter the General Agreement) was signed by the Government, national associations (associations or unions) of employers and national associations of trade unions on 12 March 2021.

The National Confederation of Employers (Entrepreneurs) of the Republic of Kazakhstan (hereinafter the Confederation) was among the signatories of the General Agreement.

The Confederation is making efforts to sign sectoral and regional social partnership agreements and its representatives are also members of national, sectoral and regional tripartite social partnership and social and labour regulation commissions.

As reported earlier, the National Chamber of Entrepreneurs “Atameken” lost its right to participate in the social partnership system as an employers’ representative and did not participate in the development and adoption of the General Agreement.

Concerning Article 402 of the Criminal Code of Kazakhstan

Amendments to Article 402 of the Criminal Code were adopted in May 2020 to reduce the liability for encouraging participation in strikes declared unlawful by the courts.

The current provisions comply with Article 21 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005, which provides that the exercise of the right of peaceful assembly shall not be subject to any restrictions other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or protection of the rights and freedoms of others.

In addition, MLSPP Order No. 89 of 29 March 2021 establishes a working group for analysis of the enforcement of labour legislation (hereinafter the Working Group), which includes representatives of State bodies, trade union associations and employers’ associations, and various experts and academics in the area of labour relations.

The Working Group shall discuss the improvement of the labour legislation, the Law on Trade Unions, and the revision of Article 402 of the Criminal Code.

Concerning the inclusion of international workers' and employers' organizations in the list of international and state organizations providing grants

As reported earlier, the MLSPP is prepared to consider the possibility of including the International Trade Union Confederation and the International Organisation of Employers on the list.

This issue will be considered subject to the relevant letters from these organizations, indicating the specific goals and areas covered by their grants.