

Committee on the Application of Standards

Date: 28 May 2022

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 information.

Regarding further improvement of national legislation to bring it into line with Convention No. 87

In order to modernize the human rights sphere comprehensively, on 9 June 2021 the President of the Republic of Kazakhstan, K.K. Tokayev, signed the Decree on Further Human Rights Measures of the Republic of Kazakhstan. The Decree identified additional new areas of human rights-related government work with a view to ensuring the primacy of the rule of law.

This means that the protection of human rights should be ensured through improvement of the Law and existing legal instruments.

On 13 April 2022, the Decree was amended by adding a new area of work – the right to freedom of association.

In order to implement the Decree, the Government has developed a Plan for Further Measures in the Field of Human Rights and the Rule of Law, which provides for “Further improvement of national legislation and law enforcement in relation to trade unions and the resolution of labour disputes, including taking into account the recommendations of the International Labour Organization” (Draft Act – by the end of 2022, Act – by the first quarter of 2023).

In pursuit of this objective, the Ministry of Labour and Social Protection of the Republic of Kazakhstan, together with the social partners, has drafted amendments to a number of legislative acts:

The first is modification of the procedure for state registration of trade unions to the notification procedure.

The notification procedure for registration involves informing the judicial authorities of the commencement of their activities by submitting an electronic notification, which is to be completed on the e-government web portal.

If this rule is adopted, the registering body will not have the right to refuse state registration of the trade union, as stipulated by existing legislation.

The second is to simplify the procedure for putting forward workers' demands in the event of a collective labour dispute.

It is planned to implement this work by amending the Labour Code of the Republic of Kazakhstan in terms of reducing the number of employees present at a meeting (conference) for it to be recognized as quorate, as well as reducing the required number of votes to make a decision from at least two thirds to more than half.

Simplification of this procedure will facilitate the resolution of collective labour disputes within the legal framework.

The third is holding short-term (one-hour) warning strikes.

Through the introduction of this regulation, employees will be given the right to demonstrate the seriousness of their intentions without harming production processes and causing losses to the employer.

This short-term action is expected to encourage employers to come to the negotiating table with no particular implications for either party.

The fourth is that during a strike, employers have no right to replace striking workers participating in a strike organized in accordance with the established procedure.

This regulation is aimed at increasing employers' interest in resolving collective labour disputes.

The fifth is assigning to the employer the obligation to provide premises and create the necessary conditions for holding a meeting (conference) of employees.

The proposed amendments are currently in the process of negotiation.

Concerning the ban on Ms Kharkova and Mr Baltabay from engaging in trade union activities

L. Kharkova's ban on holding leadership positions in public associations and other non-profit organizations expires in November 2022.

L. Kharkova requested the revision of judicial acts by way of cassation.

Her cassation application was initially examined by a Supreme Court judge with a demand to scrutinize the criminal case materials, on the basis of which a ruling was made on 7 November 2018 to refuse to transfer the application of the convicted person for consideration to the court of cassation due to the lack of grounds for reviewing the judicial acts.

On 22 May 2019 and 27 December 2019, L.N. Kharkova's application on the submission by the Chairperson of the Supreme Court on the review of the cassation sentence was returned because there were no grounds for making a submission.

E. Baltabay's ban on holding leadership positions in public associations and other non-profit organizations expires in 2026.

E. Baltabay did not appeal the additional punishment.

Concerning the case of Mr D. Senyavsky.

It has not been possible to identify the perpetrators of this criminal offence through a series of investigative and operational measures.

On 10 December 2019, the period for conducting pre-trial investigations into the criminal case was cut short due to the failure to identify the perpetrators of the crime in question.

At the same time, officers from the Shakhtinsk City Police Department are conducting operational and investigative work in order to identify the persons who committed this crime.

Upon receipt of positive information, D. Senyavsky will be notified by the criminal prosecution authorities within the time frame prescribed by law.

Concerning the Congress of Free Trade Unions of Kazakhstan National Trade Union Association

The Association submitted registration documents four times (three times in the period from July 2018 to September 2018, and also in November 2019).

Registration was denied due to the similarity of the name to that of the already registered legal entity, the Association of Legal Entities, the Confederation of Free Trade Unions of Kazakhstan Association, and also the fact that the charter made reference to the legal succession of the now liquidated Confederation of Independent Trade Unions of the Republic of Kazakhstan National Trade Union Association.

None of the comments made in the order of 25 July 2018 have been addressed in any of the subsequent registration applications (17 August 2018, 18 September 2018 and 14 November 2019).

To date, no state registration documents have been received.

Concerning the Industrial Union of Employees of the Fuel and Energy Sector

The trade union has submitted applications five times (21 September, 4 October, 3 November and 23 December 2021, and 11 March 2022) for registration of an affiliate in Atyrau region, which was denied on all five occasions (decisions of 28 September, 11 October, and 20 December 2021, and 11 February and 18 March 2022).

The reason for the refusal was the absence of a seal on the application, incomplete payment of the registration fee, inconsistencies between the affiliate's statutes and the legal entity's charter, as the statutes did not disclose the legal entity's full address.

At the same time, on 30 December 2021, an application was filed for registration of an affiliate in Almaty. However, on 10 February 2022, registration of the affiliate was denied.

On 13 April 2022, a second application was submitted for registration of an affiliate in Almaty. The affiliate was denied registration by the decision of the Almaty Department of Justice of 18 May 2022.

We note that the applicant has the right to re-apply for registration of the affiliate when the breaches are addressed.

Between 2021 and 2022 no other problems with the creation of workers' associations were recorded. The Ministry of Labour has not received any such complaints, including from the social partners.

Concerning the review of article 402 of the Criminal Code

Consideration is currently being given to the decriminalization of article 402(1) of the Criminal Code, which penalizes calls for strike action declared illegal by the court.

It is planned to make article 402(1) of the Criminal Code an administrative rather than a criminal offence. Criminal liability will only apply where incitements to continue a strike declared illegal by the court caused substantial damage to the rights and lawful interests of citizens or organizations, or to the legally protected interests of society or the State, or caused mass riots.

The proposed amendments are subject to approval by the public authorities concerned.

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

The Ministry of Labour and the Ministry of National Economy are currently considering the inclusion of a number of international organizations in the list.

At the same time, a review of the procedure for drawing up the list is being considered.

Concerning the enforcement of articles 145 and 154 of the Criminal Code and article 97(2) of the Administrative Offences Code

The Ministry of Labour has conducted an analysis of the law enforcement practice of articles 145 (violation of human rights) and 154 (obstruction of the lawful activities of employee representatives) of the Criminal Code.

Statistical data have shown that in the period from 2018 to 2022, under article 154 of the Criminal Code, two pre-trial investigations were registered (in 2018 and 2021), which were discontinued.

During the same period, no pre-trial investigations were registered under article 145 of the Criminal Code.

Likewise, no cases were recorded under article 97(2) of the Administrative Offences Code.

“In this regard, the Committee requests the Government to amend further section 20 of the Labour Code in consultation with the social partners, in order to bring it into line with the Convention and address inconsistencies in the provisions of the Labour Code referred to above. The Committee requests the Government to indicate all steps taken to this end.”

In accordance with labour legislation, workers' representatives are trade unions and their associations, and in their absence, elected representatives – elected and authorized at a general meeting (conference) of workers by a majority vote of participants in the presence of at least two thirds of the employees (conference delegates).

In order to comply with the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), labour legislation was amended accordingly in May 2020.

According to the new provisions of the Labour Code of the Republic of Kazakhstan, if the membership of trade unions is less than half of the organization's workforce, workers' interests may be represented by trade unions and elected representatives.

At the same time, collective bargaining between employers and employees without the participation of a trade union is not permitted if a trade union has been established in the organization in question.

The changes have made it possible to strike a balance between the interests of both unionized and non-unionized workers, and to take full account of the views of the entire labour collective, without infringing the rights of trade union members.

In addition, prior to the adoption of these amendments to the Labour Code, their wording was agreed upon with both the social partners and the ILO. The Ministry sent a letter to that effect, to which a positive response was received.