

Committee on the Application of Standards

Date: 30 May 2023

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 22 May 2023.

▶ Information on the application of ratified Conventions supplied by governments on the preliminary 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.

Regarding criminal liability regarding the establishment of additional penalties against trade union leaders

In order to comprehensively modernize the human rights sphere, on 9 June 2021, the President of the Republic of Kazakhstan, Tokayev Kassym-Jomart Kemelevich signed a decree “On further measures of the Republic of Kazakhstan in the field of human rights”. The decree defined new additional directions of the Government’s work in the field of human rights precisely from the position of ensuring the rule of law.

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, within the framework of which a specified section “Human rights in the field of criminal justice, execution of punishment and prevention of torture and ill-treatment” is provided. This section implies an event to develop proposals for improving criminal and administrative legislation in terms of the ratio and appointment of punishments, the application of administrative penalties in the framework of the implementation of the Concept of Legal Policy, taking into account the practice of application and recommendations of norms concerning the imposition of a ban on certain activities, including public. Thus, work in this direction continues within the framework of the implementation of this section of the Plan.

In turn, the Ministry of Labour has developed and submitted to the General Prosecutor’s Office a proposal to improve criminal legislation regarding the imposition of penalties related to the prohibition of engaging in certain activities, including public ones. In particular, it is proposed not to apply additional punishment in the form of deprivation of the right to hold a certain position or engage in a certain activity to persons elected to elective work (position) in trade unions. However, this proposal was not supported by the interdepartmental working

subgroup on monitoring and summarizing the practice of applying the Criminal and Criminal Procedure Codes.

At the same time, work in this direction does not stop and will continue as part of the implementation of the Plan of Further Measures in the field of human rights and the rule of law.

Regarding the investigation of the incident with D. Sinyavsky

The staff of the Shakhtinsk police department continues operational investigations activities in order to identify the perpetrators of these crimes. To this date, it has not been possible to identify the perpetrators. Upon getting positive information, D. Sinyavsky will be notified by the criminal prosecution authority.

Regarding Denis Oryngaliyev and Saule Seydakhmetova

Zh. Orynaliev and S. Seydakhmetova are not trade union activists and are not members of trade union organizations. On 27 October 2021, Zh. Orynaliev participated in a meeting of couriers of the Glovo company in Almaty. According to the information of the internal affairs bodies, Zh. Orynaliev was not detained.

Zh. Orynaliev was invited to the department to clarify the procedure for holding rallies and other actions. At the same time, attention was drawn to the need to resolve emerging issues in the legal field, with which Zh. Oryngaliyev agreed. Zh. Orynaliev is not a trade union activist.

In December 2021, a gathering of crane operators took place in Astana. This action was not of a strike nature. The action was held peacefully, representatives of the State Labour Inspectorate conducted explanatory work with the protesters. After that, everyone dispersed, detentions and arrests were not carried out.

S. Seidakhmetova is not a member of trade union organizations. In the period from 2019 to 2021, five cases of violation by S. Seidakhmetova of the legislation on the procedure for organizing and holding peaceful assemblies (parts 3, 6, 7, 11, 12 of Article 488 of the Administrative Code) were recorded.

Regarding the independent investigation of the events of 2011 in Zhanaozen

To investigate the events in Zhanaozen in 2011, on behalf of the President of the Republic of Kazakhstan, an interdepartmental investigative and operational group was formed under the supervision of a special prosecutor. All procedural actions against the accused by the investigating authorities and the court were carried out in strict accordance with the norms of national legislation.

Taking into account the extraordinary nature of the situation and the wide socio-political resonance around it, Kazakhstan was most interested not only in an open and objective investigation of the events in Zhanaozen, but also in an impartial and open consideration of the results of this investigation in court.

Thus, ensuring unconditional compliance with the principles of the rule of law and human rights, Kazakhstan has taken unprecedented measures before those events. In particular, for the first time in the history of criminal proceedings, a public commission was allowed to investigate a criminal case, which included representatives of political parties, non-governmental organizations, the media, as well as oil veterans, doctors, economists and

lawyers. Chairman of the Council of Veterans of the Mangystau region, O. Ozganbayev was elected head of the commission.

In addition, representatives of the public commission, together with representatives of the media, visited temporary detention facilities, where they met with representatives of the criminal prosecution authorities (after the intervention of the commission, the preventive measure for 11 accused was changed from arrest to a milder measure unrelated to it, in the future they were released from criminal liability).

At the same time, at the end of 2011, representatives of the international public association Penal Reform International and a group of Kazakhstani bloggers visited the Mangystau region, who also interacted with the local population, visited the buildings of internal affairs bodies and temporary detention facilities.

The judicial process was also ensured in conditions of maximum compliance with the principles of transparency. At the initiative of the state authorities, the trial was held in the most open manner acceptable for this, with the provision of convenient conditions for international and domestic observers, media representatives, relatives of the defendants and victims to participate in the process. In an open and accessible manner, all the evidence and evidence in the criminal case are considered. The video materials attached to the criminal case were demonstrated for everyone.

Among the observers who took part in the trial were Adviser to the British Embassy in Kazakhstan, Thomas Blake-James, employees of the US Embassy in Kazakhstan, Eric Liderbach and Aliya Zhanikina, representatives of the European Union in the Republic of Kazakhstan Anete Jacobsone and Karlygash Jamankulova, MEP Peter Borys, representatives of a number of non-governmental organizations.

The majority of observers from international organizations and government institutions who took part in the process of preliminary and judicial investigation confirmed that Kazakhstan ensures transparency of the court and investigation.

Regarding the registration of branches of the Sectorial Trade Union of Employees of the Fuel and Energy Complex

To date, the Sectorial Trade Union of Employees of the Fuel and Energy Complex (STUEFEC) has not eliminated the violations established by the court decision, and still has only eight branches. At the same time, all the comments of the registering authority are of a disposable nature, the applicant has the right to re-submit an application with the attachment of documents for registration.

There is a working group on problematic issues of trade union registration at the Ministry of Labor and Social Protection of Population of the Republic of Kazakhstan (MLSPP), the composition of which we have expanded to include representatives of sectoral and territorial unions of trade unions, as well as representatives of employers' associations.

If the STUEFEC applies to the MLSPP, the Ministry is ready to re-submit this issue to a meeting of the working group with the participation of the Ministry of Justice.

Additionally, on 25 July 2022, the Ministry of Justice refused to register amendments to the Charter of the STUEFEC for the change of legal address. On 26 October 2022, based on the claim of the STUEFEC, the court invalidated and cancelled the order of the Ministry of Justice. On 23 December 2022, the Ministry of Justice filed an appeal against the decision of the court of first instance, but on 15 February 2023, the court's decision was left unchanged by the Appellate Judicial Board for Administrative Cases of the Astana City Court, the complaint was

not satisfied. On 26 May 2023, by order of the Ministry of Justice, amendments to the STUEFEC Charter were registered to change the legal address.

Regarding the reduction of requirements for sectorial trade unions

In accordance with paragraph 2 of Article 13 of the Law “On Trade Unions”, an industrial trade union must have structural divisions and (or) membership organizations in a territory that includes more than half of the number of regions, cities of republican significance and the capital.

Taking into account the formation of three new administrative-territorial units, when creating a branch trade union, it is necessary to have structural divisions or membership organizations in more than ten regions of the country.

Requirements for the establishment of a sectorial trade union are currently being reconsidered. Discussions are being held jointly with interested state bodies. In particular, it is proposed to clarify that a sectorial trade union should have representative offices on the territory of more than half of the regions where organizations operating in a particular industry are located. The current norm obliges sectorial trade unions to have representative offices in more than half of the country's regions. Whereas, there are certain industries that are not represented in all regions. Given the industry specifics, it is inappropriate for trade unions to establish a representative office in a region where there are no organizations operating in a particular industry.

In addition, the opening of a representative office implies a set of staff, additional expenses for the maintenance of employees, as well as administrative and economic expenses. We will continue to work in this direction and inform the ILO about the results of the discussion of this issue.

Regarding the transfer of the procedure of state registration of trade unions to the notification procedure

As part of the Plan of Further Measures in the Field of Human Rights and the Rule of Law, an action has been fixed to further improve national legislation and law enforcement practice in relation to trade unions and the resolution of labour conflicts, including taking into account the recommendations of the International Labour Organization.

This work is divided into two stages. At the first stage, amendments were developed on the issues of resolving labour conflicts, implemented within the framework of the Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan to simplify the procedure for resolving labour disputes and conflicts”, which was signed by the President on 15 February 2023.

The second stage involves the development of amendments to the legislation regarding trade unions, including the transfer of state registration of trade unions to the notification procedure, revision of the requirements for the creation of sectorial trade unions.

This work is currently ongoing, discussions and coordination procedures are being carried out with interested state bodies. After the approval procedures are completed, if the Government develops a unified position on these issues, a package of amendments to the legislation will be sent to Parliament for consideration. The ILO will be informed on further progress in this direction.

Regarding the development of a separate law on employers' associations

Preliminary work in this direction is ongoing. The Ministry has developed a regulatory policy advisory document to the draft Law "On Employers' Associations". This document was sent for review and approval to all employers' associations. At the same time, a working group has been established under the Ministry of Labour to consider the development of a draft law "On employers' associations". The working group included representatives of 23 associations uniting employers of various fields of activity.

On 19 May 2023, Vladimir Churovich, a senior specialist in the activities of employers of the ILO Bureau for Eastern Europe and Central Asia, was invited to the meeting of the working group, who presented a detailed presentation on the issue under discussion to the members of the working group. Currently, the members of the working group are studying the submitted material and forming their proposals on this issue. Further steps in this direction will be announced later.

Regarding article 402 of the Criminal Code

We are consistently working to decriminalize Article 402 of the Criminal Code. In May 2020, the liability under Article 402 was mitigated (*change in the composition and disposition of Article 402 of the Criminal Code of the Republic of Kazakhstan: part one of the "criminal offenses" was transferred to the category of "criminal misconduct", the sanctions of part two from the category of "medium-gravity crimes" were transferred to "minor crimes"*).

In order to further improve the legislation, we are considering the issue of transferring part 1 of Article 402 from a criminal offence to an administrative offence. It is proposed to retain criminal liability only if the actions provoking continued participation in the strike, recognized by the court as illegal, caused significant harm to the rights and legitimate interests of citizens or organizations or the legally protected interests of society or the state, or caused mass riots.

It is expected that the relevant work on the adoption of legislative amendments on this issue will be completed by the end of 2023.

Regarding the obtaining of financial assistance by workers' and employers' organizations

The Ministry of Labour initiated the issue of including the International Trade Union Confederation (ITUC) and the International Organization of Employers (IOE) in the list of international organizations providing grants.

In this regard, appropriate amendments were developed to the Government Decree, which approved this list. However, during the coordination of these amendments with interested state bodies, the Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on administrative reform in the Republic of Kazakhstan" was adopted.

Within the framework of this Law, the competence of the Government to approve the list of international organizations providing grants was transferred to the level of the central state body – the Ministry of National Economy. To implement this Law, the Ministry of National Economy is currently developing a corresponding order on the approval of the above list.

After completion of all procedures, ITUC and IOE will be included in the list of international organizations providing grants.