

## Committee on the Application of Standards

**Date:** 13 May 2021

*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 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Kazakhstan

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

(Ratification: 2000)

The Government has provided the following written information.

##### **Concerning E.Baltabay's and L.Kharkova's criminal cases**

The criminal cases against Mr.Baltabay and Ms.Kharkova aren't caused by «participation in lawful trade union activities», but initiated due to common crimes.

Currently, Mr.Baltabay and Ms.Kharkova enjoy freedom.

**1) Mr. Baltabay**, «Local Trade Union «Decent Work of Petrochemical Industry Employees» NGO Chairman, misappropriated 10,800,000 tenge entrusted to him through official position abuse.

On July 17, 2019, Mr.Baltabay was found guilty with the verdict of the Enbekshi District Court of Shymkent, as per Paragraph 2, Part 4 of Article 189 of Kazakhstan's Criminal Code (hereinafter-the CC) (Misappropriation or embezzlement of entrusted property) and sentenced to 7-year imprisonment and deprived of the right to hold senior positions in public associations and other non-profit organizations during 7 years. The sentence shall be served at medium security penal system institution.

The verdict hasn't been appealed within the established deadlines.

On August 2, 2019, Mr.Baltabay admitted guilt and filed a pardon petition K.K.Tokayev, Kazakhstan's President.

Mr.Baltabay was pardoned on August 9, 2019 with the Presidential Decree, and unserved part of the sentence was replaced with 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 into the fine amounting 1,595,800 tenge Mr.Baltabay is obliged to pay within a month since the decision date.

At the same time, Mr.Baltabay was released from Shymkent IS-167/11 Department of criminal justice institution of Internal Affairs Ministry.

On September 11, 2019, enforcement proceedings were initiated against Mr.Baltabay to recover 1,595,800 tenge fine in favor of the state, he evaded to pay.

On October 1, 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 fine evasion.

*For reference: as per paragraph 3 part 6 of CC 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 imprisonment term, calculated as one imprisonment day equal to four MCIs to be paid by the convict of a grievous crime.*

The above sanction was replaced with 5-months and 8-days imprisonment with the decision of Al-Farabi district court of Shymkent (court decision of 16.10.2019). The court sentenced Mr.Baltabay to retaking into custody at the courtroom.

Mr.Baltabay was released from IS167/3 on March 20, 2020, upon the sentence expiration and filed a petition to the court requesting the appeal deadlines restoration, 2 months after the date of the verdict's entry into a legal force (October 7, 2019).

Enbekshi district court of Shymkent denied the request to restore the missed deadline in its decision dated October 31, 2019.

On September 24, 2020, Mr.Baltabay and representing him Mr.Abishev re-appealed to the court against the court verdict of July 17, 2019.

Enbekshi district court of Shymkent returned the appeal due to missed verdict appealing deadlines with its decision dated by September 29, 2020.

The additional sanction depriving the right to hold senior positions in public associations and non-profit organizations wasn't appealed by Mr.Baltabay.

Moreover, until today, the petition challenging the trial court verdict lawfulness and validity at the Supreme Court hasn't been filed by him or his defense.

**2) Ms.Kharkova**, ex-leader of the Confederation of Independent Trade Unions of Kazakhstan (CITUK).

On July 25, 2017, she was sentenced to 4-year liberty restriction, property confiscation and five-year deprivation of the right to hold senior positions in public associations and non-profit organizations due to the abuse of office (Part 1 of CC Article 250), resultant in the damage exceeding 12,000,000 tenge.

According to CITUK Chapter, this organization was non-profit, i.e. 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 2,500,000 tenge damage.

Moreover, she placed 5,000,000 tenge on her bank deposit at 13.2% per annum, having withdrawn the amount from the union's account.

During the accounting audit, she failed to present the documents to support 8,000,000 tenge transfer.

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

On September 29, 2017, the South Kazakhstan Regional Court Appeal Panel recognized the verdict lawful and justified, and left it unchanged. The Appeal Panel concluded the trial court assessment of each evidence piece in aggregation with the case materials as correct and reliable. The court observed general principles of sentencing and considered guilt and punishment mitigating circumstances.

The appeal decision states the court's verdict reflecting the court's conclusions on pretended reports on the works done in 2009-2015, submitted by the defense to the court, which weren't signed by the drafters or approved by anyone, and their discussions minutes weren't submitted to the court either, so these reports couldn't be regarded evidences. 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 November 9, 2017, Ms.Kharkova was registered with the probation service №1 of the Enbekshi district of the Department of criminal justice of Shymkent.

*For reference: The liberty restriction consists in probation control over the convict for six months to seven years period and the convict involvement in one- hundred hour compulsory labour annually during the term of the sentence. The freedom restriction shall be served at the convict's residence place 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: to avoid changing permanent residence, work or study places, without notification to the competent authority, monitoring the convict's behavior; avoid visiting certain places; undergo treatment for mental and behavioral disorders (diseases), associated with psychoactive substances abuse, sexually transmitted diseases; provide financial support to the family; other duties contributing to the convict's correction and preventing the convict from new criminal offenses.*

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

The cassation petition was preliminarily considered by a Supreme Court judge who requested and studied the criminal case files and rejected to transfer the convict's petition for consideration at cassation court due to the lack of grounds for judicial acts revising.

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

The conditional early release petition could be filed since November 9, 2018. Subject to Ms.Kharkova's application the restriction of freedom could be substituted with the fine (appr. 800,000 tenge). To allow the above the complete damage compensation (appr. 5,000,000 tenge) shall be required, but this right remained unexercised.

The deadlines to file the conditional early release petition expired on February 9, 2019, and according to the Prosecutor General's Office, the application wasn't submitted.

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

As for Dmitry Senyavsky's criminal case, who got injuries, criminal intelligence measures were taken to investigate the offense.

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

The 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, justice authorities refused to register the national association of trade unions «CFTU» 4 times.

The first registration of CFTU was rejected due to the similarity to already registered legal entity the «Confederation of Free Trade Unions of Kazakhstan» Association. Moreover, the Charter provisions stated the succession of 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 the legal entities registered in the Republic of Kazakhstan».

The deficiencies specified in the initial rejection haven't been remedied in the subsequent registration applications (on 17.08.2018, 18.09.2018, 14.11.2019). At the same time, all the irregularities are of a remediable nature.

However, to the date, the identified violations haven't been eliminated and the state registration re-application hasn't been submitted to the justice authorities.

### **On suspension of «Sectoral trade union of fuel and energy complex employees» public association (STUFECE) activities.**

In accordance with the decision of the specialized inter-district economic court of Shymkent on February 5, 2021, the activities of STUFECE were suspended for 6 months due to the trade union failure to confirm its status.

*For reference:*

*According to paragraph 2 of article 13 of the Law «On trade unions» (hereinafter-the Law) the sector 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 registering 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, the failure to certify a sectoral trade union's status within one year of its registration results in its activities suspension by judicial procedure upon application by the local executive authorities.*

In March 2021, the Ministry of Labour and Social Protection of Population of Kazakhstan (MLSP) and the representatives of the Ministry of Justice, the national trade union associations - the Federation of trade unions, Kazakhstan confederation of labour, and the Commonwealth of trade unions «Amanat» organized a meeting with the head of STUFECE - Mr.Koshygulov and its representatives L.Kharkova and T.Erdenov to provide practical assistance in trade unions registration procedures within a working group on problematic issues in trade unions registration.

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

The court of appeal session was scheduled on April 21, 2021, and postponed to April 29, 2021.

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

For information, on January 13, 2021 Mr. Kosshygulov was appointed as STUFECE Chairman in accordance with the application for the state service on registration of legal entity's constituent documents amendments and additions.

Moreover, a working group on trade unions registration issues comprising of MLSPP, Ministry of Justice and national trade union associations' representatives is active since 2019.

To this date, the problems of trade unions registration haven't 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**

General Agreement for 2021-2023 was signed by the Government, national associations (associations or unions) of employers and national associations of trade unions (hereinafter- the General agreement) on March 12, 2021.

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

The Confederation is taking 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, National Chamber of Entrepreneurs «Atameken» lost its right to participate in the social partnership system as employers' representative and didn't participate in General agreement development and adoption.

### **Concerning Article 402 of the Criminal Code of Kazakhstan**

The amendments to Article 402 of the CC are known to be adopted in May 2020 to reduce the liability for encouragement participation in strikes declared unlawful by court.

The current provisions comply with Article 21 of International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005, stipulating that peaceful assembly rights exercising 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, protection of public health or morals or protection of the rights and freedoms of others.

In addition, the MLSPP Order №89 of 29 March 2021 establishes a working group on labour legislation enforcement analysis (hereinafter-the Working group), including the representatives of state bodies, trade union associations and employers' associations, and various experts and academics in labour relations area.

The Working group shall discuss improvement of labour legislation, trade unions law, including the revision of CC article 402.

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

As reported earlier, the MLSPP is prepared to consider the possibility to include International Trade Union Confederation and International Organization of Employers into the list.

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