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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the Promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Kazakhstan

Comments by the State**

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Comments of the Republic of Kazakhstan on the Report of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism Fionnuala D. NíAoláin

The Government of the Republic of Kazakhstan expresses its gratitude to the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism for the opportunity to comment on her Report following her visit to Kazakhstan on May 10-17, 2019.

We provide the comments on the following paragraphs of the Report.

On paragraphs 14 and 20 of the Report

The bill “On Introducing Amendments to Some Legislative Acts of the Republic of Kazakhstan on Counteraction of Legitimization (Laundering) of Incomes Received by Illegal Means, and Financing of Terrorism” (*hereinafter - the bill; it is currently in the Mazhilis of the Parliament*) provides for the following main aspects in countering terrorism:

1) The bill includes legislative innovations regarding the protection of the non-profit sector from being used for financing terrorism.

It is proposed to include the requirements for non-profit organizations in accordance with the FATF recommendation, in particular, regarding the sufficiency of laws and regulations managing the activities of organizations that can be used to finance terrorism.

Based on the above mentioned recommendation, certain obligations and measures are proposed to protect non-profit organizations (*non-profit organizations engaged in charity, in accordance with the Law of the Republic of Kazakhstan, as well as religious associations seeking financial and other donations*) from exploiting their funds for terrorist activities and financing of terrorism.

Thus, charitable organizations and religious associations are required to:

1. Make payments and money transfers at the request of third parties or on their own initiative through organizations subject to regulation and supervision;
 2. Submit financial statements on operations involving monetary resources or other assets and information on identified risks to the authorized body upon request;
 3. Keep the information on operations involving monetary resources or other assets subject to mandatory state registration, as well as the information on members of governing and controlling bodies, for at least five years.
- 2) The bill includes the establishment of an Interdepartmental Council, which will develop measures aimed at reducing the risks of money laundering and terrorist financing.
- 3) Mechanisms of targeted financial sanctions regarding the terrorist financing and financing the proliferation of weapons of mass destruction are being introduced to national legislation in accordance with UN Security Council resolutions.

As the FATF recommendation states, countries should apply targeted financial sanctions in accordance with the UN Security Council resolutions concerning the prevention, obstruction and termination of the proliferation of weapons of mass destruction and its financing.

These resolutions require countries to freeze without delay the funds or other assets and to ensure that no funds or other assets are directly or indirectly provided to an individual or legal entity established by the UN Security Council directly or by virtue of the power vested in them in accordance with Chapter VII of the UN Charter.

4) It is proposed to consider new approaches to developing the requirements for anti-terrorist protection of the facilities vulnerable to terrorism based on industry specifics.

Central executive bodies, state bodies directly subordinate and reporting to the President of the Republic of Kazakhstan will develop and approve the instructions for

organizing anti-terrorism protection of facilities vulnerable to terrorism based on said requirements.

Developing such instructions will be driven by facilities of the central executive body, a state body directly subordinate and reporting to the President of the Republic of Kazakhstan that meet the criteria for classifying as vulnerable to terrorism.

On paragraph 15 of the Report

On December 20, 2019, at the second meeting of the National Council for Public Trust under the President of the Republic of Kazakhstan, President Kassym-Jomart Tokayev instructed to humanize the article 174 of the Criminal Code, replacing the term “arousal” with a clearer term “incitement”.

The bill also considers allowing persons who have served sentences under this article and who have an approval of law enforcement agencies to be excluded from the list restricting the rights to manage finances and property.

In addition, it proposes to allow them to receive a minimum monthly wage per each member of the family and allow opening and maintaining bank accounts.

On paragraphs 16, 19, 22, 25, 26, 57 and 59 of the Report

Absolutely all legal entities established on the territory of Kazakhstan are subject to state registration, regardless of the purpose of their establishment, kind, type and nature of activities carried out, and regardless of its participants.

All citizens, foreigners and stateless persons can practice any religion without registration. They can also freely establish religious associations.

Legal requirements on the registration of religious associations are in line with international standards. They are one for all and transparent at all stages.

The evidence for this is a steady growth of religious associations. Since the 1990s, their number has grown from 671 to 3,770, representing 18 religious denominations.

The number of missionaries, in turn, increased by 6 times over 16 years and amounted to 546 people from more than 40 countries.

Moreover, registration of religious organizations provides the opportunity to receive a number of tax advantages and benefits.

Furthermore, having registered as a religious association, it receives tax preferences. In order to ensure harmonious relations between state and religious denominations, there is the Committee for Religious Affairs at the Ministry of Information and Social Development of the Republic of Kazakhstan. It interacts and assists with religious associations in exercising their rights.

In general, the registration of religious associations is carried out to record the fact of its establishment, reorganization and termination.

The registration procedure is quite simple and does not take a lot of time. Those who want to register go through this procedure without any issues.

In accordance with Article 9 of the Law of the Republic of Kazakhstan dated October 11, 2011, On Religious Activity and Religious Associations (*hereinafter referred to as the Law*), “citizens of the Republic of Kazakhstan, foreigners and stateless persons, religious associations have the right to acquire and use religious literature, and other informational materials of religious content, religious objects at their own discretion”.

In addition, importation into the territory of the Republic of Kazakhstan of religious literature intended for personal use in one copy of each item is permitted.

Importation of a large amount of religious literature shall be carried out by the registered religious associations after receiving an approval following a theological expert examination.

In accordance with Article 6 of the Law, objects of religious expertise include the constitutional documents, as well as other documents of religious content, spiritual (religious) educational programs, and informational materials of religious content and religious objects.

Theological expert examination shall be conducted by persons with special knowledge in the field of religious studies, if necessary, with the assistance of representatives of state bodies and other professionals.

In accordance with the Law, distribution of religious literature, and other informational materials of religious content, religious objects, is permitted only in religious buildings (structures), spiritual (religious) educational organizations, as well as at specially determined premises, designated by the local executive bodies of the regions, cities of republican significance and the capital.

It should be taken into account that today, under the guise of religious literature, various materials aimed at spreading the ideology of terrorism are being actively distributed. Those materials are issued with the purpose of recruiting new members to foreign terrorist organizations such as Al-Qaeda, the Islamic State, the Taliban, and others. In this regard, religious literature imported in large quantities and distributed outside the places established by law is subject to mandatory examination in order to prevent extremist and terrorist materials.

Violation of the distribution procedure of religious literature and other informational materials of religious content outside the places established by law incurs solely administrative liability.

Criminal prosecution for “incitement to religious hatred” can be initiated in case of deliberate actions aimed at public distribution of literature and information materials containing signs of inciting national, tribal, racial or religious hatred, insulting the national honor and dignity or religious feelings of citizens, as well as promoting exclusivity, superiority or inferiority of citizens on the basis of their attitude towards religion, national, tribal or racial affiliation.

The Republic of Kazakhstan is constantly working to establish tolerance and dialogue among representatives of all religions, without exception, while protecting the freedom of religion or beliefs of all members of society, including religious minority groups.

On paragraph 19 of the Report

In 2015, the norms for establishing the NGO Database were introduced. There are regulations requiring NGOs to submit mandatory reports to the Database. Violation of the said regulations incurs administrative liability.

para.7-5) of article 1 of the Law On the State Social Order, Grants and Awards for Non-governmental Organizations in the Republic of Kazakhstan:

NGO database is an information database developed to ensure transparency of non-governmental organizations and informing the public about them as well as using them as a part of the state social order, grants and awards;

Information in the database is provided by non-governmental organizations, as well as branches and representative offices of foreign and international non-profit organizations operating in the Republic of Kazakhstan.

In accordance with paragraph 5 of Article 41 of the Law of the Republic of Kazakhstan On Non-Profit Organizations:

Annually, until March 31, non-profit organizations established in the form of a private institution, public association, non-profit joint stock company, public, corporate or private foundation, association of legal entities (union), as well as branches and representative offices (separate subdivisions) of foreign and international non-profit organizations operating in the Republic of Kazakhstan shall submit information about their activities, including information about the founders (participants), property assets, sources of financing and money expenditure in the order determined by authorized body in the sphere of interaction with non-governmental organizations to the said body.

These requirements do not apply to non-profit joint-stock companies, where the founder or shareholder is the state. They also do not apply to subsidiaries, affiliates and other legal entities associated with them in accordance with the legislative acts of the Republic of Kazakhstan, public associations created in the form of political parties, religious associations and trade unions as well as non-profit organizations under Article 17 of the Law of the Republic of Kazakhstan On Non-Profit Organizations.

According to the Code of the Republic of Kazakhstan On Administrative Offences, failure to represent or untimely representation as well as submission of inaccurate or deliberately misleading information to the database incurs administrative liability.

In addition, the Government is developing a concept of a bill on any issues related to non-profit organizations, including those regarding simplifying procedure for registration.

On paragraphs 27 and 28 of the Report

The Constitution of Kazakhstan guarantees freedom of speech, obstructing the legitimate work of journalists and mass media incurs punishment under criminal law. 3.5 thousand media outlets operate freely in the country, 80% of them are private.

In accordance with the Law On Communications, the General Prosecutor's Office has the right to temporarily suspend access to Internet resources. The list of cases when they can exercise this right is strictly defined by the Law.

These cases include propaganda of extremist, terrorist activities, sexual exploitation of children and child pornography, as well as calls for mass riots and illegal public events.

This mechanism is implemented in exceptional cases. Since its adoption in April 2014, prosecutors have made only 15 temporary orders regarding the information concerning propaganda of extremism and terrorism.

Subsequently, applications for prohibiting their distribution were filed to the court. The court has satisfied these claims.

At the same time, the rights of journalists are also respected. Media have the right to challenge both the non-judicial blocking and the court's decision to restrict access to any resource.

On paragraphs 32, 38, 40, 61(d) of the Report

According to the criminal procedure legislation of the Republic of Kazakhstan a person from the moment of obtaining the status of the witness entitled to protection, the suspect, the accused, as well as at any subsequent time of the criminal process shall be entitled to the help of an advocate.

Moreover, a person is entitled to choose an advocate independently.

In the absence of a specified advocate, the criminal prosecution authorities in order to protect the rights of a witness, entitled to defense, a suspect or accused, shall ensure the mandatory participation of an advocate in accordance with article 67 of the Criminal Procedure Code of the Republic of Kazakhstan.

To date, the bar is represented by 17 territorial bar associations, numbering more than 5 thousand advocates.

On July 5, 2018, the President of the Republic of Kazakhstan signed the new Law On Advocate Practice and Legal Assistance, the adoption of which was preceded by many problems accumulated in the field of legal assistance.

After the adoption of the Law, the advocate ranks increased by almost 600 people, which is twice as many as in the last four years before the adoption of the Law. This was achieved by abolishing the entry fees to the bar associations, which complicated access to the profession. Thus, the issue of the shortage of advocates is being systematically resolved.

The law aims to strengthen the independence of advocates, and enshrines new fundamental principles for the provision of legal assistance such as the independence of legal aid providers, the freedom for the advocate to independently determine the limits and measures for providing legal assistance.

At the same time, the transparency of the law society is ensured. Today, bar associations publish reports on their financial and economic activities online and any other advocate has the access to read them.

Regular financial report on budget expenses and revenues guarantees transparency, and subsequently the independence of the law society.

In accordance with the Law, in order to improve the quality of legal aid, advocates shall undergo mandatory advance training.

With the adoption of the Law, the authority to conduct a specific case is confirmed by a certificate and a written notice of protection (representation), which an advocate draws up on his own.

From January 1, 2020, the Law introduces the institution of compulsory professional liability insurance for advocates. In the case of low-quality legal assistance, citizens will be able to rely on insurance compensation.

In addition, the Law regulates the activities of legal consultants. Since July 2019, lawyers representing the interests of individuals and legal entities in civil proceedings shall be members of the Chambers of Legal Advisers, improve their qualifications on an ongoing basis and provide legal assistance in accordance with the established rules and standards of a professional organization.

It should be noted that in the implementation of the Law On Advocate Practice and Legal Assistance National Information Technologies JSC developed “E-Zan komegi” (E-Legal Assistance) information system, which is designed to provide the population with qualified online legal assistance, and to automate advocates and legal consultants practice.

“E-Zan komegi” will ensure the full right of individuals to independent choice of an advocate.

In accordance with paragraph 4 of Article 35 of the Law on Advocate Practice and Legal Assistance, state bodies, officials shall not be entitled to refuse an advocate to grant meetings in private with his (her) client under conditions, ensuring the confidentiality of such meetings, as well as limit their number and duration.

In addition, according to paragraph 4 of Article 14 of the Penal Code, the correspondence of a person sentenced to deprivation of liberty, arrest or the death penalty with an advocate is not subject to control.

In addition, it should be noted that in September 2019, the President of the Republic of Kazakhstan approved the National Plan providing for the adoption by the Parliament and the Government in the course of the year of legislative and practical measures of an economic, social nature, to toughen the punishment for violence, human trafficking and other crimes against the person, especially against children, the fight against corruption, the return of anti-corruption expertise of draft normative legal acts, the introduction of administrative justice in order to ensure equal conditions for citizens and businesses in litigations against state bodies, reforming the administrative police, adopting a new concept for the development of civil society and strengthening the mandate of public councils at central and local government bodies, as well as improving legislation on rallies.

On paragraphs 11, 38, 39, 42, 56 and 61(d) of the Report

According to Article 75 of the Constitution of the Republic of Kazakhstan, justice in the Republic of Kazakhstan is served only by the court.

Specialized criminal investigation courts have been established. In order to exclude facts of falsification of data from processes, court records, etc. and, accordingly, minimization of corruption risks, audio and video recording of legal proceedings has been introduced, and all actions for filing claims, reviews, receiving notifications can be carried out through the Judicial Cabinet information service.

The Court and the International Arbitration Center were established at the AIFC.

The International Council under the Supreme Court has been formed, composed of reputable foreign lawyers and scholars.

The detention period without court authorization has been reduced from 72 to 48 hours (in the case of minors, up to 24 hours).

Criminal legislation of the Republic of Kazakhstan is an effective tool in fighting crimes, protecting human rights and freedoms.

It should be noted that in 2015, the Criminal Code, Criminal Procedure Code and Penal Code were completely updated. As a result, the criminal legal system has been significantly modernized, the repressiveness of the criminal process has been reduced, and the guarantees of the rights of citizens involved in the criminal process have been strengthened.

At the same time, the Electronic Criminal Case program has been introduced. All materials of criminal proceedings go online.

The procedural capabilities of advocates have been expanded, advocates were authorized to directly apply for investigative actions, and the exchange of evidence by the prosecution and defense parties has been introduced.

For persons who committed crimes of lesser and medium gravity for the first time, as well as socially vulnerable groups of the population, humanization shall be applied.

The risks of torture and ill-treatment of detainees were significantly reduced.

In addition, organizational and practical measures are being taken to prevent torture and protect victims.

Notably, nowadays, there are more than 500 transparent glass interrogation rooms with video recording, electronic registration of persons brought to the police station; a torture investigation technique has been developed.
