



International Covenant on Civil and Political Rights

Distr.: General
24 September 2012
English
Original: Russian

Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant

Kazakhstan*

Addendum

Additional information received from Kazakhstan on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/KAZ/CO/1)

[27 July 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Additional information received from Kazakhstan on measures taken to implement the recommendations of the Human Rights Committee following its consideration of the report on the implementation by Kazakhstan of the International Covenant on Civil and Political Rights

Information concerning paragraph 5 of the concluding observations (CCPR/C/KAZ/CO/1)

1. The rights recognized in the International Covenant on Civil and Political Rights are enshrined and guaranteed in the Constitution of the Republic of Kazakhstan and the legislation adopted on the basis of the Covenant. Section II of the Constitution (“The individual and the citizen”) is entirely devoted to human rights. In the view of international experts, these provisions are in line with international human rights standards. Article 12 of the Constitution clearly states that human rights and freedoms are recognized and guaranteed in accordance with the Constitution. Human rights and freedoms belong to everyone by virtue of birth, are recognized as absolute and inalienable and determine the content and implementation of laws and other legal acts. Foreigners and stateless persons in Kazakhstan enjoy rights and freedoms but also bear the obligations established for nationals of Kazakhstan, unless the Constitution, the law or international treaties stipulate otherwise.
2. It should be noted that there is no conflict between the provisions of the Constitution and the Covenant, since the Constitution of Kazakhstan is in line with all international standards. Any concerns about the status of the Covenant and other treaties are therefore unfounded. The English text of the Constitution is attached.

Information concerning paragraph 6 of the concluding observations

3. The status of the Covenant, which has been ratified, is set out in article 4 of the Constitution. Under this article, international treaties ratified by Kazakhstan have priority over domestic legislation and are applied directly, except in cases where an international treaty stipulates that its implementation requires the adoption of a specific law. The question of the status of international treaties has been considered by the Constitutional Council on a number of occasions (Decisions No. 6 of 5 November 2009, No. 2 of 18 May 2006 and No. 18/2 of 11 October 2000).
4. In order to ensure that local courts are consistent in their explanations of judicial practice, the Supreme Court not only cites international treaties but provides detailed explanations of the legal mechanism for their implementation by the courts.
5. In order to implement paragraph 1.12 of the report of the eleventh meeting of the Inter-agency Commission on International Humanitarian Law and Human Rights, held on 28 March 2011, relating to the introduction of statistical records on the implementation by the courts of the universal human rights treaties to which Kazakhstan is a party, it has been obligatory, since May 2011, to include in the electronic information document issued by the Supreme Court concerning criminal, civil or administrative cases in the judicial system’s central database a file entitled “Reviewed in the light of universal human rights conventions”.

6. The reporting relates to a number of conventions:
- International Covenant on Civil and Political Rights;
 - Convention on the Elimination of All Forms of Discrimination against Women;
 - International Covenant on Economic, Social and Cultural Rights;
 - International Convention on the Elimination of All Forms of Racial Discrimination;
 - Convention on the Rights of the Child.
7. The result of implementation by the courts of Kazakhstan is reflected in the statistical reports, namely Form No. 1 of Table A, entitled “Report on the work of courts of first instance in criminal cases. Movement of criminal cases”, Form No. 2 of Table A “Report on the work of courts of first instance in civil cases. Movements and results of civil cases” and Form No. 1-AP of Table No. 1 “Report on the work of courts of first instance in administrative cases. Movement and results of administrative cases”.
8. In addition, the Supreme Court has set up a database of judicial proceedings, based on the provisions of the Convention and the Optional Protocol and of the Act on State Guarantees of Equal Rights and Opportunities for Men and Women and the Domestic Violence Prevention Act. In 2011, over 80,000 cases were entered into the database of judicial procedures by provincial or equivalent courts. The database was set up with a view to encouraging local courts to apply the provisions of the Convention directly in judicial proceedings and to promote further study.

Information concerning paragraph 7 of the concluding observations

9. The question of strengthening some of the powers of the Commissioner for Human Rights and his involvement with the National Preventive Mechanism is to be regulated in the bill amending and supplementing certain legislative acts on the establishment of national preventive mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment, which was submitted by the Government to Parliament on 30 March 2012. Under this bill, the Commissioner for Human Rights is appointed one of the participants in these mechanisms. The question of accreditation is included in the list of Government measures to be implemented by the end of 2013.

Information concerning paragraph 8 of the concluding observations

10. The Act amending and supplementing anti-terrorism legislation was adopted on 8 April 2010. It introduced amendments and additions to the Counter-Terrorism Act.
11. The State decided to adopt additional measures to protect citizens' rights in countering terrorism. The Act therefore enshrines the State's obligation to compensate citizens for material loss caused during anti-terrorist operations.
12. Article 3, paragraph 1 (1), of the Counter-Terrorism Act provides that one of the fundamental principles of action against terrorism in Kazakhstan is to abide by the rule of law.

13. Pursuant to article 12-1 of the Act, the State body responsible for compiling legal statistics and writing special reports keeps a list, based on courts decisions, of terrorist organizations and persons prosecuted for terrorist activities, with a view to preventing, uncovering and suppressing terrorism.

14. The inclusion of a person on the list is thus based on a court decision, not on that person's religious convictions. Current legislation does not provide for a person's criminal prosecution for terrorism solely on the basis of his or her status or religious belief and manifestation.

15. The principal body responsible for combating terrorism under the Counter-Terrorism Act is the National Security Committee, which is responsible for coordinating counter-terrorism activities and uncovering and investigating offences of a terrorist nature.

16. Information on criminal prosecutions instituted by the National Security Committee relating to terrorism is sent monthly, until the end of this year, for verification of their lawfulness to the Office of the Procurator-General and the Ministry of Internal Affairs.

17. In their activities to counter terrorism and extremism, Government bodies are strictly governed by the Constitution, the National Security Act, the Counter-Terrorism Act, the Counter-Extremism Act and other legislation.

18. Internal affairs bodies expose and investigate, within their mandate, offences of an extremist nature, which are covered by the Criminal Code, articles 164 (Incitement to social, ethnic, tribal, racial or religious hatred), 337 (Formation of or participation in the activities of unlawful social groups) and 337-1 (Organization of the activities of a social or religious association subsequent to a decision by the courts to prohibit its activities or to disband it).

19. Over recent years, there have been no recorded cases of human rights violations by internal affairs bodies in exposing or investigating extremist offences.

20. Any criminal prosecution for extremist activities is instituted only following the presentation of an expert report on the presence in literature that has been seized and in materials or other information media or in the activities of a given organization of any evidence of incitement to social, ethnic, tribal, racial or religious hatred.

21. A decrease has been noted in the number of recorded offences of an extremist nature since 2006 (63 offences in 2006, 34 in 2007, 43 in 2008, 28 in 2009 and 32 in 2010).

22. As of 27 September 2011, there were 23 criminal cases relating to terrorism in the hands of the national security authorities. By January 2012, 13 of those had been investigated, 2 had come before a court, 3 had been suspended, 1 had been terminated and, in 4 cases, sentence had been passed.

23. In 2011, three criminal cases were initiated against supporters of the religious extremist party Hizb ut-Tahrir, six against members of terrorist groups that have been broken up in Aktobe province, five against the leaders and members of the religious organization Senim.Bilim.Ömir, five against individuals who were inciting religious or ethnic hatred and one in relation to an explosion in the National

Security Committee premises in Astana. Altogether, 25 people were prosecuted in 2011.

24. Also in 2011, there were over 1,300 reported cases of seizures of literature and other information media of a religious or extremist nature, and about 10,900 printed items were seized (including 3,500 books, 5,000 newspapers, magazines or pamphlets and 2,400 leaflets or handwritten texts), 1,734 electronic media items (CDs, DVDs, flashcards or hard disks), 19 items of computer equipment (processors, notebooks) and 118 other electronic media items (audio cassettes, video cassettes and mobile telephones).

25. In the area of religious relations, 158 administrative offences under articles 322, 344, 374-1 and 375 of the Code of Administrative Offences were uncovered in 2011 and the activities of 39 unregistered religious associations suppressed. There were 90 successful prosecutions for administrative offences.

26. It may be noted that there are criminal trials currently taking place in Kazakhstan to deal with terrorist acts that occurred in 2011 in the village of Boralday in Almaty province, the Temir district of Aktobe province and the cities of Atyrau, Aktobe, Astana and Taraz. On 24 February, there was an explosion by the municipal prison in Aktobe. On 5 April, a suspected member of Hizb ut-Tahrir was sentenced to two years' imprisonment in Pavlodar. On 28 April, four people were convicted in Temirtau of fomenting religious terrorism. On 17 May, there was an attack by a terrorist suicide bomber on the premises of the National Security Committee in Aktobe, in which the bomber alone was killed and three people were wounded.

27. On 24 May, a car bomb exploded by the National Security Committee prison in Astana. The bodies of two men were found in the car, one a national of Kazakhstan and the other a national of Kyrgyzstan. On 30 June, two police officers were shot dead in the village of Shubarshi in Aktobe province. On 2-3 July, there was an exchange of gunfire in Shubarshi, Aktobe province, in which two police officers were killed and three wounded.

28. On 11 July, there was a shoot-out in the village of Kenkiyak in Aktobe province. One police officer and nine members of an armed group were killed. On 26 July, there was an exchange of gunfire in Aktobe during the arrest of persons accused of murdering police officers. One person was killed and three arrested.

29. On 29 July, a special-forces operation was carried out in the village of Kyzylzhar in Aktobe province. One police officer and two persons suspected of membership of an armed group were killed. On 31 October, there were two explosions in Atyrau, leaving one person dead. On 12 November, eight people died in Taraz, including five police officers.

30. On 3 December, during a special-forces operation against an armed group in the village of Boralday, Almaty province, seven people died, including two members of the special-purpose forces of the National Security Committee.

31. At a briefing in Astana on 20 October 2011, an official representative of the Office of the Procurator-General of Kazakhstan said that an Internet-monitoring operation had revealed the existence of over 400 sites containing incitements to extremism and justifications of terrorist acts (<http://argumentua.com/stati/kazakhstan-vyrastil-sobstvennykh-terroristov>). The Astana district courts ruled that 151 such sites were

unlawful and access to them was blocked. Also, at the end of 2011, there were 14 applications to the courts from the public prosecutor's office concerning 215 sites and one application from the Ministry of Communications and Information concerning 11 sites. These figures give an idea of the current scale of the activities of extremist groups in Kazakhstan.

Information concerning paragraph 9 of the concluding observations

32. The Act on State Guarantees of Equal Rights and Opportunities for Men and Women was passed on 8 December 2009.

33. The National Commission on Women's Affairs and Family and Demographic Policy has been established within the Office of the President of Kazakhstan.

34. One of the main priorities of the Gender Equality Strategy for 2006-2016, developed on the instructions of the Head of State, is to promote women's participation in social and political life.

35. The aim of the Strategy is to ensure the realization of equal rights and equal opportunities for women and men and to provide for their equal participation in all areas of life and public activity.

36. Men and women are guaranteed equal rights and equal opportunities in the area of labour relations:

- When concluding a labour contract;
- In access to vacant posts;
- In respect of further training, retraining and promotion.

37. An employer is not entitled to require documents to be presented in cases where no such requirement exists in Kazakh labour law.

38. Provisions are also included in general, sectoral (wage) and regional agreements to guarantee:

- Equal rights and equal opportunities for men and women in the labour market;
- Equal rights and equal opportunities for men and women in respect of wages;
- Measures aimed at improving the position of persons with family obligations;
- Equal conditions in recruiting professional staff to an organization and its structural units.

39. The strategic plans of State bodies include sectoral indicators of the effectiveness of gender mainstreaming in the activities of State bodies.

40. Persons who consider that they have been discriminated against in the workplace may apply to the bodies and organizations engaged in ensuring equal rights and opportunities for men and women.

41. An employer is not entitled to hinder an employee from filing a complaint of sexual discrimination with the competent authorities.

42. In 2011, the proportion of women in the judiciary was 23.5 per cent in the Supreme Court, 0 per cent among presidents of provincial or equivalent courts, 17.6 per cent among presidents of the judiciary councils of provincial or equivalent

courts, 52.3 per cent among judges of provincial and courts equivalent, 9.9 per cent among presidents of district or equivalent courts and 56.1 per cent among judges of district or equivalent courts.

43. In 2011, there were 21 women (14 per cent of the total) in Parliament, while women make up 17 per cent of *maslikhats* (local councils). In the Government, there are three women ministers (15 per cent), four women executive secretaries of ministries and four women deputy ministers.

44. According to data from the judicial system's central database, women lodged nearly 154,000 actions and complaints with the courts concerning the implementation of court orders (55 per cent of the total) in 2008, 174,000 (56 per cent of the total) in 2009 and 168,000 (53 per cent of the total) in 2010. Women most commonly apply to the courts for protection of their labour and housing rights. None of the actions filed has involved any allegation of sexual discrimination.

45. The strategic plans of the sectoral ministries, confirmed by Government decisions, and regional development programmes currently include benchmarks for attaining a 30 per cent representation of women by 2015 in power at the decision-making level and average wages no lower than 70 per cent those of men.

46. A separate report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women was approved by Government Decision No. 1064 of 15 September 2011. The report has been duly transmitted by the Ministry of Foreign Affairs to the Committee on the Elimination of Discrimination against Women.

Information concerning paragraph 10 of the concluding observations

47. The Domestic Violence Prevention Act and the Act Amending and Supplementing Legislation of Kazakhstan on the Prevention of Domestic Violence were adopted on 4 December 2010. The Act on State Guarantees of Equal Rights and Opportunities for Men and Women was adopted on 8 December 2009.

48. The Domestic Violence Prevention Act establishes the legal and organizational basis for the work of State agencies, organizations and individuals to prevent domestic violence and provides for a mechanism to prevent and suppress offences involving family and domestic relations.

49. The Act sets out general positions and concepts relating to the juridical relations brought about by the process of domestic violence and the principles involved in countering domestic violence. It then defines the parties to juridical relations, the functions and powers of State bodies, the organization of their activities to prevent domestic violence and other issues.

50. Amendments and additions have been made to the Code of Criminal Procedure and the Code of Administrative Offences. Specifically, articles have been added to the latter to make it an offence to publish information on the private life of a victim of domestic violence. Other amendments give police the power to hold perpetrators of domestic violence in administrative detention.

51. According to the statistical data provided by the Supreme Court, local courts heard and passed judgement in 519 criminal cases involving domestic violence

in 2010, in which 526 persons were convicted. In 2011, 877 criminal cases in that category were assigned for trial.

52. Under article 17 of the Domestic Violence Prevention Act, measures taken may be specifically tailored to an individual guilty of domestic violence in order to achieve a systematic, targeted effect on the behaviour and the understanding of the law by a perpetrator of domestic violence in order to prevent such person committing further violations and to ensure the safety of the victim.

53. There is no provision for including a separate record of such measures in the existing statistics on criminal cases and case files.

54. However, a random review of court rulings on the Internet reveals that courts of first instance have imposed sentences of individual preventive measures in cases of domestic violence.

55. Specifically, in criminal cases relating to domestic violence in 2011, 75 persons were ordered to undergo compulsory treatment for alcoholism and 6 for drug addiction.

56. Other measures are also taken. For example, in a criminal case involving I. V. Demidenko, who was found guilty of premeditated grievous bodily harm against his common-law wife, O. N. Kozlova, which resulted in her death, the court ruled that the guardianship and foster-care authorities for the Shemonaikha district should determine the question of where N. I. Demidenko, born on 10 March 2005, should live in the future.

57. Similarly, with a view to preventing further incidents of domestic violence, the courts take specific considerations into account in their decisions. For example, in a criminal case involving O. G. Sharafutdinov, who was found guilty of the premeditated murder of his wife, L. A. Mikhailova, the court issued a decision addressed to the *akim* (mayor) of Kostanay and the head of the Southern Department of Internal Affairs of Kostanay calling on them to take action to eliminate the causes and conditions that allowed domestic violence offences such as the one in question to be perpetrated.

58. Official statistics on criminal cases and case files do not provide for separate information on safety measures taken by courts.

59. In 2008, the Code of Administrative Offences was supplemented by a provision establishing liability for unlawful acts in family and domestic relations (art. 79-5) and for assault (art. 79-1).

60. In action taken to prevent domestic violence, about 75,000 offenders were convicted of unlawful acts in family and domestic relations over three years, rising from 16,875 in 2008 to 20,646 in 2009 and 37,937 in 2010. In 2011, the figure was 25,000. Over 4,000 people were convicted of assault: 966 in 2008, 936 in 2009 and 2,147 in 2010.

61. Since the entry into force of the Code of Administrative Offences, internal affairs offices nationwide have issued some 40,000 restraining orders against persons who have committed a total of 26,550 offences in the domestic environment.

62. The bulk of such orders (95 per cent, or a total of 35,669) is imposed on males, with 3 per cent (1,188) being imposed on women and 2 per cent (862) on minors.

63. The public prosecutor's office has authorized the extension of 630 restraining orders. Over 800 offenders under article 355-1 of the Code of Administrative Offences have been brought to court for breaching their restraining orders.

64. Moreover, the courts have imposed over 3,000 special requirements concerning the conduct of offenders guilty of administrative offences.

65. Altogether, about 200,000 preventive talks have been held with persons responsible for offences in the home environment and over 70,000 offenders have been taken to internal affairs offices. Of those, over 37,000 have been detained in accordance with article 620 of the Code of Administrative Procedure (Administrative detention).

66. The legislation of Kazakhstan contains a sufficient number of measures on the prevention of domestic violence.

67. As a result of the measures taken, crimes relating to family and domestic relations showed a steady downward trend over the six years 2005 to 2010. The number of offences over that period fell by more than half, from 1,610 to 745. In 2010, the decrease amounted to 16 per cent and, in 2011, to 3 per cent.

68. In March 2011, the Ministry of Internal Affairs and the Union of Crisis Centres in Kazakhstan signed a memorandum of cooperation and drew up a plan of action to prevent domestic violence.

69. The Ministry of Internal Affairs police in Astana have a telephone hotline, with the number 1415, for victims of domestic violence. In 2011, over 180 calls were made to the hotline and two lawyers from the crisis centre and a psychologist conducted emergency psychological consultations.

70. Moreover, recognizing the importance of the problems arising from domestic violence and the need to raise awareness among the public, the executive authorities and the legislature concerning the issue and to provide psychological and legal help to persons suffering from domestic violence, the relevant State bodies, non-governmental organizations (NGOs) and civil society jointly conducted the campaigns "Family without violence", "Your right to protection" and "Sixteen days without violence against women". The campaigns involved taking joint preventive action with representatives of NGOs on the living conditions of problem families and people committing offences in the area of family or domestic relations were relocated. The local executive authorities received more than 1,500 requests for assistance to problem families and 6,500 victims of domestic violence were given legal, psychological and medical assistance. During the course of the campaigns, more than 500,000 pamphlets were distributed, more than 120,000 posters were put up at parks and vacation sites and more than 10,000 meetings were held at enterprises, organizations and establishments. From 22 to 27 August 2011, a campaign called "Let's stop violence in the family" was conducted.

71. In addition, the National Commission on Women's Affairs and Family and Demographic Policy attached to the Office of the President joined forces with the private social funds Pravo and Korgau-Astana to hold a conference on 11-12 October 2011 on the topic "Enhancing the effectiveness of interaction

between State bodies and civil society institutions to prevent violence against women”. Participants in the conference included Mr. A. Solovev, a member of the *Majlis* (Parliament) of Kazakhstan, and representatives of Nur Otan, the political party in power. Representatives of State bodies and NGOs dealing with the problems of violence against women and officials of internal affairs departments on the protection of women against violence around the country were invited to the conference. The aim of the conference was to conduct a constructive dialogue with NGOs, raise levels of knowledge about international legal agreements and standards relating to domestic violence, discuss problematic issues arising out of internal affairs action in cooperation with NGOs, determine the basic lines of cooperation and establish partnership relations.

72. There are six correctional institutions for female convicts in Kazakhstan, in which, as of 17 September 2011, 2,957 women are serving their sentences.

73. Every inmate has an individual sleeping space, bedclothes, a bedside table in which to keep essentials and an issue of clothing. The communal residential facilities contain sleeping accommodation, day rooms, recreation rooms, where inmates can watch television at certain times, and education rooms. There are separate toilet facilities and bathrooms.

74. The latest report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women was approved by Government Decision No. 1064 of 15 September 2011 and submitted by the Ministry of Foreign Affairs, in accordance with the due procedure, to the Committee on the Elimination of Discrimination against Women. That report contains more detailed information.

75. The 2012-2016 Plan of Measures for Implementing the Strategy for Gender Equality in the Republic of Kazakhstan for 2006-2016 was adopted by Government Decision No. 24 of 11 January 2012.

Information concerning paragraph 11 of the concluding observations

76. Medical treatment for women in places of deprivation of liberty is regulated by paragraphs 117-127 of Ministry of Internal Affairs Order No. 272 of 14 June 2010, Ministry of Health Order No. 350 of 18 May 2011 and Ministry of Justice Order No. 157 of 16 May 2011, issued jointly, concerning the approval of rules for the provision of medical assistance to persons whose liberty is restricted or serving a sentence imposed by a court in a place of deprivation of liberty or held in a special institution. Illegal abortions are not carried out in women’s institutions of the penal correction system. Any measures involving abortion take place only in accordance with the medical evidence, where there is a threat to a woman’s health. No information on reproductive health is currently issued.

Information concerning paragraph 12 of the concluding observations

77. The observations that the number of crimes subject to the death penalty has been greater than those provided for under the Constitution are not quite correct, since the relevant articles largely relate to wartime, with the exception of article 166-1 (Attempt on the life of the First President of the Republic of Kazakhstan, the Leader of the Nation) and article 167 (Attempt on the life of the President of the Republic of Kazakhstan) of the Criminal Code.

78. Consideration is currently being given to the possibility of abolishing the death penalty in Kazakhstan.

79. Under article 15, paragraph 1, of the Constitution, every person has the right to life. The Presidential Decree of 17 December 2003 introducing a moratorium on capital punishment in Kazakhstan, which is still in force, was therefore an important milestone in the process of implementing the strategy of legal and judicial reform.

80. Following constitutional reforms in May 2007, the use of the death penalty has been restricted exclusively to terrorist offences involving fatalities and very serious offences committed in wartime. This amounts to the virtual abolition of capital punishment.

81. The constitutional reforms opened up new possibilities for the further improvement of the country's crime policy. Thus an amendment to article 15 of the Constitution guaranteeing the right to life effectively abolishes capital punishment, because it provides that the death penalty may be imposed by law only for very serious offences committed in wartime and terrorist offences involving fatalities. This does not, however, mean that the Constitution requires the death penalty to be applied for all the offences listed in it.

82. Kazakhstan associated itself with the statement by the European Union on the abolition of the death penalty at the sixty-first session of the United Nations General Assembly, on 19 December 2006.

83. At the legislative level, the Constitution restricts the use of the death penalty but does not, on the whole, present any obstacle to the ratification of the Second Optional Protocol to the International Covenant on Civil and Political rights, aiming at the abolition of the death penalty, bearing in mind the essential reservation on the possibility of using capital punishment for war crimes. In view of the fact that, under the Constitution, the death penalty is established by law as a measure of punishment exclusively for terrorist offences involving fatalities and for very serious offences committed in wartime, any question of the full abolition of capital punishment should be preceded by the adoption of the relevant amendments to the State Constitution. Considering the new threats and challenges of terrorism, and its increasingly international nature, we consider that such a step would currently be premature.

84. Legal policy for the period 2010 to 2020 provides for the further improvement of criminal legislation, including the continuation of the move gradually to reduce the grounds for the imposition of the death penalty.

85. Following the implementation of the provisions of article 4 of the Act on the entry into force of the Criminal Code, of 16 July 1997, which set out the prerequisites for introducing the punishment of life imprisonment, this form of punishment was brought in in 2004 and is successfully applied by the courts as an appropriate alternative to the death penalty. It also substantially reduces the options for using the death penalty.

Information concerning paragraph 13 of the concluding observations

86. Since the time that Kazakhstan acceded to the Convention relating to the Status of Refugees, through the Act of 15 December 1998, there have been no cases of extradition to a foreign State of a person having refugee status.

87. Pursuant to article 89 (i) and (j) of the Chişinău Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 7 October 2002, extradition does not take place where:

- The person whose extradition is sought is given asylum in the territory of the requested Contracting Party;
- There are other grounds under an international treaty to which the parties are the requesting and the requested Contracting Party.

88. The Committee against Torture is currently considering three petitions relating to Kazakhstan from three persons, namely Mr. O. Evloev, Mr. A. Gerasimov and Mr. T. Abdusamatov and also 28 nationals of Uzbekistan. The Committee has, to date, not reached any final Decisions on these petitions.

89. In connection with the latter petition, it should be noted that the 29 nationals of Uzbekistan were not granted refugee status in Kazakhstan. They were extradited to Uzbekistan on 29 June 2011 owing to the gravity of the offences of which they were accused. When they were extradited, assurances were sought that they would not be subjected to torture and these assurances were given by the other contracting party with regard to each of the persons concerned.

90. With regard to the petition of Mr. Gerasimov, we should note that, on 9 March 2011, a letter written by Mr. Gerasimov and certified by a notary was sent from the Ministry of Foreign Affairs of Kazakhstan to the Committee against Torture, stating that the petition in his name dated 22 April 2010 on the use of torture, currently before the Committee, had been drawn up on the legal initiative of a public company and the Kazakhstan International Bureau for Human Rights and Rule of Law on his authorization. He himself had not prepared or signed any petition, although he had indeed previously lodged complaints with the law-enforcement agencies against the police in the southern district of the Ministry of Internal Affairs in Kostanay, alleging that they had caused him physical and psychological harm. He was currently making no complaint against the police of the southern district of the Ministry of Internal Affairs in Kostanay. He had therefore sent a letter to the Committee against Torture withdrawing his petition.

Information concerning paragraph 14 of the concluding observations

91. The Act on the further humanization of criminal law and the strengthening of guarantees of due process in criminal proceedings was adopted on 9 November 2011.

92. Article 141-1 of the Criminal Code provides for criminal liability for torture, if used in the course of a person's official duties to determine the value of evidence, it is punished by a fine of between 200 and 500 times the monthly calculation index, or deprivation of the right to hold certain posts for a period of up to three years, or restriction of liberty for up to five years, or deprivation of liberty for the same period.

93. Under Supreme Court Regulatory Decision No. 1 of 10 July 2008 on the application of international standards under treaties entered into by the Republic of Kazakhstan, torture is understood to mean the deliberate causing of physical or psychological harm by the persons indicated in article 347-1 of the Code (an investigator, a person conducting an initial inquiry or any other official) with a view

to obtaining information or a confession from the person under torture or a third person, or punishing him or her for an action that he or she has performed or is suspected of performing and also threatening or coercing that person or a third person, for any reason, on the basis of discrimination of any kind.

94. Teaching establishments of the Ministry of Internal Affairs organize special training courses on international standards on human rights and the treatment of prisoners.

95. By agreement with the Ministry of Internal Affairs, the office of the Organization for Security and Cooperation in Europe (OSCE) and the Kazakhstan International Bureau for Human Rights and Rule of Law organized a workshop in Astana on 19-21 May 2010 for 16 members of staff of Ministry of Internal Affairs educational establishments on the methodology of teaching courses on human rights.

96. Similar on-site training courses were held in June and July 2010 for teachers at 13 Ministry of Internal Affairs educational establishments and the Semey and Aktobe Ministry of Internal Affairs colleges of law.

97. This 16-hour special course has formed part of the curriculum of special primary instruction for candidates for official service with the Ministry of Internal Affairs since 1 September 2010.

98. On 16 June 2010, the Kazakhstan International Bureau for Human Rights and Rule of Law organized an expert meeting at the National Academic Library in Astana to discuss the question of introducing human rights as an academic discipline into the curriculum of higher educational establishments.

99. The meeting was organized by the Kazakhstan International Bureau for Human Rights and Rule of Law in conjunction with the Commission on Human Rights attached to the Office of the President and with support from the United Nations Democracy Fund.

100. The meeting considered the joint work of representatives of State bodies, international organizations and civil society institutions in developing and introducing the academic discipline of human rights into the curricula of Ministry of Internal Affairs higher educational establishments. The questions of preparing methodological aids for lecturers and a textbook for students were also discussed.

101. Over the period March to June 2010, workshops were held in Karaganda, Stepnogorsk, Aktobe and Almaty on United Nations human rights standards and instruments on the prevention of torture, which were attended by 23 people.

102. The representative of the United Nations Children's Fund (UNICEF) and the Academy of Public Administration attached to the Office of the President held a workshop at the Academy's Institute of Justice from 1 to 5 November 2010 to draw up an academic programme on the rights of the child and international standards of justice for children. Among the participants in the workshop were four lecturers from Ministry of Internal Affairs higher educational establishments (the Almaty and Karaganda Ministry of Internal Affairs academies).

103. The Act on the further humanization of criminal law and the strengthening of guarantees of due process in criminal proceedings was adopted on 9 November 2011 in order to implement the Committee's recommendations. The Act introduces a new

provision to the Criminal Code, article 141-1, which provides for criminal liability for the use of torture, in line with article 1 of the Convention. At the same time, article 347-1 of the Criminal Code was rescinded.

104. In order to prevent an official from shielding another from investigation during inquiries into such cases, amendments and additions were introduced to article 192 of the Code of Criminal Procedure.

105. Improvements were made to the Instructions for the verification of reports of torture and other unlawful methods involving the cruel treatment of persons involved in criminal proceedings and held in special institutions and the prevention of use of such methods, which previously had been approved by Order No. 7 of the Procurator-General of 1 February 2010.

106. Under the amendments made to the Instructions by Order No. 66 of the Procurator-General of 27 July 2011, provincial prosecutors and equivalent prosecutor's offices are required to provide within 24 hours information concerning any case of pretrial investigation, and any criminal proceedings resulting therefrom, to the department responsible for the verification of the lawfulness of investigations and initial inquiries and the department responsible for supervising the maintenance of respect for the rights of persons who are detained, held in custody or serving a criminal sentence. Special reports must be submitted.

107. Once information has been lodged concerning an act of torture, the investigatory authorities undertake immediate verification of all the circumstances of the event in question and transmit the evidence in accordance with the procedure laid down in the Code of Criminal Procedure.

108. Previously, statements concerning torture by the police were, in practice, usually investigated by the very authorities by a member of which the alleged torture was perpetrated, namely the regional services of the internal security department of the Ministry of Internal Affairs. Frequently, such investigations were conducted in secret, behind closed doors. As a rule, they continued for a considerable length of time and ended without a prosecution being instituted.

109. The investigation of a criminal offence involving a staff member of a law-enforcement agency may no longer be conducted by that agency. Such matters are assigned to the public prosecutor's office and the investigation is undertaken by special prosecutors.

110. In 2010, action against torture was stepped up considerably. Whereas, in 2009, 3 prosecutions were instituted against 7 officers, in 2010 13 criminal cases were instituted against 31 officers.

111. In the first half of 2011, investigations were opened into 22 complaints, as a result of which 5 criminal cases were instituted under article 141-1 of the Criminal Code (Torture).

112. In 2011, five criminal cases were instituted involving officials of the operative units of the Ministry of Internal Affairs in the Karaganda and West Kazakhstan provinces.

113. The record shows that, in 2010, the public prosecutor's office received 269 claims of the use of torture and prohibited forms of treatment, on 33 of which the public prosecutor's office undertook investigations, as a result of which

proceedings were instituted in 5 cases — 2 in South Kazakhstan province and 1 each in Akmolin, Almaty and Kostanay provinces — while in 28 cases no proceedings were instituted.

114. Kazakhstan has decided to undertake a root-and-branch reform of the criminal law process. In that connection, preparations have been started to develop a policy outline and draft new texts for the Code of Criminal Procedure and the Criminal Code of Kazakhstan. The body in charge of working on the drafts is the Office of the Procurator-General of Kazakhstan. The draft Outline of the new Code of Criminal Procedure was approved by the interdepartmental commission on draft legislation at the end of 2011.

115. Interdepartmental working groups have been set up to work on the draft legislation, with the participation of NGOs, academic experts and practising lawyers.

116. The intention is to concentrate all criminal offences in the new text of the Criminal Code, including minor criminal offences, which are currently governed by the Code of Administrative Offences.

117. This will also require radical changes to be made to the existing legislation on criminal procedure.

118. One of the main lines of approach to improving criminal procedure legislation is to simplify such procedure and make it more efficient. This means that pretrial procedure must also be simplified.

119. In dealing with the question of simplifying pretrial and trial proceedings, special attention should be paid to the procedural regulations aimed at protecting the constitutional rights and freedoms of the individual, since administrative power must not be allowed to take the place of the administration of justice.

120. The draft legislation radically alters the preliminary stage of the criminal procedure by eliminating the preliminary inquiry and the institution of criminal proceedings. The procedure whereby an investigator confronts an accused person at the investigation stage is also eliminated. Instead, the public prosecutor's office, having received and carefully studied the evidence provided by the investigator, will charge the person concerned and then justify the charge in court. Pretrial procedure is simplified with the introduction of the concept of "pretrial investigation".

121. Moreover, the fixed term is to be abolished and replaced by the concept of the "reasonable period". A rule is also being established that clear-cut offences, including serious offences, must be investigated within the shortest time possible and in any case not more than 30 days, while minor or less serious offences committed by a person who confesses and acknowledges the amount in damages must be investigated within 15 days. All investigation activities involving constitutional or other human rights and freedoms will be conducted exclusively with authorization from the public prosecutor's office and the next stage will involve the transfer of all these functions to the court within the time scales set out in the Outline of legal policy. Witnesses will be called only in cases where the activities of police officers may restrict an individual's constitutional rights, in the course of an inspection or a search of private premises, for example.

122. The concept of a “procedural agreement”, or a so-called “deal”, is being introduced into criminal procedure. It will take the form of a written agreement between the public prosecutor’s office and the suspect and will be approved by the court by means of the appropriate judicial instrument, thus preventing potential abuse and violation of the law.

123. The concept of the investigating magistrate is being introduced into the criminal procedure. This magistrate will decide such questions as whether to sanction an arrest as a preventive measure, how long its duration should be and whether a person not kept under guard should be placed in a medical institution so that forensic psychiatric tests can be carried out.

124. The intention is that the examining magistrate will be given the authority to order an international search, the exhumation of a body, the placing of a child offender in a special children’s institution, the compulsory placing of a person not kept under guard in a medical institution for forensic medical tests and various other measures of investigation to be carried out by the investigative agencies.

125. The reform of the investigative agencies and the improvement of pretrial procedure will entail a greater role and responsibility for the public prosecutor. To that end, it is proposed to give the public prosecutor’s office additional duties and increase its coordinating role.

126. Instituting a clear demarcation of powers, releasing the law-enforcement agencies from non-core functions, optimizing the system for investigating criminal cases, establishing unified legal standards for the conduct of the law-enforcement agencies and introducing the concept of mediation should all make the work of the investigative agencies easier and have an enormous impact on reducing bureaucracy in the pretrial procedure, thereby making it more effective.

127. This should help to broaden the range of alternative measures available under the law for prevention and punishment not automatically involving deprivation of liberty, for the application of restorative justice and for other ways and means of rationalizing legal procedure.

128. In order to ensure that the courts are as responsive as possible to the needs and requests of the hundreds of thousands of individuals involved in the legal process, that operational mistakes in the legal system can be corrected on the spot and that the potential of provincial courts can be exploited more fully, it is proposed that two new legal bodies should be established:

- A court of appeal to consider decisions and sentences before they enter into force;
- A court of cassation to consider judicial instruments that have already entered into force.

129. Measures will also be taken to eliminate unnecessary procedural rules in the legal process, thus reducing the costs for individuals involved in proceedings and creating better conditions for obtaining access to justice.

130. It is planned to introduce the European model of police-public prosecutor-court. The police should not determine the legal aspects of a case, apply measures of procedural coercion, except in cases strictly defined by law, or engage in activities

relating to constitutional human rights without permission from the public prosecutor's office or the courts. It is also planned to appoint international experts.

131. The expectation is that the bills will be submitted for consideration by Parliament in 2013.

Information concerning paragraph 15 of the concluding observations

132. Article 28 of the Education Act states that the learning and educational process in educational establishments takes place on the basis of mutual respect for the personal dignity of the pupils, the educators and the classroom staff. The use of physical, moral or psychological force against pupils or educators is prohibited.

133. In order to improve the effectiveness of preventive work with individual young people, the post of school police inspector was created in 2001. As of December 2011, such inspectors numbered 1,608.

134. School police inspectors give tens of thousands of talks and address round tables or seminars on the subject of the law every year. The official site of the Ministry of Internal Affairs conducts Internet conferences in real time, involving the heads of the structural departments of the Ministry of Internal Affairs and the Ministry of Education and Science (one such was held on 27 April 2011).

135. In the interests of the early prevention of offending among minors, the formation of law-abiding behaviour and greater awareness of the law among children and adolescents, the Ministry of Internal Affairs conducts a running campaign on the theme "Children are our future", "The police and school" and "Children and night work". In order to make a specific impact on the incidence of offending among young people, operational and preventive campaigns are conducted, including "Teenagers", "The family and school" and "School leavers' parties", in which representatives of the relevant State bodies, the Nur Otan political party, the Ministry of Internal Affairs, NGOs and civil society take part.

136. With a view to anticipating and forestalling all forms of violence, the regions adopt and implement plans for joint measures on maintaining and protecting the rights of children against violence and other forms of discrimination.

137. A nationwide campaign entitled "Let's stop violence in the family" was held from 22 to 27 August 2011 jointly with the law-enforcement agencies. This campaign involved setting up mobile advisory groups, made up of representatives of regional children's rights departments and educational units. The groups gave lectures, workshops, seminars, round tables and talks to explain the Domestic Violence Prevention Act, administrative and criminal law, the Convention on the Rights of the Child, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and other legal instruments. These events included information and methodological instruction.

138. In 2011, the Ministry of Education and Science adopted a plan of measures to improve the general public's knowledge of the law relating to education and the protection of children's rights and to put a stop to violations of such rights. The plan provides for a range of measures to organize outreach activities with a view to educating parents about the law on education and the protection of children's rights

and to conduct seminars and workshops aimed at ensuring that teachers did not violate educational ethics.

139. All provincial education departments issue an instruction booklet for teachers, entitled “Research into the problems of the development of social infrastructure to forestall and prevent violence against children”, which discusses the problems of developing the social infrastructure and forestalling and preventing violence against children.

140. Article 10 of the Children’s Rights Act of 8 August 2002 states that every child has the right to life, personal freedom and the inviolability of his or her dignity and private life.

141. The State guarantees the personal inviolability of the child and ensures his or her protection from physical and/or psychological violence and cruel, brutal or degrading treatment.

142. Under article 107, paragraph 2, of the Criminal Code, deliberately inflicting physical or psychological suffering on a minor by means of systematic assault or other violent act is a criminal offence.

143. Under article 137 of the Criminal Code, a parent or other person having an obligation regarding the upbringing of a minor, or a teacher or other employee of an educational, residential, medical or other institution having an obligation to supervise a minor, is also liable to prosecution for non-fulfilment or improper fulfilment of such an obligation, if such action is accompanied by harsh treatment of the minor in question.

144. In addition, there is a national telephone hotline which operates round the clock and which children can call by dialling 150 for psychological, social or legal help.

Information concerning paragraph 16 of the concluding observations

145. Article 1 of Children’s Rights Act sets out what constitutes the economic exploitation of children, namely the worst forms of child labour, including the sale of children, the involvement of children in criminal activity, the performance of anti-social acts or prostitution, the production of pornographic photographs or participation by children in spectacles of a pornographic nature, and also labour engaged in by children under the minimum working age established by the legislation of Kazakhstan.

146. The Coordinating Council for the Eradication of the Worst Forms of Child Labour has been operational since 2006. Its mandate is to disseminate information, provide management and political support from the relevant State bodies and organizations and mainstream the issue of child labour into the activities of various organizations.

147. The National Information Resource Centre on the Worst Forms of Child Labour is operational at the National Occupational Safety Research Institute, a State-run organization, as part of a project organized by the International Labour Organization (ILO) and the International Programme on the Elimination of Child Labour (IPEC).

148. The Centre collects information on issues relating to child labour in Kazakhstan, prepares and disseminates the relevant information for specialists and takes part in organizing the work of the National Coordinating Council for Combating Child Labour under the auspices of the Ministry of Labour and Social Protection and other measures aimed at the elimination of child labour.

149. The Ministry of Labour and Social Protection is currently working with ILO to draw up the new joint workplan on the eradication of child labour and the implementation of ILO Convention No. 182, 1999 in Kazakhstan for 2012-2014.

150. From 1 to 12 June every year since 2006, the National Information Campaign has run a programme called “12 days of struggle against the use of child labour”.

151. With a view to obtaining complete information about the use of child labour in all regions and economic sectors of Kazakhstan, the Ministry and the State Statistics Agency have held talks with IPEC on a proposal that, in 2013, the Agency should, with technical and financial help from IPEC, conduct a national statistical survey on child labour in Kazakhstan.

152. In addition, on 10 November 2011, the Ministry of Labour and Social Protection held a workshop, as part of the IPEC process, jointly with the Asian-American partnership social fund, entitled “Introduction of a child labour monitoring system in Kazakhstan”.

153. On 13 October 2011, the Ministry of Labour and Social Protection held a round table, in which the *akimat* of Almaty province and the Union of Manufacturers and Exporters of Kazakhstan participated, on the topic of the working conditions of employees engaged in agricultural work.

154. Representatives of the Ministries of Agriculture, Education and Science and Internal Affairs, the Office of the Procurator-General, ILO, the Embassy of Kyrgyzstan in Kazakhstan, the Committee for the Protection of Children’s Rights attached to the Ministry of Education and Science, social organizations and agricultural companies participated in the work of the round table.

155. On 14-15 June 2011, members of the agricultural workers’ and teachers’ unions took part in a two-day training seminar on the role of the unions in eradicating child labour and their participation in monitoring child labour.

156. Among the most valuable existing mechanisms for identifying children from risk groups are the “Children and night work” and “The road to school” campaigns conducted by the Committee for the Protection of Children’s Rights attached to the Ministry of Education and Science.

157. One of the priorities of public prosecutor’s offices is to monitor the implementation of minors’ rights.

158. According to information provided by the Office of the Procurator-General, systematic checks are carried out on companies to ensure that they meet legal and ethical requirements aimed at protecting the rights of minors, including assurances that they are not hiring children for work that is harmful to life or health.

159. The results of the checks undertaken have shown that there are cases of child labour being used unlawfully in Kazakhstan. Over nine months during 2011 it was found that there had been 986 breaches of the law protecting the labour rights of

minors. As a result, disciplinary proceedings were instituted against 55 people and administrative proceedings against 42.

160. During the course of integrated checks carried out in 2011 by State labour inspectors jointly with public prosecutor's offices, unions, educational institutions and health establishments 177 administrative fines were imposed, amounting to a total sum of 1,540,000 tenge. The results of this monitoring work in the area of child labour prove the need to impose stronger sanctions on employers who unlawfully hire minors, to mount information campaigns and to take further action to make sure that the law is known in order to minimize the number of cases of child labour.

161. The Ministry of Internal Affairs is engaged in work to identify, suppress and prevent cases of trafficking in minors with a view to their exploitation.

162. According to statistical data provided by the Office of the Procurator-General for 2011, 21 cases of trafficking in minors (Criminal Code, art. 133, Trafficking in minors) were registered in the territory of Kazakhstan, as of 26 December 2011. Of those, 6 occurred in North Kazakhstan province, 10 in Zhambyl province, 2 in the town of Almaty and 1 each in Almaty, Kyzylorda and Atyrau provinces. A total of 14 cases went to trial under article 133 of the Criminal Code in 2011.

163. The Ministry of Internal Affairs is currently carrying out the necessary procedure for the ratification of the Hague Convention on the Civil Aspects of International Child Abduction.

164. In order to uncover cases of violations of children's rights and prevent the neglect and abandonment of children, Internal Affairs offices carry out "Children and night work" raids across the country every three months. In the course of these raids, checks are carried out on the places where children and adolescents spend most time, engaged in vagrancy or begging, and also in computer clubs, with a view to finding adolescents after 10 p.m., and nocturnal places of entertainment, in order to identify adults engaged in using child labour.

165. The Ministry of Education and Science ran a national information campaign from 1 to 12 June 2011, entitled "12 days of struggle against the use of child labour", for the sixth year running, jointly with the Ministry of Labour and Social Protection and the NGO Association of Women White-Collar Workers. This campaign is conducted annually as part of the ILO project to eliminate the worst forms of child labour and is timed to coincide with the World Day Against Child Labour.

166. In 2011, the Committee for the Protection of Children's Rights set up the NGO Council, which, among other activities, participates in the work of the Ministry of Education and Science to prevent the exploitation of child labour.

167. The interdepartmental plan of measures to be taken by the Republic of Kazakhstan on combating trafficking in persons, 2012-2014, drawn up by the Ministry of Justice, provides for checks to be carried out on cotton and tobacco manufacturers in order to identify any cases of the unlawful use of child labour.

Information concerning paragraph 17 of the concluding observations

168. The Ministry of Justice (Order No. 30 of 1 February 2010), the Ministry of Health (Order No. 56 of 29 January 2010) and the National Security Committee (Order No. 15 of 30 January 2010) issued a joint order on the mandatory participation of forensic specialists in medical examinations of persons held in temporary holding facilities, remand centres or institutions of the penal system.

169. The total number of convicted persons fell from 49,479 to 43,238 between 1 January 2004 and 1 January 2007. By 1 January 2010, the number of convicted persons had risen to 55,140, an increase of 11,902. Since the beginning of 2010, the number has fallen by 2,772.

170. As of 17 September 2011, there are 94 establishments in the penal correction system of the Ministry of Internal Affairs. Of those, 75 are correctional institutions, in which 45,852 convicted persons are serving their sentences, and 19 are remand centres, in which 6,516 persons are detained pending investigation or following conviction.

171. The procedure for parole in Kazakhstan is governed by the legislation in force. Thus, under the provisions of article 169, paragraph 9, of the Penal Enforcement Code, once a convicted person has served a part of his or her sentence as established by law, the administration of the institution or establishment in which the sentence is being served is required to review the case monthly and submit an application for parole or refusal of parole or the replacement of the remaining part of the sentence by a more lenient penalty, which is addressed to the public prosecutor's office for subsequent submission to the courts.

172. According to paragraph 3 of Supreme Court Decision No. 10 of 25 December 2007, the public prosecutor's office should consider the justification and legality of a petition. Where the petition is acceptable, the case files are sent to the court. If it is not acceptable, the office issues a reasoned decision and returns the case file to the administration of the institution or body enforcing the sentence.

173. However, the requirement in article 169, paragraph 9, of the Penal Enforcement Code that case files should be reviewed by the courts is not always met.

174. To deal with this problem, legislation was adopted on 10 January 2012 relating to the penal enforcement system, changing the procedure for submission for parole and the replacement of the remaining part of a sentence by a more lenient penalty or a move to a different kind of correctional institution.

175. This question is currently before Parliament for consideration.

176. With regard to the number of deaths among prisoners, there were 272 deaths in the year to 4 October 2011, of which 48 were suicides. In every case of suicide, official investigations were conducted and on the basis of their results, disciplinary action was taken against 232 members of staff. A comparison of 2011 with 2010 shows the following situation: in 2010 434 deaths were recorded, as against 452 in 2009, which is 18 cases less.

177. Since the beginning of 2011, there have been 150 cases of self-mutilation in institutions of the penal enforcement system.

178. Whenever a case of self-mutilation occurs, the public prosecutor's office is informed and an official investigation is carried out to establish the reason for the self-mutilation and the conditions under which it was carried out.

179. One of the reasons for self-mutilation, accounting for more than 30 cases, is to express dissatisfaction with investigations carried out by Internal Affairs offices or with a judge, a sentence or a court decision.

180. However, in more than 80 per cent of cases, such actions by prisoners are aimed at obtaining a less rigorous regime of detention.

181. In 2010, there were 100 cases of self-mutilation in institutions of the penal enforcement system, involving 225 convicted persons and 39 remand prisoners, as against 35 cases involving 128 persons in 2009. As of 30 September 2011, there had been 179 cases of self-mutilation inflicted by 337 convicted persons, including 35 group self-mutilations in which 158 persons participated.

182. An analysis of the causes and conditions behind the perpetration of acts of group self-mutilation has shown that the main causes are a desire to protest against a search or dissatisfaction with a disciplinary regime, a court sentence or confinement to a punishment cell. Self-mutilation may also be due to family circumstances or conflict situations between the prisoners.

183. In order to establish a single procedure for reviewing communications or other information or facts concerning suicide among persons held in custody or serving a criminal sentence, for ensuring the lawfulness of investigations into the circumstances of an incident and for developing preventive measures to ensure that such incidents do not occur, the Office of the Procurator-General issued Order No. 42r/1 of 20 May 2011.

184. Measures are currently being taken to increase the effectiveness of law enforcement activities and of the judicial system, in accordance with Presidential Decree No. 1039 of 17 August 2010.

185. Particular attention is being given to improving the basic laws and regulations in order to humanize criminal legislation.

186. Amendments and additions have been made to the Criminal Code, the Code of Criminal Procedure, the Penal Enforcement Code and the Code of Administrative Offences, simplifying the procedure for investigating criminal cases, decriminalizing certain categories of offence and improving legislation related to administrative offences. Amendments to the Criminal Code include a provision that, in three categories of offence, deprivation of liberty as a punishment is abolished and, in 11 categories of offence, the length of a sentence of imprisonment is shortened: 13,236 prisoners have been affected by this amendment, with 383 being released and the rest serving shorter sentences.

187. On 28 December 2011, a law was passed offering amnesty in connection with the twentieth anniversary of the independence of Kazakhstan. The amnesty covered 3,114 persons sentenced to deprivation of liberty and 9,958 convicted persons whose sentences did not involve deprivation of liberty.

188. By the end of 2011, 22,582 convicted persons had been released from the establishments where they had been held. Of those, 3,114 were released following

the amnesty, 1,640 on humanitarian grounds, 6,635 on completion of their sentences and 11,127 on parole.

189. This means that, at the end of 2011, 41,519 persons were held in places of deprivation of liberty, while by the end of 2012 the figure will be 36,233, falling to 30,347 by the end of 2013.

190. On 2 February 2010, a joint order on cooperation between law-enforcement agencies and civil society actors to verify complaints of torture and other unlawful methods of inquiry and investigation and to undertake prosecutions in such cases was issued by the Minister of Justice, the Procurator-General, the Minister of Internal Affairs and the Chairperson of the National Security Committee Agency to Combat Economic Crime and Corruption.

191. A bill introducing amendments and additions to a number of legislative acts of the Republic of Kazakhstan on the establishment of a national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment is under consideration by Parliament, to go with the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Information concerning paragraph 18 of the concluding observations

192. The requirement for nationals of Kazakhstan travelling abroad to obtain an exit visa was abolished in 2001.

193. So-called exit visas are issued only to foreign nationals:

- Who reside permanently in Kazakhstan, on the basis of a permit from the Ministry of Internal Affairs;
- Who have lost in the territory of Kazakhstan their passport or other document conferring the right to cross the State border of Kazakhstan, on the basis of a written application from the embassy or consulate of a foreign State and a guarantee that the foreign national will return to his or her country of permanent residence;
- Concerning whom a decision has been taken in accordance with legal procedure to deport him or her from Kazakhstan, on the basis of a court ruling on the deportation of a foreign national.

Information concerning paragraph 20 of the concluding observations

194. Under article 26 of the Code of Criminal Procedure, a court holding a criminal trial must explain to accused persons their right to defence, which they may conduct themselves or with the help of a defence counsel or legal representative.

195. Article 134, paragraph 1, of the Code of Criminal Procedure (Procedure for the detention of a person suspected of committing an offence) states that a detective or investigator must draw up a report within no more than three hours after a person has been detained and the detained person must be informed of this.

196. The accused person is also read his or her rights as provided for under article 68 of the Code, including the right to engage a defence counsel and to testify in the presence of the counsel, which is noted in the report. The accused is also

entitled to a confidential meeting before the first cross-examination alone with a defence counsel chosen by the accused or appointed by the court.

197. The question of the obligation to inform a suspect at the time of arrest that he or she is entitled to the services of a lawyer is governed by the Qualified Legal Assistance Act of 11 December 2009. Under the Act, article 68, paragraph 7, of the Code of Criminal Procedure was supplemented by a rule stating that an accused person has the right to require the person responsible for his or her detention to provide an immediate explanation of his or her rights.

198. Previously, the Code stipulated that a defence counsel could participate in criminal proceedings only once he or she had been authorized to do so by decision of the court holding the criminal proceedings. The Act introduces the rule that a lawyer may participate in criminal proceedings as defence counsel on presentation of his or her accreditation as a lawyer and a warrant of attorney. Other persons permitted under the Act to participate in criminal proceedings may do so on presentation of documents attesting to their right to participate in criminal proceedings as defence counsel.

199. A law introducing amendments and additions to a number of legislative acts of Kazakhstan on the profession of the Bar was adopted on 28 December 2011. The law aims to provide for transparency in the accreditation of persons wishing to take up the profession of lawyer, to regulate issues relating to the training of such persons and to monitor the quality of the legal assistance provided by lawyers.

200. A bill on State-guaranteed legal assistance has been drawn up and is currently being discussed and coordinated by State bodies.

201. The State Secrets Act defines what information comprises a State secret, access to which is regulated by a procedure for obtaining the relevant authorization.

202. In the interests of national security, the country's legislation sets out a precise procedure for investigating criminal cases involving State secrets.

203. Articles 53 and 205 of the Code of Criminal Procedure regulate the procedure for allowing those participating in the trial, including defence counsel, access to information comprising a State secret and the requirements on maintaining confidentiality in the criminal case concerned.

204. Article 14, paragraph 8, of the Bar Act provides for the right of a defence counsel to be given access to information comprising a State secret, if that is essential for defence or representation during an investigation or preliminary enquiry or before the courts.

205. An authorized body may refuse a person access to State secrets only on the grounds provided for in the State Secrets Act, article 30, namely, lack of legal capacity, limited legal capacity, possession of a conviction that has not expired or been expunged, medical contraindications, the deliberate furnishing of false information, permanent residence abroad or submission of documents applying for permanent residence in another State, the discovery, as a result of investigation, of activities of the person concerned constituting a threat to the national security of Kazakhstan or the person's avoidance of such investigations.

206. As regards the Committee's concern at the President's role as "coordinator" of all three branches of Government, we consider that there has probably been a

misunderstanding arising as the result of incorrect interpretation at the time that oral questions were being answered, as indicated by article 40 of the Constitution of Kazakhstan:

“...

2. The President of the Republic shall be the symbol and guarantor of the unity of the people and the State power, the inviolability of the Constitution and a citizen's human rights and freedoms.

3. The President of the Republic shall ensure the coordinated functioning of all branches of State power and the responsibility of the institutions of power to the people.”

Information concerning paragraph 21 of the concluding observations

207. We wish to disagree with the observation that Kazakhstan lacks a largely independent judicial system. We should draw attention to the continued adoption of measures to strengthen the independence of the judiciary.

208. Article 3, paragraph 4, of the Constitution provides that State power in Kazakhstan is unified and implemented on the basis of the Constitution and the law in accordance with the principle of its division into the legislative, executive and judicial branches and a system of checks and balances that governs their interaction.

209. This constitutional rule is not merely a matter of words; the principle of division of powers is fully realized. The State has consistently adopted a range of legislative and organizational measures to establish the independence of the judicial system.

210. In particular, the Presidential Decree issued in 2000 on measures to increase the independence of the judicial system in the Republic of Kazakhstan finally severed the dependence of the country's courts and judges on the executive authorities.

211. The Decree transferred the function of running the activities of the judicial system from the executive authorities to a special body established for that purpose answering to the Supreme Court.

212. The Decree removed from the justice institutions within the system of executive authority the function of running the Qualification Collegium of Justice, which at that time was responsible for issues relating to judicial personnel.

213. It should be pointed out that the existing procedure for appointing and discharging judges in Kazakhstan is fully in accord with the principle of an independent judiciary.

214. Issues relating to staffing are currently the responsibility of the Higher Council of the Judiciary, a collegial body ensuring the independence and inviolability of judges.

215. The procedure for selecting judicial personnel, which is set out in the Constitutional Act on the Judicial System and the Status of Judges, has many positive features that facilitate fairness in the selection of candidates, such as the non-discrimination principle (art. 30, para. 1) and the procedure for choosing candidates by means of a qualifying examination (art. 29, para. 1). Under article 30,

paragraph 2, the Higher Judicial Council selects candidates that have met the competitive requirements and then recommends them to judicial posts. The final decision on the appointment of a judge of the Supreme Court is taken by the Senate and on all other judicial posts by the President of Kazakhstan.

216. The Constitutional Act also enshrines the principle of the autonomy of the judicial system regularized and, which enables the selection process to be democratized. Thus judges themselves are given the opportunity to meet in plenary sessions and participate in the selection of candidates for judicial posts.

217. Candidacies for vacant posts of presidents of chambers of provincial courts and of the Supreme Court are submitted by the President of the Supreme Court for consideration by a plenary meeting of the Supreme Court on the basis of a system of alternates.

218. Candidates for the post of president of a chamber of the Supreme Court are recommended from among the judges of the Supreme Court.

219. The Supreme Court, meeting in plenary, discusses the candidacies for vacant posts of chairpersons and presidents of chambers of provincial courts and the Supreme Court and reaches its decision accordingly.

220. On the basis of the decision taken by a plenary meeting of the Supreme Court, the President of the Supreme Court submits the candidacies for the posts of president of the chambers of provincial courts and of the Supreme Court to the Higher Judicial Council.

221. The Higher Judicial Council considers the candidacies submitted to it and recommends candidates for the vacant posts of presidents of chambers of provincial courts and of the Supreme Court to the President of Kazakhstan for appointment to their posts.

222. A report by the President of the Supreme Court serves as the basis for consideration by the Higher Judicial Council of the question of dismissing a judge from his or her post. The report on the dismissal of a judge from his or her post for breaching disciplinary rules, for professional unsuitability or for failure to fulfil the requirements of the Constitutional Act is submitted to the Council by the President of the Supreme Court on the basis of a decision by the Judges' Disciplinary and Qualification Board or the Judicial Panel.

223. The Supreme Court takes measures to ensure that the procedure for the selection of judges takes account of gender equality.

224. The Constitution states that a judge may not be arrested, subjected to detention or measures of administrative punishment imposed by a court of law or arraigned on a criminal charge without the consent of the President of the Republic of Kazakhstan on the basis of a decision by the Higher Judicial Council of the Republic or under the conditions set out in article 55, paragraph 3, of the Constitution or without the consent of the Senate, except in a case where a judge is apprehended at the scene of a crime or committing a serious crime.

225. The President of Kazakhstan is thus not entitled to appoint or dismiss judges except on the recommendation of the Higher Judicial Council, which is made up of representatives of all three branches of power. The Committee's concluding

observations concerning the dependence of the judicial system on the executive branch are therefore incorrect.

226. The Supreme Court conducts investigations to prevent and counter corruption in the judicial system by taking organizational and preventive measures aimed at preventing manifestations of corruption in the judiciary of Kazakhstan.

227. The observance by judges of work and disciplinary standards is kept under constant review. In the regions, such work is undertaken directly by the president of the provincial court.

228. The Supreme Court has a number of judicial institutions whose aim is to ensure that all judges meet moral and ethical standards and rules of conduct set out in the Code of Judicial Ethics. These institutions are the Judges' Disciplinary and Qualification board, which has branches in the regions, the Judicial Panel and the Commission on Judges' Ethics, which is attached to the Union of Judges of the Republic of Kazakhstan in the provinces.

229. The Supreme Court has conducted judicial monitoring of judges' activities since 2009. On the basis of this monitoring, a total of 64 judges across the country were dismissed from their posts in 2009, 2010 and the first four months of 2011.

230. Judicial monitoring means the systematic consideration of the activities of judges attached to local and other courts with a view to establishing the quality and appropriateness of their conduct of trials. Judicial monitoring makes it possible to react promptly to breaches of legality by judges conducting trials and, on the basis of the available evidence, to consider the professional suitability of a judge.

231. Judicial monitoring also includes a consideration of:

- The general opinion of a judge's work, obtained by means of the anonymous questioning of persons participating in cases over which he or she has presided;
- The efforts by a judge to improve his or her professional level;
- Evidence of disciplinary penalties, complaints against a judge's activities and the results of any investigation of such complaints, and any publications in the media.

232. A judge's work is kept under constant scrutiny by civil society, both directly by jurors and indirectly by human rights organizations, the media and the public attending legal trials.

233. Social forms of scrutiny increase the responsibility on judges. For example, the Union of Judges of the Republic of Kazakhstan, a voluntary organization, and the nationwide social council on combating corruption attached to the national democratic party Nur Otan signed a memorandum of cooperation on 18 May 2011. Under the memorandum, the parties agreed that one aim of cooperation should be to develop proposals on improving the legal and organizational mechanisms regulating the functioning of the courts, such as the need to eliminate causes and conditions that facilitate manifestations of corruption in the judicial system.

234. In order to provide for transparency and openness in the procedure for appointing judges, the Constitutional Act on the Judicial System and the Status of

Judges establishes a procedure for selecting candidates on a competitive basis and stipulates that they must pass through a probationary period.

235. The Supreme Court is continuously engaged in clearing the ranks of the judiciary of persons who have compromised their judicial power or committed crimes and offences involving corruption. The Supreme Court's preventive work against corruption includes the monitoring of personnel by setting up and operating an information system, entitled "Courts and judges of the Republic of Kazakhstan", which contains information on every judge and on offences committed by judges.

236. Judges' training is carried out by the Institute of Justice of the Academy of Public Administration attached to the Office of the President of Kazakhstan. The Institute's Academic Plan for 2010 included a lecture by a Supreme Court judge entitled "The practice of hearing cases involving corruption and other crimes of office", which formed part of the criminal-law programme for judges of regional and equivalent courts, including newly appointed judges.

237. The Staff Reserve Commission is the body responsible for selecting the most suitable candidates for managerial posts in local courts. Similar commissions have been set up in the provincial courts.

238. In the exercise of their powers, the country's judges carry out measures to improve and implement anti-corruption legislation correctly, apply the principle of the unavoidability of punishment and strengthen preventive measures by issuing private orders addressed to officials and other persons on the elimination of the causes and conditions that the court has determined facilitate corruption.

239. Measures are taken to ensure the openness and transparency of judicial procedure. Active, targeted action has been taken to introduce the electronic distribution of cases in the courts and audio and video recordings of trial proceedings. Court decisions are published on the website of the Supreme Court, media involvement is encouraged and articles regularly appear in leading newspapers and magazines on issues relating to the judicial system.

240. The president of a court has the obligation to engage in action against corruption and to maintain judges' ethical standards. One of a number of anti-corruption measures is to prohibit access by the public to court premises, apart from the chambers where trials are held. A pass system is in place to prevent contacts between the public and court staff outside the legal proceedings and a telephone hotline has been set up.

241. Work is, moreover, constantly being done to harmonize court practices on hearing corruption cases.

242. In order to develop this process further, an electronic recording system has been introduced for operational documents in local courts and telephone hotlines are in use.

243. Legislation has also been introduced amending and supplementing the Higher Judicial Council of the Republic of Kazakhstan Act, with a view to strengthening the role of the Higher Judicial Council and further improving the judicial system, enhancing the role of local courts and strengthening the independence and inviolability of the country's judges.

244. The procedural legislation of the Soviet period gave not only the Procurator-General but also his deputies and provincial procurators the right to suspend court decisions.

245. The procedural legislation adopted by Kazakhstan has significantly decreased the number of officials granted that right, which is retained only by the Procurator-General (Civil Code, art. 396). It should be noted, however, that the Procurator-General exercises the right to suspend court decisions only when reviewing cases for supervisory purposes.

246. The Procurator-General is entitled to suspend a judicial decision for supervisory purposes only on receipt of an application in a civil case from the relevant court (General Decision No. 2 of the Supreme Court of 20 March 2003, paragraph 33, on the application by the courts of a number of regulations of procedural civil legislation). A suspension by the Procurator-General of the execution of a judicial decision is restricted in time, to no more than three months.

247. The powers of the Office of the Procurator-General are also set out in article 83 of the Constitution, which states that the Office shall, on behalf of the State, exercise the fullest supervision over the exact and uniform implementation of the law, presidential decrees and other regulatory acts in the territory of Kazakhstan, monitor the legality of police operations, enquiries and investigations and administrative or executive proceedings, take steps to identify and eliminate any breaches of the law and speak out against legislation or other regulatory acts that contradict the Constitution and legislation of Kazakhstan. The Office represents the interests of the State in court and conducts criminal prosecutions in accordance with the procedure and within the restrictions laid down by law.

248. The data show that, in 2010-2011, the President of the Supreme Court exercised his authority to suspend the implementation of 30 judicial decisions that had entered into force, 17 of those cases being in 2010 and 13 in the first nine months of 2011.

249. Out of the total of cases suspended, 18, or 60 per cent (11 in 2010 and 7 in 2011), were subsequently quashed or amended by a supervisory board (12 were quashed and 6 amended). In one case, the decision was left unchanged, in eight an application for review was denied, in one the application was returned and two are currently before the courts.

250. Over the same period, the Office of the Procurator-General suspended the execution of 28 court orders (18 in 2010 and 10 in 2011).

251. Petitions were lodged under the review procedure against 18 out of the total of court decisions, or 64 per cent (12 in 2010 and 6 in 2011). Following a review, 11 petitions out of 18 (61 per cent) were granted, 3 were dismissed, 2 were recalled, 1 was returned and 1 is still at the review stage.

252. It should be noted that, in the context of the number of decisions reached by courts, the proportion of judicial instruments suspended by the authorities — the Procurator-General — is insignificant. Thus, in 2010, 305,249 rulings were made and implemented in the civil courts and, of those, 18 were suspended, that is 0.006 per cent, while, in the first eight months of 2011, the figure was 10 suspensions out of 184,007 cases (0.005 per cent).

253. The suspension of the execution of a judicial decision is based on arguments by parties to a case who have lodged an application concerning such issues as an unlawful eviction from their dwelling, an unfounded demand for payment of a substantial sum of money or evidence of an attempt by an individual to avoid paying taxes or other compulsory payments to the budget.

Information concerning paragraph 32 of the concluding observations

254. According to the statistics, acquittals amounted to 694 in 2010, out of a total of 30,130 decisions reached, or 2.3 per cent. That proportion is roughly the same for the first six months of 2011: acquittals comprised 216 out of 11,151 decisions, or 2 per cent.

255. Court records show that, in the first half of 2011, Kazakhstan courts acquitted 199 persons, 180 of whom were the subject of private accusations, while criminal proceedings against 24 persons — including 17 who were the subject of private complaints — were dropped for purposes of rehabilitation.

256. The small proportion of acquittals does not mean that negative influence is wielded by the public prosecutor's office on the process of administering justice in criminal cases, with an alleged bias towards conviction.

257. This indicator is related to the special features of the criminal procedure. An assessment of the courts' activities in criminal cases should also take account of the courts' practice of referring cases for additional investigation, which lowers the number of cases resulting in acquittal.

258. A revision of the Code of Criminal Procedure is currently in hand and it is proposed to strengthen the regulations aimed at eliminating the practice of additional investigation.

259. The law of Kazakhstan does not in any way permit the use of testimony obtained under torture.

260. Under the Act amending and supplementing the Criminal Code, the Code of Criminal Procedure and the Penal Enforcement Code of the Republic of Kazakhstan, of 21 December 2002, article 347-1 (Torture) was added to the Criminal Code.

261. The provision previously known as article 347-1 of the Criminal Code (Torture) and now renumbered as article 141-1 has been transferred to chapter 3 of the Criminal Code on the violation of citizens' rights and freedoms. At the same time, the wording of the first part of the article has been changed to bring it into line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

262. The inadmissibility of the use by courts of testimony obtained under torture is provided for on the basis of the law and other rules and regulations.

263. On the basis of studies of judicial practice in torture trials, the Supreme Court issued a regulatory decision on the implementation of the provisions of criminal and criminal procedure law relating to respect for personal liberty and the inviolability of human dignity and to the prevention of torture, violence and other cruel or degrading treatment or punishment.

264. The regulatory decision includes an explanation of how courts should act in the pretrial period, during the trial and when considering applications to authorize preventive measures in the form of arrest. It also sets out precisely how the courts should proceed.

265. The regulatory decision also provides that a person should be handed over without delay, but not more than three hours following the time of arrest, to the person carrying out the inquiry or investigation to determine the question of the detainee's procedural detention. The precise time of arrest must be recorded, indicating hours and minutes, in the report on the arrest.

266. In addition, paragraph 18 of the regulatory decision provides that not only the officials who cause the physical and psychological suffering are criminally liable for participation in the offence but also the organizers, instigators and accomplices to torture who are not persons in positions of responsibility. An official with whose knowledge or tacit consent or connivance or prior agreement to be an accessory to torture is committed by a person subordinate to the official in question is deemed to be an accomplice to that crime.

267. The regulatory decision also deals with issues relating to the review and verification of complaints concerning the use of torture, the separation of torture from related inquiries and compensation for damage caused by torture.

268. All the explanations in the regulatory decision of the Supreme Court have the purpose of ensuring the correct application of the standards set out in the law and of preventing torture.

269. The small number of acquittals in criminal cases (on public or private-public charges) referred to in the Committee's recommendations is explained by the greater responsibility imposed on the criminal investigation agencies to ensure that criminal cases submitted to the courts are well founded in substance and also by the active supervision by the public prosecutor's office of the lawfulness of preliminary inquiries and investigations. Every case that ends in acquittal or dismissal for purposes of rehabilitation is considered a serious breach of an individual's constitutional rights and thus an unsatisfactory performance of their duties both by the criminal investigation agency and the public prosecutor's office in relation to the question of the liability of a guilty official.

270. Article 14 of the Constitution states that no person participating in a criminal trial may be subjected to violence or cruel or degrading treatment. The violation of this principle means that, in accordance with the provisions of article 2 of the Constitution, the proceedings are regarded as being legally invalid and evidence thus obtained has no legal force.

271. Instructions for the verification of the reports of torture and other unlawful conduct entailing the cruel treatment of persons involved in criminal proceedings and held in special institutions, and the prevention of such methods, were adopted by order of the Procurator-General on 1 February 2010.

Information concerning paragraph 23 of the concluding observations

272. Article 28 of the Military Duty and Military Service Act provides that persons may be excused military service in peacetime, if they have undergone military or alternative service in another State.

273. An initiative to introduce “alternative service” in Kazakhstan was not successful.

274. One of the main reasons for this is that article 36 of the Constitution provides that the defence of the Republic of Kazakhstan is a sacred duty and responsibility of every person and that citizens of the Republic must do their military service, in accordance with the procedure and in the forms established by law.

275. In order not to deviate from the Constitution, the Military Duty and Military Service Act provides for citizens to be excused from service for a period of religious activities if they have taken holy orders or are permanently employed in a registered religious association.

Information concerning paragraph 24 of the concluding observations

276. The Freedom of Religion and Religious Associations Act provides for the State registration of religious associations with the judicial authorities. Small religious groups must also be registered with local executive authorities for notification purposes.

277. According to the statistics, in the first half of 2011, 37 cases of administrative violations of article 375 of the Code of Administrative Offences (Violation of the law on religious activity and religious associations) came before the courts in Kazakhstan. The violation of requirements under the law of Kazakhstan for:

- The performance of religious rites, ceremonies and/or meetings; the organization of charitable activities;
- The import, production, publication and/or distribution of religious literature and other materials having religious content or purpose or items of religious significance;
- The construction of religious premises (buildings) and the conversion (alteration of the functional purpose) of premises (buildings) into religious premises (buildings)

shall be punishable by a fine of 50 times the monthly calculation index for natural persons, 100 times the monthly calculation index for the officials and leaders of religious associations and 200 times the monthly calculation index, with a three-month suspension of activities, for legal entities.

2. The obstruction of lawful religious activities, the violation of the civil rights of natural persons on the grounds of their religious position, the abuse of their religious feelings or the desecration of any religious items, buildings or places revered by the adherents of a given religion, where such acts do not constitute evidence of a criminal offence

shall be punishable by a fine of 50 times the monthly calculation index for natural persons, 100 times the monthly calculation index for officials and 200 times the monthly calculation index for legal entities.

3. Missionary work carried out by nationals of Kazakhstan, foreign nationals or stateless persons without the appropriate registration or reregistration and the use by missionaries of religious materials, informational

materials of a religious nature or items holding religious meaning, without a favourable report from a theologian

shall be punishable by a fine of 100 times the monthly calculation index for nationals of Kazakhstan and 100 times the monthly calculation index and administrative expulsion from the territory of the Republic for foreign nationals and stateless persons.

4. Activities by a religious association that are not provided for in its statute or regulations

shall be punishable by a fine of 200 times the monthly calculation index for the officials and heads of religious associations and 300 times the monthly calculation index, with a three-month suspension of activities, for legal entities.

5. The involvement of a religious association in political activity, or participation in the activities of political parties and/or the provision of financial support to such parties, or interference in the activities of State bodies or the appropriation by members of religious associations of the functions of State bodies or their officials

shall be punishable by a fine of 100 times the monthly calculation index for natural persons, 200 times the monthly calculation index for the leaders of religious associations and 300 times the monthly calculation index, with a three-month suspension of activities, for legal entities.

6. The formation of organizational structures of religious associations in State bodies, organizations or institutions or in educational or health-care institutions

shall be punishable by a fine of 100 times the monthly calculation index for officials and 200 times the monthly calculation index for the heads of State bodies, organizations or institutions.

7. The appointment of a head of a religious association by a foreign religious centre without the consent of the authorities, and the failure by the head of a religious association to take measures to prevent the involvement or participation of minors in the activities of the association despite an objection by a parent or other legal representative of a minor

shall be punishable by a fine of 50 times the monthly calculation index for nationals of Kazakhstan and 50 times the monthly calculation index and administrative expulsion from the territory of the Republic for foreign nationals and stateless persons.

8. Activities by a religious association that are prohibited by legislative acts of Kazakhstan, and failure by a religious association to rectify within the prescribed period the violations that led to the suspension of its activities

shall be punishable by a fine of 300 times the monthly calculation index for the officials and heads of religious associations and 500 times the monthly calculation index and the prohibition of their activities for legal entities.

9. Actions, or failures to act, covered by the first, second, third, fourth, fifth and seventh paragraphs of this article, that are committed repeatedly within the year following the imposition of an administrative penalty

shall be punishable by a fine of 200 times the monthly calculation index for natural persons, 300 times the monthly calculation index for heads of religious associations and 500 times the monthly calculation index and the prohibition of their activities for legal entities.

278. Of the above-mentioned cases, seven were returned for registration. Following the examination of 30 cases, administrative action was taken against 39 persons.

279. During this period, a total of 125,002 cases of administrative offences, involving 125,513 persons, were held throughout the country.

280. Thus, cases of administrative offences under article 375 of the Criminal Code amounted to only 0.02 per cent of all the cases that came before the courts.

281. Under these circumstances, the court came to the conclusion that, despite his failure to register personally with the local executive authorities, the statement made by John Russell Kikot could not be considered missionary work, liability for which is covered by article 375, paragraph 3, of the Code of Administrative Offences.

282. Thus, under its supervisory procedure, the Supreme Court restored the violated right of a foreign national to practice religion within the territory of Kazakhstan.

Information concerning paragraph 25 of the concluding observations

283. The Criminal Code does not provide for the criminal liability of the media for defamation.

284. A law adopted on 21 January 2011 prescribed that articles 129 (Defamation) and 130 (Insult) should be placed in the section relating to offences against the person, which once more confirms that such crimes are regarded as constituting a social and criminal threat to all nationals of Kazakhstan. Thus, these articles are intended to protect the honour and dignity of all, not just officials, from the illegal actions of persons of any kind, whether natural persons or legal entities. Moreover, the penalty for defamation under article 129 was revised in the law of 21 January 2011. In particular, the penalty of up to six months' imprisonment for public defamation (in the form of speeches, demonstrations, creative works or media publications) was withdrawn.

285. However, it should be noted that criminal liability for defamation is an important safeguard for the protection of the constitutional right to honour and dignity.

286. According to article 17 of the Constitution of Kazakhstan, human dignity is inviolable. No one should be subjected to torture, violence, or other cruel or degrading treatment or punishment. Everyone has the right to a private life, personal and family secrets and protection of their honour and dignity (art. 18). The inviolability of the honour and dignity of the President of Kazakhstan is specifically provided for by article 46 of the Basic Law.

287. Experience has shown that the greatest threats to society are attacks in the media on a person's honour and dignity when knowingly false defamatory

information is widely disseminated, thus causing serious damage to property and non-property benefits, the subsequent reparation for which is difficult, and sometimes impossible.

288. In view of this, the current Criminal Code recognizes instances of defamation and other such offences using the media to be circumstances that aggravate criminal liability and establishes fairly stringent penalties, including the imprisonment of persons found guilty.

289. Since the Mass Media Act was adopted in 1999, some of its provisions have undergone significant change.

290. The registration requirement for electronic media has been lifted, as has the requirement to reregister a media organization following the replacement of an editor-in-chief; and an amendment has been introduced to the Code of Administrative Offences permitting the confiscation of printed materials as an alternative form of punishment. Within the framework of the humanization of criminal law, the rule establishing six months' imprisonment as punishment for defamation has been removed from article 129, paragraph 2, of the Criminal Code.

291. Under the Criminal Code, defamation and insult are classified as private prosecution cases, that is, cases that are considered by the courts on the complaint of the injured party and on provision of the relevant evidence. A criminal case may thus be terminated in the event of reconciliation between the parties.

292. The Civil Code has also undergone changes regarding the protection of personal non-property rights.

293. Thus the Act amending and supplementing certain legislative acts of the Republic of Kazakhstan regarding improvements to civil legislation came into force on 16 April 2011. The Act does not provide for compensation for moral harm by legal entities.

Information concerning paragraph 26 of the concluding observations

294. Administrative liability for violation of the laws of Kazakhstan on the organization or holding of meetings, rallies, marches, pickets, demonstrations or other public events, the obstruction of the organization or holding of such events and participation in illegal meetings, rallies, marches, demonstrations or other public events is provided for by article 373 of the Code of Administrative Offences, if such activities do not tend to show that the offence has been committed.

295. According to the statistical data of Administrative Offences, 179 cases of administrative offences under article 373 of the Code of Administrative Offences went to trial in Kazakhstan in the first half of 2011. Of the 179 cases, 19 were returned to be registered. A total of 161 administrative cases were considered on their merits, which accounted for 0.1 per cent of the total number of administrative cases (125,002). Administrative action was taken against a total of 160 persons and administrative charges against one person were dropped.

296. It should be noted that the above-mentioned restrictions on holding meetings, rallies, marches, pickets and demonstrations have been established by legislation in the interests of national security, public order, the protection of health and the

protection of the rights and freedoms of others. These restrictions are permissible under article 21 of the Covenant.

297. To safeguard the right to organize meetings and demonstrations, citizens should ensure that such activities are peaceful and that they do not lead to an imbalance in society. For example, events in the Kyrgyz Republic and Georgia, where initially peaceful demonstrations led to violence, anarchy, mass public disorder and numerous incidents of robbery and looting, seriously destabilized the situation and threatened the lives of many people.

298. Article 12, paragraph 5, of the Constitution establishes that exercise of a citizen's human rights and freedoms must not violate the rights and freedoms of others or infringe the constitutional system or public morals.

299. Permission to hold meetings, rallies, marches, pickets or demonstrations is granted by the local executive authorities (*akimat*), which are also entitled to refuse permission for an event if the reason for it is to incite racial, ethnic, social or religious hatred, intolerance of class discrimination or the violent overthrow of the constitutional system, or if it threatens public order and safety, infringes the territorial integrity of the Republic or violates other provisions of the Constitution, the law or other regulations of Kazakhstan. Public prosecutor's offices have the same powers.

300. Thus, in 2011, more than 232 protest events were held on various issues in the country, 50 per cent of which were unauthorized. Administrative action was taken against 227 persons who actively participated in the protests.

Information concerning paragraph 27 of the concluding observations

301. Article 22 of the International Covenant on Civil and Political Rights states that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by 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 the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

302. Under article 23 of the Constitution, citizens of the Republic of Kazakhstan have the right to freedom of association. The activities of public associations are regulated by law (art. 8, para. 3 of the Political Parties Act).

303. Members of the armed forces, employees of national security or law enforcement agencies and judges must abstain from membership of political parties or trade unions and from action in support of any political party.

304. Since this rule is enshrined in the Constitution, we consider that any amendment would be inappropriate.

Information concerning paragraph 28 of the concluding observations

305. Kazakhstan encourages and supports the formation of integrationist, multiracial organizations and movements. An advisory body on issues of

inter-ethnic harmony in the country, headed by the President of Kazakhstan, was set up by the Presidential Decree of 1 March 1995 on the establishment of the Assembly of the Peoples of Kazakhstan. It was based on the principle of partnership between the State and civil society institutions through ethno-cultural associations.

306. The Assembly has constitutional status and the right to elect nine members of one of the Houses of Parliament (Majlis).

307. For example, members of the parliamentary group of the previous Assembly actively participated in working groups to develop 104 draft laws and in nine cases they chaired the working groups.
