

JOINT OPEN LETTER - THE OBSERVATORY

Mr. Nursultan Nazarbayev Abishevich
President of the Republic of Kazakhstan

Mr. Sultanov Kuanysh Sultanovich
Chairman of the Human Rights Commission under
the President of Kazakhstan

Astana-Geneva-Paris, November 24, 2015

Re: Call to the President of the Republic of Kazakhstan not to sign into law the bill “On introducing changes and additions in some legislative acts of Republic of Kazakhstan regarding activities of the non-governmental organisations”

The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), together with the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) and the International Legal Initiative Public Foundation would like to call upon you not to sign the draft law “On introducing changes and additions in some legislative acts of Republic of Kazakhstan regarding activities of the non-governmental organisations” adopted by the Senate on November 5, 2015, and now awaiting your promulgation.

The new bill aims at improving the institutional framework in charge of providing financial aid to civil society organisations (hereafter - CSOs). However, if implemented, the law would severely and unduly restrict the right to freedom of association and undermine Kazakhstan’s international human rights obligations.

Such concerns were raised on September 25, 2015, when more than 90 Kazakhstani CSOs appealed on to you to guarantee that the draft law be revised and brought in line with national and international human rights standards. In addition, more than 600 local CSOs have raised concerns over the conformity of the bill with the right to freedom of association.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association, the UN Office of the High Commissioner for Human Rights as well as the OSCE Representative on Freedom of the Media expressed their concern about the restrictive nature of the bill severely violating the freedom and independence of associations.

The Observatory shares the concerns expressed by the international community and local CSOs and would like to draw your attention to the following:

1. The bill assigns a so-called “authorized body” – up to now, the Ministry of Culture and Sports has been acting as the “authorised body” - the power to fix rules on grant-making, control and monitor the implementation of grants, potentially including grants allocated by entities other than the State of Kazakhstan. Indeed, the vague wording of the bill allows for various interpretations of its provisions and increased state control over non-state grants.
2. The bill provides that the Ministry of Culture and Sports shall be responsible for setting up a database on which CSOs would be required to post information regarding their founders, funding sources and expenditures. Failure to register or to provide information within a given time frame as well as the provision of “incorrect information” is subject to warning, a fine of 160 EUR or the suspension of the CSO for up to three months for repeated infringements. As a consequence, the Ministry of Culture and Sports may decide under its own authority to suspend a CSO for failing to comply with requirements related to the database. Furthermore, under legislation already in force, the failure by a suspended CSO to redress a violation may lead to its liquidation.

Local civil society organisations questioned the added value of the database pointing to the already extensive information that CSOs are required under laws in force to provide to the Ministry of Justice and the tax authorities. We therefore consider that the set-up of the new database contradicts the requirements provided in the OSCE and Venice Commission Guidelines on Freedom of Association stipulating that associations cannot be subject to a stricter control compared to private businesses¹. It is also a violation of the Constitution of Kazakhstan which protects the associations from discriminatory and unjustified supervision.

3. The bill also provides a list of the types of activities eligible for a grant. Such list differs from the one provided for in the Law "On non-commercial organisations". Hence the bill contains conflicting notions of what activity might be eligible for receiving a grant and contradicts the existing legal legislation generating more legal uncertainty.

4. The bill provides for the set-up of a new grant-making body - the Operator - responsible to allocate and oversee the implementation of governmental and non-governmental grants. Unfortunately, the bill fails to specify how this body would function, such as its composition, accountability and the decision-making process within the Operator, etc.

5. The bill is unclear as to whether grants awarded by international organisations, diplomatic missions or international not-for-profit organizations will fall under the competence of the Operator. Item 5 of Article 6-1 of the bill provides that grants regulated under the Tax Code will fall outside of the scope of its provisions. However, only 15 international organisations are listed in the Tax Code.

6. The bill also provides for the extension of the scope of the Law "On state social service procurement" regulating relations between the state and CSOs receiving funds from the State to provide social services. If the amendments in question are adopted, the afore-mentioned law could also regulate the provision of any grants and awards to CSOs, whether private, public, international, foreign or domestic. The vagueness of the provisions allow for such interpretation. Hence the Law "On state social service procurement" could also regulate relations that it was not initially supposed to deal with. This would create more legal uncertainty as the latter relations are also regulated by a number of existing legislations.

If adopted, the bill will obstruct the functioning of non-governmental organisations in the country by introducing vague notions subject to discretionary interpretation. The bill also includes many contradictory provisions and new legal terms thereby adding unnecessary confusion and uncertainty into the legal framework governing CSOs. Finally, the bill unnecessarily imposes additional regulation and control over CSOs by the Ministry of Culture and Sports in addition to the existing accountability mechanisms enforced by the Ministry of Justice and the relevant tax authorities. Proposals submitted by local civil society organisations to improve the bill, to clarify its legal terminology and to bring it in line with existing regulations and Kazakhstan's international human rights obligations were disregarded by the Parliament.

We therefore urge the you not to sign the above-mentioned legislative initiative into law as it is likely to significantly restrict the space of human rights organisations.

We call on you to ensure that all human rights defenders can pursue their legitimate work without any further hindrances and sincerely hope that you will take these elements into account.

Yours sincerely,

Gerald STABEROCK
OMCT Secretary General

Karim LAHIDJI
FIDH President

Roza AKYLBEKOVA
KIBHR President

Aina SHORMANBAYEVA
International Legal Initiative Public Foundation

¹ Article 228 of the Guidelines on Freedom of Association stipulates that "Oversight and supervision of associations should not be invasive, nor should they be more exacting than those applicable to private businesses. Such oversight should always be carried out based on the presumption of lawfulness of the association and of its activities. <...> Such oversight should <...> not compel associations to co-ordinate their objective and activities with government policies and administration".