

September 13, 2022

TO:

State Counselor of the
Republic of Kazakhstan
Mr. Karin E.T.

FROM:

Freedom Now
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Clooney Foundation for Justice
TrialWatch Initiative
4768 Broadway, #947
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RE: UN Working Group on Arbitrary Detention Opinion No. 2/2022 Concerning the Case of Alnur Ilyashev

Dear Erlan Tynymbaevich,

We write to inquire about the progress of the Government of the Republic of Kazakhstan (the “Government”) in implementing Opinion No. 2/2022 of the United Nations Working Group on Arbitrary Detention (the “Working Group”) concerning the Kazakhstani citizen Alnur Ilyashev.¹

Background

Mr. Ilyashev was arrested, prosecuted, and convicted for allegedly violating Article 274 of the Criminal Code of Kazakhstan based on Facebook posts that, among other things, criticized the Amanat party (formerly Nur-Otan) for its management of the COVID-19 pandemic. On March 30, 2022, the Working Group found that Mr. Ilyashev’s pretrial detention between April 17, 2020 and June 22, 2020 was arbitrary and that his arrest and subsequent conviction and sentence violated international human rights norms, including because the application of

¹ See UN Working Group on Arbitrary Detention, *Ilyashev v. Kazakhstan*, UN Doc. A/HRC/WGAD/2022/2 (March 30, 2022), https://www.freedom-now.org/wp-content/uploads/AUV_A-HRC-WGAD-2022-2.pdf.

Article 274 “resulted from the exercise of the rights or freedoms guaranteed by articles 19, 21 and 22 of the [International] Covenant [on Civil and Political Rights].” The Working Group specifically noted that the violation of Mr. Ilyashev’s “fair trial rights was of such gravity as to give his deprivation of liberty an arbitrary character.” Finally, the Working Group concluded “that the arrest and subsequent detention of Mr. Ilyashev constitutes a violation of international law on the grounds of discrimination based on political or other opinion.”

The Working Group determined that in order to comply with Kazakhstan’s international human rights obligations, the Government should quash Mr. Ilyashev’s sentence, expunge his criminal record, and accord him an enforceable right to compensation and other reparations.

The Working Group’s holding in this case is based on Kazakhstan’s obligations under the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Kazakhstan in 2006. According to Article 4(3) of the Constitution of the Republic of Kazakhstan, international law has primacy over domestic law. Furthermore, Article 1(3) of the Criminal Code of the Republic of Kazakhstan states that international treaties ratified by the Republic of Kazakhstan supersede the Criminal Code. Likewise, Article 2(3)(a) of the International Covenant on Civil and Political Rights provides that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Accordingly, domestic convictions that violate human rights obligations require appropriate remedies. Because the Working Group’s opinion demonstrates how the Government’s criminal case against Mr. Ilyashev violates international law, the government has an obligation under both domestic and international law to bring Mr. Ilyashev’s situation into compliance with Kazakhstan’s international obligations and provide an appropriate remedy to Mr. Ilyashev.

Information Requested

As Mr. Ilyashev’s international legal counsel (Freedom Now) and on behalf of the initiative that produced the trial monitoring report cited in the Working Group opinion (the Clooney Foundation for Justice’s TrialWatch initiative), we would like to know how the Government is progressing in implementing the international obligations highlighted in the Working Group opinion on Mr. Ilyashev’s case. Specifically, we would like to know the following:

1. Has the sentence imposed on Mr. Ilyashev in June 2020 been quashed? If not, is the Government taking steps to quash the sentence? If not, why not?

2. Has Mr. Ilyashev's criminal record been expunged? If not, is the Government taking steps to expunge his criminal record? If not, why not?
3. Has the Government provided reparations, including compensation and rehabilitation,² to Mr. Ilyashev for his arbitrary detention and wrongful conviction? If not, is the Government taking steps to do so? If not, why not?
4. Have the circumstances surrounding Mr. Ilyashev's arrest, detention and trial been investigated? If not, is the Government taking steps to do so, including holding accountable those responsible for violating Mr. Ilyashev's rights? If not, why not?
5. Has the government made any legislative amendments or changes in practice to harmonize the laws and practices of Kazakhstan with its international obligations, such as by amending Article 274 to ensure that it does not encompass protected speech or by ceasing to apply Article 274 to individuals exercising their right to freedom of expression?

Any information that you can provide on the above questions would be greatly appreciated.

Working Group Visit Requested

In addition to raising the above questions, we would also like to highlight paragraph 99 of the Opinion, in which the Working Group requests an invitation from the Government to conduct a country visit to Kazakhstan. The Working Group stated that

“[I]t would welcome the opportunity, at the earliest convenience to the Government, to conduct a visit to Kazakhstan in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.”³

We strongly encourage the Government to grant the Working Group's request to conduct a country visit to Kazakhstan, especially in light of Kazakhstan's current membership on the Human Rights Council.

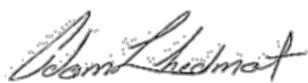
² Rehabilitation is viewed as a component of full reparations. See UN Human Rights Commission, *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, Prin. 34 (adopted in 1997, updated in 2005), available at undocs.org/E/CN.4/2005/102/Add.1.

³ *Ilyashev v. Kazakhstan*, at para. 99.

We greatly appreciate your consideration of our request for information and for further engagement with the Working Group. If you require any additional information or would like to discuss any of the topics above, please let us know.

We look forward to your prompt reply.

Sincerely,



Adam Lhedmat
Legal Officer
Freedom Now



Stephen Townley
Legal Director
TrialWatch Initiative
Clooney Foundation for Justice