



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 14 May 2007

Opinion no. 425 / 2007

CDL(2007)054
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Statute
on the Commissioner for Human Rights
of Kazakhstan**

**As established by the Decree of the President
of the Republic of Kazakhstan
947 dated 19 September 2002**

Statute

On Commissioner for Human Rights

1. General Provisions

1. The Commissioner for Human Rights (hereinafter referred to as the Commissioner) shall be an official who is responsible for supervising the observance of the rights and freedoms of an individual and a citizen and who shall take the necessary steps within his/her competence for the restitution of the violated rights and freedoms of an individual and a citizen.
2. The Commissioner shall complement the existing state capacities for protection of the rights and freedoms of an individual and a citizen. Activity of the Commissioner shall not result in restrictions on the competencies of other state bodies entrusted to protect human rights in conformity with the Constitution and the legislation of the Republic of Kazakhstan.
3. The Commissioner shall fulfil his/her duties in conformity with the Constitution of the Republic of Kazakhstan, laws of the Republic of Kazakhstan, Decrees of the President and the Government of the Republic of Kazakhstan, other normative legal acts and the present Statute.
4. The Commissioner shall be independent in the course of fulfilment of his/her activities.
5. No one shall have the right to assign to the Commissioner the functions, which are not designated in this Statute. Any unlawful interference into the Commissioner's activities shall be prohibited.

For the term of his/her office, the Commissioner shall suspend his/her membership in political parties and other public associations.

The Commissioner shall not undertake political activities.

6. Activities of the Commissioner shall be based on the principles as listed below:

- 1) legality;
- 2) priority for the rights and freedoms of an individual and a citizen;
- 3) objectivity;
- 4) transparency.

2. Appointment to the post and removal of the Commissioner

7. The candidate for the post of the Commissioner shall conform to following requirements:

- 1) be a citizen of the Republic of Kazakhstan;
- 2) have a university degree in law or other education in humanities;
- 3) have at least a three-year experience of legal work or in the field of protection of the rights and freedoms of an individual and a citizen.

8. The Commissioner shall be appointed by the President of the Republic of Kazakhstan after consultations with the Committees of the Parliament of the Republic of Kazakhstan, the list of which is determined by the President of the Republic of Kazakhstan.

The Commissioner shall be removed by the President of the Republic of Kazakhstan.

9. The procedure for consideration of the candidacies for the post of the Commissioner shall start at least 2 months before the expiration of the term of the Commissioner currently in the office.

10. The term of the office of the Commissioner is five years from the date of appointment.

11. The same person may not be appointed to the post of the Commissioner more than two times consecutively.

12. After appointment to the post, the Commissioner shall be adjured by the President of the Republic of Kazakhstan in the presence of the Chairmen of the Chambers of the Parliament, Chairmen of the Parliamentary Committees and other officials, where the Commissioner shall take the following oath:

“I take the solemn oath to faithfully serve the people of Kazakhstan, strictly follow the Constitution and the laws of the Republic of Kazakhstan, fulfil in good faith the entrusted high responsibilities to protect the rights and freedoms of an individual and a citizen”.

The oath shall be taken in the State or Russian language.

13. The competence of the Commissioner shall be terminated at the end of the term of the office or in the event of a pre-term removal or resignation.

14. The Commissioner may be removed by the President of the Republic of Kazakhstan before the end of his/her term of the office based on the following grounds:

- 1) resignation from the post based on his/her own will;
- 2) state of health, which is constraining the further execution of professional duties as justified by the medical conclusion;
- 3) entering into force of a court decision on incapacity or restricted capacity of the Commissioner or application of forced medical measures to the Commissioner;
- 4) Entering into force of a conviction;
- 5) Loss of citizenship of the Republic of Kazakhstan;
- 6) Death of the Commissioner or a court declaration to the effect that he/she is announced deceased;
- 7) Appointment or election of the Commissioner to another post;
- 8) Disregard of duties or restrictions established by this Statute;
- 9) Gross abuse of official duties, commission of misdeeds inconsistent with the post and undermining the authority of the State;
- 10) Exit from Kazakhstan for permanent residence abroad.

3. Competence of the Commissioner and the procedure of implementation

15. The Commissioner shall have the right to implement the following actions in a manner prescribed by the legislation:

1) To request from the officials and organizations except for those listed in section 18 of the present Statute the information required for consideration of complaints;

2) To immediately meet with the leaders and other officials of the state agencies and other organizations;

2-3) On the basis of outcomes of investigation of complaints made by the citizens of the Republic of Kazakhstan, foreign citizens and stateless persons as well as after receipt by other ways of information on violation of their rights and freedoms to make appeal to the Houses of the Parliament with the request to carry out parliamentary hearings on the above matters;

2-4) To take part in the activities of the international human rights organizations and other non-governmental human rights organizations;

3) To recruit on a contractual basis organizations and specialists for implementation of expert and consultancy services in order to prepare conclusions on matters related to violations of the rights and freedoms of an individual and a citizen;

4) To take steps to protect the violated rights and freedoms of an individual and a citizen;

5) Upon presentation of an official identification card, the Commissioner may enter and stay on the territory and in premises of the state agencies and organizations including military units and detachments as well as the detention areas and meet and speak with persons confined therein;

6) To apply to authorized state agencies or officials with the appeal to initiate disciplinary or administrative proceedings or criminal case in respect of an official, who violated rights and freedoms of an individual or a citizen, as well as to undertake measures for compensation of material and moral damage;

7) To publish in mass media the official reports on the results of the inspections undertaken.

16. With a purpose of establishing the facts of violations of the rights and freedoms of an individual and a citizen, the Commissioner, in conformity with the section 15 of this Statute, shall, within his/her competence, verify the information regarding such facts both on the ground of submitted complaints and at his/her own initiative if he/she has become aware of such violations from official sources or mass media.

17. While fulfilling his/her responsibilities, the Commissioner shall consider the complaints made by the citizens of the Republic of Kazakhstan, foreign citizens and stateless persons against actions and decisions of officials and organizations in violation of the rights and freedoms guaranteed by the Constitution, legislative acts and international treaties of the Republic of Kazakhstan.

18. The Commissioner shall not consider the complaints against actions and decisions of the President of the Republic of Kazakhstan, Parliament and its Members, Government, Constitutional Council, Prosecutor General, Central Electoral Commission and the courts of the Republic of Kazakhstan.

19. The Commissioner within his/her competence shall contribute to an improvement of the legislation of the Republic of Kazakhstan relating to human rights and freedoms, manner and methodology of their protection and to bringing such legislation into conformity with the universally recognized principles and norms of international law, shall encourage international cooperation in the field of human rights by the relevant proposals to be made to the state agencies of Kazakhstan.

20. The Commissioner shall facilitate legal education in the field of human rights and freedoms, be involved in development of curricula and raising the level of public knowledge and awareness on legislation and international instruments on human rights.

21. In the cases, considered by the Commissioner to be of a major public importance, he/she shall have the right to send his/her communications directly to the President, Parliament and the Government of the Republic of Kazakhstan.

22. While performing his/her duties, the Commissioner shall:

- 1) comply with the Constitution and the legislation of the Republic of Kazakhstan;
- 2) undertake measures to ensure observance of the rights, freedoms and lawful interests of citizens;
- 3) in a due time and procedure, to process applications of citizens against actions (or acts of omission) perpetrated by officials, decisions made by the state agencies, other organizations and their staff and to take the relevant measures;
- 4) keep the state secrets and other secrets protected by the law, not disclose confidential information known by him/her as a result of processing complaints;
- 5) be responsive and polite with the applicants;
- 6) be objective and unprejudiced while processing the complaints;
- 7) not perform any actions, which obstruct the realization of the rights of the applicant.

23. The Commissioner shall submit on an annual basis an activity report for consideration by the President of the Republic of Kazakhstan.

4. Response acts of the Commissioner

24. The response acts of the Commissioner shall be the recommendations.

25. Based on examination of applications, the Commissioner has the right to send recommendations to the official whose actions (or acts of omission) violated the rights and freedoms of the applicant, regarding the measures that are needed to remedy the violated rights.

26. The official who received recommendations of the Commissioner, shall within one month after receipt consider them and shall send a message regarding the results of consideration.

In the case of rejection of the recommendation, the official shall submit to the Commissioner a well-founded motivation of rejection.

27. The copy of recommendations made by the Commissioner shall be sent to the applicant.

5. Consideration of applications

28. The application needs to be signed by the applicant or the statutory representative of the applicant whose rights and freedoms have been violated. The application needs to contain first name, last name, patronymic and the place of residence or work, describe the essence of decisions or actions (or acts of omission) which have violated or are viewed by the applicant as violating his/her rights and freedoms. Other documents and materials need to be included in the complaint to justify the applicant's assertions.

29. Upon receipt of the complaint, the Commissioner has the right to:

1) explain means and methods to be used by the applicant for protection of his/her rights and freedoms;

2) submit the complaint to the appropriate bodies competent to resolve in essence the complaint.

6. Organizational framework for the activities of the Commissioner

30. The activities of the Commissioner shall be supported by the National Center for Human Rights (hereinafter referred to as the National Center) which is a state agency, which has its own seal and letterhead with the National Emblem of the Republic of Kazakhstan and the name in the state language as well as bank accounts.

31. The Head of the National Center shall be appointed and removed by the Commissioner.

32. The National Center operates under the Statute of the National Center for Human Rights endorsed by the President of the Republic of Kazakhstan upon proposal by the Commissioner.

33. The National Center shall provide informational, analytical, organizational, legal and other support to the Commissioner.

34. The staff officials of the National Center are civil servants acting under the law on state service.

35. The Commissioner may establish an expert council to perform the functions of consultation and analysis consisting of persons experienced in protection of the rights and freedoms of an individual and a citizen.

36. Activities performed by the Commissioner and the National Center are funded by the state budget.

President of the Republic of Kazakhstan

N. Nazarbaev