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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPUBLIC OF KAZAKHSTAN

DRAFT LAW

ON THE COMMISSIONER FOR HUMAN RIGHTS

Draft Law on the Commissioner for Human Rights in the Republic of Kazakhstan

This Law determines the legal status, powers and organization of activities of the Commissioner for Human Rights in the Republic of Kazakhstan.

CHAPTER I. GENERAL PROVISIONS

Article 1. Legal status and basis of activities of the Commissioner

1. The position of the Commissioner for Human Rights in the Republic of Kazakhstan (hereinafter - the Commissioner) is established in accordance with the Constitution of the Republic of Kazakhstan in order to ensure protection of human and civil rights and freedoms, as well as their observance and respect by state bodies, local government and self-government bodies, officials and civil servants of the Republic of Kazakhstan.
2. The Commissioner carries out his activities in accordance with the Constitution of the Republic of Kazakhstan, this Law, other regulatory legal acts of the Republic of Kazakhstan, as well as generally recognized principles and norms of international law, the provisions of international treaties ratified by the Republic of Kazakhstan.
3. The Commissioner, when considering issues on the recognition, observance and protection of human and civil rights, has the right to attend meetings of the Parliament of the Republic of Kazakhstan and its Chambers, the Government of the Republic of Kazakhstan, the Constitutional Council of the Republic of Kazakhstan, collegial bodies formed in law enforcement agencies, executive authorities, as well as collegial bodies of local government and self-government.
4. The Commissioner, within the framework of his activities, takes part in the work of international human rights organizations, other non-governmental human rights organizations.

Article 2. Principles of the Commissioner 's activities

The activities of the Commissioner are based on the principles of:

- 1) legality;
- 2) objectivity and fairness;
- 3) openness;
- 4) independence, responsibility and impartiality in the interests of human and civil rights and freedoms.

Article 3. Guarantees for activities of the Commissioner

1. The Commissioner shall have immunity during his term of office.
The Commissioner during his term of office without the consent of the Prosecutor General of the Republic of Kazakhstan cannot be detained, held in custody, under house arrest, brought under police custody, and brought to criminal liability, except in cases of detention at the scene of a crime or the commission of a grave or a particularly serious crime.
2. The procedure for bringing the Commissioner to criminal and (or) administrative responsibility is established by the laws of the Republic of Kazakhstan.
3. No one has the right to interfere in the activities of the Commissioner and entrust him with functions not provided for by the laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan, as well as exert influence in any form in order to prevent him from exercising his powers.
4. The rights of the Commissioner are not subject to restrictions, except for cases expressly provided for by the laws of the Republic of Kazakhstan. Interference or obstruction of the lawful activities of the Commissioner entail liability provided for by the laws of the Republic of Kazakhstan.
5. The Commissioner shall have the right to refuse to testify in a civil or administrative case, an administrative offense case or a criminal case about the circumstances that became known to him in connection with the performance of his official duties.
6. The Commissioner is guaranteed the right to ensure safety in the course of his activities in the manner specified by the law of the Republic of Kazakhstan.

7. The Commissioner shall have the right, upon presentation of his service certificate, to freely exercise his powers throughout the territory of the Republic of Kazakhstan.

CHAPTER II. PROCEDURE FOR ELECTION FOR OFFICE, TERMINATION OF AUTHORITY AND DISMISSAL FROM THE POSITION OF THE COMMISSIONER

Article 4. Procedure for election of the Commissioner

1. The Commissioner is elected to office for a period of five years and dismissed by the Senate of the Parliament of the Republic of Kazakhstan at the recommendation of the President of the Republic of Kazakhstan.

2. A person elected to the position of the Commissioner must meet the following requirements:

- 1) possess the citizenship of the Republic of Kazakhstan and have permanently resided in its territory for the last ten years;
- 2) have a higher education;
- 3) have experience in the field of protecting human and civil rights and freedoms;
- 4) be at least thirty years old;
- 5) be proficient in the state language of the Republic of Kazakhstan.

3. Upon assuming office, the Commissioner takes the following oath: "Assuming the office of the Commissioner for Human Rights in the Republic of Kazakhstan, I solemnly swear to honestly and conscientiously protect the rights and freedoms of a person and citizen and fulfill my duties, guided by the Constitution of the Republic of Kazakhstan, the legislation of the Republic of Kazakhstan, as well as justice and conscience. I pledge to act independently, responsibly and impartially in the interests of human and civil rights and freedoms".

4. The Commissioner who took office, in the manner prescribed by the legislation of the Republic of Kazakhstan, is presented with an official certificate confirming his official position and powers.

Article 5. Termination of powers of the Commissioner

1. Powers of the Commissioner are terminated from the date of the expiration of their term, as well as in the event of early release or resignation of powers.

2. The Commissioner may be early relieved of his post by the Senate of the Parliament of the Republic of Kazakhstan at the recommendation of the President of the Republic of Kazakhstan.

3. Grounds for early dismissal of the Commissioner are:

- 1) failure to comply with the requirements and restrictions established by this Law and the laws of the Republic of Kazakhstan;
- 2) entry of a conviction into legal force;
- 3) the state of health of the Commissioner, which prevents further performance of professional duties;
- 4) entry into legal force of a court decision on recognizing the Commissioner as incapable or partially incapacitated, or on application of compulsory medical measures against him;
- 5) termination of citizenship of the Republic of Kazakhstan;
- 6) appointment, election to another position and his transfer to another job;
- 7) departure for permanent residence outside the Republic of Kazakhstan;
- 8) committing misdemeanors incompatible with being in office and diminishing the authority of the Commissioner.

4. The introduction of a state of emergency throughout the entire territory of the Republic of Kazakhstan or in some of its localities does not stop and does not suspend the activities of the Commissioner.

Article 6. Restrictions related to continuance in office as Commissioner

1. The Commissioner is not entitled to engage in political activities.

For the period of exercising his powers, the Commissioner suspends his membership in political parties.

2. The Commissioner may not be in the civil service, engage in other paid activities, with the exception of teaching, scientific or other creative activities.

3. The Commissioner is obliged to stop activities incompatible with his status, no later than thirty calendar days from the date of taking the office.

4. In the event of a personal interest of the Commissioner in the performance of official duties, which leads or may lead to a conflict of interest, he is obliged to take measures to prevent or resolve such a conflict.

CHAPTER III. COMPETENCE OF THE COMMISSIONER

Article 7. Consideration of a complaint

1. The Commissioner, within the limits of his competence, considers complaints of citizens of the Republic of Kazakhstan and foreigners and stateless persons in the territory of the Republic of Kazakhstan (hereinafter referred to as the applicants).

2. The Commissioner does not consider complaints about the actions and decisions of the President of the Republic of Kazakhstan, the First President of the Republic of Kazakhstan - Elbasy.

3. The complaint must contain information about the surname, name, patronymic (if it is indicated in the identity document) and place of residence or work of the applicant, the essence of decisions or actions (inaction) that violated or violate, in the opinion of the applicant, the rights and freedoms. Documents and other materials confirming the arguments of the applicant are attached to the complaint.

4. Having received a complaint, the Commissioner has the right:

1) to accept the complaint for consideration;

2) to explain the ways and means that the applicant can use to protect his rights and freedoms;

3) to submit the complaint to state bodies, local government and self-government bodies, officials, who are responsible for resolving the complaint on the merits;

4) to refuse to accept the complaint for consideration, which must be reasoned. Refusal to accept a complaint for consideration is not subject to any appeal.

5. The Commissioner notifies the applicant of the decision taken, and in the case of commencement of consideration of the complaint - also state bodies, bodies of local government and self-government, officials, decisions and (or) actions (inaction) of which are appealed.

Article 8. Rights of the Commissioner when considering a complaint

1. When considering a complaint, the Commissioner has the right to:

1) request and receive information from state bodies, local government and self-government bodies, officials and organizations necessary for consideration of the complaint. At that, cases and materials in the proceedings of the court cannot be claimed;

2) get unhindered access to documents of state and public organizations dealing with rights and freedoms of person and citizen;

3) for immediate reception by heads and other officials of state bodies, bodies of local government and self-government, as well as other organizations;

4) upon presentation of the official certificate of the Commissioner, freely enter and stay on the territory and in the premises of state bodies, bodies of local government and self-government, other organizations, including in military units and formations, as well as visit places of detention, meet and talk with persons detained in them.

2. In the event that from official sources or the media, the Commissioner became aware of the acts of violation of human and civil rights and freedoms, then he has the right, on his own initiative, to take a complaint for consideration about these violations with the provision of measures provided for by this Law.

3. Provision of the Commissioner with information constituting a state or other secret protected by law is carried out in accordance with the legislation of the Republic of Kazakhstan.

Article 9. Peculiarities of consideration of a complaint

1. When considering a complaint, the Commissioner is obliged to provide a state body, a local government and self-government body or an official and a civil servant, whose decisions or

actions (inaction) are appealed, with the possibility of giving explanations on any issues to be clarified in the process of consideration, as well as to give reason for your position generally.

The Commissioner has the right to apply to a state body, local government and self-government body or to an official for assistance in clarifying the circumstances that have become the subject of the complaint, as well as send a request to his representative in the region.

2. Recommendations and petitions of the Commissioner are subject to consideration within fifteen calendar days from the date of their receipt, following which the Commissioner is informed of the results of their consideration.

In cases where it is necessary to conduct additional study, the period for consideration of the recommendation and petition of the Commissioner is extended by the subject to which they were sent, no more than for thirty calendar days, as reported to the Commissioner within three working days from the date of extension of the consideration period.

3. Materials received during the consideration of the complaint before the Commissioner's final decision are not subject to disclosure.

4. The Commissioner has no right to disclose information that has become known to him in the process of considering the complaint, about the private life of the applicant and other persons without their written consent.

Article 10. Results of consideration of a complaint

Based on the results of consideration of the complaint, the Commissioner, depending on the decision made by him:

1) submits recommendations to state bodies, local government and self-government bodies, officials, civil servants, whose actions (inaction) violated the rights and freedoms of the applicant, regarding measures to be taken to restore the violated rights;

2) applies to the authorized state bodies or officials with a request to carry out disciplinary or administrative proceedings or a criminal case against a person who has violated human and civil rights and freedoms;

3) applies to the court with a statement of claim (claim) in defense of the rights and freedoms of an unlimited number of persons violated by decisions or actions (inaction) of state bodies, bodies of local government and self-government, officials, civil servants.

The statement of claim (claim) submitted (submitted) by the Commissioner is not subject to state fee in accordance with the tax legislation of the Republic of Kazakhstan;

4) publishes official messages on the results of consideration of complaints in the media.

Article 11. Summarizing results of consideration of complaints

1. Based on the results of the study and analysis of information about the violation of human and civil rights and freedoms, summarizing the results of consideration of the complaints, the Commissioner:

1) sends to state bodies, local government and self-government bodies, as well as officials, his comments and suggestions of a general nature related to ensuring human and civil rights and freedoms, improving administrative procedures;

2) appeals to the subjects that have adopted (issued) legal acts, with proposals for amendments and additions to them, if the Commissioner believes that decisions or actions (inaction) of state bodies, local government and self-government bodies or officials and civil servants that violate the rights and freedoms of a person and a citizen, are committed due to its imperfection or existing gaps or contradictions between the legislation of the Republic of Kazakhstan and generally recognized principles and norms of international law and international treaties ratified by the Republic of Kazakhstan.

2. In cases of particular public importance, either gross or massive violation of human and civil rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan, the Commissioner takes the following measures:

1) sends an appeal directly to the President of the Republic of Kazakhstan, the Chambers of the Parliament of the Republic of Kazakhstan or the Government of the Republic of Kazakhstan;

2) applies for an appeal to the Constitutional Council of the Republic of Kazakhstan by persons having such a right in accordance with the Constitution of the Republic of Kazakhstan and the

Constitutional Law of the Republic of Kazakhstan "On the Constitutional Council of the Republic of Kazakhstan";

3) makes a report in the Chambers of the Parliament of the Republic

Kazakhstan either makes a proposal to hold parliamentary hearings on the facts of violation of human rights and freedoms;

4) appeals to the Supreme Court of the Republic of Kazakhstan with a proposal to give clarifications on judicial practice.

Article 12. Report of the Commissioner

1. The Commissioner annually submits for consideration to the President of the Republic of Kazakhstan a Report on his activities, containing an analysis of application of the norms of existing laws in the field of human and civil rights on the issues considered for the relevant period of activity, if necessary - recommendations for their improvement and bringing them into line with the principles and norms of the international law and international treaties ratified by the Republic of Kazakhstan, as well as other information.

2. The report of the Commissioner on his activities shall be published in the media in the manner prescribed by the legislation of the Republic of Kazakhstan.

Article 13. National preventive mechanism

The Commissioner coordinates the activities of the participants in the national preventive mechanism for prevention of torture and other cruel, inhuman or degrading treatment or punishment, takes measures to ensure the necessary potential and professional knowledge of the participants in the national preventive mechanism, and also exercises other powers in accordance with the legislation of the Republic of Kazakhstan in order to ensure the effective operation of the national preventive mechanism.

Article 14. Legal education in the field of rights and freedoms

1. The Commissioner promotes legal education in the field of human and civil rights and freedoms, participates in the development of educational programs and increases the level of knowledge of the population of national legislation and the most important international acts on human and civil rights and freedoms.

2. The Commissioner, for these purposes, if necessary, initiates the creation of a scientific and educational center and other organizations whose activities are aimed at promoting knowledge about the rights and freedoms of a person and citizen, developing effective, scientifically based proposals, research, as well as systematic, regular training and improvement of knowledge of the population in this area.

CHAPTER IV. ORGANIZATION OF ACTIVITIES OF THE COMMISSIONER AND HIS REPRESENTATIVE

Article 15. Representative of the Commissioner for Human Rights in the region, city of republican significance, the capital

1. The Commissioner has a representative in the region, appointed to the position and dismissed by him in agreement with the local representative bodies of the region, city of republican significance, the capital for a period of five years.

2. The person appointed to the position of the representative of the Commissioner in the region, city of republican significance, the capital (hereinafter - the representative of the Commissioner in the region), must meet the requirements established by paragraph 2 of Article 4 of this Law, and cannot be appointed to this position for more than two consecutive terms.

3. The representative of the Commissioner in the region has the powers of the Commissioner defined by Articles 7 - 9, subparagraphs 1), 2) and 4) of Article 10, as well as subparagraphs 1) and 2) of Article 11 of this Law, within the relevant administrative-territorial unit.

4. The financial support of the representative of the Commissioner in the region, medical and social support are determined in accordance with the Law of the Republic of Kazakhstan "On public service in the Republic of Kazakhstan" and other regulatory legal acts of the Republic of Kazakhstan.

Article 16. Financial and logistical support

1. Financing of the activities of the Commissioner, his representatives in the regions, as well as the working body is carried out from the republican budget.
2. The financial support of the Commissioner, medical and social support, as well as the material and technical support of his activities are determined at the level of guarantees established by laws and other regulatory legal acts of the Republic of Kazakhstan for officials holding public positions, but not lower than a member of the Government of the Republic of Kazakhstan.
3. The republican budget annually envisages a separate budget program for funds necessary to ensure the activities of the Commissioner, his representatives in the regions, as well as the working body.
4. The Commissioner has the right to engage organizations and specialists on a contractual basis to carry out expert and consulting work to prepare conclusions on the circumstances to be clarified related to the violation of human and civil rights.
5. Financial statements are submitted by the National Center for Human Rights in the order, established by the legislation of the Republic of Kazakhstan.

Article 17. National Center for Human Rights

1. The activities of the Commissioner are carried out by a working body - the National Center for Human Rights (hereinafter - the National Center), which is a state institution, having a seal and letterhead with the image of the State Emblem of the Republic of Kazakhstan and its name in the state language, as well as the corresponding accounts in banking institutions.
Activities of the representative of the Commissioner in the region are supported by the representative offices of the National Center.
2. The head of the National Center is appointed and dismissed by the Commissioner.
3. The Commissioner approves the structure of the National Center, the regulations on it, within the limits of the cost estimate, establishes the number and staffing table.
4. On issues related to the activities of the working body, the Commissioner issues orders.
5. The National Center provides information and analytical, organizational, legal and other support for the activities of the Commissioner and his representatives in the regions.
6. Employees of the National Center are civil servants who carry out their activities on the basis of the legislation on public service.
7. The financial support of the employees of the National Center, medical and social support are determined in accordance with the Law of the Republic of Kazakhstan "On public service in the Republic of Kazakhstan" and other regulatory legal acts of the Republic of Kazakhstan.

Article 18. Expert councils

Under the Commissioner and his representative in the region, expert councils with advisory and analytical functions can be established, consisting of persons with experience in the field of protecting human and civil rights and freedoms.

CHAPTER V. Final provision

Article 19. Procedure for enforcement of this Law

This Law enters into force upon the expiration of ten calendar days after the day of its first official publication.

President of the Republic of Kazakhstan