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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

KAZAKHSTAN

DRAFT CONSTITUTIONAL LAW
ON THE COMMISSIONER FOR HUMAN RIGHTS

CONSTITUTIONAL LAW REPUBLIC OF KAZAKHSTAN

on the Commissioner for Human Rights in the Republic of Kazakhstan

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

Chapter 1. GENERAL PROVISIONS

Article 1. Goals and objectives of the activities of the Commissioner for Human Rights in the Republic of Kazakhstan

1. The Commissioner for Human Rights in the Republic of Kazakhstan (hereinafter referred to as the Commissioner) is a person holding a responsible public position, which is established in accordance with the Constitution of the Republic of Kazakhstan in order to ensure the state guarantee of the protection of human and civil rights and freedoms, their observance and respect by state bodies, bodies of local state administration and self-government, other organizations and officials.

The tasks of the Commissioner's activities are to promote the restoration of violated rights and freedoms of a person and a citizen, improve the regulatory legal acts of the Republic of Kazakhstan, encourage and promote the rights and freedoms of a person and a citizen.

2. The Commissioner carries out its activities in accordance with the Constitution of the Republic of Kazakhstan, this Constitutional Law, other regulatory legal acts of the Republic of Kazakhstan, as well as international treaties and other obligations of the Republic of Kazakhstan.

Article 2. Principles of activity of the Commissioner

The Commissioner in carrying out his activities is guided by the principles of legality, fairness, impartiality, objectivity, publicity, openness, transparency and other principles enshrined in the Constitution of the Republic of Kazakhstan.

Chapter 2 STATUS OF THE AUTHORIZED OFFICE, PROCEDURE FOR HIS APPOINTMENT TO POSITION, SUSPENSION AND TERMINATION OF AUTHORITIES, RELEASE FROM POSITION

Article 3. Guarantees for the activities of the Commissioner

1. The Commissioner in the exercise of his powers is independent and not accountable to any state bodies and officials.

2. The conditions and procedure for proceedings in cases of administrative offenses or pre-trial investigation against the Commissioner are determined by the relevant laws of the Republic of Kazakhstan.

3. During the term of his powers, the Commissioner may not be arrested, brought to justice, subjected to administrative penalties imposed in court, brought to criminal liability without the consent of the Senate, except in cases of detention at the scene of a crime or the commission of grave crimes.

4. The rights of the Commissioner shall not be subject to restrictions, except for cases expressly provided for by the laws of the Republic of Kazakhstan.

Intervention or obstruction of the legitimate activities of the Commissioner entails liability established by the laws of the Republic of Kazakhstan, and are reflected in the annual report of the Commissioner;

5. The Commissioner is not subject to interrogation as a witness about the circumstances that became known to him in connection with the performance of his official duties.

6. The authorized person is guaranteed the right to ensure security in the course of carrying out his activities in accordance with the laws of the Republic of Kazakhstan.

7. The procedure for issuing and description of the official certificate of the Commissioner are determined in the manner established by the President of the Republic of Kazakhstan.

The authorized person has the right, upon presentation of an official certificate, to freely visit institutions and other facilities throughout the territory of the Republic of Kazakhstan.

When visiting especially important state and strategic facilities, the Commissioner complies with the established requirements for access and intra-object regimes

8. In the event of the introduction of a state of emergency throughout the territory of the Republic of Kazakhstan or in its individual areas, the Commissioner shall carry out his activities in the manner established by the legislation of the Republic of Kazakhstan.

Article 4. Procedure for election of the Commissioner

1. The Commissioner is elected to office for a period of five years by the Senate of the Parliament of the Republic of Kazakhstan on the proposal 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 citizenship of the Republic of Kazakhstan and permanently reside on its territory for the last ten years;
- 2) have higher education;
- 3) have at least five years of experience in protecting human and civil rights and freedoms;
- 4) be at least thirty years old;
- 5) to know the state language;
- 6) be capable.

3. Upon taking office, the Commissioner shall take the following oath:

“Assuming the position of Commissioner for Human Rights in the Republic of Kazakhstan, I solemnly swear to honestly and conscientiously protect the rights and freedoms of man and citizen and fulfill my duties, guided by the Constitution of the Republic of Kazakhstan, other legislation of the Republic of Kazakhstan, as well as justice and conscience. I undertake to act independently, impartially, objectively in the interests of the rights and freedoms of man and citizen.

Article 5. Dismissal from office of the Commissioner

1. The Commissioner is dismissed from office by the Senate of the Parliament of the Republic of Kazakhstan on the proposal of the President of the Republic of Kazakhstan.

2. The Commissioner may be early dismissed from his position by the Senate of the Parliament of the Republic of Kazakhstan upon the proposal of the President of the Republic of Kazakhstan.

3. The grounds for early dismissal of the Commissioner are:

- 1) non-compliance with the requirements and restrictions established by this Constitutional Law and other laws of the Republic of Kazakhstan;
- 2) entry into legal force in relation to his guilty verdict of the court;
- 3) the entry into force of a court decision on recognizing the Commissioner as incapable or of limited capacity or on the application of compulsory medical measures against him;
- 4) termination of citizenship of the Republic of Kazakhstan;

- 5) appointment, election to another position or transfer to another job;
- 6) leaving for a permanent place of residence outside the Republic of Kazakhstan;
- 7) commission of criminal offenses incompatible with the position held;
- 8) an application for the resignation of their powers.

Article 6. Restrictions related to the activities of the Commissioner

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

For the period of exercising his powers, the Commissioner shall suspend his membership in a political party.

2. The Commissioner may not be in the public service, engage in entrepreneurial activities, participate in the management of a commercial organization, regardless of its organizational and legal form, as well as other paid activities, with the exception of teaching, scientific or other creative activities.

3. The Commissioner is prohibited from performing official duties if there is a conflict of interest. He must take measures to prevent and resolve conflicts of interest.

4. The authorized person cannot be a deputy of a representative body.

5. The authorized person is not entitled to:

1) use for non-official purposes the means of material and technical, financial and information support of his official activities, other state property and official information;

2) participate in actions that impede the functioning of state bodies and the performance of official duties, including strikes;

3) in connection with the performance of official powers, use the services of citizens and legal entities for personal purposes.

Chapter 3. COMPETENCE OF THE AUTHORIZED

Article 7. Competence of the Commissioner

Authorized in its activities:

1) submit proposals to the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan on the development of draft laws, improvement of the legislation of the Republic of Kazakhstan on the promotion and protection of human and civil rights and freedoms;

2) prepares and distributes an annual report on its activities, as well as special reports;

3) has the right to attend any, both open and closed, joint and separate meetings of the Chambers of the Parliament of the Republic of Kazakhstan and has the right to be heard;

4) participate by invitation at the plenary sessions of the session of maslikhats of regions, cities of republican significance or the capital in accordance with the laws of the Republic of Kazakhstan;

5) participates by invitation at meetings of the Government of the Republic of Kazakhstan, the Constitutional Court of the Republic of Kazakhstan, collegiate and other bodies formed in state bodies;

6) submits to the Government of the Republic of Kazakhstan and other state bodies, bodies of local state administration and self-government, other organizations and officials recommendations and restoration of human and civil rights and freedoms;

7) makes proposals to the President of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan and state bodies of the Republic of Kazakhstan in accordance with the tasks specified in this Constitutional Law;

8) coordinates the activities of the participants of the national preventive mechanism in accordance with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, adopted on December 10, 1984;

9) consider complaints about violations of human and civil rights and freedoms in the manner prescribed by this Constitutional Law;

10) makes proposals on the ratification of international treaties in the field of human rights and freedoms or in another way for the Republic of Kazakhstan to express its consent to be bound by an international treaty;

11) participates at the invitation of the authorized bodies in the preparation and discussion of national reports that are submitted to the bodies and committees of the United Nations, as well as regional institutions in pursuance of the contractual obligations of the Republic of Kazakhstan, and expresses an independent opinion on these issues in accordance with the procedures for these bodies and committees ;

12) cooperate with international, regional and other organizations, as well as national human rights institutions of other states, including through the conclusion of agreements (memorandums), in order to promote the promotion and protection of human and civil rights and freedoms;

13) promotes the development of educational and research programs on human and civil rights, takes part in their implementation in educational organizations and other organizations;

14) states:

rules for dealing with complaints;

regulation on the Coordinating Council under the Commissioner;

regulation on the expert council under the Commissioner;

rules for the selection of participants in the national preventive mechanism;

rules for the formation of groups of participants of the national preventive mechanism for preventive visits;

guidelines for preventive visits;

position and description of the symbol and flag of the Commissioner;

15) applies to the Constitutional Court on the issue of compliance with the Constitution of the Republic of normative legal acts affecting the rights and freedoms of a person and citizen enshrined in the Constitution;

16) acts as an observer for the observance of human rights and freedoms in other states;

17) instruct competent and authorized state bodies and scientific institutions, departments to provide expert and analytical studies;

18) in the manner and under the conditions provided for by this Constitutional Law, calls and receives written or oral explanations from officials of state bodies, local government and self-government bodies, other organizations, with the exception of judges and the President of the Republic of Kazakhstan, receives written or oral explanations from citizens;

19) freely visits organizations and institutions providing special social services, providing temporary isolation from society or intended for the execution of punishment, subject to preventive visits;

20) with the consent of persons who are in the relevant organizations and institutions providing special social services, providing temporary isolation from society or intended for the execution of punishment, makes film, photo and video filming, interviewing them, including using audio, video equipment;

21) submit proposals to the President of the Republic of Kazakhstan related to resolving issues of pardon, citizenship, granting political asylum;

22) exercise other powers in accordance with the legislation of the Republic of Kazakhstan.

Article 8. Reports of the Commissioner

1. The Commissioner annually submits for consideration by the President of the Republic of Kazakhstan reports on his activities containing the results of the analysis of

regulatory legal acts, consideration of complaints and the exercise of other powers in accordance with this Constitutional Law.

2. On certain issues of observance of human and civil rights and freedoms in the Republic of Kazakhstan, the Commissioner may prepare and distribute special reports.

3. Reports of the Commissioner shall be sent to authorized state bodies for consideration on issues within their competence.

The authorized state bodies within three months from the date of receipt of the report of the Commissioner in the prescribed manner inform him of the results of the consideration of the report.

4. The Commissioner approves the procedure for preparing and distributing the reports referred to in this article.

5. Reports are subject to publication on the Internet resource of the Commissioner and distribution in the manner prescribed by the legislation of the Republic of Kazakhstan.

Article 9 National Preventive Mechanism

The Commissioner coordinates the activities of the participants of the national preventive mechanism for the 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 of the national preventive mechanism, and also exercises other powers in accordance with the legislation of the Republic of Kazakhstan in order to ensuring the effective operation of the national preventive mechanism.

Article 10. Legal education in the field of human and civil rights and freedoms, interaction with public associations, experts and specialists

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

2. The Commissioner may initiate the creation of a scientific and educational center and other organizations in order to promote knowledge about the rights and freedoms of a person and a citizen, organize scientific and applied research, as well as regularly improve knowledge and skills in the field of protecting the rights and freedoms of a person and a citizen.

3. The Commissioner interacts with state bodies, public associations and other organizations within the framework of information campaigns and projects to promote and encourage the rights and freedoms of man and citizen.

4. The Commissioner has the right to involve organizations and specialists on a contractual basis in the preparation of reports in accordance with the legislation of the Republic of Kazakhstan.

Article 11. Proposals for improving legislation and concluding international treaties

The Commissioner, within the framework of his activities on issues of human and civil rights and freedoms and in the manner prescribed by the laws of the Republic of Kazakhstan "On Legal Acts" and "On International Treaties of the Republic of Kazakhstan":

1) develops and sends proposals to the interested state bodies on improving the legislation or concluding international treaties of the Republic of Kazakhstan;

2) consider proposals of state bodies, organizations and citizens.

Article 12 Advisory and advisory bodies under the Commissioner, as well as his participation in advisory and advisory bodies under state bodies and organizations

1. An expert council with advisory and analytical functions is created under the Commissioner, consisting of persons with experience in the field of protection of human and civil rights and freedoms.

2. A Coordinating Council is established under the Commissioner in order to ensure effective coordination of the activities of the national preventive mechanism.

3. The Commissioner may create working groups and commissions with the participation of representatives of interested state bodies and organizations, citizens.

4. The Commissioner may participate independently or through his representatives in consultative and advisory and supervisory bodies under state bodies and organizations on his own initiative or by invitation.

Chapter 4 FACILITATION OF THE AUTHORIZED RESTORATION OF VIOLATED HUMAN RIGHTS

Article 13. Consideration of a complaint

1. The Commissioner, within the limits of his competence, within fifteen working days from the date of receipt of the complaint, considers complaints of citizens of the Republic of Kazakhstan and foreigners and stateless persons located on the territory of the Republic of Kazakhstan, filed personally and (or) through representatives (hereinafter referred to as the applicants).

In order to protect the rights of a citizen and with his written consent, public associations may apply to the Commissioner.

2. The Commissioner does not consider complaints against actions (inaction) and decisions of the President of the Republic of Kazakhstan.

3. The complaint must contain information about the last name, first name, patronymic (if it is indicated in the identity document) and the place of residence or work of the applicant, a statement of the essence of the decisions or actions (inaction) that violated or violate, in the opinion of the applicant, his rights and freedoms. To

The complaint shall be accompanied by documents and other materials confirming the arguments of the applicant.

4. Having received a complaint, the Commissioner shall take one of the following decisions:

1) accepts the complaint for consideration in the manner approved by the Commissioner;

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

3) sends appeals to the competent state bodies or officials for verification of the circumstances to be clarified;

4) refuses to accept the complaint for consideration, which must be motivated. Refusal to accept a complaint for consideration is not subject to appeal.

5. The term for consideration of a complaint may be extended by a reasoned decision of the Commissioner for a reasonable period, but not more than up to two months, of which the applicant is notified within three working days from the date of extension of the term. The Commissioner shall notify the applicant and relevant state bodies, bodies of local state administration and self-government, officials whose decisions and (or) actions (inaction) are being appealed about the decision taken.

Article 14. Rights of the Commissioner when considering a complaint

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

1) request and receive from state bodies, bodies of local state administration and self-government, other organizations and officials documents, materials and information necessary

for considering a complaint, with the exception of cases and materials that are in court proceedings;

2) to receive access in accordance with the established procedure to documents of state organizations and public associations relating to issues of human and civil rights and freedoms;

3) organize prompt reception of complainants, including with the invitation of representatives of state bodies, local government and self-government bodies, as well as other organizations (joint receptions);

4) on their own initiative to consider issues related to the violation of the rights and freedoms of man and citizen, if there is information about their massive violation or such violation is of public importance or is associated with the need to protect the interests of such persons who cannot independently use legal means to protect their rights and freedom;

5) send recommendations and petitions to state bodies, bodies of local state administration and self-government and organizations, officials on issues of protecting the rights and freedoms of man and citizen.

2. Providing 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 15. Features of consideration of a complaint

1. When considering a complaint, the Commissioner is obliged to provide the state body, body of local state administration and self-government or official, whose decisions or actions (inaction) are being appealed, with the opportunity to give their explanations on any issues to be clarified in the process of consideration.

The Commissioner has the right to apply to a state body, a body of local state administration and self-government or an official for assistance in clarifying the circumstances that have become the subject of the complaint.

2. Recommendations and petitions of the Commissioner are subject to consideration within fifteen working days from the date of their receipt, the results of the consideration are reported to the Commissioner in the manner prescribed by the legislation of the Republic of Kazakhstan.

In cases where an additional study is necessary, the term for consideration of the recommendations and petitions of the Commissioner is extended by the entity to which they were sent for no more than thirty calendar days, which is reported to the Commissioner within three working days from the date of extension of the consideration period.

3. The materials received during the consideration of the complaint are not subject to disclosure until the Commissioner makes a final decision.

4. The Commissioner is not entitled to disclose information about the private life of the applicant and other persons that became known to him during the consideration of the complaint without their written consent.

Article 16. Results of consideration of the complaint

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

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

2) applies to the authorized state body or official with a request to conduct disciplinary or administrative proceedings or proceedings on a criminal offense against a person who has violated the rights and freedoms of a person and a citizen;

3) apply 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, local state administration and self-government bodies, officials, civil servants. The statement of claim (claim) sent (sent) by the Commissioner is not subject to state duty in accordance with the tax legislation of the Republic of Kazakhstan.

Article 17. Generalization of the results of consideration of complaints

1. Based on the results of summarizing the results of consideration of complaints, the Commissioner:

1) sends to state bodies, bodies of local state administration and self-government, as well as to officials, their comments and proposals of a general nature related to ensuring the rights and freedoms of man and citizen, improving administrative procedures;

2) addresses the subjects that have adopted (issued) legal acts with proposals for making changes and additions to them, if the Commissioner believes that decisions or actions (inaction) of state bodies, bodies of local state administration and self-government or officials 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 international treaties or other obligations of the Republic of Kazakhstan.

2. In cases of special public importance or associated with mass violation of human and civil rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan, the Commissioner shall take 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) apply to the Supreme Court of the Republic of Kazakhstan with a proposal to provide clarifications on issues of judicial practice.

Article 18. Obligations of state bodies, local government and self-government bodies, organizations

1. State bodies, bodies of local state administration and self-government, organizations, their officials are obliged, in accordance with the procedure established by the legislation of the Republic of Kazakhstan, to provide the Commissioner with the necessary materials, documents, information and explanations.

2. Materials, documents, information requested by the Authorized Person must be sent to him within ten working days from the date of receipt of the request, unless another period is specified in his request.

3. The Commissioner and his representatives in the region, the city of republican significance and the capital, as well as employees of the National Center for Human Rights (hereinafter referred to as the National Center), within their powers, enjoy the right of prompt reception in state bodies, local state administration and self-government bodies, organizations and officials. At the request of the Commissioner, these bodies and officials are obliged to provide the Commissioner and his representatives or employees of the National Center with immediate assistance.

4. Authorized state bodies, bodies of local state administration and self-government, institutions and organizations, their officials are obliged to provide the Commissioner and his representative in the region, the city of republican significance, the capital, as well as the employees of the National Center with the opportunity to freely visit and communicate with persons located in relevant organizations and institutions providing special social services, providing temporary isolation from society or intended for the execution of punishment. The Commissioner and his representative in the region, city of republican significance, the capital, as well as employees of the National Center conduct a conversation using audio recording, photo and video filming, with the indicated persons without witnesses, personally or, if necessary, through an interpreter, as well as with any other person who can provide relevant information.

Chapter 5

Article 19

1. The authorized person has a representative in the region, city of republican significance, the capital (hereinafter referred to as the representative), appoints and dismisses him from office in accordance with the legislation of the Republic of Kazakhstan on public service.

2. The representative is a civil servant and manages the activities of the representative offices of the National Center for Human Rights.

Functional duties of representatives are approved by the Commissioner.

3. The representative, on behalf of the Commissioner, shall exercise powers within the framework of his functional duties and on his behalf within the respective administrative-territorial unit.

Article 20. National Center for Human Rights

1. To ensure the activities of the Commissioner, a working body is created - the National Center for Human Rights, which is a state institution, has a seal and forms with the image of the State Emblem of the Republic of Kazakhstan and indicates its name in the state and Russian languages, as well as the corresponding accounts in banking institutions.

2. Regulations on the National Center and the structure of the National Center, as well as representative offices, are approved by the Commissioner.

3. The head of the National Center and his deputies are appointed and dismissed by the Commissioner.

4. The National Center provides information and analytical, organizational, legal and other support for the activities of the Commissioner.

5. Employees of the National Center are civil servants, carrying out their activities on the basis of the legislation of the Republic of Kazakhstan in the field of public service.

6. The financial allowance of the employees of the National Center and its representative offices, their medical and social support are determined in accordance with the legislation of the Republic of Kazakhstan in the field of public service.

7. The National Center, on behalf of the Commissioner, provides assistance for the implementation of the activities of the Commissioner, provided for in Chapter 3 of this Constitutional Law.

8. Employees of the National Center are not subject to interrogation as a witness about the circumstances of private life on the appeals of citizens deprived of liberty and persons restricted in freedom who became known to them during conversations with them.

Article 21. Financial and logistical support

1. Financing of the activities of the Commissioner, his representatives, as well as the working body is carried out from the funds of the republican budget.

2. The financial allowance of the Commissioner, his medical and social services, 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 Kazakhstan.

3. In the republican budget, annually, a separate budget program provides for the funds necessary to ensure the activities of the Commissioner, his representatives, as well as the working body.

4. Financial statements are submitted by the National Center in the manner prescribed by the legislation of the Republic of Kazakhstan.

Article 22. Acts of the Commissioner and the head of the National Center

1. In order to implement this Constitutional Law, the Commissioner and the head of the National Center issue orders.

2. The Commissioner has his own form of the established form with the image of the State Emblem of the Republic of Kazakhstan, indicating the name of the position in the state and Russian languages.

Chapter 6. FINAL PROVISION

Article 23. Procedure for the entry into force of this Constitutional Law

1. This Constitutional Law shall enter into force ten calendar days after the day of its first official publication.

2. Recognize as invalid the Law of the Republic of Kazakhstan dated December 29, 2021 "On the Commissioner for Human Rights in the Republic of Kazakhstan".

**The President
Republic of Kazakhstan**