

**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

**POST-HEARING BRIEF REGARDING THE
PETITION TO REMOVE
KAZAKHSTAN
FROM THE LIST OF
ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES PURSUANT TO
19 USC § 2462(d) OF THE GENERALIZED SYSTEM OF PREFERENCES**

filed by

**THE AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

July 17, 2018

I. Information Required Under 15 CFR § 2007

- A. *Petitioner*: AFL-CIO, 815 16th Street, N.W., Washington, D.C., 20006
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- B. *Country Subject to Review*: Kazakhstan
- C. *Section of Law Warranting Review*: 19 U.S.C. § 2642(c)(7)
- D. *Reason for Filing*: The Government of Kazakhstan is not taking steps to afford internationally recognized worker rights in law or practice.

II. Introduction

This post-hearing brief addresses questions raised by the Generalized System of Preferences (GSP) Subcommittee of the Trade Policy Staff Committee (TPSC) during and after the hearing on June 19, 2018. This brief should be read as a supplement to all prior filings and hearing testimony on this petition. The Government of Kazakhstan (GOK) has not taken steps to afford internationally recognized worker rights, and the AFL-CIO continues to urge the United States Trade Representative to suspend benefits if the GOK does not take immediate and effective steps to come into compliance with 19 USC § 2462(d).

III. Post-Hearing Questions from the Subcommittee

- A. Is the AFL-CIO aware of the recently finalized ILO Roadmap to implement Convention 87? If so, does AFL-CIO believe that it adequately addresses the concerns highlighted in its petition?**

The AFL-CIO is aware of the Roadmap but does not believe that it adequately addresses the concerns highlighted in the petition. If fully implemented the Roadmap would provide a good start, but it fails to address the criminal penalties imposed for operating unregistered trade unions or for certain activities related to strikes. Moreover, it appears to be focused on law rather than practice, and therefore does not require measurable progress to eliminate the arbitrary denial of registrations or harassment and intimidation of trade unionists, including CITUK President Larisa Kharkova. The Roadmap also fails to restore the rights of trade union leaders and members who were unjustly punished when their unions were denied registration. Without more, we do not believe that the Roadmap includes all the meaningful changes necessary to meet the standard required by 19 U.S.C. § 2642(c)(7).

- B. While Kazakhstan's Constitution and Labor Code provide for the right to strike, stakeholders are unaware of a single strike in Kazakhstan in recent years that complied with the proper legal requirements. Consequences for participating in an illegal strike include fines, dismissal and imprisonment. To your knowledge are strikes frequently declared illegal in Kazakhstan? For what**

reasons? How often do illegal strikes result in fines, dismissal, and/or imprisonment of participants?

The AFL-CIO and its partners are not aware of any strike that acquired legal approval. The GOK has shut down independent unions and engages in crackdowns on both union activists and journalists, making it increasingly difficult to obtain accurate information regarding the overall frequency of illegal strikes or the consequences that result. We do know that sanctions have been imposed against union leaders and members who conduct unapproved strikes. For example, as discussed in our petition, leaders and members of the LLP Oil Construction Company union were jailed and fined for participating in a hunger strike. This includes fines for “damage” to the company determined by the company itself rather than a neutral third party. Other leaders were jailed for allegedly publicly supporting the strike. These repressive measures appear designed to dissuade workers from undertaking industrial actions in the first place, and are not consistent with internationally recognized worker rights.

IV. Follow-up to Hearing Questions

- A. The AFL-CIO petition asserts that the 2014 Law on Trade Unions creates serious legal obstacles for the effective operation of independent trade unions. Furthermore, the petition alleges that the law has resulted in the dismantling of the majority of independent trade unions due to non-compliance with the law. Yet the GOK’s submission claims there are “467 trade union organizations and over 20,000 primary trade unions in the Republic of Kazakhstan” in operation today. Given the significant obstacles to trade union establishment that the AFL-CIO petition describes, how were those unions able to register and operate following the 2014 Trade Union Law?**

The number of unions registered should not be taken as an accurate indication of the application of freedom of association. Nearly all of the 20,000 local unions registered belong to the GOK-controlled Federation of Trade Unions of Kazakhstan. The GOK appointed the president of that organization and, after the GOK became dissatisfied with his actions last year, removed him and appointed a new president in his place. Workers must be able to freely join a union of their own choosing, being forced to affiliate to a government’s preferred union structure is not consistent with freedom of association.¹

- B. The Government of Kazakhstan asserts that the dissolution of CITURK did not interfere with workers ability to unionize, and that former members of CITURK**

¹ See, e.g., Freedom of Association: Digest of Decisions, Geneva, International Labour Office, Fifth (revised) edition, 2006 (hereinafter CFA Digest of Decisions), available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf, ¶ 340 (“By according favourable or unfavourable treatment to a given organization as compared with others, a government may be able to influence the choice of workers as to the organization which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87[Freedom of Association] that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise . . .”) and ¶ 309 (“The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact.”).

joined the existing Union of Industrialists and Entrepreneurs, otherwise known as “Amanat.” Does this organization provide the same representation as CITURK? How is it different?

The GOK must ensure that workers are free to join organizations of their own choosing. It is not for the government to choose which federation is favored or which federation “will do” in place of another it has chosen to harass and intimidate. Making individual unions or workers find a workaround to the deregistration of her or his organization demonstrates that the GOK continues to actively undermine, rather than afford, the right of association. This does not meet the standard required by 19 U.S.C. § 2642(c)(7).

With respect to Amanat in particular, according to news reports this new organization was created at the direction of the GOK and its leader was hand-picked by the government.² It is not clear whether the healthcare workers union or the scientific and educational workers union even voluntarily joined Amanat, and we would ask the U.S. government to further investigate this issue.

C. In the AFL-CIO petition, it urges USTR to suspend GSP benefits if the GOK fails to take immediate and effective steps to afford internationally recognized worker rights. In AFL-CIO’s view, what would indicate that the GOK has taken immediate and effective steps?

The GOK should take prompt action to afford freedom of association, including labor law reform consistent with the recommendations in the 2017 ILO report,³ recognition of independent unions, expungement of all penalties for trade unionists who acted in good faith in a strike or other trade union activity, and an end to the harassment of Larisa Kharkova, her family, and her associates, with an assurance that she will receive her full rights consistent with due process. However, we stress that these steps alone may not be sufficient. Longer term technical assistance and monitoring may be required to ensure that Kazakhstan comes into compliance with GSP eligibility criteria regarding internationally recognized worker rights.

D. In the ILO Roadmap, reference is made to the helpline to assist unions in the registration process. Does AFL-CIO see this as a useful proposal? What could be done to ensure that the help line is as useful as possible?

The helpline, as envisioned, cannot address the failure to afford internationally recognized worker rights. Under the current proposal, workers would contact the very government responsible for denying freedom of association to make complaints that their freedom of association has not been respected. It is quite possible that workers simply give up instead. Assuming workers attempt to use the helpline in good faith, it is not clear that the individuals tasked with answering the phones will have the political independence or necessary authority to

² See, e.g., “Will the authorities forbid their fake «trade union Amanat», which was created and is acting in violation of the law?,” available at <http://socialismkz.info/?p=20966>.

³International Labor Organization, Follow-up to the conclusions of the Committee on the Application of Standards 105th Session, May–June 2016 (published 2017) available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3298653.

respond meaningfully to complaints. For example, if staffers must challenge a more powerful agency to effectuate change, we have serious doubts that they will be able to afford complainants their internationally recognized worker rights. Given that the GOK has coerced and intimidated workers to prevent the operation of unions independent of government control, the helpline is unlikely to assist the GOK in coming into compliance with the standard under 19 U.S.C. § 2642(c)(7).

V. Conclusion

The GOK has not taken steps to afford internationally recognized worker rights, including the right of association and the right to organize and bargain collectively. Instead, the GOK is actively restricting these rights in both law and practice. The AFL-CIO urges USTR to suspend benefits under 19 U.S.C. § 2462(d) if the GOK does not take immediate and effective steps to afford internationally recognized worker rights.