

# CORI

country of origin research and information

## **CORI Thematic Report**

### **Mental Health; Kazakhstan**

**March 2014**



## **Preface**

Country of Origin Information (COI) is required within Refugee Status Determination (RSD) to provide objective evidence on conditions in refugee producing countries to support decision making. Quality information about human rights, legal provisions, politics, culture, society, religion and healthcare in countries of origin is essential in establishing whether or not a person's fear of persecution is well founded.

CORI Country Reports are designed to aid decision making within RSD. They are not intended to be general reports on human rights conditions. They serve a specific purpose, collating legally relevant information on conditions in countries of origin, pertinent to the assessment of claims for asylum. Categories of COI included within this report are based on the most common issues arising from asylum applications made on the basis of mental health related issues by nationals from Kazakhstan. This report covers events up to March 2014.

COI is a specific discipline distinct from academic, journalistic or policy writing, with its own conventions and protocols of professional standards as outlined in international guidance such as The Common EU Guidelines on Processing Country of Origin Information, 2008 and UNHCR, Country of Origin Information: Towards Enhanced International Cooperation, 2004.

CORI provides information impartially and objectively, the inclusion of source material in this report does not equate to CORI agreeing with its content or reflect CORI's position on conditions in a country. It is acknowledged that all sources have a bias, it is for decision makers to place a weight on sources, assessing relevance to each individual application.

CORI Country Reports are prepared on the basis of publicly available information, studies and commentaries within a specified time frame. All sources are cited and fully referenced. Every effort has been taken to ensure accuracy and comprehensive coverage of the research issues, however as COI is reliant on publicly available documentation there may be instances where the required information is not available. Any translations made are unofficial translations made by CORI, as with all sources referenced, please see the full text of the original article. The reports are not, and do not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. Every effort has been made to compile information from reliable sources; users should assess the credibility, relevance and timeliness of source material with reference to the specific research concerns arising from individual applications.

CORI is an independent centre providing specialist research resources to support Refugee Status Determination.

CORI works internationally with all parties to RSD, including governments, legal representatives and NGOs, producing commissioned research reports and providing knowledge management services. CORI works to improve standards of COI production through capacity building and training.

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# 1. Mental Health Legislation

## 1.1 Right to health, including mental health

Article 29 of the 1995 *Constitution of the Republic of Kazakhstan* states that citizens hold the right to protection of health and " free, guaranteed, extensive medical assistance" by the state as well as private medical institutions,

"Article 29

1. Citizens of the Republic of Kazakhstan shall have the right to protection of health.
2. Citizens of the Republic shall be entitled to free, guaranteed, extensive medical assistance established by law.
3. Paid medical treatment shall be provided by state and private medical institutions as well as by persons engaged in private medical practice on the terms and according to the procedures stipulated by law."<sup>1</sup>

Article 31 of the 1995 *Constitution of the Republic of Kazakhstan* states that protecting "the environment favorable for the life and health of the person" is an objective set by the state,

" Article 31

1. The state shall set an objective to protect the environment favorable for the life and health of the person.
2. Officials shall be held accountable for the concealment of facts and circumstances endangering the life and health of the people in accordance with law."<sup>2</sup>

According to the 2011 *World Health Organisation (WHO) Mental Health Atlas Kazakhstan* does not have an officially approved mental health policy or plan, although the general health policy does mention mental health and specific mental health legislation has existed since at least 2009. Legislation regarding welfare, disability, general health legislation also contains legal provisions regarding mental health.<sup>3</sup>

## 1.2 Right to health care in relation to mental health

Article 61 of the 1995 *Constitution of the Republic of Kazakhstan* states that parliament has the right to issue laws that regulate health care,

"Article 61

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<sup>1</sup> Constitution of the Republic of Kazakhstan 1995, Article 29, available at <http://www.refworld.org/type.LEGISLATION.NATLEGBOD.KAZ.3ae6b52a10.0.html> , accessed 10 January 2014

<sup>2</sup> Constitution of the Republic of Kazakhstan 1995, Article 31, available at <http://www.refworld.org/type.LEGISLATION.NATLEGBOD.KAZ.3ae6b52a10.0.html> , accessed 10 January 2014

<sup>3</sup> The World Health Organisation, Department of Mental Health and Substance Abuse, The World Health Organisation Mental Health Atlas 2011, Kazakhstan, [http://www.who.int/mental\\_health/evidence/atlas/profiles/kaz\\_mh\\_profile.pdf](http://www.who.int/mental_health/evidence/atlas/profiles/kaz_mh_profile.pdf), accessed 10 January 2014

[ ] 3. Parliament shall have the right to issue laws that regulate the most important public relations, establish fundamental principles and standards dealing with: [ ] 7) education, health care and social provision;"<sup>4</sup>

Article 119 of the 2009 *Law on the Health of the People and Health Care System*, states that "medical agents and the methods permitted by the legislation of the Republic of Kazakhstan in the field of health care are applied" in the diagnosis and treatment of mental illness,

"Article 119. Diagnostics and treatment of mental disturbances (diseases)

1. The psychiatric help appears the psychiatrist.

2. The diagnosis of mental disturbance (disease) is put by the psychiatrist according to clinical implications, datas of laboratory, objective data. The diagnosis cannot be based on disagreement of citizens with the accepted in society moral, cultural, political and religious values or to locate other causes, is direct not connected to condition of its mental health. To the person hospitalized involuntarily, the diagnosis is put by the commission vracheypsikhiatrov.

3. For diagnostics and treatment of the person suffering from mental disturbance (disease), medical agents and the methods permitted by the legislation of the Republic of Kazakhstan in the field of health care are applied.

4. Medical agents and methods are applied only in the diagnostic and medical purposes according to nature of morbid disorders and prohibited for use in the form of punishment of the person.

5. The doctor within forty eight hours from the moment of carrying out psychiatric examination provides to the person suffering from mental disturbance (disease) if it can correctly accept short of stated information, or to his legal representative written information on nature of mental disturbance (disease), the purposes and treatment methods, and also data on duration of recommended treatment, possible painful feelings, side effects and on expected results. About provided information entry in medical documentation is made. In other cases this information can be provided according to Item 4 of Article 95 of this Code.

6. Treatment of the person suffering from mental disturbance (disease), is made after receipt of its consent or its legal representatives, except as specified, provided in Item 7 of this Article."<sup>5</sup>

Article 120 of the 2009 *Law on the Health of the People and Health Care System*, also states that "persons suffering from mental disturbances (diseases)", have all rights and freedoms of citizens provided by the Constitution of the Republic of Kazakhstan, have the right to psychiatric care as an inpatient or outpatient and to uncensored communication,

"Article 120. The rights of the persons suffering from mental disturbances (diseases)

1. The persons suffering from mental disturbances (diseases), have all rights and freedoms of citizens provided by the Constitution of the Republic of Kazakhstan.

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<sup>4</sup> Constitution of the Republic of Kazakhstan 1995, Article 31, available at <http://www.refworld.org/type,LEGISLATION.NATLEGBOD,KAZ,3ae6b52a10,0.html> , accessed 10 January 2014

<sup>5</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

Restriction of implementation of the rights and freedoms of citizens, connected to mental disturbance (disease), is admissible only in the cases provided by the laws of the Republic of Kazakhstan.

2. All persons suffering from mental disturbances (diseases), when rendering of the psychiatric help by it have the right on:

- 1) receipt of the psychiatric help in residence, and also in case of need - in the location;
- 2) abandoning at any stage of treatment for use of medical agents and methods, scientific researches or educational process, from photo, video or filmings;
- 3) the invitation of the specialist participating in rendering of the psychiatric help (with the consent of the last), for work in the medical commission on the questions regulated by this Code;
- 4) education according to the program of comprehensive school or special school for children with violation of intellectual development if the patient has not reached eighteen years;
- 5) conducting correspondence, obtaining and departure of sending, parcels post, money, postal orders, using phone, acceptance of visitors, subscription to periodic printing editions;
- 6) ownership and acquisition of necessities, using own clothes.

3. The persons suffering from mental disturbances (diseases) concerning whom enforcement powers of medical nature in the public mental health facilities of specialized phylum with intensive observation are applied, have, in addition to the rights specified in Items 1 and 2 of this Article, the right on:

- 1) acquisition of additional delivery;
- 2) receipt of medical services over the guaranteed amount of free medical care;
- 3) acquisition of mild stock, clothes, footwear;
- 4) using long-distance telecommunication;
- 5) using control account of cash.

Sale of the specified rights is performed at the expense of agents of the person to which they are presented."<sup>6</sup>

Article 122 of the 2009 *Law on the Health of the People and Health Care System*, also states that psychiatric examination and care, both "emergency and planned" is guaranteed by the state, as is "social help and assistance" following treatment,

"Article 122. Rendering of the psychiatric help and the social protection, guaranteed by the state

1. By the state it is guaranteed:

- 1) emergency and planned psychiatric help;
- 2) psychiatric examination, determination of temporary invalidity;
- 3) the social help and assistance in work arrangement of the persons suffering from mental disturbances (diseases), from them disabled people - according to the individual program of after treatment.

2. For providing the persons suffering from mental disturbances (diseases), the psychiatric help and for the purpose of their social protection the state:

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<sup>6</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

- 1) will organize provision of the psychiatric help;
- 2) will organize general educational and professional training of the minors suffering from mental disturbances, from them disabled people - according to the individual program of aftertreatment;
- 3) frames the medical and production organizations, and also special productions, shops or fields with the facilitated working conditions for labor therapy, education to new professions for workarrangement in these organizations of the persons suffering from mental disturbances (diseases), including disabled people."<sup>7</sup>

The 2011 *World Health Organisation (WHO) Mental Health Atlas* stated that the majority of primary health care doctors and nurses had "not received official in-service training on mental health within the last five years" and are not permitted to prescribe psychotherapeutic medicines. Primary health care nurses are also not authorised to "independently diagnose and treat mental disorders" Official information on mental disorders was not available in most primary health care clinics.<sup>8</sup>

In 2012 the *USDOS* stated that despite the prohibition of discrimination against persons with intellectual, and mental disabilities in access to health care and the provision of other state services or other areas under Kazakh law, significant discrimination existed in practice and that state-run psychiatric institutions were poorly managed and inadequately funded.<sup>9</sup>

In 2012 US Central Asian news website *Eurasianet.org* stated that disabilities are into three groups, assigned by state-run medical commissions, in all Central Asian republics "in a continuation of Soviet-era practices". Those with "category one" disabilities are entirely cared for by others, "category two" care for themselves with some assistance (some intellectual disabilities fall into this category); "category three" does not include mental disabilities.<sup>10</sup>

In 2013 the *International Federation of the Red Cross and Red Crescent* stated that it would continue to provide legal and social counselling and psychological assistance, amongst other services, in Astana, Almaty, Taldykorgan, Shymkent, Aktobe, Atyrau, Semipalatinsk and Karaganda, through the Red Crescent Society of Kazakhstan.<sup>11</sup>

### **1.3 Non-discrimination provisions as they relate to discrimination mental health**

In an undated post the website *Kazakhstan Human Rights and Rule of Law* stated that the current system for "the social protection of the disabled" includes "a multilevel social

<sup>7</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

<sup>8</sup> The World Health Organisation, Department of Mental Health and Substance Abuse, The World Health Organisation Mental Health Atlas 2011, Kazakhstan, [http://www.who.int/mental\\_health/evidence/atlas/profiles/kaz\\_mh\\_profile.pdf](http://www.who.int/mental_health/evidence/atlas/profiles/kaz_mh_profile.pdf), accessed 10 January 2014

<sup>9</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014

<sup>10</sup> EurasiaNet.Org, Central Asia: Disabled Citizens Find Avenues to Advancement Blocked, 22 October, 2012 <http://www.eurasianet.org/node/66087> accessed 6 January 2014

<sup>11</sup> International Federation of the Red Cross and Red Crescent, Kazakhstan Consolidated Operational Plan 2014, <http://reliefweb.int/sites/reliefweb.int/files/resources/Kazakhstan%20Consolidated%20Operational%20Plan%202014.pdf> accessed 6 January 2014

security system" (state social benefit payments, special state benefit payments, and lump sum social payments), provision of social services and rehabilitation in medical and social institutions and material support (target social assistance, housing assistance).<sup>12</sup>

In May 2013 the *Office for Democratic Institutions and Human Rights* stated that "mandatory defence" is often provided free of charge for vulnerable groups including those with mental and physical disabilities under Central Asian national laws.<sup>13</sup>

#### **1.4 Provisions relating to forced confinement to a mental health institution (on the basis of the person's own best interests or in the interests of society)**

Article 88 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that "compulsory measures of a medical character" can be imposed on those deemed to have committed crimes in a "state of insanity" or who suffer from "mental disorders" in cases where they are seen as endangering themselves or others or there is potential for "considerable damage",

"Article 88. The Grounds for Applying Compulsory Measures of Medical Character  
1. Compulsory measures of medical character may be imposed by a court on the following persons:

a) Those who in a state of insanity committed offences stipulated by the articles of the Special Part of this Code;

b) Those who after the commission of a crime, developed a mental disorder which made it impossible to sentence them or for them to endure punishment;

c) Those who committed a crime and suffer from mental disorders, but have not been found to be insane;

[ ] 2. For persons indicated in the first part of this Article, compulsory measures of a medical character shall be imposed only in cases in which mental disorders are associated with a possibility of causing by those persons other considerable damage, or to be a danger to themselves or other persons.

3. The procedure for execution of compulsory measures of a medical nature shall be defined by the Criminal Executor Code and the legislation of the Republic of Kazakhstan on health protection.

4. In relation to the persons indicated in the first part of this Article and who do not present a danger in their mental state, a court may transfer necessary materials to health protection bodies for resolving the issue of treatment of those persons, or

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<sup>12</sup> Kazakhstan: Human Rights & Rule of Law, Social Protection System of the Disabled, <http://kazakhstanhumanrights.com/humanrightsanddemocracy/rights-of-individuals-with-limitations-disabled/social-protection-system-of-the-disabled/>, accessed 6 January 2014

<sup>13</sup> Office for Democratic Institutions and Human Rights, ODIHR Report on the Regional Expert Roundtable on Legal Aid in Criminal Proceedings in Central Asia, May 2013, <http://www.osce.org/odihr/104375>, accessed 6 January 2014



their transfer to psycho-neurological institutions, through the procedure stipulated by the legislation of the Republic of Kazakhstan on health protection."<sup>14</sup>

Article 89 of the 1997 *Criminal Code of the Republic of Kazakhstan*, entitled "Rationale for Applying Compulsory Measures of a Medical Character", states that "treatment of persons indicated in the first part of Article 88 of this Code, or improvement of their mental state, is the rationale behind the application of compulsory measures of a medical character, as well as the prevention of the commission by them of further offences stipulated by the articles of the Special Part of the this Code."<sup>15</sup>

Articles 90-92 of the 1997 *Criminal Code of the Republic of Kazakhstan* state that "compulsory measures of medical character" which may be enforced by a court include; observation and treatment by a psychiatrist as an outpatient, treatment as a psychiatric inpatient of a general or specialised hospital or as an inpatient of a specialized hospital with "intensive observation".

1. A court may establish the followings of compulsory measures of medical character:

- a) Outpatient compulsory observation and treatment by a psychiatrist;
- b) Compulsory treatment in a psychiatric inpatient hospital of a general;
- c) Compulsory treatment in a psychiatric inpatient hospital of a specialized;
- d) Compulsory treatment in a psychiatric inpatient hospital of a specialized with intensive observation.

2. For persons convicted for crimes committed in a state of sanity, but who need treatment of alcoholism, drug addiction (addition to toxic chemicals), or treatment of mental disorders not excluding sanity, a court, along with punishment, may establish compulsory measures of a medical charactering the form of outpatient compulsory observation and treatment by a psychiatrist.

Article 91. Outpatient Compulsory Observation and Treatment by a Psychiatrist  
Outpatient compulsory observation and treatment by a psychiatrist may be imposed upon the existence of the grounds stipulated by Article 88 of this Code, if a person due to his mental state, does not need placement in an inpatient psychiatric hospital.

Article 92. Compulsory Treatment in an Inpatient Psychiatric Hospital

1. Compulsory treatment in an inpatient psychiatric hospital may be imposed upon the existence of the grounds stipulated by Article 88 of this Code, if the nature of a person's mental disorder requires such conditions of treatment, care, maintenance, and observation, which may be carried out only in an inpatient psychiatric hospital.

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<sup>14</sup> Criminal Code of the Republic of Kazakhstan, Article 88. The Grounds for Applying Compulsory Measures of Medical Character, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2013

<sup>15</sup> Criminal Code of the Republic of Kazakhstan, Article 89 Rationale for Applying Compulsory Measures of a Medical Character, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2013

2. Compulsory treatment in an inpatient psychiatric hospital of a general may be imposed upon a person who, due to his mental state, and the nature of the committed offence which was dangerous to society, needs inpatient hospital treatment and observation, but does not need intensive observation.

3. Compulsory treatment in an inpatient psychiatric hospital of a specialized may be imposed upon a person who, due to his mental state and the nature of the committed offence which was dangerous to society, needs permanent observation.

4. Compulsory treatment in an inpatient psychiatric hospital of a specialized with intensive observation may be imposed upon a person who, due to his mental state and the character of the committed offence which was dangerous to society, presents a special danger to himself or other persons, and requires permanent and intensive observation.

Article 93 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that "extension, change, or termination" of compulsory measures is made on the basis of a report by the psychiatrists carrying out the treatment, which must then be approved by a court. Psychiatric assessment on which to base these reports should be made "not less frequently than once every six months",

"Article 93. Extension, Change, and Termination of the Application of Compulsory Measures of Medical Character

1. Extension, change, or termination of the application of compulsory measures of medical character shall be carried out by a court, pursuant to a proposal from the administration of a given institution carrying out compulsory treatment, on the basis of a report of a commission of psychiatrists.

2. A person upon whom a compulsory measure of medical character is imposed shall be subject to assessment by a commission of psychiatrists not less frequently than once every six months in order to decide on whether there are grounds to submit a proposal to a court to terminate or change of such a measure. In the absence of any grounds for the termination of the application, or the changing of a compulsory measure of medical character, the administration of a given institution carrying out compulsory treatment shall submit to a court a report on the extension of compulsory treatment. The first extension of compulsory treatment may be carried out upon the expiration of six months from the moment of the beginning of treatment, and a subsequent extension of compulsory treatment shall be carried out annually.

3. Changing or terminating a compulsory measure of a medical nature shall be carried out by a court in case there is such a change in the mental state of a given person, that the need no longer exists to apply the earlier imposed measure, or the need arises from the application of another compulsory measure of medical character.

4. In case of termination of the application of compulsory treatment in an inpatient psychiatric hospital, a court may transfer the necessary materials with regard to a person who was undergoing compulsory treatment to the health protection bodies in order to decide the issue of his treatment or transfer to a psycho-neurological

institution in accordance with the procedure stipulated by the legislation of the Republic of Kazakhstan on health protection."<sup>16</sup>

Article 127 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that "illegal" placement or retention of a person in a mental hospital is punishable by restraint or deprivation of liberty for between three and seven years,

"Article 127. Illegal Placement in a Mental Hospital

1. Illegal placement of a person in a mental hospital or illegal retention there shall be punishable by restraint of liberty for a term of up to three years or with deprivation of liberty for the same term.

2. The same act,

a) if it has been committed with mercenary motives;

b) if it has been committed by a person using his official position;

c) if it has entailed by negligence the death of the victim, or any other serious consequences

is punishable with deprivation of liberty for a term of three to seven years with or without deprivation of the right to hold specific offices or to engage in specific activities for a term of up to three years."<sup>17</sup>

Article 116 of the 2009 *Law on the Health of the People and Health Care System*, states that psychiatric care may be given only with written consent from the patient, except in the circumstances specified by the law,

"Article 116. Voluntariness of the request for the psychiatric help

1. The psychiatric help includes prophylaxis of mental disturbances (diseases), inspection of mental health of citizens, diagnostics of mental violations, treatment, leaving and medico-social resettlement of the persons suffering from mental disturbances (diseases).

2. The psychiatric help appears in case of the voluntary address of the person from its written consent, except as specified, provided by this Code.

3. It appears to the minor, and also the person recognized by court by incapacitated, the psychiatric help with the consent of their legal representatives according to the procedure, provided by this Code."<sup>18</sup>

Article 119 of the 2009 *Law on the Health of the People and Health Care System*, also states that psychiatric treatment may only be carried out without consent of the patient or their representative in the case of "enforcement powers of medical nature" or forced hospitalisation,

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<sup>16</sup> Criminal Code of the Republic of Kazakhstan, Article Articles 90-93 1997, available at <http://adilet.zan.kz/eng/docs/K970000167> , accessed 9 January 2013

<sup>17</sup> Criminal Code of the Republic of Kazakhstan, Article 127, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167> , accessed 9 January 2013

<sup>18</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

"7. Treatment can be carried out without consent of the person suffering from mental disturbance (disease), or without consent of his legal representative only in case of application of enforcement powers of medical nature on the establishments established by the legislation of the Republic of Kazakhstan, and also in case of forced hospitalization on the establishments, stipulated in Item 1 Articles 94 of this Code. In these cases, except for emergency hospitalization, treatment is performed according to the decision of the commission of psychiatrists. In case of hospitalization of the person without its consent decision making about procedure for treatment by the commission of psychiatrists shall be provided within forty eight hours from the moment of its placement to the psychiatric organization.

8. The person suffering from mental disturbance (disease), or his legal representative has the right to refuse offered treatment or to stop it, except as specified, provided in Item 7 of this Article.

9. Possible consequences of the termination of treatment shall be explained to the person who has refused treatment, or his legal representative. Abandoning of treatment with indication of data on possible consequences is drawn up by entry in medical documentation signed by the person suffering from mental disturbance (disease), or his legal representative and the psychiatrist."<sup>19</sup>

Article 121 of the 2009 *Law on the Health of the People and Health Care System*, states that "enforcement powers of medical nature" can be applied by a court decision if a person is thought have committed "socially dangerous acts" and may take the form of compulsory inpatient or outpatient psychiatric treatment,

"Article 121. Enforcement powers of medical nature concerning the persons suffering from mental disturbances (diseases)

1. Enforcement powers of medical nature are applied by a court decision concerning the persons suffering from mental disturbances (diseases), made socially dangerous acts, on the establishments and according to the procedure, the established legislation of the Republic of Kazakhstan.

2. Enforcement powers of medical nature are performed in the psychiatric organizations of health care system in type:

- 1) outpatient forced observation and treatment at the psychiatrist;
- 2) compulsory treatment in psychiatric hospital of general phylum;
- 3) compulsory treatment in psychiatric hospital of specialized phylum;
- 4) compulsory treatment in psychiatric hospital of specialized phylum with intensive observation.

3. The persons placed in psychiatric hospital for application of enforcement powers of medical nature, are recognized disabled for the entire period of stay in psychiatric hospital.

4. Money from physical persons and legal entities, including retirement benefits and the public welfare social benefits, is enlisted into the control account of cash of the public mental health facility of specialized phylum with intensive observation (daleeuchrezhdeniye) for use mentally the patients being on compulsory treatment in organization.

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<sup>19</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

5. The procedure for use of money is determined by the Government of the Republic of Kazakhstan.
6. Accounting and the reporting on use of agents of the control account of cash of organization, and also control of their use are performed according to the legislation of the Republic of Kazakhstan."<sup>20</sup>

Article 123 of the 2009 *Law on the Health of the People and Health Care System*, states that psychiatric examination may be carried out without the consent of the patient or their legal representative if they are considered a danger to others, are unable to care for themselves adequately, or it is thought that their mental state will significantly deteriorate if they are not placed in psychiatric care,

"Article 123. Psychiatric examination

1. Psychiatric examination is carried out for the purpose of establishment of mental disturbance (disease) at the surveyed person, determination of need of rendering of the psychiatric help and its types, and also for the solution of questions on guardianship, determination of temporary invalidity.

2. Psychiatric examination, and also routine maintenances are carried out at request or from the written consent of the surveyed person or according to the written application of his legal representatives with indication of the examination cause; concerning the minor or the person recognized by court incapacitated, - at request or from the written consent of their legal representatives.

Drawn psychiatric examination and the conclusion about condition of mental health of the surveyed person are fixed in medical documentation in which the causes of the address to the psychiatrist and medical references are specified also.

3. In case of objection or absence at the surveyed person or the minor legal representative examination is carried out according to the decision of guardianship and custody body which can be appealed in court.

4. The doctor who is carrying out psychiatric examination, shall be provided to the surveyed person and his legal representative as the psychiatrist, except as specified, provided by subparagraph 1) Item 5 of this Article.

5. Psychiatric examination of the person can be carried out without its consent or without consent of his legal representative in case when the surveyed person makes the actions giving the grounds to assume availability at it of serious mental disturbance (disease) which causes:

- 1) its direct danger to and people around;
- 2) his helplessness, that is disability independently to satisfy the basic vital needs, in the absence of due care;
- 3) essential harm of its health owing to deterioration of mental condition if the person is abandoned without the psychiatric help.

6. Psychiatric examination of the person can be carried out without consent of his legal representative if the surveyed person is under dynamic observation, according to the procedure, stipulated in Item 2 Articles 124 of this Code.

7. Different types of psychiatric examination and psychiatric examination of the person are made according to the legislation of the Republic of Kazakhstan in the field of health care.

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<sup>20</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

8. In cases, stipulated in Item 5 these Articles, the decision on psychiatric examination is accepted by the commission of psychiatrists from the notification of the legal representative of the person.

9. The decision on psychiatric examination of the person without its consent or without consent of his legal representative, except as specified, stipulated in Item 6 these Articles, is accepted by the psychiatrist according to the statement containing data on availability of the establishments for such examination, listed in Item 5 of this Article."<sup>21</sup>

Article 124 of the 2009 *Law on the Health of the People and Health Care System*, states that "dynamic observation" including "regular surveys by the psychiatrist and rendering to it the necessary medical and public assistance" may be administered without the consent of the patient or their legal representative,

"Article 124. Dynamic overseeing by sick mental disturbances (diseases)

1. Dynamic observation can be established irrespective of consent of the person suffering from mental disturbance (disease), or his legal representative in cases, stipulated in Item 2 these Articles, and assumes overseeing by condition of mental health of the person by regular surveys by the psychiatrist and rendering to it the necessary medical and public assistance.

2. Dynamic observation can be established for the person suffering from chronic or fixing disorder with serious, permanent, often becoming aggravated morbid implications.

3. The solution of question on need of establishment of dynamic observation and its termination is accepted by the commission of psychiatrists prescribed by administration of the psychiatric organization, rendering the ambulatory psychiatric care, or the commission of psychiatrists prescribed by organ of health care, in number of at least three doctors.

4. Reasoned decision of the commission of psychiatrists is drawn up by entry in medical documentation. The decision on establishment or on the termination of dynamic observation can be appealed according to the procedure, established by this Code.

5. Established earlier dynamic observation stops in case of convalescence or appreciable and permanent enriching of mental condition of the person suffering from mental disturbances (diseases). After the termination of dynamic observation the psychiatric help at request either with the consent of the person or at request or with the consent of his legal representative appears in the form of consultation and treatment. In case of change of mental condition the person suffering from mental disturbance (disease), can be examined without its consent or without consent of his legal representative on the establishments and according to the procedure, the stipulated in Clause 123 presents of the Code. Dynamic overseeing by sick mental disturbances (diseases) can be renewed in such cases according to the decision of the commission of psychiatrists.

6. Treating of question of the termination of dynamic observation can be performed according to the procedure, stipulated in Item 3 these Articles, at the initiative of the

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<sup>21</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

person suffering from mental disturbance, and also at the initiative of his legal representative."<sup>22</sup>

Article 125 of the 2009 *Law on the Health of the People and Health Care System*, states that forced psychiatric hospitalisation is permitted "based on judgment". Written notice must be given to the prosecutor within forty eight hours in the case of forced hospitalisation "without judgment the administration of the psychiatric organization". A psychiatric patient who has been involuntarily admitted must be examined at least once a month for the first six months to establish whether their stay needs to be prolonged. After six months a judge can make a decision to extend the period of hospitalisation,

"Article 125. Hospitalization in psychiatric hospital

1. The establishment for hospitalization in psychiatric hospital are availability at the person of mental disturbance (disease) and the decision of the psychiatrist on need of carrying out inspection or treatment in the conditions of hospital.

1-1. Forced hospitalization in psychiatric hospital is allowed based on judgment.

Forced hospitalization of the person in psychiatric hospital before removal by court of the decision is allowed only for the purpose of non-admission of the consequences provided by subparagraphs 2), 3) and 4) Item 1 of Article 94 of this Code.

In each case of forced hospitalization without judgment the administration of the psychiatric organization within forty eight hours from the moment of room of the person refers to psychiatric hospital to the prosecutor the written notice.

In the presence of data on the spouse, close relatives and (or) legal representatives the administration of the psychiatric organization within forty eight hours from the moment of room of the person in psychiatric hospital informs them.

2. Hospitalization in psychiatric hospital can be caused by need of judicial and psychiatric examination according to the procedure, established by the legislation of the Republic of Kazakhstan in the field of health care.

3. Hospitalization of the person in psychiatric hospital is performed voluntary at its request or from its written consent, except as specified, the stipulated in Clause 94 presents of the Code.

4. The minor is hospitalized in psychiatric hospital from the written consent of his parents or other legal representative.

[ ] 6. In case of objection or absence of the legal representative hospitalization of the minor is carried out to psychiatric hospital according to the decision of guardianship and custody body which can be appealed in court, with the written notice of the prosecutor within twenty four hours from the moment of decision making about hospitalization.

7. The received consent of the person to hospitalization is drawn up by entry in medical documentation signed by the person or his legal representative and the psychiatrist.

8. Stay of the person in psychiatric hospital involuntarily proceeds only during time of preserving the establishments on which hospitalization has been carried out.

9. The person hospitalized in psychiatric hospital involuntarily, within the first six months is subject not less often than once a month to examination by the commission of psychiatrists for the solution of question on hospitalization

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<sup>22</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

prolongation. Hospitalization prolongation is made over six months by a court decision based on the appeal of the commission of psychiatrists according to the procedure, established by the legislation of the Republic of Kazakhstan in the field of health care.

10. Extraordinary examination of the person hospitalized involuntarily, can be carried out at will of the patient or his legal representative, the lawyer.

The person hospitalized in psychiatric hospital on the establishments, stipulated in Item 1 Articles 94 of this Code, is subject to obligatory examination within forty eight hours from the moment of hospitalization by the commission of psychiatrists of the psychiatric organization which makes the decision on justification of hospitalization. In cases when hospitalization is recognized unreasonable and the hospitalized person does not express desire to remain in psychiatric hospital, it is subject to the immediate statement.

11. In case of disagreement with forced hospitalization the person suffering from mental disturbances (diseases), or his legal representative has the right to take a legal action."<sup>23</sup>

Article 126 of the 2009 *Law on the Health of the People and Health Care System*, states that a psychiatric patient who has been deemed incapacitated must be examined at least once a month for the first six months to establish whether their stay needs to be prolonged. After six months a judge can make a decision to extend the period of hospitalisation,

"Article 126. Examination of the minor or the person recognized by court by incapacitated, placed in psychiatric hospital at request or with the consent of their legal representatives

1. The minor or the person recognized by court incapacitated, placed in psychiatric hospital, are subject to obligatory examination by the commission of psychiatrists of the psychiatric organization according to the procedure, the stipulated in Clause 123 presents of the Code.

2. Within the first six months the minor or the person recognized by court incapacitated, are subject to examination by the commission of psychiatrists not less often than once a month for the solution of question on hospitalization prolongation. The decision on hospitalization prolongation is made over six months by a court decision based on the appeal of the commission of psychiatrists according to the procedure, established by the legislation of the Republic of Kazakhstan in the field of health care.

3. In case of detection by the commission of psychiatrists or administration of psychiatric hospital of the abuses allowed in case of hospitalization by legal representatives of the minor or the person, recognized by court incapacitated, the administration of psychiatric hospital within twenty four hours from the moment of identification of the specified circumstances informs on it the prosecutor and guardianship and custody body in residence of the ward."<sup>24</sup>

Article 127 of the 2009 *Law on the Health of the People and Health Care System*, states that physical constraint and isolation should only be used when a patient presents a "direct

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<sup>23</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

<sup>24</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014



danger" to others and a legal representative informed. Law enforcement officers may "assist medical workers when implementing forced examination, forced hospitalization",

"Article 127. Security measures when rendering the psychiatric help

1. The stationary psychiatric help is performed in the least restrictive conditions ensuring safety of the hospitalized person and other persons, when keeping by the medical personnel of its rights and legitimate interests.

2. Measures of physical constraint and isolation in case of forced hospitalization and stay in psychiatric hospital are applied only in those cases, forms and for that period of time when, according to the psychiatrist, other methods it is impossible to prevent actions of the hospitalized person representing direct danger to it or other persons, and performed in case of permanent control of the medical personnel. About forms and time of application of measures of physical constraint or isolation entry in medical documentation with the notification of his legal representative is made.

3. Law enforcement officers shall assist medical workers when implementing forced examination, forced hospitalization, provide safe conditions for access to the hospitalized person for the purpose of its survey, and also in the cases menacing to life and health of people around from the hospitalized person (the person which is subject to hospitalization)."<sup>25</sup>

Article 128 of the 2009 *Law on the Health of the People and Health Care System*, states that the decision to involuntarily admit a patient to a psychiatric hospital is made "according to the conclusion of the commission of psychiatrists, judgment or the resolution of the prosecutor",

"Article 128. The statement from psychiatric hospital

1. The statement from psychiatric hospital is made after convalescence of the patient or enriching of its mental condition when it is not required further hospitalization, and also on termination of inspection or the examination, been the establishments for room in hospital.

2. The statement of the patient who is voluntary in psychiatric hospital, is made according to its application in person, the statement of his legal representative or according to the decision of his attending physician.

3. The statement of the patient hospitalized in psychiatric hospital involuntarily, is made according to the conclusion of the commission of psychiatrists, judgment or the resolution of the prosecutor.

4. The statement of the patient to which by determination of court enforcement powers of medical nature are applied, is made only by court determination.

5. To the patient placed in psychiatric hospital voluntary, it can be refused the statement if the commission of psychiatrists of the psychiatric organization establishes the establishments for hospitalization involuntarily, stipulated in Item 1 Articles 94 of this Code. In that case questions of its stay in psychiatric hospital, prolongation of hospitalization and the statement from hospital are solved according to the procedure, established by Items 8-10 of Article 125 and Item 3 of this Article."<sup>26</sup>

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<sup>25</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

<sup>26</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

Article 129 of the 2009 *Law on the Health of the People and Health Care System*, states that the decision to place an adult not deemed incapacitated into a psychoneurological organization is made by a court,

"Article 129. The establishments for placement of persons to the psychoneurological organizations

1. The establishment for placement to the psychoneurological organization of the minor is the conclusion psikhologo - medico-pedagogical consultation; for the person recognized by court incapacitated, - the decision of guardianship and custody body accepted based on the conclusion of the medical commission with participation of the psychiatrist.

The placement to the psychoneurological organization of the full age person suffering from mental disturbance (disease), but not recognized incapacitated, is performed by a court decision.

The conclusion shall witness about availability at the person of the mental disturbance (disease) depriving its possibilities to be in the unspecialized organization for social security, and concerning capacity to act of the person - also data on lack of the establishment for statement before court of question of recognition its incapacitated.

2. Guardianship and custody bodies shall take measures for preservation of valuable interests of the persons placed in the psychoneurological organization.

3. The establishment for the direction of the minor in the psychoneurological organization for the purpose of special education is availability at the person of mental disturbance (disease). The direction is made based on the statement of parents or his legal representative and the conclusion republican, regional or city psikhologo - medico-pedagogical consultations. The conclusion shall contain data on need of education of the minor in the conditions of special school for children with violation of intellectual development.

4. The establishment for transfer of the person suffering from mental disturbance (disease), from the psychoneurological organization or school of special education in the similar organization of general phylum is the conclusion of the medical commission with participation of the psychiatrist, psikhologo - medico-pedagogical consultation about absence of medical indications to accommodation or education in the specialized psychoneurological organization.

5. The statement from the psychoneurological organization or school of special education is made:

1) according to the application in person of the person suffering from mental disturbance (disease), in the presence of the conclusion of the medical commission with participation of the psychiatrist that on state of health this person is capable to live independently;

2) according to the statement of parents, other relatives or the legal representative, undertaking to perform care of the written-out minor or of the person recognized by court incapacitated."<sup>27</sup>

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<sup>27</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

## 1.5 Criminal justice

Articles 14 -17 of the 1997 *Criminal Code of the Republic of Kazakhstan* state that only a "sane person" can be held criminally liable and that a juvenile who "due to mental retardation (not a mental disorder)" is not fully aware of the nature or social danger of his acts (or omissions) cannot be,

"Article 14. Persons Subject to Criminal Liability

1. Only a sane person who reached the age established by the Code shall be subject to criminal liability.

[ ] Article 15. Age of Criminal Liability

[ ] 3. If a juvenile offender has reached the age of criminal liability as specified by the first and second parts of this Article, but during the commission of the crime of a lesser or medium gravity he could not be fully aware of the nature or social danger of his acts (or omissions) due to mental retardation (not a mental disorder) he will not be criminally liable.

Article 17. Criminal Liability of Persons with a Mental Disorder which does not exclude Criminal Sanity

1. A sane person who at the time of committing a crime could not be fully aware of the actual nature and social danger of his actions (failure to act) or control his behavior due to a mental disorder, shall be criminally liable.

2. A mental disorder which does not exclude criminal sanity shall be taken into consideration by a court as a mitigating circumstance when imposing punishment, and may be the reason for imposing compulsory measures of a medical character stipulated by this Code."<sup>28</sup>

Article 23 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that an offence can be considered to have been "committed without guilt", if the offender could not have prevented its consequences "due to diminished mental capacity in the extreme situation or to mental overload",

"Article 23. Causing of Harm without Guilt

[ ] 2. An offence shall be considered to have been committed without guilt, if a person who has committed it was not aware and under the circumstances of a given offence could not have been aware of the social danger of his actions (omissions), or did not foresee a possibility of socially dangerous consequences and under the circumstances of a given case should not have or could not have foreseen them. An offence shall also be considered to have been committed without guilt, if the offender foresaw the socially dangerous consequences at the time of committing the offence, relied on prevention thereof with sufficient grounds or could not have prevented those consequences due to diminished mental capacity in the extreme situation or to mental overload."<sup>29</sup>

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<sup>28</sup> Criminal Code of the Republic of Kazakhstan, Articles 14 -17, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2014

<sup>29</sup> Criminal Code of the Republic of Kazakhstan, Article 23, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2014

Article 62 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that if an offender is "subjected to compulsory measures of a medical nature", after being convicted these will "be offset against the term of punishment",

"Article 62. Calculation of Terms of Punishment and Offset of Punishment

[ ] 6. The time during which a person, who fell ill with a mental disease after the commission of a crime, was subjected to compulsory measures of a medical nature, shall be offset against the term of punishment."<sup>30</sup>

Articles 94 and 95 of the 1997 *Criminal Code of the Republic of Kazakhstan* state that should someone convicted of a crime become "ill with a mental disorder which deprived him of the capability to be aware of his actions or to control them", they may be sentenced after psychiatric treatment. Article 95 states that those mentioned in paragraph c) of the first part of Article 88, "those who committed a crime and suffer from mental disorders, but have not been found to be insane", compulsory measures should be applied in the place they are imprisoned. Time spent in psychiatric institutions is deducted from the overall prison sentence,

"Article 94. Sentencing after the Application of Compulsory Measures of Medical Character

1. A person who, after the commission of a crime or during the serving of punishment, fell ill with a mental disorder which deprived him of the capability to be aware of his actions or to control them, may be sentenced by a court after the end of his treatment if the limitation periods did not expire, or if there are no grounds for him to be exempt from criminal liability and punishment.

2. In case a person who fell ill with a mental disorder recovers after the commission of a crime, when sentencing him or resuming the running of the sentence, the time during which compulsory treatment in an inpatient psychiatric hospital was applied to a given person shall be offset from the term of punishment on the basis of one day of staying in an inpatient psychiatric hospital for one day of deprivation of liberty.

Article 95. Compulsory Measures of Medical Character Combined with the Endurance of Punishment

1. In cases stipulated by paragraph c) of the first part of Article 88 of the Code, compulsory measures of medical character shall take place in the place of imprisonment, and with regard to those sentenced to others of punishment, in the institutions of the health protection bodies which render outpatient psychiatric assistance.

1-1. In cases stipulated by paragraph c) of the first part of Article 88 of the Code, compulsory measures of medical character shall take place in the place of imprisonment, and in relation to those sentenced to others of punishment, in the institutions of the health protection bodies.

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<sup>30</sup> Criminal Code of the Republic of Kazakhstan, Article 62, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2014

2. In case of a change in the mental state of a convict which requires inpatient treatment, the placement of a given convict to an inpatient psychiatric hospital or other medical institution shall be carried out through the procedure and on the bases stipulated by the legislation of the Republic of Kazakhstan on health protection.

3. The time spent in said institutions shall be offset from the term of punishment. In case it is unnecessary to further treat a convict in said institutions, release from them shall be carried out in accordance with the procedure stipulated by the legislation of the Republic of Kazakhstan on health protection.

4. Termination of the application of a compulsory measure of medical character combined with the endurance of punishment shall be carried out by a court, pursuant to a proposal from the body executing punishment, on the basis of a report from a commission of psychiatrists."<sup>31</sup>

Article 141 of the 1997 *Criminal Code of the Republic of Kazakhstan* states that "intentional infliction of physical and(or) mental suffering" by or on behalf those conducting a criminal investigation is punishable" by a fine ranging from two hundred to five hundred monthly calculation indices", the removal of the "right to hold specific posts" for up to three years, or with the restraint and deprivation of liberty for up to seven years,

"Article 141-1. Investigative tortures

1. Intentional infliction of physical and(or) mental suffering, committed by a crime investigator, by a person, conducting investigation or by another office holder or with their incitement or with tacit agreement of another person or purposely with their knowledge to extract information from tortured person or third party, either confession or to punish him for the offence, which he committed or in committing of which he is suspected, and also to intimidate or to enforce him or the third party, or by any reason, based on discrimination of any kind is punished by a fine ranging from two hundred to five hundred monthly calculation indices or with the deprivation of right to hold specific posts for a period up to three years, or with the restraint of liberty for a period up to five years, or with the deprivation of liberty for the same period.

2. If the same offence is committed:

a) by a group of persons or a group of persons with pre-planning;

b) more than once;

c) with the infliction of medium gravity harm to health;

d) with regard to a pregnant woman, consciously for a liable person, or a juvenile person,

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<sup>31</sup> Criminal Code of the Republic of Kazakhstan, Articles 94-95, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2014

it shall be punished with the deprivation of liberty for a period up to seven years with the deprivation of the right to hold specific posts or to practice a specific activity for a period up to three years.

3. The same offence that resulted in infliction of serious harm to health or negligently in death of an injured person is punished with the deprivation of liberty for a period from five to ten years with the deprivation of the right to hold specific posts or to practice a specific activity for a period up to three years.

Note; Physical and mental sufferings are not considered to be an investigative torture caused as a result of legal actions by office holders.<sup>32</sup>

In 2012 the *USDOS* stated that the government must provide an attorney under the criminal procedure code by law for a defendant with physical or mental disabilities but that in practice public defenders often did not have the training or experience to aid defendants.<sup>33</sup>

### **1.5.1 Provisions related to fitness to appear in court**

Article 26 of the *Civil Code of the Republic of Kazakhstan* states that a citizen who cannot "understand the meaning of his acts or direct them" due to a "psychic disease or mental weakness" can be deemed incapable by a court and allocated a guardian to act on their behalf

"Article 26. The Recognition of a Citizen as Incapable

1. A citizen who, as a result of psychic disease or mental weakness, can not understand the meaning of his acts or direct them, may be recognised by the court as incapable, and in this connection, guardianship shall be established over him.

2. On behalf of citizens recognised as incapable, the transactions shall be carried out by a guardian.

3. In the case of a recovery or a significant improvement of the health of the incapable person, the court shall recognise him as capable, after which guardianship over him shall be alleviated.<sup>34</sup>

Article 118 of the 2009 *Law on the Health of the People and Health Care System* states that psychiatric patients have the right to nominate a representative to protect their rights and "legitimate interests", if they are considered incapacitated,

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<sup>32</sup> Criminal Code of the Republic of Kazakhstan, Article 141, 1997, available at <http://adilet.zan.kz/eng/docs/K970000167>, accessed 9 January 2014

<sup>33</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014

<sup>34</sup> Civil Code of the Republic of Kazakhstan, Article 26. The Recognition of a Citizen as Incapable, 1994, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=200699](http://www.wipo.int/wipolex/en/text.jsp?file_id=200699), accessed 16 January 2014

"Article 118. Protection of the rights and interests of citizens the psychiatric help appears which

1. The citizen when rendering to it the psychiatric help has the right to invite at the choice of the representative for protection of the rights and legitimate interests. Veneering of representation is made according to the procedure, established by the Code of penal procedure of the Republic of Kazakhstan and the Code of civil procedure of the Republic of Kazakhstan.

2. Protection of legitimate interests of the minor or the person recognized by court by incapacitated, in case of rendering by him to the psychiatric help legal representatives perform them.

3. Protection of the rights and legitimate interests of the citizen when rendering to it the psychiatric help is performed by the lawyer or the legal representative. The administration of the organization rendering the psychiatric help, provides possibility of the invitation of the lawyer, except as specified, provided regarding Article 97 second the Item 3 and Item 5 of Article 123 of this Code."<sup>35</sup>

### **1.5.2 Provisions related to the defence of mental illness**

Article 159 of the *Civil Code of the Republic of Kazakhstan* states that a transaction entered into by a person who is deemed incapable due to a "mental disease or mental weakness" should be recognised as invalid, either at the time, or subsequently by their guardian,

"Article 159. The Bases for the Invalidity of Transactions

[ ] 5. A transaction shall be invalid which is entered into by a person who is recognised as incapable as a result of a mental disease or mental weakness. A transaction which is entered into by a citizen, who afterwards is recognised as incapable (Article 26 of this Code), may be recognised by the court as invalid upon the action by his guardian, provided it is proved that at the moment of the commitment of the transaction that citizen was in the condition of a psychic disorder."<sup>36</sup>

Chapter 1, Article 3 of the 2010 *Law on Approval of the Instruction on Production of Judicial and Psychiatric Examination* states that in criminal cases the objective of judicial and psychiatric examination is "the research of objects which is carried out by judicial and psychiatric experts on the basis of special scientific knowledge, important for criminal case",

"3. The main objectives of judicial and psychiatric examination are:

1) on criminal cases - the research of objects which is carried out by judicial and psychiatric experts on the basis of special scientific knowledge, important for criminal case;

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<sup>35</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

<sup>36</sup> Civil Code of the Republic of Kazakhstan, Article 26. The Recognition of a Citizen as Incapable, 1994, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=200699](http://www.wipo.int/wipolex/en/text.jsp?file_id=200699), accessed 16 January 2014

2) on civil cases - the research of objects which is carried out by judicial and psychiatric experts on the basis of special scientific knowledge, important for the civil case;

3) on cases on administrative offenses - the research of objects which is carried out by judicial and psychiatric experts on the basis of special scientific knowledge, important on cases on administrative offenses."<sup>37</sup>

Chapter 2, Article 5 of the 2010 *Law on Approval of the Instruction on Production of Judicial and Psychiatric Examination* states that judicial and psychiatric examination is conducted by at least two experts, or three in the case of "examination of responsibility". The results of the examination must be communicated to the appointed body within three days,

"Chapter 2. Production of judicial and psychiatric examination

5. Judicial and psychiatric examination is carried out komissionno by at least than two judicial and psychiatric experts, and for production of judicial and psychiatric examination of responsibility of the person at least three judicial and psychiatric experts are appointed.

8. The conclusion of judicial and psychiatric experts or the message on impossibility to draw the conclusion goes (is issued) to the body (person) which has appointed judicial examination, within three days after their creation.

9. In case of carrying out out-patient judicial and psychiatric examination if on one questions specified in the resolution, determination about purpose of judicial examination, the court expert draws the conclusion, and on another there are bases for creation of the message on impossibility to draw the conclusion, it constitutes single the dokumentzaklyucheniye of the judicial and psychiatric expert.

10. In case of carrying out stationary judicial and psychiatric examination if on one questions specified in the resolution, determination about purpose of judicial examination, the court expert draws the conclusion, and on another there are bases for creation of the message on impossibility to draw the conclusion, it constitutes single the dokumentzaklyucheniye of the judicial and psychiatric expert, with the recommendation about carrying out treatment to the exit from temporary mental disturbance in established by the legislation of the Republic of Kazakhstan the procedure and the subsequent judicial and psychiatric examination for the solution of expert questions."<sup>38</sup>

Chapter 4 of the 2010 *Law on Approval of the Instruction on Production of Judicial and Psychiatric Examination* states that psychiatric and judicial examination may be prolonged in "exceptional circumstances". Firstly, if a "sharp change mental and (or) the physical condition" of the patient or secondly, if there is a need for "additional studying" in order to reach a definite conclusion. "Difficult examinations" may not take more than 20 days and "especially difficult examinations" no more than 30 days,

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<sup>37</sup> Order of the Minister of Health of the Health of the Republic of Kazakhstan, 12 March 2010 of No. 164, "About approval of the Instruction on production of judicial and psychiatric examination", available at <http://cis-legislation.com/document.fwx?rgn=31035>, accessed 13 March 2014

<sup>38</sup> Order of the Minister of Health of the Health of the Republic of Kazakhstan, 12 March 2010 of No. 164, "About approval of the Instruction on production of judicial and psychiatric examination", available at <http://cis-legislation.com/document.fwx?rgn=31035>, accessed 13 March 2014



"Chapter 4. Terms of production of judicial and psychiatric examination and calculation of their terms

13. Term of production of judicial and psychiatric examination is estimated from the date of acceptance by body of judicial examination or the person which is not the employee of body of judicial examination, involved as the judicial and psychiatric expert, to production of the resolution, determination about purpose of judicial and psychiatric examination and its objects.

14. Prolongation of term of production of judicial and psychiatric examination is made according to the motivated petition of the head of body of judicial psychiatric examination or the judicial and psychiatric expert (judicial and psychiatric experts), body of judicial and psychiatric examination not being the employee in the form, according to appendix 1 to this Instruction, only in the following exceptional cases:

1) sharp change mental and (or) the physical condition of the person to which judicial and psychiatric examination in the course of its production is appointed;

2) in case of again opened circumstances in the production process of the judicial and psychiatric examination, requiring additional studying and which can make essential impact on the conclusion of judicial and psychiatric experts.

15. Features of prolongation of term of stay of the person in the medical organization for production of judicial and psychiatric examination are established by the Law.

16. Criteria of determination of categories of complexity of judicial and psychiatric examinations:

1) difficult examinations - judicial and psychiatric examinations when the solution of expert questions in out-patient conditions in time not exceeding 20 days is possible;

2) especially difficult examinations - judicial and psychiatric examinations when involvement of different specialists for production of stationary examinations when the person to whom judicial examination is appointed, is charged of the crime relating to categories especially heavy is necessary, term of production of judicial examination shall not exceed 30 days."<sup>39</sup>

Chapter 5, Article 21 of the 2010 *Law on Approval of the Instruction on Production of Judicial and Psychiatric Examination* states that if the examining psychiatric and judicial experts cannot reach a unanimous decision, the dissenting opinion/s shall be included separately in the conclusion. The examination should describe the events in the life of the patient up to and including the psychiatric examination, and any criminal activity, and describe the form of "mental disturbances" and their treatment,

"Chapter 5. Structure and contents of the expert opinion

21. In case of disagreement between judicial and psychiatric experts each of them or the part of judicial and psychiatric experts draws the separate conclusion or the judicial and psychiatric expert which opinion disperses from conclusions of other members of the commission, formulates it in the conclusion separately.

23. Anamnestichesky data shall gather in chronological sequence from the past to the present. The scheme of anamnestichesky data reflects events of life from the

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<sup>39</sup> Order of the Minister of Health of the Health of the Republic of Kazakhstan, 12 March 2010 of No. 164, "About approval of the Instruction on production of judicial and psychiatric examination", available at <http://cis-legislation.com/document.fwx?rgn=31035>, accessed 13 March 2014

moment of the birth till the beginning of production of judicial and psychiatric examination and includes labor, family, sexual, marriage, social (including criminal) the anamnesis.

24. The description of anamnestichesky data shall be directed on:

- 1) identification of mental disturbances with the time management of their emergence, the subsequent complication or the reduction with the assessment of their influence on various aspects of life of the person to which production of judicial and psychiatric examination (since what time is appointed suffers mental disturbance (disease), change of clinic of mental disturbances (diseases) in dynamics throughout life, their complication, deepening or ease, recovery of temporarily lost functions);
- 2) detection of personal features to the disease and characterologic changes which occurred during the illness;
- 3) detection of features of response to various household circumstances, in particular, on mental injuries;
- 4) identification not only the suffered somatic diseases and other exogenous negative factors (craniocereberal injuries, the use of psychoactive substances), but also what influence they rendered on the mental condition;
- 5) detection of features of the critical age periods (pubertatny, involyutsionny);
- 6) collection of the therapeutic anamnesis in cases of treatment by psychotropic preparations in the past;
- 7) data on features of the mental condition and behavior during the period of time, the interesting body (person) which has appointed judicial and psychiatric examination, within the delivered questions before judicial and psychiatric experts.

26. In case of the description of the mental condition of the person to which judicial and psychiatric examination is appointed, it shall be paid attention to features of its appearance, the mimicry, movements, speech, the manner to behave and it shall be reflected:

- 1) the condition of consciousness - extent of orientation in the surrounding situation, in time, own personality, understanding of the purpose of judicial and psychiatric examination;
- 2) features of thinking, memory, intelligence, emotional and strong-willed sphere, mood, attention and their violation;
- 3) the relation of the person to which judicial and psychiatric examination to the painful mental disturbances which were available in the past is made;
- 4) available psikhotichesky frustration;
- 5) the relation of the person to which judicial and psychiatric examination by the period of time and actions, which initiations of proceedings (criminal, civil or on administrative offenses were at the bottom is made);
- 6) relation to own mental condition."<sup>40</sup>

Chapter 5, Article 21 of the 2010 *Law on Approval of the Instruction on Production of Judicial and Psychiatric Examination* also states that psychiatric and judicial examinations may use the "diaries, self-descriptions of painful frustration (the description of the condition

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<sup>40</sup> Order of the Minister of Health of the Health of the Republic of Kazakhstan, 12 March 2010 of No. 164, "About approval of the Instruction on production of judicial and psychiatric examination", available at <http://cis-legislation.com/document.fwx?rgn=31035>, accessed 13 March 2014

in writing), different types of their art creative activities, and also the data received from diaries of supervision of the medical personnel" in drawing their conclusion,

"28. Judicial and psychiatric experts in case of availability in materials of case use for making the conclusion of the letter of persons concerning which judicial and psychiatric examination, their diaries, self-descriptions of painful frustration (the description of the condition in writing), different types of their art creative activities, and also the data received from diaries of supervision of the medical personnel is made.

30. General survey of the person concerning which judicial and psychiatric examination is appointed, shall include:

- 1) identification of traces of various damages, including self-cuts (taking into account their prescription), the arrangement and features of tattoos if they are available;
- 2) survey of the hairy part of the head for identification of hems, scars after the suffered injuries;
- 3) identification of traces of injections of various prescription if they are available;
- 4) survey of the mucous oral cavity (hems, availability of traces of bites, as a result of convulsive attacks)."<sup>41</sup>

## **2. Treatment of individuals suffering from mental health conditions by state agents**

### **2.1 Health care**

In 2013 Yerbol Nurkatov, Director of the *Medical Center of Mental Health Problems in Astana*, stated that the policy and the system of mental health is not focused on the "active impact on all actors involved in the process of interaction between the disease and the individual [ ] with mental illness" (the patient's family, society, professionals, providing assistance, and politicians) as it is in the UK and community services are largely absent. Nurkatov also described the existing system of care for patients with schizophrenia as "one-sided", stating that emphasis on quality of life and social inclusion is virtually absent in the real system of care.<sup>42</sup>

In September 2013 the *International Crisis Group* stated that only 2.5 per cent of the country's GDP is spent on health services, in comparison with roughly 9 per cent in developed countries.<sup>43</sup>

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<sup>41</sup> Order of the Minister of Health of the Health of the Republic of Kazakhstan, 12 March 2010 of No. 164, "About approval of the Instruction on production of judicial and psychiatric examination", available at <http://cis-legislation.com/document.fwx?rgn=31035>, accessed 13 March 2014

<sup>42</sup> Yerbol Nurkatov, Methodological basis for reforming the Mental Health Services in Kazakhstan: lessons from the UK, Medical Center of Mental Health Problems, Astana, 2013 available at [www.group-global.org/en/storage\\_manage/download\\_file/18920](http://www.group-global.org/en/storage_manage/download_file/18920), accessed 13 January 2014

<sup>43</sup> International Crisis Group, Kazakhstan Waiting For Change, September 2013, <http://www.crisisgroup.org/~media/Files/asia/central-asia/kazakhstan/250-kazakhstan-waiting-for-change.pdf>, accessed 13 January 2014

### **2.1.1 Ill-treatment of individuals suffering from mental health conditions by health care professionals working in mental health care (chaining, beating, isolation, starvation, neglect, etc.)**

*During the timeframe of this research we were unable to identify information concerning ill-treatment of individuals suffering from mental health conditions by health care professionals working in mental health care within the sources consulted.*

### **2.1.2 Discrimination against individuals suffering from mental health conditions by health care professionals in the delivery of health care not related to the person's mental illness**

In 2012 the *USDOS* stated that the rights of patients in state-run mental hospitals were unregulated which was believed to have led to "mass abuse". Conditions for patients were reportedly poor, with little privacy and drugging and isolation for "minor infractions" was frequent.<sup>44</sup>

In 2013 an article entitled "Mental Health in Former Soviet Countries: From Past Legacies to Modern Practices", published by France based *Public Health Reviews Journal* stated that conditions in mental hospitals in former Soviet countries were poor and treatment of those with mental health problems is characterised by "paternalistic, disempowering, even abusive practices",

"For decades, the image of mental health in Soviet countries has been associated with past political abuses in psychiatry, stigmatising attitudes and discriminating practices against people with any form of disability. Twenty years after the fall of the Soviet Union, the tainted reputation of psychiatry still persists. Living conditions in mental hospitals remain poor, sometimes inhumane and treatment of people with mental health problems is still marked by paternalistic, disempowering, even abusive practices. The Soviet practice of hiding people deemed disabled translates nowadays into the practice of relocating people with the most severe mental illnesses from mental health hospitals to social care institutions, outside the jurisdiction of the health sector, and outside the scope of mental health reforms."<sup>45</sup>

## **2.2 Criminal Justice**

### **2.2.1 Treatment of criminal suspects suffering from mental health conditions**

*During the timeframe of this research we were unable to identify information concerning the treatment of criminal suspects suffering from mental health conditions within the sources consulted.*

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<sup>44</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014

<sup>45</sup> Ionela Petrea, Mental Health in Former Soviet Countries: From Past Legacies to Modern Practices, *Public Health Reviews*. 2013;34, <http://www.publichealthreviews.eu/show/a/121>, accessed 15 January 2014

### **2.2.2 Ill-treatment of individuals suffering from mental health conditions in prisons and other detention facilities (police stations etc.)**

*During the timeframe of this research we were unable to identify information concerning ill-treatment of individuals suffering from mental health conditions in prisons and other detention facilities (police stations etc.) within the sources consulted.*

## **2.3 Housing**

*During the timeframe of this research we were unable to identify information concerning housing within the sources consulted.*

## **3. Children**

In July 2012 the *United Nations Children's Fund (UNICEF)* reported that the child protection system in Kazakhstan offers social medical and educational support to "children with disabilities" in line with laws on the Social, Medical and Educational Support for Children with Disabilities, Special Social Services and Social Protection of Persons with Disabilities. Ongoing support for "children requiring special attention from the state" is detailed in the National Long Term Action Plan 2009-2012 including access to housing, health services, employment, rehabilitation and special social services.

In July 2012 the *United Nations Children's Fund (UNICEF)* also reported that families with disabled children are provided with financial support from the state in the form of cash transfers which are fixed and expressed in Minimum Calculation Index (MCI). The allowance for families with a disabled child is only slightly more than the minimal level for subsistence. In addition, children with disabilities from sixteen to eighteen years of the first, second and third categories are provided with special state allowances (SSA). In all regions material support financed from local budgets is provided to children with disabilities raised at home. In order to support the parents of children with special needs, the able-bodied family members are granted tax privileges. The income of one of the parents of a child with disability is tax exempt up to 55 times the minimum wage and this category of citizens is exempt from land taxes, duties and fees. Housing allowances are also provided to recipients of (SSA) towards the payment of housing and utilities.<sup>46</sup>

### **3.1 Education**

Article 30 of the 1995 *Constitution of the Republic of Kazakhstan* states that all citizens hold the right to guaranteed free state education up to secondary level,

Article 30

1. The citizens shall be guaranteed free secondary education in state educational

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<sup>46</sup> United Nations Children's Fund (UNICEF), Child Wellbeing in Kazakhstan, July 2013, [http://mgsog.merit.unu.edu/publications/external\\_policy\\_reports/2012\\_child\\_wellbeing\\_kazakhstan.pdf](http://mgsog.merit.unu.edu/publications/external_policy_reports/2012_child_wellbeing_kazakhstan.pdf), accessed 13 January 2014

establishments. Secondary education shall be obligatory.

2. A citizen shall have the right to receive on a competitive basis a higher education in a state higher educational establishment.<sup>47</sup>

According to the *State Program of Development of Education in the Republic of Kazakhstan for 2011-2020*, established by the Government of the Republic of Kazakhstan, development of inclusive education and provision of equal access to education services have been identified as goals. The program contains measures for a legal framework for children with "developmental disabilities" to be involved in the general education area and aims for 50% of them to be "covered with inclusive education" by 2020.<sup>48</sup>

In 2012 the *USDOS* stated that despite the prohibition of discrimination against persons with intellectual, and mental disabilities in education under Kazakh law, significant discrimination in practice.<sup>49</sup>

In May 2012 the report of the Special Rapporteur on the right to education, Kishore Singh's mission to Kazakhstan to the *United Nations Human Rights Council* stated that there are currently 149,043 children and adolescents with developmental disabilities in the country of which 107,302 are school-age and there are currently roughly two thousand "children with mental retardation" studying in 102 correctional schools. The report also stated that the state budget had provided funds equip 9,000 children with disabilities enrolled in education at home with computers connected to the internet connection with the aim for all children will be provided with similar "technical and compensatory means" in the next three years.<sup>50</sup>

In December 2012 a report published in the *Kazakh-American Free University (KAFU) Academic Journal* stated that "inclusive education" of children with disabilities, including intellectual disabilities, remains a problematic ongoing process and further adaptation to the needs of disabled children is necessary, with educational institutions accepting children regardless of their specific needs. The educational system is described as being "in the process of democratization" and a regulatory and legal framework for inclusive education as being developed despite remaining difficulties. The report states that "in most cases disabled students are considered to be uneducable" and that many teachers are not given adequate training in how to teach them or do not have time to properly consider them in overcrowded classes. The parents of disabled students are described as unaware of how to gain access to education for their children. The report also states that roughly fifteen per cent of students are expelled because of system is unable to meet their needs.<sup>51</sup>

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<sup>47</sup> Constitution of the Republic of Kazakhstan 1995, Article 30, available at <http://www.refworld.org/type.LEGISLATION.NATLEGBOD.KAZ.3ae6b52a10.0.html>, accessed 10 January 2014

<sup>48</sup> State Program of Development of Education in the Republic of Kazakhstan for 2011-2020, established by the Government of the Republic of Kazakhstan, available at [http://www.akorda.kz/en/category/gos\\_programmi\\_razvitiya](http://www.akorda.kz/en/category/gos_programmi_razvitiya), accessed 12 January 2014

<sup>49</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014

<sup>50</sup> United Nations General Assembly Human Rights Council, Nineteenth session Agenda item 3, Report of the Special Rapporteur on the right to education, Kishore Singh Addendum Mission to Kazakhstan: comments by the State on the report of the Special Rapporteur, 29 May 2012, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.21.Add.3.En\\_Ru\\_only.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.21.Add.3.En_Ru_only.PDF), accessed 14 January 2014

<sup>51</sup> Natalya Moshenskaya, Inclusive education in Kazakhstan: legal, social, psychological and pedagogical aspects, *Kazakh-American Free University, Kazakhstan The Kazakh-American Free University Academic Journal* №4 - 2012, <http://www.kafu-academic-journal.info/journal/4/79/>, accessed 7 January 2014

In 2013 a report published in the *World Applied Sciences Journal* stated that the psychological health of university students is particularly relevant given the reform of the educational system in the "post-Soviet space" leading to an increase in tension, stress, frustration and neuroticism. Kazakh national psychology is described as still having "strong tribal and congeneric links" which form values that govern behaviour including professional training. Students who experience educational difficulties feel a sense of guilt towards their families, occasionally even "hiding" if expelled for poor academic performance. Anxiety regarding potential failure often results in stress and neurosis. Kazakh students were reportedly more oriented to the support of relatives, less independent and self-sufficient than their Russian counterparts.[ ] Kazakh first-year students also displayed higher levels of neuroticism, stress, depression and high moral standards. Psychological health depended on ethnocultural conditions, traditions, educational influences, and the change of a mono-ethnic rural environment to the polyethnic and multicultural environment of the city.<sup>52</sup>

In April 2013 a report presented to the *International Conference on Integration and Innovation in Science and Education* stated that the government currently considers education of children with disabilities as an important social and educational issue and that "special educational services for children with mental retardation" are provided in thirty seven special kindergartens, 101 correctional schools, 240 special groups and 1098 special classes in compulsory schools. Close to ten thousand children are reportedly enrolled in individual study programs at home and there are also fifty six "medical-psychological-pedagogical rooms" throughout the country which support the diagnosis of children with disabilities. The report states that the number of elementary school students incapable of coping with the Standard School Program has increased (the number of children with disabilities has increased from 251 to 498 in Taldykorgan, according to the 2008-2012 data of the Educational Department Office in Almaty region) and that adjustment classes of compensatory education, correction and "pedagogical support" have been used to help students adapt. Students are reportedly trained to use one of three options "oriented to the different levels of cognitive development of the students with disabilities". Correctional and pedagogical support is reportedly being conducted in 156 inclusive education rooms for the preschool age children 123 "psychological and pedagogical correction rooms", 15 convalescent centers, and 345 speech therapy units. However, only 41.4 per cent of children with disabilities are involved in the special study programs.<sup>53</sup>

### **2.3.1 Discrimination and ill-treatment of children suffering from mental health conditions by education professionals**

### **3.2 Orphanages**

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<sup>52</sup> Dr. Niyetbayeva, Ethnocultural Environment as a Factor in Psychological Health of First-Year Students, Kazakh State Pedagogical University named after Abay, Almaty, Kazakhstan, *World Applied Sciences Journal* 23 (1): 46-50, 2013, 20 Jun 2013 [http://www.idosi.org/wasj/wasj23\(1\)13/8.pdf](http://www.idosi.org/wasj/wasj23(1)13/8.pdf), accessed 13 January 2014

<sup>53</sup> Gulnar Zholtayeva, Assel Stambekova, Anara Alipbayeva, Gulnur Yerzhanova, INCLUSIVE EDUCATION IN KAZAKHSTAN: SELECTED ISSUES, Zhetysu State University named after I. Zhansugurov, CBU INTERNATIONAL CONFERENCE ON INTEGRATION AND INNOVATION IN SCIENCE AND EDUCATION, APRIL 7-14, 2013, <http://ojs.journals.cz/index.php/CBUConference2013/article/view/34/37>, accessed 2 January 2014

In 2012 the *USDOS Human Rights Report* reported that orphanages for children with physical and mental disabilities did not have enough staff to adequately meet children's needs and were "overcrowded and unsanitary".<sup>54</sup>

In October 2013 government owned Kazakh news website *Kazakh National Information Agency National Company (Kazinform)* reported that the head of a private charitable foundation called "Dara" Madina Bakiyeva, at a meeting of the Committee on Social and Cultural Development of the Majilis of the Parliament of Kazakhstan, stated that 90-95% of children in orphanages are "in need of treatment by a psychotherapist"

"It is no secret that being in public care children are not only deprived of parental care, they are at high risk of violence and violation of their rights [ ] the worst part of the facts of abuse, violence and human rights, especially as related to psychological violence, unfortunately remains uncovered. Because it is not noticeable. But, when our professional psychologists are conducting testing, they suggest that 90-95 percent of orphans living in orphanages are deeply traumatized, there is need for long-term treatment with a psychotherapist"<sup>55</sup>

## **4. The use of forced treatment or institutionalization as a punitive measure**

### **4.1 Abuse of provisions on forced confinement to mental health institution**

On 19 November 2013 Belgian NGO the *International Partnership for Human Rights (IPHR)* stated that activists attempting to defend justice and human rights remained "vulnerable to punitive action by authorities, including politically motivated charges and forced psychiatric examinations and treatment, as seen in several recent cases such as those of Zinaida Mukhortova and Alexander Kharlamov".<sup>56</sup>

In 2012 the *USDOS* stated that citizens with mental disabilities could be committed to state-run psychiatric institutions them without consent or judicial review. Young people were committed by the government with the permission of their families.<sup>57</sup>

#### **4.1.1 On the basis of a person's political opinions**

In August 2013 US human rights organisation *Human Rights Watch* stated that Kazakh lawyer Zinaida Mukhortova had been held in forced psychiatric detention intermittently

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<sup>54</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014

<sup>55</sup> Kazakh National Information Agency National Company (Kazinform), In Kazakhstan 90-95% of orphanage children in need of treatment by a psychotherapist, 22 October 2013, quoting a report by Madina Bakiyeva head of charitable foundation "Dara" at the Committee on Social and Cultural Development of the Majilis of the Parliament of Kazakhstan <http://www.inform.kz/eng/article/2598967> (unable to source original), accessed 14 January 2014

<sup>56</sup> International Partnership for Human Rights (IPHR), Appeal to the EU: challenge the Central Asian governments on pressing human rights concerns, 19 November 2013. <http://www.iphronline.org/eu-central-asia-meeting-appeal-20131119.html>, accessed 15 February 2014

<sup>57</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014



since February 2010, including at least twice in psychiatric hospitals, after writing a letter to the president "to complain about interference by a member of parliament in a civil case in which she was involved" and was subsequently taken into custody, forced to undertake a psychiatric evaluation, and diagnosed with a "chronic delusional disorder." Mukhortova's lawyer, Amangeldy Shormanbaev, stated that neither he nor Mukhortova had been told of any court order for her forced detention in a psychiatric hospital. In 2012 Mukhortova filed a complaint against the hospital's head doctor for unlawfully subjecting her to psychiatric detention but the Supreme Court declined to consider it in a judicial review. Mukhortova also appealed the original criminal court decision against her prompting the Balkhash City Court to issue a decision releasing her from "criminal liability for the charge of "deliberately false denunciation"" and stating that she should not be subject to further forced medical treatment. In September 2012 Mukhortova underwent an independent psychiatric assessment which concluded that she had never suffered from any mental illness. *Human Rights Watch* stated that the detention appeared to be a form of punishment, in the absence of any medical justification.<sup>58</sup>

In October 2013 Irish NGO *Frontline Defenders* stated that the regional court of Karaganda had confirmed the decision of the court of Balkhash to approve the forced psychiatric confinement of Zinaida Mukhortova, in effect since 9 August 2013 when medical and police staff escorted her to Balkhash hospital, where she remains,

"The Prosecutor's request for her psychiatric confinement was sent to the Court on 12 August 2013, stating that Zinaida Mukhortova "started complaining again, refused treatment in 2012-2013 and there are reasons to believe her mental condition has deteriorated." On the evening of 20 August 2013, judge Ms Maira Ibragimova of Balkhash Court approved the Prosecutor's request for the forced psychiatric confinement of Zinaida Mukhortova, which she has appealed.

On 19 September 2013, the Prosecutor's Office also informed Zinaida Mukhortova's lawyers of its decision to appoint another psychiatric expert in Astana to assess Zinaida Mukhortova's mental health. On 27 September 2013, the Cassation Court Collegium – consisting of three judges – examined and dismissed Zinaida Mukhortova's appeal in her absence. According to a trial observer's report, the entire hearing lasted ten minutes and was held despite requests from Zinaida Mukhortova's lawyers that the hearing be postponed until October in order to ensure her presence in Court. During the appeal, a leading doctor in the psychiatric hospital where Zinaida Mukhortova is being held had reiterated that Ms. Mukhortova is a danger to herself and to society. On 30 September 2013, Zinaida Mukhortova was transported to the Medical Centre of Mental Health in Astana."<sup>59</sup>

In November 2013 Dutch NGO *Lawyers for Lawyers* stated that Zinaida Mukhortova was had been released from Astana Medical Centre but that at her latest appeal hearing,

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<sup>58</sup> Human Rights Watch, Kazakhstan: Lawyer in Forced Psychiatric Detention Psychiatric Hospital Saga Began With Her Complaint Against Parliament Member, 16 August, 2013 <http://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>, accessed 9 January 2014

<sup>59</sup> Frontline Defenders, Kazakhstan: Update - Karaganda regional court upholds psychiatric confinement of human rights lawyer Zinaida Mukhortova, 1 October 2013 <http://www.frontlinedefenders.org/node/23924>, accessed 9 January 2014

psychiatric tests "confirmed Mukhortova is suffering from a 'delusional disorder'" placing her at risk of further forced psychiatric detention.<sup>60</sup>

In November 2013 *Frontline Defenders* stated that Zinaida Mukhortova had been released on 1 November but after almost three months in forced psychiatric confinement but was under renewed risk of psychiatric detention after the results of the most recent psychiatric tests were said to be "not in her favour" during a hearing at the Appeals Board of the Karaganda regional court on 13 November 2013. *Frontline Defenders* stated that Zinaida Mukhortova's home was visited by two nurses before the hearing who told her she must go back to Balkhash hospital on 11 November 2013, which she did not do as she feared forced confinement. Zinaida Mukhortova's legal representatives therefore attended the appeal in her absence. *Frontline Defenders* stated that the court will continue hearing the case on 3 December 2013.<sup>61</sup>

#### **4.1.2 On the basis of a person's religion or religious practices**

On 25 July 2013 US based news website *Radio Free Europe Radio Liberty* reported that jailed Christian pastor Bakhtzhan Kashkumbaev "accused of using mind-altering drinks to pry donations" from Lyazzat Almenova, a member of his congregation, had started a hunger strike in protest at his treatment after reported plans to transfer him to a psychiatric institution for a mandatory mental health assessment, which he states is aimed at detaining him indefinitely in a psychiatric hospital. Kashkumbaev denies the charges against him. Kazakh media reported that after testing the "mind-altering drink" was revealed to be locally purchased red tea.

"Almenova reportedly told Astana prosecutors that she was "perfectly healthy" and that the pastor had "done nothing" to damage her health. The Kazakh authorities, however, continued their criminal investigation and in May charged Kashkumbaev and took him into custody. [ ] Investigators say a preliminary medical test in Astana revealed that he suffered from mental-health problems. Kashkumbaev was subsequently transferred to Almaty pending more checkups in that city's psychiatric hospital."<sup>62</sup>

On 4 September 2013 Norwegian human rights organisation *Forum 18* reported that on 9 August Almaty District Court in Astana had extended Kashkumbayev's detention for a further month, until 17 September, "at the request of the investigator in the case, Captain Vyacheslav Glazkov of the police Department for the Struggle against Extremism, Separatism and Terrorism". Glazkov would disclose information regarding Kashkumbayev's whereabouts or the case against him.

*Forum 18* also stated that Kashkumbayev was discharged on 2 September from Almaty's Republican Scientific/Practical Centre of Psychiatry, Psychotherapy and Narcology. Chief

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<sup>60</sup> Lawyers for Lawyers, Kazakhstan Zinaida Mukhortova released from psychiatric confinement but still at risk, 6 November 2013 <http://www.advocatenvooradvocaten.nl/8521/kazakhstan-zinaida-mukhortova-released-from-psychiatric-confinement/>, accessed 5 January 2014

<sup>61</sup> Frontline Defenders, Kazakhstan: Update – Human rights defender Ms Zinaida Mukhortova under renewed risk of psychiatric confinement, 14 November 2013, <http://www.frontlinedefenders.org/node/24246>, accessed 5 January 2014

<sup>62</sup> Radio Free Europe Radio Liberty, Kazakhstan- Jailed Pastor Goes On Hunger Strike In Kazakhstan, Pastor Bakhtzhan Kashkumbaev says the Kazakh authorities' case against him "is going nowhere," which is why they sent him for psychiatric evaluation. 25 July 2013 <http://www.rferl.org/content/kazakhstan-evangelical-christian-jailed/25055888.html>, accessed 5 January 2014

doctor Natalya Logacheva stated he had been taken away by convoy but insisted she did not know where. Officials at the Investigation Prison in Almaty, where Kashkumbayev had previously been held, refused to put Forum 18 through to prison head Aleksei Orishchenko or confirm if Kashkumbayev had been transferred back there.<sup>63</sup>

On 12 September 2013 US NGO *International Christian Concern* reported that Bahtzhan Kashkumbaev had been held at the National Psychiatric Centre in Almaty throughout August in "a common cell (called the house)" with six other pre-trial detainees in the basement and had been subject to medical examination nineteen times, according to his lawyer Nurlan Beisekeyev. *International Christian Concern* stated that Kashkumbaev was asked questions concerning his religious feelings, including why he believes in Jesus, and other aspects of personal life. Inmates reportedly informed Kashkumbaev that doctors in the centre would attempt to provoke him through questioning, drawing conclusions regarding his mental state if he became angry, and therefore advised him not to give in to provocation.<sup>64</sup>

On 22 September 2013 UK Christian news website *World Watch Monitor* reported that a judge had ruled Bakhytzhan Kashkumbayev would be detained for another month, until at least 17 October, while the case against him continued. Kashkumbayev had been held in a psychiatric ward in Almaty from 19 July and ordered to remain there until 17 September while undergoing psychiatric examination. On 8 September he was released, only to be moved back to prison. Kashkumbayev informed the United Nations Human Rights Committee that he was planning a hunger strike as a protest against "treatment he claimed would render him a 'vegetable'" and asking for protection. However, after three days Kashkumbayev was transferred to the psychiatric ward, where his hunger strike ended. His family and legal representation were denied contact with him or information regarding his health during his time in the psychiatric ward, although Kashkumbayev's son Askar was later allowed limited visits, and had to pay to leave parcels of food and clothing.<sup>65</sup>

On 7 October 2013 Norwegian human rights organisation *Forum 18* reported that pre-trial detention for Bakhytzhan Kashkumbayev had been extended until 17 November, but that the terms had been changed to house arrest, after almost five months imprisonment. Kashkumbayev was "banned from associating with anyone apart from close relatives living with him, receiving and sending letters, holding conversations with the use of any communications devices," and allowed to leave home only for medical appointments. The police were also ordered to supervise his behaviour. K. Artykbayev, a Prosecutor's Office official, asked at the hearing for Kashkumbayev's detention to be extended to 17 November. Judge Bayakhmetov agreed to this extension but ordered Kashkumbayev's transfer to house arrest, stating that his "complete isolation" was "not necessary". Forum 18 also stated that the arrests, detention and forcible psychiatric examination of Kashkumbayev formed part of a wider pattern of systemic Kazakh government violations of freedom of religion or belief and other human rights.<sup>66</sup>

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<sup>63</sup> Forum 18 News Service, KAZAKHSTAN: Atheist freed, but criminal case continues; Pastor transferred from psychiatric hospital, 4 September 2013 [http://www.forum18.org/archive.php?article\\_id=1871](http://www.forum18.org/archive.php?article_id=1871), accessed 5 January 2014

<sup>64</sup> Persecution: International Christian Concern, Pastor in Kazakhstan held in Psychiatric Ward and Refused Visitors, 12 September 2013, <http://www.persecution.org/2013/09/12/pastor-in-kazakhstan-held-in-psychiatric-ward-and-refused-visitors/>, accessed 5 January 2014

<sup>65</sup> World Watch Monitor, Jail term for Kazakh pastor extended, 22 September 2013, [http://www.worldwatchmonitor.org/2013/09/article\\_2717992.html/](http://www.worldwatchmonitor.org/2013/09/article_2717992.html/) accessed 7 January 2014

<sup>66</sup> Forum 18 News Service, KAZAKHSTAN: Pastor to be transferred from prison to house arrest, 7 October 2013, [http://www.forum18.org/archive.php?article\\_id=1884](http://www.forum18.org/archive.php?article_id=1884), accessed 10 January 2014

### **4.1.3 On the basis of other grounds not related to the person's mental health needs**

In May 2013 UK NGO the *Institute for War & Peace Reporting* stated that the charges of inciting religious strife against atheist journalist Alexander Kharlamov looked "like a pretext for locking up an outspoken critic of the authorities" and expressed concern that the focus had shifted from prosecuting Kharlamov to detaining him in a psychiatric institution. The *Institute for War & Peace Reporting* stated that Kharlamov is a regular contributor to the newspapers "Ridderskiye Vesti" and "Flash", and has a blog, in addition to heading the "Secret Service" a rights group and is known for campaigning against corruption and malpractice among officials in the city of Ridder in eastern Kazakhstan, where he lives. Kharlamov was moved to detention in Almaty to await further psychiatric examination on April 8, raising concern over his being forcibly committed to a mental hospital and the misuse of psychiatric medicine for punitive ends. A previous psychiatric assessment found that Kharlamov suffered from a "delusional disorder", which he denies.<sup>67</sup>

In May 2013 UK NGO the *Institute for War & Peace Reporting* also stated that when interviewed by Radio Free Europe/Radio Liberty on 15 April 2013, Alexander Kharlamov stated that investigators "decided to declare him mentally unfit once they realised their legal case was flimsy."<sup>68</sup>

On 14 May 2013 US based news website *Radio Free Europe Radio Liberty* reported that Kazakhstan's Bureau for Human Rights criticised the placing of journalist Aleksandr Kharlamov in a psychiatric clinic by authorities, which the chairman of the bureau, Yevgeny Zhovtis, was reminiscent of the Soviet-era treatment dissidents. Kharlamov was charged with inciting religious hatred after being arrested in March and brought a psychiatric clinic in Almaty, his relatives state they have not been allowed to visit him. Kharlamov's wife stated on 12 May that his case is politically motivated and that local authorities began to investigate Kharlamov after he wrote an article in a Ridder newspaper criticising local police.<sup>69</sup>

On 16 August *Human Rights Watch* reported that Zinaida Mukhortova, a lawyer, was forcefully detained in a psychiatric hospital after she wrote a letter of complaint to the President regarding interference in a legal case by a member of parliament, *Human Rights Watch* stated that she had been detained at least twice before in psychiatric hospitals since February 2010,

"Mukhortova, 56, was detained on August 9 and forcibly admitted to the psychiatric hospital in Balkhash. Her lawyer told Human Rights Watch that Mukhortova's sister saw four police officers and several medical personnel take Mukhortova away. On August 12 the hospital's head doctor barred Mukhortova's legal representative,

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<sup>67</sup> Institute for War & Peace Reporting, Kazakhstan Journalist at Risk of Forcible Psychiatric Treatment, 3 May 2013, <http://iwpr.net/report-news/kazakhstan-journalist-risk-forcible-psychiatric-treatment>, accessed 10 January 2014

<sup>68</sup> Institute for War & Peace Reporting, Kazakhstan Journalist at Risk of Forcible Psychiatric Treatment, 3 May 2013, <http://iwpr.net/report-news/kazakhstan-journalist-risk-forcible-psychiatric-treatment>, (quoting an interview with Alexander Kharlamov by Radio Free Europe/Radio Liberty on 15 April 2013 (unable to source original), accessed 10 January 2014

<sup>69</sup> Radio Free Europe Radio Liberty, Rights Group Criticizes Decision To Put Kazakh Journalist In Psychiatric Clinic, 14 May 2013 <http://www.rferl.org/content/kazakhstan-rights-group-journalist-psychiatric-clinic/24986089.html>, accessed 10 January 2014

Amangeldy Shormanbaev, from meeting with her and refused to explain the grounds for her detention.

According to Shormanbaev, a human rights lawyer, as well as information circulated by human rights group Kadyr Kasiyet, there are no grounds for Mukhortova's forced detention. Neither Mukhortova nor Shormanbaev had been informed at the time she was detained of any court order for her forced detention in a psychiatric hospital.

On August 9, upon hearing that his client had been detained, Shormanbaev filed a criminal complaint with the prosecutor's office in Balkhash for "unlawful deprivation of freedom" and "unlawful detention in a psychiatric institution.

[ ]

Mukhortova's legal troubles began in September 2009, when she wrote a letter to the president of Kazakhstan complaining about a member of parliament interfering in a civil case in which she was involved at the time. Soon after, authorities charged her and three others who had signed their name to the letter with the offense of "deliberately false denunciation" under article 351, part 2 of Kazakhstan's criminal code. In late February 2010, during the trial, Mukhortova was taken into custody, forced to undergo a psychiatric evaluation, and was later diagnosed with a "chronic delusional disorder."

In August 2010 the Balkhash City Court ruled that since she had been found mentally incompetent, she should be relieved of criminal responsibility and undergo forced psychiatric treatment. The three others were given suspended sentences. In January 2011 Mukhortova was sent to the Republican Specialized Psychiatric Hospital in Aktas for treatment. She spent approximately nine months there."<sup>70</sup>

According to *Human Rights Watch* Mukhortova stated that she was ill treated by staff whilst forcibly detained in a psychiatric hospital in 2011,

"“They gave me two pills – I didn't know what the pills were – without even checking my reaction to these pills... and when I refused [to swallow them], they beat me and... tied my legs and hands to the bed.”<sup>71</sup>

In August 2013 *Human Rights Watch* reported that Mukhortova's supporters were concerned that her recent psychiatric detention was in retaliation at having made a complaint previous detentions,

"In 2012 Mukhortova filed a complaint against the hospital's head doctor for unlawfully subjecting her to psychiatric detention. By July 2013 judicial review of the complaint had reached the Supreme Court, which declined to consider the complaint. Two human rights activists familiar with Mukhortova's case told Human Rights Watch they are concerned that her current detention is retaliation for this complaint."<sup>72</sup>

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<sup>70</sup> Human Rights Watch, Kazakhstan: Lawyer in forced psychiatric detention, 16 August 2013, <http://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>, accessed 21 March 2013

<sup>71</sup> Human Rights Watch, Kazakhstan: Lawyer in forced psychiatric detention, 16 August 2013, <http://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>, accessed 21 March 2013

<sup>72</sup> Human Rights Watch, Kazakhstan: Lawyer in forced psychiatric detention, 16 August 2013, <http://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>, accessed 21 March 2013

In November 2013 *Radio Free Europe* reported that Mukhortova was released from psychiatric detention on 1 November 2013 and has appealed medical reports that she suffers from delusion stating that such claims are politically motivated due to her having made a complaint,

"Mukhortova insists she is mentally fit and that the legal actions against her are politically motivated. She says authorities began investigating her mental competence only after she filed complaints against a regional governor."<sup>73</sup>

On 5 September 2013 French NGO *Reporters Without Borders* stated that Alexander Kharlamov had been released from Öskemen detention centre into house arrest but that the charges against him had not been dropped. *Reporters Without Borders* stated that Kharlamov had spent six months in pre-trial detention, some weeks of which in a psychiatric clinic against his will and reported that "no hard evidence has been produced to support the grave accusations made against him".

"We hope that, after the additional investigation requested by the prosecution, the judicial authorities will recognize that the charges were trumped-up and will compensate him. The growing use of enforced psychiatric hospitalization for dissidents highlights the disturbing reemergence of the worst Soviet practices in support of Kazakhstan's current crackdown." He continues to be charged with "inciting religious hatred" in his blog posts. His trial on this charge began on 19 July, with the prosecution requesting a four-year jail term. But a month later the prosecution requested an adjournment for further investigation. As well as criticizing religion in his blog and in books published online, Kharlamov is known locally for investigating and combatting corruption. Aged in his 60s, he has lost nearly 20 kilos in weight while in detention, according to the Ferghana news agency."<sup>74</sup>

On 24 September 2013 Polish NGO *The Open Dialog Foundation* stated that Aleksandr Kharlamov underwent forced psychiatric examination from 29 April, 2013 to 27 May, 2013 at the National Research Centre of Psychiatry, Psychology and Addiction in Almaty during his incarceration on charges of inciting religious hatred. The examination concluded that Kharlamov was mentally healthy but the charges against him were not dropped and he remained under house arrest, while the international community called for the dismissal of the case. *The Open Dialog Foundation* reported that "due to its absurdity and groundlessness, the criminal case against Aleksandr Kharlamov gained widespread international publicity [ ] Aleksandr Kharlamov's forced incarceration in a psychiatric clinic acutely raised the question of the existence of punitive psychiatry in Kazakhstan. This is not the first time that civil society activists have been remanded in a psychiatric clinic in Kazakhstan." Kharlamov stated that detention conditions in the psychiatric hospital were similar the prison and that he was not allowed glasses or a toothbrush for reasons of safety. Kharlamov also stated that he believes he was released only due to the publicity surrounding his case and intervention by the Kazakh and international community."<sup>75</sup>

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<sup>73</sup> Radio Free Europe, Appeal begins of Kazakh lawyer forced into psychiatric care, 13 November 2013, <http://www.rferl.org/content/kazakh-lawyer-appeal-25167191.html>, accessed 21 March 2014

<sup>74</sup> Reporters Without Borders, Authorities again urged to drop all charges against atheist blogger, 5 September 2013 <http://en.rsf.org/kazakhstan-authorities-again-urged-to-drop-05-09-2013,45141.html>, accessed 7 January 2014

<sup>75</sup> Open Dialog Foundation, The case of Aleksandr Kharlamov: the civic activist has been released, but is still under investigation, 24 September 2013,

## 5. Societal attitudes and discrimination by members of society / non-state agents

### 5.1 Ostracization, stigmatization

In July 2013 English language Kazakh news website *Tengrinews.kz English* stated that the government of Kazakhstan made suicide prevention a national priority in 2012 and created its first suicide-prevention action plan for 2012 to 2014 to address its suicide rate of 20.7 per 100,000 people, the highest in the former Soviet Union and one of the highest in the world. Suicide rates were higher among young people and teenagers, 25.3 per 100,000 20 to 24 year olds, 31.2 per 100,000 25 to 29 year olds and 17.5 per 100,000 15 to 19 year olds. Jun Kukita, head of UNICEF's Kazakhstan office, stated at an international conference at Nazarbayev University that UNICEF and the Ministry of Health had developed a research program into Kazakhstan's suicide problem involving "a multi-pronged study of the problem in five provinces",

"The results will help us take evidence-based joint action for prevention of suicide among youth," Kukita said. "Suicide prevention requires a coordinated effort – families, schools, government officials, police and the media,"

*Tengrinews.kz English* stated that the study, conducted in 2012 and 2013, identified depression, impulsiveness, substance abuse and being victims of bullying as being among the risk factors for suicide and made preliminary recommendations for Kazakhstan to promote the importance of mental health, take steps to reduce the stigma that prevents those with mental-health issues from seeking help, identify factors that help prevent suicide as well as reducing risk factors and develop multi-disciplinary, evidence-based and "culturally relevant" prevention programs involving the government, schools, and mental-health professionals, among others. Further recommendations were expected after additional analysis of the study.<sup>76</sup>

In July 2013 English language Kazakh news website *Tengrinews.kz English* also stated that attitudes toward psychiatrists remained "very negative", according to Sagat Altynbekov, director of Kazakhstan's National Mental Health Center. Altynbekov stated that as part of the national suicide prevention program those working with young people should be trained to detect the warning signs of suicide and news organisations should be trained in "the proper way to report the problem", as coverage which portrays suicide as could prompt others to try to kill themselves, Altynbekov also stated that "Kazakhstan needs the kind of suicide-prevention hotline that developed countries have" for those contemplating suicide to call anonymously,

"It's telling, Altynbekov said, that 89 percent of those who kill themselves in Kazakhstan do so by hanging. "Hanging is not an impulsive act – it is well thought

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[http://www.odfoundation.eu/en/urgents/1451/the\\_case\\_of\\_aleksandr\\_kharlamov\\_the\\_civic\\_activist\\_has\\_been\\_released\\_but\\_is\\_still\\_under\\_investigation](http://www.odfoundation.eu/en/urgents/1451/the_case_of_aleksandr_kharlamov_the_civic_activist_has_been_released_but_is_still_under_investigation), accessed 8 January 2014

<sup>76</sup> Tengrin News, Conference spotlights Kazakhstan's youth suicide problem, search for solutions, 18 July 2013, <http://en.tengrinews.kz/opinion/394/>, accessed 12 February

out," he said. "This means that most people who commit suicide here probably conveyed it in some way to family members or friends before doing it." And that, in turn, means the suicide could have been prevented.<sup>77</sup>

On 17 January 2014 a paper entitled "*Depression and Access to Mental Health Services Among Injection Drug Users and Their Intimate Partners in Almaty, Kazakhstan*" stated that little was known about the mental health of those in Kazakhstan who inject drugs (an estimated 1% of adults) but that research had concluded social support and physical health were important determinants of their mental wellbeing. Those with higher levels of social support from friends, family, and partners received lower depression scores, whereas depressive scores were "significantly higher" in participants with lower levels of social support. Policies and services that encourage supportive relationships and health in injection drug users could be useful in addressing mental health needs.<sup>78</sup>

## 5.2 Employment

Article 117 of the 2009 *Law on the Health of the People and Health Care System*, states that citizens may be "acknowledged unsuitable" for some forms of "professional activity" if they are considered a danger to others as a result of mental illness. This decision can be appealed in court,

"Article 117. Restriction of accomplishment of separate types of professional activity  
1. The citizen can be temporary, with the right of the subsequent re-examination, is acknowledged unsuitable owing to mental disturbance (disease) to accomplishment of separate types of professional activity, and also work, connected to source of enhanced danger.

Recognition of unfitness is made according to the decision of the medical commission framed in the specialized psychiatric medical organization, having the license and (or) the certificate on accreditation on implementation of the conforming examination.

In case of disagreement of the citizen with the decision of this commission it can be appealed in court."<sup>79</sup>

In 2012 the *USDOS* stated that despite the prohibition of discrimination against persons with intellectual, and mental disabilities in employment under Kazakh law, significant discrimination in existed practice.<sup>80</sup>

On 4 May 2013 an article entitled "*The problem of unemployment in Kazakhstan: economic and socio-cultural factors*", published by the Eurasian Economic Club of Scientists Association stated that graduates of colleges and universities are often unemployed due to a "massive overproduction of graduates in a number of specialties, as

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<sup>77</sup> Tengrin News, Conference spotlights Kazakhstan's youth suicide problem, search for solutions, 18 July 2013, <http://en.tengrinews.kz/opinion/394/>, accessed 12 February

<sup>78</sup> Depression and Access to Mental Health Services Among Injection Drug Users and Their Intimate Partners in Almaty, Kazakhstan, 17 January 2014, Stacey A. Shaw, MSW, PhD Candidate, Columbia University et al, <http://sswr.confex.com/sswr/2014/webprogram/Paper21678.html>, accessed 12 February 2014

<sup>79</sup> Code of the Republic of Kazakhstan, 18 September 2009 of No. 193-IV ZPK, "About health of the people and health care system" (last edition from 21 May 2013), available at <http://cis-legislation.com/document.fwx?rgn=29204>, accessed 13 March 2014

<sup>80</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012, Kazakhstan, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, accessed 9 January 2014



well as very low skills of the majority holders of diplomas". Students with little education and high expectations become frustrated and dissatisfied with their social environment, making them the main sources for formation the protest movements.

"The situation on the labor market in Kazakhstan is largely the result of saving a significant impact in the public consciousness of pre-modern values. The effect of these values causes the mass to choose a specialty for which there is a clear oversupply, retain a significant degree of dependency. Such attitudes and socio-cultural values are common for post-Soviet countries and to change a structure of expectations and behavior only by economic means is impossible. Only a wider social and cultural transformation of post-Soviet societies can change the situation."<sup>81</sup>

In July 2013 English language Kazakh news website *Tengrinews.kz English* described suicide as "all too common in Kazakhstan" and stated that unemployment can be a contributing factor,

"Twenty-one-year-old Aknur Sakhanova had just entered the hallway to her Almaty apartment when she came across a grisly sight. The Almaty State University student's neighbor, who was about 25, was hanging dead from a rafter, having committed suicide. The young man had a wife, a 1-year-old baby and a mother to care for – but no job. After months without work, he could no longer face a world that he felt was closing in on him. What Aknur saw three years ago is all too common in Kazakhstan"<sup>82</sup>

## 6. Availability of mental health care

### 6.1 Availability of appropriate mental health care

According to the 2011 *World Health Organisation Mental Health Atlas* Kazakhstan has 32 mental health outpatient facilities/beds, a rate of 0.2 per 100,000 population, 15 day treatment facilities, a rate of 0.1 per 100,000 population and 274 psychiatric beds in general hospitals, a rate of 1.74 per 100,000 population (the European median is 10.5 per 100,000 population). The country has 31 mental hospitals with 9660 beds, a rate of 0.2/61.3 per 100,000 population (the European median is 39.4). There are no mental health community residential facilities.<sup>83</sup>

In 2013 an article entitled "*Mental Health in Former Soviet Countries: From Past Legacies to Modern Practices*", published in *Public Health Reviews* stated that Commonwealth of Independent States (CIS) countries spend approximately three percent of their health budgets on mental health mostly spent on psychiatric hospitals, and organise their services in similar ways. However, Kazakhstan is among those who report significantly

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<sup>81</sup> Eurasian Economic Club of Scientists Association, The problem of unemployment in Kazakhstan: economic and socio-cultural factors, N. Yakimenko and Y. Yessengarayev, 4 May 2013, <http://www.group-global.org/ru/publication/view/5285>, accessed 14 February 2014

<sup>82</sup> Tengrin News, Conference spotlights Kazakhstan's youth suicide problem, search for solutions, 18 July 2013, <http://en.tengrinews.kz/opinion/394/>, accessed 12 February

<sup>83</sup> The World Health Organisation, Department of Mental Health and Substance Abuse, The World Health Organisation Mental Health Atlas 2011, Kazakhstan, [http://www.who.int/mental\\_health/evidence/atlas/profiles/kaz\\_mh\\_profile.pdf](http://www.who.int/mental_health/evidence/atlas/profiles/kaz_mh_profile.pdf), accessed 10 January 2014

higher resources of services and staff, contributing factors to which are "the migration of staff from lower income economies, facilitated by similarities between the education and health systems, and fluency in the Russian language",

"Introducing mental health services in primary care is challenging due to limitations in roles of primary care staff, but also in their competencies and skills, and their reluctance to take on more responsibilities.

With reforms in the early stages of implementation, and slim prospects of suitable resources for necessary developments, modern mental health services remain largely out of reach for most people in former Soviet countries in the near future."<sup>84</sup>

In January 2013 the *World Health Organisation (WHO) Regional Office for Europe* stated that Commonwealth of Independent States (CIS) countries have 50 percent fewer family doctors than the European average. In Kazakhstan there are approximately 26 family doctors per 100,000 population.<sup>85</sup>

In June 2013 an article entitled "*Nicotine Dependence More Strongly Correlates with Psychological Distress in Disadvantaged Areas of Kazakhstan than Germany*", published in the *Journal of Immigrant and Minority Health*, stated that the "lack of outpatient community mental health services for the treatment of common mental disorders" could possibly be the reason for an association between nicotine dependence and psychological distress in the disadvantaged area of Kazakhstan.<sup>86</sup>

On 17 January 2014 a paper entitled "*Depression and Access to Mental Health Services Among Injection Drug Users and Their Intimate Partners in Almaty, Kazakhstan*" stated that little was known about the access to mental health treatment of those in Kazakhstan who inject drugs (an estimated 1% of adults),

"Additional research is needed to research was needed to explore barriers to mental health services access and appropriate treatment approaches for drug users and their sexual partners in Central Asia

[ ] Access to counseling in the past 6 months was similar across genders (18.5%). Among those who had not received counseling, 51.0% of females and 35.9% of males said they needed services. Only 27.6% of those in need of services felt that such services were available."<sup>87</sup>

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<sup>84</sup> Ionela Petrea, Mental Health in Former Soviet Countries: From Past Legacies to Modern Practices, *Public Health Reviews*. 2013;34, <http://www.publichealthreviews.eu/show/a/121>, accessed 15 January 2014

<sup>85</sup> World Health Organisation (WHO) Regional Office for Europe. European Health for All Database. January 2013. available at: <http://www.euro.who.int/en/what-we-do/data-and-evidence/databases/european-health-for-all-database-hfa-db2>, accessed 11 April 2013

<sup>86</sup> Yuriy Ignatyev, Adrian P. Mundt, Nicotine Dependence More Strongly Correlates with Psychological Distress in Disadvantaged Areas of Kazakhstan than Germany, *Journal of Immigrant and Minority Health*, June 2013, <http://link.springer.com/article/10.1007/s10903-013-9865-x>, accessed 14 February 2014

<sup>87</sup> Depression and Access to Mental Health Services Among Injection Drug Users and Their Intimate Partners in Almaty, Kazakhstan, 17 January 2014, Stacey A. Shaw, MSW, PhD Candidate, Columbia University et al, <http://sswr.confex.com/sswr/2014/webprogram/Paper21678.html>, accessed 12 February 2014

### **6.1.1 Availability in the capital and other urban centres**

*During the timeframe of this research we were unable to identify any information concerning availability of mental health care in the capital and other urban centres within the sources consulted.*

### **6.1.2 Availability in rural areas**

In April 2012 an article entitled "Health Care Reform in the Former Soviet Union: Beyond the Transition", published in *Health Services Research*, stated that when asked questions relating to health service utilization, social capital, income sources, economic situation; and "a range of self-reported physical and mental health conditions", those residing in rural areas were significantly less likely to obtain care. Utilization was associated with long-term illness or certified disability which necessitated familiarity with the system as regular access to services was needed. Access to health services was not deterred by problems relating to lack of health insurance, time or geographical inaccessibility.<sup>88</sup>

## **6.2 Costs and accessibility of treatment (both public and private)**

In April 2012 an article entitled "Health Care Reform in the Former Soviet Union: Beyond the Transition", published in *Health Services Research*, stated that those who perceived their "financial situation to be "bad" [ ] were significantly less likely to seek care when needed" Frequency of alcohol use was also significantly associated with lower probability of obtaining care. Kazakhstan had one of the highest share of respondents who stated they chose to self-treat even though their condition was serious enough to need professional help, "suggesting that cheaper home-based treatment may be a substitute for accessing the health system". 4.1% of respondents gave not being able to afford services as their main reason for not consulting a health professional for those in their household who had a health problem in the last four weeks. 5% stated that they could not afford drugs, and 8.3% could not afford either services or drugs. 28.6% of respondents stated they had had to pay for outpatient costs, 43.6% for inpatient costs, 77.8% for drug costs and 69.9% for transport costs. Payments for inpatient care are more common but the cost is much lower than in other former Soviet countries. Reforms to introduce forms of health insurance were subsequently reversed.<sup>89</sup>

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<sup>88</sup> Dina Balabanova et al, Health Care Reform in the Former Soviet Union: Beyond the Transition, *Health Services Research*, Volume 47, Issue 2, pages 840–864, April 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-6773.2011.01323.x/full>, accessed 12 February 2014

<sup>89</sup> Dina Balabanova et al, Health Care Reform in the Former Soviet Union: Beyond the Transition, *Health Services Research*, Volume 47, Issue 2, pages 840–864, April 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-6773.2011.01323.x/full>, accessed 12 February 2014