

REPORT ON MONITORING OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE REPUBLIC OF KAZAKHSTAN IN 2018 - 2020



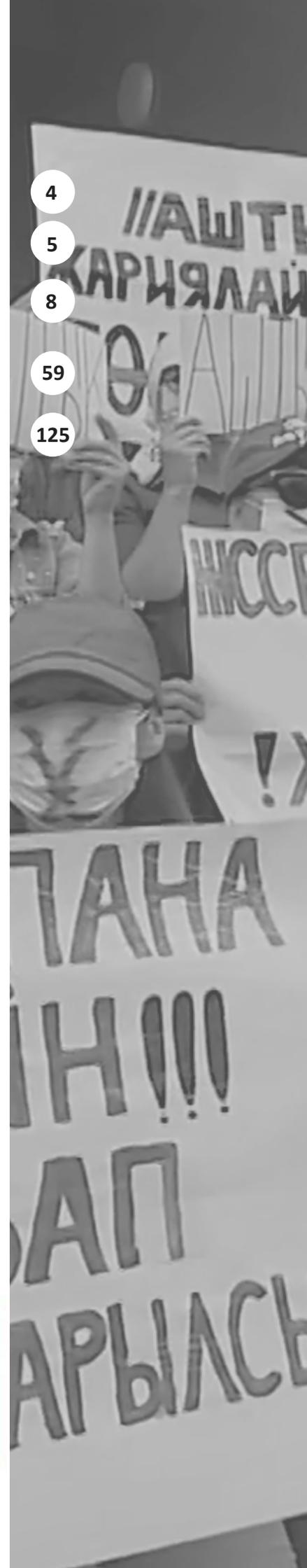
Kazakhstan International Bureau for Human Rights
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RESUME¹

The right to freedom of peaceful assembly is proclaimed in Article 20 of the Universal Declaration of Human Rights² and is guaranteed under Article 21 of the International Covenant on Civil and Political Rights (ICCPR)³, which has been ratified by the Republic of Kazakhstan⁴.

This Report offers an analysis of the legislation of the Republic of Kazakhstan, both in force prior to June 2020 and the current one, in terms of its compliance with international standards as set forth in, primarily, the Guidelines of the Organization for Security and Cooperation in Europe (OSCE) and the Venice Commission of the Council of Europe (2nd edition⁵, 2010, and 3rd edition⁶, 2019), and General comment No. 37 of the UN Human Rights Committee on Article 21 of the ICCPR adopted in 2020⁷.

The Report also provides an overview of the practice of regulating peaceful assembly in the Republic of Kazakhstan in 2010-2017, as monitored by the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR), and the results of monitoring of peaceful assembly in Kazakhstan in 2018—first six months of 2020, which was conducted by KIBHR as part of the project “The right to freedom of peaceful assembly in the context of prevention of extremism and terrorism” supported by the Norwegian Helsinki Committee. As the work on the Report was finished in December 2020, it included information and references to a number of documents which had come around in the period from July through December 2020.

The Report pays particular attention to various stages of preparation, organization and holding of peaceful assemblies by civil activists and the relevant actions by the authorities, in particular:

- discussion and planning of peaceful assemblies, including on social networks, prior to holding them;
- communications with the authorities (submitting applications for permits, or notifications on peaceful assemblies);
- preventive detentions and blocking of potential organizers and participants;
- actions by the authorities in venues of supposed peaceful assembly (blocking of places, detentions, treatment of media representatives and independent observers);
- bringing-in and keeping detainees, observance of their rights, including the right to professional legal assistance;
- legal proceedings and serving an administrative arrest;
- criminal prosecution.

The final part of the Report contains principal recommendations which, in brief, speak of the need for a top-down review of legislation and law enforcement practice in order to make sure the right to freedom of peaceful assembly is respected and bring both in line with international standards and obligations of the Republic of Kazakhstan.

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¹ This Report has been drafted with the support of the Norwegian Helsinki Committee and Soros-Kazakhstan Foundation. The opinions and conclusions contained in this Report may not reflect the official views of these organizations.

² Universal Declaration of Human Rights. Adopted by Resolution 217 A (III) of the UN General Assembly dated 10 December 1948 // website of the United Nations. URL: http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

³ International Covenant on Civil and Political Rights. Adopted by Resolution 2200 A (XXI) of the UN General Assembly dated 16 December 1966 // Website of the United Nations. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

⁴ Law of the Republic of Kazakhstan dated 28 November 2005 No.91 “On The Ratification Of The International Covenant On Civil And Political Rights” // Information and Legal Systems of Regulatory Acts of the Republic of Kazakhstan “Adilet”. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

⁵ Guidelines on Freedom of Peaceful Assembly (2nd edition), OSCE/ODIHR and the Venice Commission of the Council of Europe, 2010 // Website of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. URL: <http://www.osce.org/ru/odihr/83237>.

⁶ Joint guidelines on freedom of peaceful assembly (3rd edition), European Commission for Democracy through Law (Venice Commission) OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), CDL-AD(2019)017-e, 8 July 2019 // Website of the Council of Europe. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e).

⁷ General Comment No. 37. Article 21: Right of Peaceful Assembly // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fGC%2f37&Lang=ru



INTRODUCTION

Freedom of peaceful assembly is a fundamental human right and one of the most important elements of effectively functioning democratic systems, along with freedom of expression, freedom of association and the right to participate in governing one's country.

Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, legal entities, registered and unregistered associations and other political and public organizations. Assemblies may serve many purposes, including the expression of protest, diverse, unpopular or minority opinions. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together.

As noted in the OSCE Handbook on Monitoring Freedom of Peaceful Assembly⁸: «*Public assemblies can be particularly important and prominent at times of political tension or when citizens are making demands for social change. Demonstrations and protests are often used in a variety of campaigns by political groups and are generally an important aspect of election campaigns. They can also be an important means of calling for change in contexts where more institutional mechanisms for effecting social change are not available*».

According to the Guidelines on Freedom of Peaceful Assembly (2nd edition)⁹, an assembly means «*the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose*».

Since only peaceful assemblies are protected, an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

⁸ Handbook on Monitoring Freedom of Peaceful Assembly. ODIHR OSCE, 2011 // Website of the Organization for Security and Cooperation in Europe. URL: <https://www.osce.org/ru/odihr/82987>

⁹ Guidelines on Freedom of Peaceful Assembly (2nd edition), OSCE/ODIHR and the Venice Commission of the Council of Europe, 2010 // Website of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. URL: <http://www.osce.org/ru/odihr/83237>.

As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation, and its promotion should be based on recognized principles of international human rights law, including the presumption in favour of law, the legal certainty and predictability, non-discrimination and proportionality of restrictions.

Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so.

In accordance with the presumption in favour of the right, it is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

Any restrictions imposed must have a formal basis in law and be in conformity with the international human rights instruments and state obligations in the field of human rights. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches.

Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case.

In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any grounds. The freedom to organize and participate in public assemblies must be guaranteed to



individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.

The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.

An important element of the right to freedom of peaceful assembly is the place where it is held. Assemblies are as legitimate use of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.

Assemblies are held for a common expressive purpose and, thus, aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.

A wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.

Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.

All these fundamental provisions should be reflected in legislation and implemented in practice.



1. LEGAL CONTEXT OF EXERCISING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE REPUBLIC OF KAZAKHSTAN

1.1. Republic of Kazakhstan and international law

The Republic of Kazakhstan declared its independence on 16 December 1991 and, in accordance with Article 1 of the Constitution of the Republic of Kazakhstan¹⁰ «proclaims itself as a democratic, secular, legal and social state whose highest values are a person, his/her life, rights, and freedoms».

Article 4 of the Constitution of the Republic of Kazakhstan stipulates:

«1. The law in force in the Republic of Kazakhstan shall include the provisions of the Constitution, the laws corresponding to it, other regulatory legal acts, international treaties and other commitments of the Republic as well as regulatory decisions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan.

2. The Constitution has supreme legal force and direct effect through the territory of the Republic.

3. International treaties ratified by the Republic shall have priority over its laws. The procedure and the terms for the operation of international treaties, to which Kazakhstan is a party, in the territory of the Republic of Kazakhstan shall be determined by the legislation of the Republic.

4. All laws and international agreements, to which the Republic is a party, shall be published. Official publication of regulatory and legal acts, dealing with the rights, freedoms, and responsibilities of citizens shall be the necessary condition for their application».

Thus, in its Constitution the Republic of Kazakhstan has proclaimed its values and its attitude towards international law, in general, and to international human rights law, in particular.

According to Article 20 of the Law of the Republic of Kazakhstan dated 30 May 2005 «On International Treaties Of The Republic Of Kazakhstan»¹¹:

«1. Each international treaty of the Republic of Kazakhstan currently in effect must be performed in good faith by the Republic of Kazakhstan...

3. The President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan shall take measures on securing the performance of international treaties of the Republic of Kazakhstan.

4. Central state bodies of the Republic of Kazakhstan within the competence shall secure performance of obligations and exercise of the rights of the Republic of Kazakhstan arising from international treaties, as well as supervise of performance of the obligations of international treaties by other participants.

5. General supervision and control of performance of international treaties of the Republic of Kazakhstan shall be carried out by the Ministry of Foreign Affairs of the Republic of Kazakhstan».

Despite the fact that the rules established by international agreements ratified by the Republic of Kazakhstan are given priority in the national legislation, the Decision of the Constitutional Council of the Republic of Kazakhstan No.2 dated 18 May 2006 “On the Official Interpretation of Sub-paragraph 7) of Article 54 of the Constitution of the Republic of Kazakhstan” causes serious concern.¹²

¹⁰ Constitution of the Republic of Kazakhstan. Adapted at the republican referendum on 30 August 1995, amended 23 March 2019 // Legal information system of laws and regulations of the Republic of Kazakhstan «Adilet». URL: http://adilet.zan.kz/rus/docs/K950001000_

¹¹ Law of the Republic of Kazakhstan No. 54 dated 30 May 2005 “On International Treaties Of The Republic Of Kazakhstan” as amended on 21.01.2019 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z050000054_

¹² Decision of the Constitutional Council of the Republic of Kazakhstan No.2 dated 18 May 2006 “On The Official Interpretation Of Sub-Paragraph 7) Of Article 54 Of The Constitution Of The Republic Of Kazakhstan” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/S060000002_

In the declarative part of the said decision, the Constitutional Council made a reference to its own Decision No. 18/2¹³ dated 11 October 2000 in which it said that the Vienna Convention on the Law of Treaties “does not define the procedure for implementation of agreements. This is the constitutional and legislative prerogatives of the states and follows from the commonly accepted principle of international law—sovereign equality of the states.”

Further, “based on this, the Constitutional Council believes that should an international treaty signed by the Republic of Kazakhstan, in whole or in any part, be duly recognized as contradicting the Constitution of the Republic of Kazakhstan, which under Article 4.2 of the Basic Law has the highest legal force in the Republic of Kazakhstan, such treaty recognised as not compliant with the Constitution, in full or in part, is not enforceable.”

In the operative part of the said decision, the Constitutional Council of the Republic of Kazakhstan asserts the following: “... 4. If an international treaty signed by the Republic of Kazakhstan has been duly recognized, in full or in part, as contradicting the Constitution of the Republic of Kazakhstan, such treaty or its relevant provisions shall not be enforceable.”

In our opinion, the said decision of the Constitutional Council of the Republic of Kazakhstan contradicts the 1969 Vienna Convention on the Law of Treaties¹, in particular Article 27 of the Convention, which states the following: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”¹⁴

It is also worth noting the change in the wording of paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan which was introduced on 10 March 2017. In the past, this provision used to read as follows: “International treaties ratified by the Republic shall have priority over its laws and shall apply directly, except when it follows from an international treaty that its application requires a law to be adopted.”

The new wording is as follows: “International treaties ratified by the Republic shall have priority over its laws. The procedure and the terms for the operation of international treaties, to which Kazakhstan is a party, in the territory of the Republic of Kazakhstan shall be determined by the legislation of the Republic”, which, essentially, has removed the notion of direct application of international treaties in the law enforcement practice in Kazakhstan, while no special legislation on procedures and conditions of application of certain international treaties pertaining to human rights has been adopted.

Since its independence, the Republic of Kazakhstan began to actively build its relationships with the international community.

By January 1992, Kazakhstan had joined the Organization for Security and Cooperation in Europe.

On 2 March 1992, following the 46th session of the General Assembly of the United Nations, by the Resolution 46/224 the Republic of Kazakhstan was unanimously admitted to the UN and since then has ratified several dozen international treaties on human rights.

The country has joined several regional organizations, including the Commonwealth of Independent States, the Collective Security Treaty Organization, the Organization of the Islamic Conference, the Shanghai Cooperation Organization, the Eurasian Economic Union.

By becoming a member of such organizations, the Republic of Kazakhstan has joined and ratified a number of international treaties in the area of human rights, recognized the jurisdiction of several international human

¹³ Decision of the Constitutional Council of the Republic of Kazakhstan dated 11 October 2000 No.18/2 “On The Official Interpretation Of Paragraph 3 Article 4 Of The Constitution Of The Republic Of Kazakhstan” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/S000000018_

¹⁴ Regulatory Decision of the Supreme Court of the Republic of Kazakhstan dated 10 July 2008 No.1 “On The Application Of The Norms Of International Treaties Of The Republic Of Kazakhstan” as amended on 30.12.2011 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/P080000015_

rights bodies to review individual complaints of human rights violations occurring within its territory (within the framework of its UN membership), or recognized the provisions of several documents on human rights which have no legal force but have a significance in terms of morality and political aspects (e.g. as part of the OSCE membership). However, until today international human rights treaties have been hardly ever directly applied in the practice of the country's executive and judicial bodies.

This is also true for Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by the Republic of Kazakhstan,¹⁵ which (the article) concerns the freedom of peaceful assembly.

Moreover, the UN Human Rights Committee (HRC) since 2014 has adopted at least 13 opinions (decisions) on individual complaints against the Republic of Kazakhstan regarding violations of Article 21 and/or in aggregated with other ICCPR articles, *Andrey Sviridov v. the Republic of Kazakhstan* (2017)¹⁶, *Bakhytzhana Toregozhina v. Republic of Kazakhstan* (2018)¹⁷, *Berik Zhagiparov v. Republic of Kazakhstan* (2018)¹⁸, *Anar Abildayeva v. Republic of Kazakhstan* (2019)¹⁹, *Ruslan Dzhumanbayev v. Republic of Kazakhstan* (2019)²⁰, *Bakytgul Suleimenova v. Republic of Kazakhstan* (2019)²¹, *Esenbek Ukteshbayev v. Republic of Kazakhstan* (2019)²², *Bakhytzhana Toregozhina v. Republic of Kazakhstan* (2019)²³, *Dilnar Insenova v. Republic of Kazakhstan* (2019)²⁴, *Khalelkhan Adilkhanov v. Republic of Kazakhstan* (2020)²⁵, *Murat Telibekov v. Republic of Kazakhstan* (2020)²⁶, *Yerzhan Sadykov v. Republic of Kazakhstan* (2020)²⁷.

In all those decisions, it was pointed out that the Republic of Kazakhstan, being a member State to the ICCPR, must provide the complainants with adequate compensation, ensure that similar violations do not occur in the future, including by conducting a review of the current legislation on peaceful assembly. However, not one of these decisions has been implemented yet, and the new law on peaceful assembly, as it will be demonstrated below, in many respects fails to meet international standards guaranteeing and protecting the right to freedom of peaceful assembly.

1.2. Fundamental international standards to guarantee the right to freedom of peaceful assembly

The international guarantees in the area of freedom of assembly that are binding on the Republic of Kazakhstan are based mainly on the provisions of the International Covenant on Civil and Political Rights (ICCPR), as well

¹⁵ International Covenant on Civil and Political Rights. Adopted by Resolution 2200 A (XXI) of the UN General Assembly dated 16 December 1966 // Website of the United Nations. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

¹⁶ *Andrey Sviridov v. Republic of Kazakhstan*, CCPR/C/120/D/2158/2012, adopted on 13 July 2017 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F120%2FD%2F2158%2F2012&Lang=en

¹⁷ *Bakhytzhana Toregozhina v. Republic of Kazakhstan*, CCPR/C/124/D/2257/2013, CCPR/C/124/D/2334/2014, adopted on 15 October 2018 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F124%2FD%2F2257%2F2013&Lang=ru

¹⁸ *Berik Zhagiparov v. Republic of Kazakhstan*, CCPR/C/124/D/2441/2014, adopted on 25 October 2018 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F124%2FD%2F2441%2F2014&Lang=en

¹⁹ *Anar Abildayeva v. Republic of Kazakhstan*, CCPR/C/125/D/2309/2013, adopted on 29 March 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F125%2FD%2F2309%2F2013&Lang=en

²⁰ *Ruslan Dzhumanbayev v. Republic of Kazakhstan*, CCPR/C/125/D/2308/2013, adopted on 29 March 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F125%2FD%2F2308%2F2013&Lang=en

²¹ *Bakytgul Suleimenova v. Republic of Kazakhstan*, CCPR/C/126/D/2416/2014, adopted on 17 July 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F126%2FD%2F2416%2F2014&Lang=en

²² *Esenbek Ukteshbayev v. Republic of Kazakhstan*, CCPR/C/126/D/2420/2014, adopted on 17 July 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F126%2FD%2F2420%2F2014&Lang=en

²³ *Bakhytzhana Toregozhina v. Republic of Kazakhstan*, CCPR/C/126/D/2311/2013, adopted on 25 July 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F126%2FD%2F2311%2F2013&Lang=en

²⁴ *Dilnar Insenova v. Republic of Kazakhstan*, CCPR/C/126/D/2542/2015, CCPR/C/126/D/2543/2015, adopted on 25 July 2019 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F126%2FD%2F2542%2F2015-2543-2015&Lang=en

²⁵ *Khalelkhan Adilkhanov v. Republic of Kazakhstan*, CCPR/C/128/D/2686/2015, adopted on 12 March 2020 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F128%2FD%2F2686%2F2015&Lang=ru

²⁶ *Murat Telibekov v. Republic of Kazakhstan*, CCPR/C/128/D/2687/2015, adopted on 13 March 2020 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F128%2FD%2F2687%2F2015&Lang=en

²⁷ *Erzhan Sadykov v. Republic of Kazakhstan*, CCPR/C/129/D/2456/2014, adopted on 23 July 2020 // Website of the Office of UN High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F129%2FD%2F2456%2F2014&Lang=ru

as its Optional Protocol²⁸ (as it relates to affording individual complaints on violations of the right to peaceful assembly to be put forward to the United Nations Committee on Human Rights), both of which have been ratified by the Republic of Kazakhstan²⁹.

Article 21 of the ICCPR establishes: «*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*».

Freedom of assembly is also proclaimed by Article 15 of the Convention on the Rights of the Child which has been ratified by the Republic of Kazakhstan³⁰: “*The member states recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*”

The right of human rights defenders to assemble peacefully is also included in article 5 (a) of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1999)³¹, which reads: “*For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully.*”

According to the 1990 OSCE Copenhagen Document³², “[*the participating States agree on the following*]: everyone will have the right of peaceful assembly and demonstration.”

All these international documents also note the criteria of admissibility of restrictions: in respect to the right to peaceful assembly no restrictions may be applied except for those that are applied in accordance with the law and which are necessary in a democratic society in the interests of national or public security, public order (*ordre public*), public health or morals, or protection of the rights and freedoms of others.

International human rights institutions, including the UN Human Rights Committee, emphasize that freedom of assembly is often linked to freedom of expression, a right protected by Article 19 of the ICCPR, as well as the right to freedom of thought, conscience and religion (Article 18 of the ICCPR) as the right to assembly always has an objective to convey some sort of a message or expression of a view or opinion to another government or other groups.

The right to freedom of peaceful assembly is also closely linked to the right to freedom of association, which is covered in Article 22 of the ICCPR. The right to associate in a political party, trade union (which includes the right to a strike) and other public organizations is often a condition precedent for organizing an assembly, and unreasonable or disproportionate restrictions placed on the right to form associations may also result in restrictions on the right to assembly.

Restrictions of the right to form associations through mechanisms such as the requirement of registration, refusal to accept documents, or refusal to record a registration, involuntary dissolution or prohibition of an

²⁷ Optional Protocol to the International Covenant on Civil and Political Rights. Adopted by Resolution 2200 A (XXI) of the UN General Assembly on 16 December 1966. // Website of the United Nations. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpro1.shtml.

²⁸ Law of the Republic of Kazakhstan No.91 of 28 November 2005 “On The Ratification Of The International Covenant On Civil And Political Rights” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z050000091_;

²⁹ Law of the Republic of Kazakhstan No.130-IV dated 11 February 2009 “On The Ratification Of The Optional Protocol To The International Covenant On Civil And Political Rights” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z090000130_.

³⁰ Convention on the Rights of the Child. Adopted by Resolution 44/25 of the UN General Assembly of 20 November 1989. Came in effect on 2 September 1990. Decision of the Supreme Council of the Republic of Kazakhstan dated 8 June 1994 “On The Ratification Of The Convention On The Rights Of The Child” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/B940001400_.

³¹ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted by Resolution 53/144 of the UN General Assembly of 9 December 1998 // Website of the United Nations. URL: http://www.un.org/ru/documents/decl_conv/declarations/defender.shtml.

³² Document of the Copenhagen Session of the Conference on Human Dimension of the OSCE. Adopted in Copenhagen on 29 June 1990 // Website of the Organization for Security and Cooperation in Europe. URL: <http://www.osce.org/ru/odihr/elections/14304>.

association, or imposing onerous financial requirements, may be viewed as an indirect restriction of the right to a peaceful assembly.

Restrictions of freedom of peaceful assembly can have a negative impact on other rights, such as the right to life, liberty and security; the right to a fair trial; and the right to freedom of movement. Besides, all rights and freedoms must be respected without any discrimination, as set forth in Article 2 of the ICCPR.

Accordingly, in international law the right to freedom of peaceful assembly is guaranteed along with a number of related rights and freedoms.

The most complete and specialized documents that cover all aspects of implementation of the right to freedom of peaceful assembly are the Guidelines of the Organization for Security and Cooperation in Europe (OSCE) and the Venice Commission of the Council of Europe (2nd edition, 2010) (the “Guidelines (2nd edition)”), and 3rd edition, 2019 (the “Guidelines (3rd edition)”), and General Comment No. 37 of the UN Human Rights Committee on Article 21 of the ICCPR adopted in 2020 (the “General Comment No. 37”) which contain the basic concepts and principles for the implementation of this right. The General Comment No. 37 is the first interpretative document adopted under the ICCPR by that convention body on the issue of the right to peaceful assembly. It is also worth noting the OSCE/ODIHR Human Rights Handbook on Policing Assemblies.³³

Based on these documents, international standards for the promotion and protection of the right to freedom of peaceful assembly are based on the following fundamental principles:

1. People take to the streets and squares not because they have nowhere to gather, but because they want to convey their problems, disagreements and protests to the state. Therefore, they do not go to parks and squares in remote corners but to the central streets, squares and buildings where state bodies sit, in order to express their attitude toward events, decisions, actions—directly to the authorities, media and society. In international practice this principle is defined as within “sight and sound” of the audience to which a picket, rally or demonstration is being addressed.

2. People should not ask the authorities for permission to conduct a picket, rally or assembly, because it is their right which is guaranteed by international obligations and the Constitution. Therefore, the notification principle when holding peaceful assemblies should be adopted as a general rule.

3. People must have the right to hold pickets, rallies and demonstrations in any publicly accessible place. The state can determine an exhaustive list of venues where peaceful assemblies may be prohibited, which may include hazardous industries, defence enterprises and places that pose a danger to life and health.

4. The state should provide for the possibility of spontaneous (i.e. conducted without advance notification) peaceful assemblies in cases where, for objective reasons, the events that has occurred or the severity of the issue, have invoked an immediate reaction on the part of the citizenry. In any case, the authorities must act based on the presumption in favour of the right to peaceful assembly, even if no notification has been sent—as long as the assembly is peaceful.

5. The state should ensure a clear, fast and effective procedure for notifying and communicating with the organizers and participants of peaceful assemblies, and law enforcement agencies should act based on their duty to ensure and protect the right of citizens to peaceful assembly and public dialogue.

As the above listed principles are necessary for ensuring the right to peaceful assembly, they must be reflected in the legislation and applied in law enforcement practice.

They are explained in sufficient detail in the aforementioned documents, reports of the UN’s special procedure—the UN Special Rapporteur on the right to freedom of peaceful assembly and freedom of

³³ OSCE ODIHR Human Rights Handbook on Policing Assemblies, 2016 // Website of the ODIHR OSCE. URL: <http://www.osce.org/node/247656>

association—as well as in a number of decisions of the HRC, including decisions on individual complaints submitted by Kazakhstani citizens.

Below are the fundamental principles of international law and international standards pertaining to the ensuring, promotion and protection of the right to freedom of peaceful assembly; Kazakhstan’s legislation and law enforcement practice will be compared against them.

1.2.1. Basic guiding principles regarding the right to freedom of peaceful assembly

The basic guiding principles regarding the right to freedom of peaceful assembly are laid down in Guidelines of the Organization for Security and Cooperation in Europe (OSCE) and the Venice Commission of the Council of Europe (2nd edition, 2010)³⁴.

The presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of this freedom should be clearly and explicitly established in law.

The state’s positive obligation to facilitate and protect peaceful assembly. It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers’ preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

Legality. Any restrictions imposed must have a formal basis in law and be in conformity with the international human rights instruments. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches.

Proportionality. Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case.

Non-discrimination. Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any grounds. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.

Good administration. The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information about its procedures and operation. Organizers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have the opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any

³⁴ Guidelines on Freedom of Peaceful Assembly (2nd edition), OSCE/ODIHR and the Venice Commission of the Council of Europe, 2010 // Website of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.
URL: <http://www.osce.org/ru/odihr/83237>.

restrictions placed on an assembly should be communicated promptly and in writing to the event organizer, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date provided in the notification for the assembly.

The liability of the regulatory authority. The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so. Liability should be gauged according to the relevant principles of administrative law and judicial review concerning the misuse of public power.

1.2.2. Definition of assembly

An «assembly» means «*the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose*». This includes «*planned and organized assemblies, unplanned and spontaneous assemblies, static and moving assemblies*» (Guidelines (2nd edition, para 1.2; 3rd edition, para 18)³⁵).

It is important to note that the definition of “assembly” in international law is based primarily not on the form but on the purpose of the assembly. As noted in General Comment No. 37, «*the right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones*».

Moreover, this definition recognizes that, although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately-owned premises or in enclosed structures – deserve protection (paragraph 1.2 of the Guidelines (2nd edition)).

Paragraph 13 of General Comment No. 37 states: «*While the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19. Although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organization of, assemblies, for example online*».

Paragraph 11 of the Guidelines (2nd edition) states that «*11. While there is no requirement that participating States enact a specific law on freedom of assembly, such legislation can greatly assist in protecting against arbitrary interference with the right to freedom of peaceful assembly. **Any such domestic legislation should confer broadly framed protection on freedom of assembly, and narrowly define those types of assembly for which some degree of regulation may be justified.** It cannot be overemphasized that, in an open society, **many types of assembly do not warrant any form of official regulation***».

Paragraph 16 of the Guidelines (2nd edition) states that: «*16. An assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where the protester’s physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly*».

And further in paragraph 17 it is stated that «*17. A range of different activities are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, “flash mobs”, demonstrations, sit-ins and pickets) and moving assemblies (such as parades, processions, funerals, pilgrimages and convoys). These examples are not exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible... Recent case law demonstrates the variety of new forms of protest to which the right to freedom of assembly has been held to extend. These include mass processions by cyclists and drive-slow protests by motorists. The case law confirms that the right to freedom of expression includes the choice of the form in which ideas are conveyed, without unreasonable interference*

³⁵Unofficial translation of selected provisions of the Guidelines (3rd edition) by KIBHR.

by the authorities (particularly in the case of symbolic protest activities).»

Thus, even if the law defines various forms of peaceful assembly, most of them do not require any regulation.

Even though the right to peaceful assembly corresponds to the right to freedom of speech and expression, the right to association, the right to freedom of conscience and religion, and the right to participate in the government of one's country, it is still an independent right which requires special protection and assistance in its implementation.

1.2.3. Subjects of the right to peaceful assembly

According to paragraph 2.5 of the Guidelines (2nd edition): «*The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity (including persons with mental illnesses)*».

Paragraph 84 of the Guidelines (3rd edition) emphasizes that: «***The State should take positive measures to facilitate assemblies associated with individuals and groups that have historically faced discrimination, or are otherwise marginalized or at risk, including LGBT people, youth, women, persons with disabilities, minorities, indigenous peoples, internally displaced persons, non-citizens, including refugees, asylum seekers and migrant workers***».

Paragraph 5 of General Comment No. 37 states: «*Everyone has the right of peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals, migrants (documented or undocumented), asylum seekers, refugees and stateless persons*». A similar provision is contained in paragraph 42 of General Comment No.15 on the rights of aliens under the ICCPR³⁶.

Therefore, the right to freedom of peaceful assembly should be guaranteed to everyone without discrimination and enjoyed by all people.

1.2.4. Notification or authorization

Paragraph 4.1 of the Guidelines (2nd edition) states: «***4.1. It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require the organizer of an assembly to submit a notice of intent rather than a request for permission.***

The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time for the relevant state authorities to make the necessary plans and preparations to satisfy their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged. If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with their activities according to the terms presented in their notification and without restriction».

Paragraph 25 of the Guidelines (3rd edition) treats notification as a restriction: «***Notification as a restriction. A prior notice requirement is a de facto interference with the right to freedom of assembly, and any such***

³⁶General Comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1–2; and CCPR/C/KWT/CO/3, para. 42. // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://www2.ohchr.org/english/bodies/icm-mc/docs/8th/hri.gen.1.rev9_ru.pdf

requirement should therefore be prescribed by law, necessary and proportionate. It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly, but prior notice can enable the State to better ensure the peaceful nature of an assembly and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others. A notification regime should never be turned into a de facto authorization procedure. The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic. Furthermore, **the domestic legal framework should ensure that spontaneous assemblies can lawfully be held, and laws regulating freedom of assembly should explicitly exempt such assemblies from prior notification requirements**».

Whereas paragraph 22 of the Guidelines (3rd edition) specifically emphasizes spontaneous or non-notified assemblies: «*The emergence of new technologies has greatly enhanced the possibility of spontaneous assemblies, and these should be regarded as an expected (rather than exceptional) feature of a healthy democracy. All reasonable and appropriate measures should be taken to ensure that spontaneous and non-notified assemblies are facilitated and protected in the same way as assemblies that are planned in advance*».

International standards in this regard are even more clearly articulated in paragraph 70 of General Comment No. 37: «**Having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.** Notification systems requiring that those who intend to organize a peaceful assembly must inform the authorities in advance and provide certain salient details are permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. At the same time, this requirement must not be misused to stifle peaceful assemblies and, as in the case of other interferences with the right, must be justifiable on the grounds listed in Article 21. **The enforcement of notification requirements must not become an end in itself.** Notification procedures should be transparent, not unduly bureaucratic, their demands on organizers must be proportionate to the potential public impact of the assembly concerned, and they should be free of charge».

At the same time, according to paragraph 71 of General Comment No. 37, the lack of notification itself is not a reason for the prohibition or dispersal of a peaceful assembly: «**A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities. Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants**».

It is important to note that, according to paragraph 72 of General Comment No. 37, peaceful assemblies that do not require notification, including spontaneous, should be protected: «**Any notification regime should exclude assemblies for which the impact of a gathering on others can reasonably be expected to be minimal, for example because of its nature, location or limited size or duration. Notification must not be required for spontaneous assemblies for which there is not enough time to provide notice**».

Finally, even if in some countries the authorization regime is maintained, although the notification procedure is recommended in the international law, paragraph 73 of General Comment No. 37 defines: «*Where authorization regimes persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Notification regimes, for their part, must not in practice function as authorization systems*».

Thus, **international standards and international jurisprudence convincingly show that:**

- it is not necessary under international law to require advance notification or authorization of peaceful assemblies;

- many types of peaceful assemblies require no notification or authorization at all;
- prior notification should only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others;
- the peaceful nature of an assembly, even if it is held without prior notification, does not entitle the authorities to disperse or arrest the participants, and does not absolve the authorities from the obligation to facilitate the assembly and to protect the participants;
- there is a possibility of spontaneous assemblies when notification was impossible due to lack of time.

1.2.5. Place and time of peaceful assemblies

In accordance with international standards citizens must have the right to hold pickets, rallies and demonstrations in any publicly accessible places. The state can determine an exhaustive list of places where peaceful assemblies may be prohibited, which may include hazardous production facilities, defence enterprises and places that pose a danger to life and health.

According to paragraph 3.2 of the Guidelines (2nd edition), *«assemblies are as legitimate use of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions».*

Paragraph 3.5 clearly states the principle of “sight and sound”: *«Public assemblies are held to convey a message to a particular target person, group or organization. **Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience».***

Paragraphs 19-21 of the Guidelines (2nd edition) emphasize that they *«...apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths).*

In particular, the state should always seek to facilitate public assemblies at the organizers’ preferred location, where this is a public place that is ordinarily accessible to the public.

20. Participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic) ...

21. Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression».

Similar provisions are contained in paragraphs 61 to 62 of the Guidelines (3rd edition).

Paragraph 53 of General Comment No. 37 states: *«the regulation of the time, place and manner of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction on a case-by-case basis. Any such restrictions should still, as far as possible, allow participants to assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose».*

Moreover, according to paragraph 55, *«peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets. While rules concerning public access to some spaces, such as buildings and parks, may also limit the right to assemble in such places, the application of such restrictions to peaceful assemblies must be justifiable in terms of Article 21. Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of*

those who are being addressed, or the general public. As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city».

Paragraph 56 of General Comment No. 37 states that *«the designation of the perimeters of places such as courts, parliaments, sites of historical significance or other official buildings as areas where assemblies may not take place should generally be avoided, inter alia, because these are public spaces. Any restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed».*

As noted and reaffirmed by paragraph 43 of the Guidelines (2nd edition), *«legislative provisions that limit the holding of assemblies to only certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should be regarded as a prima facie violation of the right. Similarly, the regulation of assemblies in residential areas or of assemblies at night time should be handled on a case-by-case basis rather than being specified as prohibited categories of assemblies».*

However, according to paragraphs 44-45 of the Guidelines (2nd edition), *«the time, place and manner of individual public assemblies can be regulated to prevent them from unreasonably interfering with the rights and freedoms of other people. This reflects the need for a proper balance to be struck between the rights of persons to express their views by means of assembly and the interest of not imposing unnecessary burdens on the rights of non-participants».*

But, *«if, having regard for the relevant factors, the authorities have a proper basis for concluding that restrictions should be imposed on the time or place of an assembly (rather than merely the manner in which the event is conducted), a suitable alternative time or place should be made available».*

Similar provisions are contained in the Guidelines (3rd edition).

According to paragraph 59 of the Guidelines (3rd edition), the right to freedom of assembly *«in principle also includes the right to choose the date and time of the assembly. The timing of an assembly may be essential for the message that the participants wish to convey – for example, to protest against a concurrent event or to commemorate a historical event. The right to choose the date and time of an assembly may also be crucial in terms of ensuring that the assembly reaches its target audience, and in enabling the widest possible participation (including participation by individuals from other cities or regions).»*

The duration of an assembly is also important. According to paragraph 60 of the Guidelines (3rd edition), *«assembly organizers have the right to determine the duration of an assembly so that they have sufficient time and opportunity to interact with one another and to manifest their views. The duration of an assembly may itself also be part of its message – for example, where an assembly seeks to coincide precisely with other contemporaneous events. In cases involving assemblies of particularly long duration, any limitations will only be permissible following an individual assessment of the case at hand, bearing in mind the level of interference, and the extent to which the assembly organizers and participants have had the opportunity to interact with one another and to communicate their message».*

A similar approach is taken by the UN Human Rights Committee in the General Comment No. 37. According to paragraph 54 of the General Comment No. 37, *«concerning restrictions on the time of assemblies, participants must have sufficient opportunity to manifest their views or to pursue their other purposes effectively. Peaceful assemblies should generally be left to end by themselves. Restrictions on the precise time of day or date when assemblies can or cannot be held raise concerns about their compatibility with the Covenant. Assemblies should not be limited solely because of their frequency. The timing, duration or frequency of a demonstration may, for example, play a central role in achieving its objective. However, the cumulative impact of sustained gatherings may be weighed in a proportionality assessment of a restriction. For example, certain assemblies held regularly at night in residential areas might have a significant impact on those living nearby».*

1.2.6. Planning and publicizing of an assembly

Paragraph 2.2 of the Guidelines (2nd edition) states that *«it is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the **state** should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also **ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded**».*

Moreover, the dissemination of such information does not depend on the notification or obtaining permission.

Paragraph 54 of the Guidelines (3rd edition) specifies that *«the planning and publicizing of an assembly are integral parts of the exercise of the rights to freedom of speech and assembly and should be facilitated and protected accordingly».*

«Given the presumption in favour of (peaceful) assemblies, organizers also have the right to publicize the holding of an assembly ahead of time, both on and offline. Because of their importance in people's everyday lives, the Internet and social media can be (and often are) used to discuss, prepare, organize and publicize assemblies» (Paragraph 55 of the Guidelines (3rd edition)).

More details of the same provisions are set out in General Comment No. 37. According to paragraphs 33 and 34 of General Comment No. 37: *«33. Article 21 and its related rights do not only protect participants while and where an assembly is ongoing. Associated activities conducted by an individual or by a group, outside the immediate context of the gathering but which are integral to making the exercise meaningful, are also covered. The obligations of States parties thus extend to actions such as participants' or organizers' mobilization of resources; planning; dissemination of information about an upcoming event; preparation for and travelling to the event; communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and leaving the assembly afterwards. These activities may, like participation in the assembly itself, be subject to restrictions, but these must be narrowly drawn. Moreover, no one should be harassed or face other reprisals as a result of their presence at or affiliation with a peaceful assembly».*

«34. Many associated activities happen online or otherwise rely upon digital services. Such activities are also protected under Article 21. States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies. The same applies to geotargeted or technology-specific interference with connectivity or access to content. States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression».

According to international standards, discussing and planning peaceful assemblies is protected by the guarantees as stipulated in Article 19 of the ICCPR on the right to freedom of speech and expression and may not be restricted, except as expressly provided for in international law.

Therefore, the authorities may not interfere with the process of communication on an upcoming assembly, including before the time a notification has been dispatched on such assembly, except for when an abuse of freedom of expression has been established and an actual threat to state or public security, public order, public health and morals, or rights and freedoms of others, has been identified.

1.2.7. Journalists and monitors

Paragraphs 5.9-5.10 of the Guidelines (2nd edition) highlight the role of monitors and the media in peaceful assemblies: *«The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law-enforcement officials. This information may be used to inform public debate and, usefully, can also serve as the basis for dialogue among government, local authorities,*

law-enforcement officials and civil society. NGOs and civil society organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies...

The role of the media as a public watchdog is to impart information and ideas on matters of public interest – information that the public also has a right to receive. Media reports can thus provide an otherwise absent element of public accountability for both organizers of assemblies and law-enforcement officials. Media professionals should, therefore, be guaranteed as much access as is possible to an assembly and to any related policing operation».

The right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression). In this regard, the safeguards guaranteed to the media are particularly important. However, freedom to monitor public assemblies should not only be guaranteed to all media professionals but also to others in civil society, such as human rights activists, who might be regarded as performing the role of social watchdogs and whose aim is to contribute to informed public debate.

Monitors are defined as non-participant third-party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. Independent monitoring may be carried out by local NGOs, human rights defenders, domestic ombudsman offices or national human rights institutions; or by international human rights organizations or intergovernmental networks (such as the Council of Europe, the OSCE or the UN Office of the High Commissioner for Human Rights). Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly (Paragraphs 199-201 of the Guidelines (2nd edition)).

Similar provisions are contained in paragraph 30 of General Comment No. 37 and paragraphs 34, 178, 189-212 of the Guidelines (3rd edition).

As noted in paragraph 30 of General Comment No. 37, *«the role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor. It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies».*

It should be noted that paragraph 189 of the Guidelines (3rd edition) states that *«state authorities and law enforcement personnel should be aware of the work of these different actors and of the need to facilitate such work as part of the wider process of protecting the right to peaceful assembly».*

There is no formal requirement for monitors (third party actors) to be readily identifiable or to make themselves known to the relevant authorities at an assembly, but being distinctively visible or having a means of identification may be useful if the third party actors wish to distinguish themselves from the general body of participants or request special treatment, such as access to specific areas or to cross through police lines (Paragraph 190 of the Guidelines (3rd edition)). This may take a highly visible form through wearing some type of identifiable clothing (vests), or may involve monitors carrying an identification card that can be produced on demand, or both (Paragraph 206 of the Guidelines (3rd edition)).

Today, the production and distribution of news is widely dispersed, as technology has made it possible for a variety of people and organizations to perform journalistic acts and roles. The respect for and protection of journalists should therefore not be limited to those formally recognized as journalists, but should cover *“community media workers and citizen journalists and others who may be using new media as a means of reaching their audiences.”* Moreover, *“the function of the press includes the creation of forums for public debate, ... and the realisation of this function is not limited to the media or professional journalists”* (Paragraph 195 of the Guidelines (3rd edition)).

No media credentials should be required to access or cover an assembly except where space is limited, in which case the accrediting criteria must be broad enough to account for the growing scope of media actors. The criteria must not be developed or applied by a state entity; rather, they should be applied by a body that is independent from Government and other state bodies (Paragraph 196 of the Guidelines (3rd edition)).

Journalists and monitors are observers of, rather than participants in, an assembly, therefore, dispersal orders should not oblige monitors to leave the area, unless their individual safety is endangered. Monitors should not be prevented from observing and recording a policing operation, unless their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work. In such cases, journalists and monitors should be given clear instructions, and if they refuse to comply with a lawful dispersal order, the police may respond in a proportionate manner (Paragraphs 202, 208 of the Guidelines (3rd edition)).

1.2.8. Restrictions on the right of peaceful assembly, use of force

Paragraphs 36-59 of the General Comment No. 37 set out in sufficient detail the principles for establishing restrictions on the right to freedom of assembly.

While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions. Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in Article 21. Where this onus is not met, Article 21 is violated. The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.

The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.

The second sentence of Article 21 provides that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed in conformity with the law. This poses the formal requirement of *legality*, akin to the requirement that limitations must be “provided by law” in other articles of the Covenant. Restrictions must thus be imposed through law or administrative decisions based on law. The laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.

Article 21 provides that any restrictions must be “*necessary in a democratic society*”. Restrictions must therefore be *necessary* and *proportionate* in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient. Such restrictions must be appropriate responses to a pressing social need, relating to one of the permissible grounds listed in Article 21. They must also be the least intrusive among the measures that might serve the relevant protective function. Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.

The last part of the second sentence of Article 21 sets out the legitimate grounds on which the right of peaceful assembly may be restricted. ***This is an exhaustive list, consisting of the following grounds: the interests of national security; public safety; public order (ordre public); the protection of public health or morals; or the protection of the rights and freedoms of others.***

For the protection of “*public safety*” to be invoked as a ground for restrictions on the right of peaceful assembly, it must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property.

“*Public order*” refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly. States parties should not rely on a vague definition of “*public order*” to justify overbroad restrictions on the right of peaceful assembly. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. “*Public order*” and “*law and order*” are not synonyms, and the prohibition of “*public disorder*” in domestic law should not be used unduly to restrict peaceful assemblies.

The protection of “*public health*” may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during an assembly presents a substantial health risk to the general public or to the participants themselves.

Restrictions imposed for the protection of “*the rights and freedoms of others*” may relate to the protections under the Covenant or other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.

As far as restrictions on the *manner* of peaceful assemblies are concerned, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments or other technical means, such as projection equipment, to convey their message. Assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.

In general, States parties should not limit the number of participants in assemblies. Any such restriction can be accepted only if there is a clear connection with a legitimate ground for restrictions as set out in Article 21, for example where public safety considerations dictate a maximum crowd capacity for a stadium or a bridge, or where public health considerations dictate physical distancing.



It should also be noted that international standards contain requirements for the behaviour of law-enforcement agencies during peaceful assemblies and conditions for the possible use of force.

Paragraphs 5.3-5.5 of the Guidelines (2nd edition), in particular, note: «**The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards.** In particular, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way...

If a stand-off or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – although not always successful – can serve as a preventive tool to help avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force...

The use of force must be regulated by domestic law, which should set out the circumstances that justify its use (including the need to provide adequate prior warnings) and the level of force acceptable to deal with various threats. Governments should develop a range of responses that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed...

If the force used is not authorized by law, or more force was used than necessary in the circumstances, law-enforcement personnel should face civil and/or criminal liability, as well as disciplinary action. Law-enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law-enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted».

Paragraph 108 of the Guidelines (2nd edition) further recommends: «*The role of the police or other law-enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law-enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be just as rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient. In such circumstances, it will be appropriate for other civil authorities (such as an ombudsman's office) to have an oversight role in relation to the policing operation, and law-enforcement personnel should be accountable to an independent body. Furthermore, ... unduly broad discretionary powers afforded to law-enforcement officials may breach the principle of legality, given the potential for arbitrariness. The detention of participants during an assembly (on grounds that they have committed administrative, criminal or other offences) should meet a high threshold, given the right to liberty and security of person and the fact that any interference with freedom of assembly is inevitably time sensitive. Detention should be used only in the most pressing situations, when failure to detain would result in the commission of serious criminal offences».*

However, according to paragraphs 171-174 of the Guidelines (2nd edition): «*The inappropriate, excessive or unlawful use of force by law-enforcement authorities can violate fundamental freedoms and protected rights, undermine police-community relationships, and cause widespread tension and unrest. The use of force should, therefore, be regulated by domestic law. Such provisions should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings) as well as the level of force acceptable to deal with various threats...*

Governments should develop a range of means of response that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations... This, again, emphasizes the requirement that the state provide adequate resources for its law-enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly...

International standards give detailed guidance regarding the use of force in the context of dispersal of both unlawful, non-violent and unlawful, violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials³⁷ provide that “in the dispersal of assemblies that are unlawful but non-violent, law-enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.” The UN Basic Principles also stipulate that “in the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary...»...

When assessing the use of force by law-enforcement officials, the European Court of Human Rights has applied the evidential standard, beyond reasonable doubt. The burden of proof rests on the Government to demonstrate with convincing arguments that the use of force was not excessive, and proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. What will be judged to be a reasonable action or reaction requires an objective and real-time evaluation of the totality of circumstances».

Similar provisions with respect to restrictions and grounds for the use of force according to international standards are contained in paragraphs 28-32, 164-188 of the Guidelines (3rd edition). It is necessary to separately note the provisions contained in several paragraphs of the Guidelines (3rd edition).

Paragraph 170, in particular, specifies the **duty of the authorities to facilitate peaceful assemblies that do not have identified organizers**. As noted in this paragraph, “*while most assemblies have one or more individuals organizing the event, an identifiable organizer is not always part of the planning of an assembly. Assemblies should be facilitated by police whether they have a formal or named organizer or not. The increased use of social media allows assemblies to be organized in a more informal manner but the absence of an identifiable organizer does not diminish the protection afforded by the right to freedom of assembly to all expressive gatherings. Where there are no formal organizers of an assembly, public communication tools such as the media and social media can be used to inform participants about the police’s preparations to facilitate the event. In such cases the authorities should communicate with all participants in an assembly through clear and audible statements, amplified by bullhorns or other sound equipment if necessary.*”

Paragraph 171 specifies the **duty of the authorities to facilitate assemblies without advance notification or that deviate from the terms of notification**. “*The authorities must take reasonable and appropriate measures to facilitate assemblies that are convened at short notice or in response to an urgent or emerging situation (including spontaneous assemblies, flash mobs and non-notified assemblies) as long as they are peaceful in intent and execution. The European Court of Human Rights has stated that “a decision to disband assemblies solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction of freedom of peaceful assembly.” The same applies if a small assembly is scheduled to take place and ends up being larger than expected due to an unexpectedly high turnout or continuing past the agreed or specified time for the ending of the assembly.*”

The European Court of Human Rights has noted that “*State authorities shall take reasonable steps within the scope of their powers to prevent criminal offences of which they had or ought to have had knowledge.*” At the same time, as set out in paragraph 140 of the Guidelines (3rd edition), the ECHR has found that this “*does not permit a state to protect individuals from criminal acts of a person by measures which are in breach of that person’s rights*”.

³⁷ Principles 13-14. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba, 27 August - 7 September 1990 // United Nations website. URL: https://www.un.org/ru/documents/decl_conv/conventions/firearms.shtml

It means that “preventive restrictions of individual rights are thus only possible in exceptional cases where there is a clear and present danger that a crime will be committed. States should always seek to ensure that any preventive intervention that negatively impacts on an individual’s right to freedom of peaceful assembly is based on objective evidence that without such intervention, the individual will commit a concrete and specific offence of significance (constituting, for example, actual violence or serious criminal damage). Preventive interventions should thus not be based exclusively on such factors as membership of an organization, previous activities that the individual may have been involved in, or mere general suspicion that someone may commit an offence, nor should they involve ‘bad faith or deception on the part of the authorities. Rather, they should only be carried out to deal with criminal activity that is likely to disrupt assemblies. Furthermore, states must not criminalize the exercise of the right to peaceful assembly (or certain forms thereof), and criminal provisions may not serve as a pretext to restrict or prohibit an assembly with a view to preventing such crimes. This also applies to administrative regulations, e.g. where assemblies were not duly notified.”

Paragraph 82 of the General Comment No. 37 states: «preventive detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. This is especially the case if detention lasts more than a few hours. Where domestic law permits such detention, it may be used only in the most exceptional cases, for no longer than absolutely necessary and only where the authorities have proof of the intention of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate. Practices of indiscriminate mass arrest prior to, during or following an assembly are arbitrary and thus unlawful».

According to paragraph 177 of the Guidelines (3rd edition) “**assembly participants should not be stopped, searched or detained en route to an assembly unless there is evidence of imminent violence or other serious crime.** The State should not intervene to prevent individuals from participating in an assembly, either by detaining them in advance, or by restricting access to the site of the assembly via physical or administrative obstacles, simply on the grounds of the possible commission of an offence. Unless a clear and present danger of imminent violence or of another crime can reasonably be deemed to exist, law enforcement officials should not intervene to stop, search and/or detain protesters en route to an assembly if there is no reason to believe that those participants are going to participate in the violence or crime.

The reason for the stopping, searching or detaining a participant should be particular to the person and not merely based on the fact that he or she is participating in an assembly. Exceptionally, in cases where there is evidence of probable violence, including evidence that a significant proportion of assembly participants may be armed, police control points may be set up on the way to assembly locations where participants may be searched for weapons. Relevant laws and operating procedures should outline the criteria for conducting searches in such situations and the legal and practical consequences in cases where weapons are found.”

Paragraph 35 of the Guidelines (3rd edition) notes that «law enforcement should as far as possible avoid the use of containment (a tactic often referred to as “kettling” or “corralling”) or mass arrests of participants at an assembly. Such indiscriminate measures may amount to an arbitrary deprivation of liberty under international human rights law. Clear and accessible protocols for the stop, search and arrest or detention of assembly participants must be established».

Finally, according to paragraph 179 of the Guidelines (3rd edition), “dispersal is not permissible unless there is an imminent threat of violence or where an assembly would otherwise be unlawful because it violates applicable criminal law and constitutes a serious violation of the rights of others, under circumstances in which prosecutions of demonstrators after the assembly is not a safer and more practicable alternative. Dispersal may at some point be deemed necessary in the interests of public order or health, depending on the size, location and circumstances of an assembly. Dispersal should not, however, occur unless law enforcement officials have previously made efforts to resolve a tense situation by reasonable, less invasive measures, and to facilitate and maintain the peaceful nature of an assembly.”

The same standards of conduct for law-enforcement officials are set out in paragraphs 78-80, 85-86 of the General Comment No. 37.

«Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give prior warning if it becomes absolutely necessary to use force, unless doing either would be manifestly ineffective.

Any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to Articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force. Domestic legal regimes on the use of force by law enforcement officials must be brought into line with the requirements enshrined in international law, guided by standards such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.

Only the minimum force necessary may be used where it is required for a legitimate law enforcement purpose during an assembly. Once the need for any use of force has passed, such as when a violent individual is safely apprehended, no further resort to force is permissible. Law enforcement officials may not use greater force than is proportionate to the legitimate objective of either dispersing an assembly, preventing a crime or effecting or assisting in the lawful arrest of offenders or suspected offenders.

Domestic law must not grant officials largely unrestricted powers, for example to use “force” or “all necessary force” to disperse assemblies, or simply to “shoot for the legs”. In particular, domestic law must not allow use of force against participants in an assembly on a wanton, excessive or discriminatory basis.

Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose. Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies. The military should not be used to police assemblies, but if in exceptional circumstances and on a temporary basis they are deployed in support, they must have received appropriate human rights training and must comply with the same international rules and standards as law enforcement officials».

«Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests. In all cases, the law enforcement rules on use of force must be strictly followed. Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly. An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.»

Where a decision to disperse is taken in conformity with domestic and international law, force should be avoided. Where that is not possible in the circumstances, only the minimum force necessary may be used. As far as possible, any force used should be directed against a specific individual or group engaged in or threatening violence. Force that is likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting».

It is also worth noting the General Comment No. 35 of the UN Human Rights Committee on arbitrary detention, according to which: *«17. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (Art. 19), freedom of assembly (Art. 21), freedom of association (Art. 22), freedom of religion (Art. 18) and the right to privacy (Art. 17)».*³⁸

³⁸ General comment No. 35 (2014). Article 9 (Liberty and security of person), paragraph 17 // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fGC%2f35&Lang=ru

Paragraph 2 of this document also notes that «an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality»³⁹.

1.2.9. The liability of organizers and participants of peaceful assemblies

International standards establish certain grounds and criteria for holding the organizers and participants of peaceful assemblies liable.

In particular, paragraph 5.7 of the Guidelines (2nd edition) defines: «Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or for the actions of non-participants or agents provocateurs. Instead, there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials».

According to paragraph 109 of the Guidelines (2nd edition), «the imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to or during an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent prosecution or other disciplinary action instead of by prior restraint».

Paragraph 171 notes that on several occasions «the Human Rights Committee and the European Court of Human Rights have found subsequent sanctions to constitute disproportionate interference with the right to freedom of assembly or expression. As with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should, therefore, allow for the imposition of minor sanctions where the offence concerned is of a minor nature».

According to paragraph 110-112 of the Guidelines (2nd edition), «anyone charged with an offence relating to an assembly must enjoy the right to a fair trial. All provisions that create criminal or administrative liability must comply with the principle of legality... Furthermore, organizers of and participants in assemblies should benefit from a “reasonable excuse” defence. For example, the organizer of an assembly should not face prosecution for either underestimating or overestimating the number of expected participants in an assembly if this estimate was made in good faith. Similarly, a participant in an assembly should not be held liable for anything done under the direction of a law-enforcement official or for taking part in an unlawful assembly if the participant was not aware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.

Individual participants in any assembly who themselves do not commit any violent act should not be prosecuted, even if others in the assembly become violent or disorderly. As stated in the decision in Ezelin v. France (1991), “it is not ‘necessary’ in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights.”

Organizers of assemblies should not be held liable for the failure to perform their responsibilities if they have made reasonable efforts to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizers did not intend or directly participate in. Holding the organizers of an event liable would be a manifestly disproportionate response, since this would imply that organizers are imputed to have responsibility for acts by other individuals (including possible agents provocateurs) that could not have been reasonably foreseen».

³⁹ Ibid.

Paragraph 198 talks about possible liability insurance: «*The organizers may wish to take out public-liability insurance for their event. Insurance, however, should not be made a condition of freedom of assembly, as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly. Moreover, if an assembly degenerates into serious public disorder it is the responsibility of the state – not the organizers or event stewards – to limit the damage caused. In no circumstances should the organizers of a lawful and peaceful assembly be held liable for disruption caused to others*».

As it appears from these international standards, the state, represented by the relevant authorities and officials, has an obligation to assist citizens in organizing and holding peaceful assemblies, and a responsibility to maintain public order and safety, just the same as they do in the case of sports and cultural events.

Accordingly, the organizers of peaceful assemblies, same as the organizers of sports or cultural events, are responsible for their own actions and not the actions of third parties, including participants in peaceful assemblies or provocateurs. In doing so, they should make reasonable efforts to ensure public order and safety, but only to the extent that directly falls within their area of competence and is commensurate with their capabilities.

It is also important to pay attention to the provisions of paragraphs 66-68 of General Comment No. 37: «**Authorities may not require pledges or undertakings from individuals not to organize or participate in future assemblies.** Conversely, no one may be forced to participate in an assembly.

Where criminal or administrative sanctions are imposed on organizers of or participants in a peaceful assembly for their unlawful conduct, such sanctions must be proportionate, non-discriminatory in nature and must not be based on ambiguous or over broadly defined offences, or suppress conduct protected under the Covenant.

While acts of terrorism must be criminalized in conformity with international law, the definition of such crimes must not be overbroad or discriminatory and must not be applied so as to curtail or discourage the exercise of the right of peaceful assembly. The mere act of organizing or participating in a peaceful assembly cannot be criminalized under counter-terrorism laws».

Paragraphs 36-37 of the Guidelines (3rd edition) state that «*penalties imposed for conduct occurring in the context of an assembly must be necessary and proportionate, since unnecessary, or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions may constitute an indirect violation of the freedom of peaceful assembly. **Offences such as the failure to provide advance notice of an assembly or the failure to comply with route, time and place restrictions imposed on an assembly should not be punishable with prison sentences, or heavy fines.***

Organizers and stewards should not be held liable where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently. Liability will only exist where organizers or stewards have personally and intentionally incited, caused or participated in actual damage or disorder».

1.3. Legal framework for ensuring the right to freedom of peaceful assembly in the Republic of Kazakhstan

Analysis of Kazakhstani laws, which regulate the right to freedom of peaceful assembly, shows that they fail, to a great extent, to comply with the principles and provisions of the international law, international standards and recommendations provided by international organizations and institutions based on the reports of the Republic of Kazakhstan on the implementation of international obligations within the framework of ratified international human rights treaties, and decisions of treaty bodies on individual complaints about violations of the right to freedom of peaceful assembly.

This concern both the Law on the procedure of organizing and conducting peaceful assemblies, rallies, marches, pickets and demonstrations in the Republic of Kazakhstan⁴⁰, which was in force until June 2020, and the new Law on the procedure of organizing and holding peaceful assemblies in the Republic of Kazakhstan⁴¹, as well as other legal acts on legal regulation of the freedom of peaceful assembly, as well as law enforcement practice.

The main objective of the regulation in both Kazakhstani laws, and law enforcement practice, as will be shown further, is law enforcement mainly against imaginary threats than securing and protecting the constitutional right to freedom of peaceful assembly.

The guarantees of the right to peaceful assembly in the Republic of Kazakhstan are set out in Article 32 of the Constitution of the Republic of Kazakhstan⁴²: *«Citizens of the Republic of Kazakhstan shall have the right to assemble peacefully and without weapons, hold meetings, rallies and demonstrations, marches and pickets. The use of this right may be restricted by law in the interests of state security, public order, and protection of health, rights, and the freedom of other persons»*.

In addition, Article 39 of the Constitution of the Republic of Kazakhstan⁴³ establishes: *«1. Rights and freedoms of an individual and citizen may be limited only by law and only to the extent necessary for the protection of the constitutional system, defence of public order, human rights and freedoms, and the health and morality of the population...»*.

Legal regulation of the freedom of peaceful assembly in the independent Kazakhstan began with a Decision of the Supreme Council of the Republic of Kazakhstan in 1992⁴⁴, continued on in the Law of the Republic of Kazakhstan “On The Procedure Of Organization Of Meetings, Rallies, Marches And Pickets” (the “1995 Law”), and is currently implemented in the form of a new law that was adopted in June 2020, “On The Procedure Of Organizing And Holding Peaceful Assemblies” (the “2020 Law”).

A number of norms pertaining to legal regulation of the freedom of peaceful assembly in the Republic of Kazakhstan are contained in the Law of the Republic of Kazakhstan on Internal Affairs Bodies of the Republic of Kazakhstan,⁴⁵ the Law of the Republic of Kazakhstan on the Fight against Extremism,⁴⁶ the Law of the Republic of Kazakhstan on Political Parties,⁴⁷ the Law of the Republic of Kazakhstan on Public Associations,⁴⁸ the Law of the Republic of Kazakhstan on Trade Unions,⁴⁹ the Code of the Republic of Kazakhstan on Administrative Offences,⁵⁰ the Criminal Code of the Republic of Kazakhstan,⁵¹ and the Regulatory Decision of the Supreme

⁴⁰ Law of the Republic of Kazakhstan No. 2126 dated 17 March 1995 “On The Procedure For Organizing And Holding Peaceful Assemblies, Meetings, Marches, Pickets And Demonstrations In The Republic Of Kazakhstan” as amended on 20.12.2004 // Legal Information System of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/U950002126_#z6.

⁴¹ Law of the Republic of Kazakhstan No. 333-VI ZRK dated 25 May 2020 “On The Procedure Of Organizing And Holding Peaceful Assemblies In The Republic Of Kazakhstan” // Legal Information System of Laws and Regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/Z2000000333>.

⁴² Constitution of the Republic of Kazakhstan, adopted at the Republican Referendum on 30 August 1995, amended on 23 March 2019, Article 32 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/K950001000_.

⁴³ Ibid.

⁴⁴ Decision of the Supreme Council of the Republic of Kazakhstan dated 4 July 1992 “On Ensuring The Implementation Of Legislation Governing The Procedure For Organizing And Holding Assemblies, Meetings, Marches And Demonstrations” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/B920005900_.

⁴⁵ Law of the Republic of Kazakhstan No.199-V of 23 April 2014 “On Internal Affairs Bodies Of The Republic Of Kazakhstan” as amended on 15.11.2020 r. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/Z1400000199>.

⁴⁶ Law of the Republic of Kazakhstan No. 31 of 18 February 2005 “On The Fight Against Extremism” as amended on 25.05.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet” URL: http://adilet.zan.kz/rus/docs/Z050000031_.

⁴⁷ Law of the Republic of Kazakhstan No.344 of 15 July 2002 “On Political Parties” as amended on 25.05.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z0200000344_.

⁴⁸ Law of the Republic of Kazakhstan No. 3 of 31 May 1996 “On Public Associations” as amended on 29.06.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z960000003_#z0.

⁴⁹ Law of the Republic of Kazakhstan No. 211-V ZRK of 27 June 2014 “On Trade Unions” as amended on 29.06.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/Z1400000211>.

⁵⁰ Code of the Republic of Kazakhstan on Administrative Offences of 5 July 2014, as amended on 16.11.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/K1400000235>.

⁵¹ Criminal Code of the Republic of Kazakhstan of 3 July 2014. Came into effect on 1 January 2015 as amended on 06.10.2020 r. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/K1400000226>.

Court of the Republic of Kazakhstan No. 7 of 6 October 2017 “On Certain Issues Of Application By Courts Of The Provisions Of The Special Part Of The Code Of The Republic Of Kazakhstan On Administrative Offences.”⁵² In addition, the duties of suppressing mass riots, ensuring public safety and protecting public order are entrusted to the National Guard of the Republic of Kazakhstan.⁵³

The by-pass laws regulating the freedom of peaceful assembly in Kazakhstan formerly included the Rules on the organization of the work of departments of internal affairs to ensure the protection of public order and safety of citizens when public associations hold events in the streets and other public places,⁵⁴ which were repealed in 2015, and the “Instructions on the organization of the patrol and guard service of the internal affairs of the Republic of Kazakhstan to ensure the protection of public order and security.”⁵⁵ What is noteworthy is that these Instructions were repealed by Order of the Minister of Internal Affairs of the Republic of Kazakhstan No. 53 dated 28 October 2013 which has not been published because of its status of “*for official use only.*” Accordingly, currently there is no information on what special normative legal acts the law enforcement agencies base themselves on in the process of ensuring public safety when citizens exercise their right to freedom of peaceful assembly.

But the most widespread legal regulation of peaceful assemblies within the limits of particular inhabited areas in terms of their location has been in the regulations issued by maslikhats (local legislatures). Over the past twenty years, several dozen regulations have been adopted by maslikhats to regulate the procedure for holding peaceful assemblies. In 2012-2016, this bulk of regulations was expanded on account of dozens new regulations issued by city and district maslikhats which provided for some additional regulation of the organization and holding of peaceful assembly within the relevant territorial units. These documents clarified the designated venues for peaceful assemblies and determined the procedure for their organization.⁵⁷ After the adoption of the 2020 Law, those regulations by the maslikhats started to be urgently replaced by regulations allocating specialized venues for peaceful assemblies.⁵⁸

In addition, in connection with the adoption of the 2020 Law, the Ministry of Information and Social Development of the Republic of Kazakhstan has drafted and adopted the Rules for activity carried out by a journalist (a representative of the mass media) while attending a peaceful assembly.⁵⁹

All these and other legal acts, which are essentially special sectoral legislation on peaceful assemblies, contain many restrictive rules that create, as it will be shown below, serious obstacles in the way of exercising this right, if international standards were to be followed.

⁵² Regulatory Decision of the Supreme Court of the Republic of Kazakhstan of 6 October 2017 No. 7 “On Certain Issues of Application by Courts of the Provisions of the Special Part of the Code of the Republic of Kazakhstan on Administrative Offences” as amended on 31.05.2019 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>.

⁵³ Law of the Republic of Kazakhstan No. 274-V ZRK of 10 January 2015 “On The National Guard Of The Republic of Kazakhstan” as amended on 10.04.2019 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/Z1500000274>.

⁵⁴ Order of the Minister of Internal Affairs of the Republic of Kazakhstan No. 665 of 6 December 2000 “On The Approval Of The Rules Of Organization Of Work Of The Departments Of Internal Affairs To Ensure Public Order And Safety When Public Associations Carry Out Events On The Streets And Other Public Venues”. No longer valid // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/V000001368_.

⁵⁵ Order of the Minister of Internal Affairs of the Republic of Kazakhstan No. 475 dated 5 July 2002 “On The Approval Of The Instructions For Organizing The Patrol And Guard Service Of Internal Affairs Of The Republic Of Kazakhstan To Ensure Public Order And Safety”. No longer valid. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/V020001938_.

⁵⁶ See, e.g.: Regulation of the XVII session of the Almaty city maslikhat of 29.07.2005 “Certain Issues Of Rational Use Of City Infrastructure”

⁵⁷ See, e.g.: Regulation of IV session of VI convention of the Karaganda city maslikhat No. 40 of 24 August 2016 “On The Additional Regulation Of The Procedure For Holding Peaceful Assembly, Meetings, Marches, Pickets And Demonstrations” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V16KA003950>.

⁵⁸ See, e.g.: Regulation of the Aktobe city maslikhat (Aktobe Oblast) of 12 August 2020 No. 575 “On Determining Specialized Venues For Organizing And Conducting Peaceful Assemblies, Procedure For Using Specialized Venues For Organizing And Holding Peaceful Assemblies, Norms For Their Maximum Occupancy, As Well As Requirements For The Material, Technical And Organizational Support Of Specialized Venues For Organizing And Conducting Peaceful Assemblies, And The Borders Of Adjacent Territories Where Pickets Are Prohibited In The City Of Aktobe” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V20CA007322>.

⁵⁹ Order of the Minister of Information and Social Development of the Republic of Kazakhstan of 14 August 2020 No. 279 “On The Approval Of The Rules Of Work Of Journalists (Representatives Of The Mass Media) While Attending Peaceful Assemblies, Distinctive Signs Of A Journalist” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V2000021094>.

1.3.1. Definition of assembly

Article 32 of the Constitution of the Republic of Kazakhstan guarantees the right to meetings, rallies and demonstrations, marches and pickets. Thus, in essence, the Constitution not only guarantees the right to peaceful assembly, but also defines its types. Further, the Kazakhstani legislation is developing along the same path of compiling an exhaustive list of types of peaceful assemblies.

Pursuant to Article 1 of the 1995 Law «*The forms of expression of public, group or personal interests and protest, referred to in the legislation as **assemblies, rallies, marches and demonstrations**, should also be understood as **hunger strike in public places, erection of yurts, tents, other structures and picketing**».*

That is, to the meetings, rallies, demonstrations, marches and pickets defined in the Constitution, the 1995 Law added a hunger strike in a public place, erection of yurts, tents and other structures.

Article 1 of the 2020 Law provides a conceptual framework regarding the definition of a peaceful assembly and its types, which are called forms:

«1) peaceful assembly means a public event which by its nature is peaceful, non-violent and unarmed, does not pose a threat to the security, public order, life, health, morality or rights and freedoms of citizens, and is held in the form of a meeting, rally and demonstration, marches and pickets, by the citizens of the Republic of Kazakhstan...»

5) demonstration means moving of a citizen or a group of citizens of the Republic of Kazakhstan at a certain time along a certain route in order to express publicly their opinion about the actions (of lack thereof) of individuals and/or bodies, organizations, and/or about socially important matters, including those with demands or without demands, whether or not using sound-amplifying technical means, placards, banners and other visual means, as well as means of transportation...»

7) assembly means a joint presence of citizens of the Republic of Kazakhstan in a certain place at a certain time for the purpose of public discussion, expression of opinion about the actions (or lack thereof) of individuals and/or bodies, organizations and/or about socially important matters;»

8) rally means presence of citizens of the Republic of Kazakhstan in a certain place at a certain time in order to express publicly their opinion about the socially important matters and/or actions (of lack thereof) of individuals and/or bodies, organizations, including those with demands or without demands, whether or not using sound-amplifying technical means, placards, banners and other visual means;...»

10) picketing means a presence of a citizen of the Republic of Kazakhstan in a certain place at a certain time for the purpose of a public expression of an opinion about actions (or lack thereof) of individuals and/or bodies, organizations, and/or socially important matters, whether or not using placards, banners and other visual means, without moving and using sound-amplifying technical means...»

12) march means a passage of a citizen or a group of citizens of the Republic of Kazakhstan without using means of transportation in order to express publicly their opinion about the actions (or lack thereof) of individuals and/or bodies, organizations, and/or socially important matters, at a specified time and along a specified route, including that with demands or without demands, and whether or not using sound-amplifying means, placards, banners and other visual means».

Article 10 of the 2020 Law mentions the possibility of erecting yurts, tents and other structures, but unlike the 1995 Law, this is no longer considered as an independent form of peaceful assembly, but, apparently, as an element of a meeting or rally.

It should be noted, first of all, that the approach adopted in the special legislation of Kazakhstan on peaceful assemblies which states that all types of peaceful assemblies require legal regulation is non-compliant with international standards even in this part, since it is impossible to determine all possible forms of expression of opinion by way of peaceful assembly and, accordingly, what form they will take. Therefore, the general approach under international law and international practice, is that all forms of expression and types of peaceful assembly are protected by Articles 19 and 21 of the ICCPR, while national legislation may narrowly define those types of assembly where some degree of regulation may be justified, while other types of assembly require no formal regulation altogether.

This means that not all types of peaceful assembly require regulation, even in the form of requirement of a notice, e.g. in the event of a picket or a rally with a small number of participants.

However, the current legislation of the Republic of Kazakhstan, essentially, does not consider as permitted any other types of peaceful assembly, except for those that are specified in the Law and for which a notification or application for permit needs to be provided or submitted.

A real-life example of this is the case of the Almaty city akimat denying, on 1 October 2020, to permit a peaceful assembly in response to a notification of an “artmob” and a “guidepark.” The akimat’s letter expressly stated, since there were no such forms of peaceful assembly listed in the Law on the procedure for organizing and holding peaceful assemblies in the Republic of Kazakhstan, that served as the reason for the denial.

It is noteworthy that at the same time, parts 5-7 of Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences⁶⁰ use the concept of “*another public event*” which does not meet the criteria of legal certainty and predictability, which, when organized and held “*in violation of the procedure established by the legislation of the Republic of Kazakhstan on the procedure for organizing and holding peaceful assemblies,*” will entail administrative liability, even though the 2020 Law does not have such a notion.

Generally, the 2020 Law definitions concerning the types of peaceful assembly do not fully meet the principle of legal certainty and predictability either.

The title of the 2020 Law contains the generic concept of “peaceful assembly,” while the text of the Law has the specific concept of “assembly,” i.e. the same word is used.

It is also unclear how an assembly in a public venue is different from a, simply, rally; besides, the definition of a rally states that it can be carried “*whether or not using sound-amplifying technical means, placards, banners and other visual means, with demands or without demands.*” However, if a rally is being held without technical means, banners and posters and without raising demands, then it is no different from an assembly, according to the relevant definition. By the way, there is no reasonable explanation as to why an assembly should not use technical means, banners and posters, and raise demands, or, at least, why it is not specified in the definition of an “assembly.”

Similarly, the distinction between a “*march*” and a “*demonstration*” is rather strange as well, where only a demonstration is permitted to use vehicles.

A very controversial is the definition of “*picketing*” adopted in the 2020 Law, which, in contrast to the internationally accepted definition of a picket being a small group of individuals, understands it to be only a single-person event. Accordingly, two or more people together are not considered to be a “*picket*” but, apparently, as a “*meeting*” or “*rally.*”

⁶⁰ Code of the Republic of Kazakhstan on Administrative Offences of 5 July 2014, as amended on 07.07.2020 r. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/K1400000235>.

It is useful to remember in this regard an excerpt from the Views of the UN Human Rights Committee dated 13 July 2017 in the case *A. Sviridov v. Republic of Kazakhstan*, which states: «*The Committee notes the author's claim that the restrictions imposed on him were not provided for by law, since expression by a single individual does not constitute a «demonstration». The Committee further notes the State party's position that although the concepts of “demonstration” and “public protest” are not defined in law, the author's conduct did constitute a “demonstration” for purposes of the law on the organization and conduct of peaceful assemblies, meetings, marches, pickets and demonstrations. Regardless of whether the author's conduct was prohibited by the domestic law, the Committee observes that the act of a single individual peacefully conveying a message regarding a reportedly unfair trial in a public place should not be subject to the same restrictions as those applying to an assembly*»⁶¹.

In other words, even though a form of expression such as a single-person picket is protected by Article 21 of the ICCPR in addition to being protected by Article 19 of the ICCPR, it should not be subject to any regulation or restriction.

Finally, according to international standards the state may not establish special objectives for an assembly, such as “*expression of opinion about the actions (or lack thereof) of individuals and/or bodies, organizations and/or about socially important matters*”, except for generalized objectives such as expression of public, group or individual interests. The purpose of an assembly may be, for example, to celebrate a national holiday or the results of a sport event, or to demonstrate a difference, or to express an unpopular or minority opinion. The issues raised by the organizers and participants of an assembly are not necessarily socially significant or concern the activity of specific bodies or organizations. In addition, the law does not need to specify the right of participants to raise or put forward any demands.

In general, the conceptual apparatus as used in the 2020 Law in relation to the definition of a peaceful assembly, and its types, requires serious review.

1.3.2. Subjects of the right to peaceful assemblies

In the 1995 Law, «*representatives of labour collectives, public associations or individual groups of citizens of the Republic of Kazakhstan who have reached the age of eighteen*» have the right to file an application to hold a meeting, rally, march, picket or demonstration. In other words, the right to a peaceful assembly was viewed not as an individual one, which is the case under the ICCPR, but as a group right, and because of that a question would often arise as to how to organize a single-person picket without an application from a group of individuals.

In paragraphs 2 and 4 of Article 1 of the 2020 Law, only citizens of the Republic of Kazakhstan are defined as subjects of the right to peaceful assembly, and only an adult, a group of persons or a legal entity can be the organizer of a peaceful assembly.

Prohibiting foreigners, stateless persons and refugees from organizing and participating in peaceful assemblies is in direct conflict with international standards, including the Guidelines (2nd and 3rd editions). The right to peaceful assemblies is guaranteed not only to citizens of Kazakhstan, but also to foreign citizens, stateless persons and refugees. This follows from the international human rights treaties ratified by the Republic of Kazakhstan, including the International Covenant on Civil and Political Rights.

There is General Comment No. 15 of the UN Human Rights Committee to the ICCPR on the position of aliens, paragraph 7 of which notes: «*Aliens receive the benefit of the right of peaceful assembly and of freedom of association*»⁶². Given that in Kazakhstan foreigners have the right to join public associations and trade

⁶¹ A. Sviridov v. Republic of Kazakhstan, CCPR/C/120/D/2158/2012, adopted 13 July 2017 // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F120%2FD%2F2158%2F2012&Lang=en

⁶² General Comment No. 15 (1986): The Position of Aliens Under the Covenant, paras. 1–2; and CCPR/C/KWT/CO/3, para. 42 // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://www2.ohchr.org/english/bodies/icm-mc/docs/8th/hri.gen.1.rev9_ru.pdf

unions which, in turn, have the right to organize peaceful assemblies, this prohibition seems illogical. The international law provides for a restriction on foreigners, e.g. Article 25 of the ICCPR, to the effect it is only citizens who have the right to participate in country governance, e.g. in political parties, elections, etc. For this reason, foreigners may only be prohibited from organizing and participating in the meetings of political parties in pursuit of political objectives, or in election campaigns.

Besides, paragraph 1 of Article 15 of the Convention on the Rights of the Child, which has been ratified by the Republic of Kazakhstan, guarantees children the right to peaceful assembly. This may be regulated depending on the development of the child, but it may not be prohibited.

These inconsistencies with the provisions of the 2020 Law in relation to subjects of the right to peaceful assembly were pointed out by the UN Special Rapporteur on the right to freedom of peaceful assembly and of association, Clement Nyaletsossi Voule, in his letter addressed to President Tokayev regarding the draft law on peaceful assemblies sent to the Mazhilis of Parliament (the «Letter of C.N. Voule, the UN Special Rapporteur»): «*The draft law foresees that only citizens of Kazakhstan can be the organizers and participants of assemblies. This proposed provision violates the principle of non-discrimination of article 2 para. 1 of the ICCPR, which also applies to freedom of assembly. Furthermore, the draft law requires all organizers to be at least 18 years old. This violates the rights of children to organize assemblies (Art. 15 of the Convention of the Rights the Child)*».⁶³

Similar comments are contained in the Joint Opinion on the compliance of the Draft Law “On The Procedure Of Organizing And Holding Peaceful Assemblies” with the international obligations of the Republic of Kazakhstan in the field of human rights, prepared by Sarah H. Cleveland⁶⁴, a leading international expert, Professor of Human Rights and Constitutional Rights at Columbia University School of Law, Former Vice-President and Member of the UN Human Rights Committee (2015-2018), Former Member of the European Commission for Democracy through Law of the Council of Europe (the Venice Commission) (2013-2019), Member of the International Commission of Jurists, Member of the Council of the International Bar Association’s Human Rights Institute on behalf of the International Bar Association’s Human Rights Institute, the International Commission of Jurists and the Centre for Civil and Political Rights (the “Joint Opinion of IBAHRI and ICJ”): «*Articles 1 and 14 of the Draft Law guarantee the right to peaceful assembly only to citizens of Kazakhstan. Article 1 limits the definitions of organizers, participants, and all assemblies to citizens of Kazakhstan. Non-citizen organizers and participants fall entirely outside the protection of the Draft Law. ... This restriction is flatly contrary to human rights law. Article 2 paragraph 1 of the ICCPR obligates each State party to respect and ensure the rights in the Covenant to “all individuals within its territory and subject to its jurisdiction” (emphasis added). The Human Rights Committee has made clear that “in general, the rights set forth in the Covenant apply to everyone, . . . irrespective of his or her nationality or statelessness.” Specifically, “aliens receive the benefit of the right of peaceful assembly and of freedom of association...».*⁶⁵

Thus, we note once again that the provisions of the 2020 Law that prohibit foreigners, stateless persons and refugees from organizing and participating in peaceful assemblies, as well as minors from organizing peaceful assembly, are in contradiction with international standards and violate the international obligations of the Republic of Kazakhstan.

⁶³ Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. REFERENCE: OL KAZ 1/2020. 21 April 2020 // Website of the Office of the United Nations High Commissioner for Human Rights.

URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25194>
(unofficial translation into Russian by the Kazakhstan International Bureau for Human Rights and the Rule of Law)

⁶⁴ Sarah H. Cleveland “International Bar Association’s Human Rights Institute, the International Commission of Jurists and the Centre For Civil and Political Rights Joint Opinion on Compliance of the Draft Law on the Procedure for Organizing and Holding Peaceful Assemblies with the Republic of Kazakhstan’s Human Rights Obligations”, 1 May 2020 // Website of the International Commission of Jurists.

URL: <https://www.icj.org/wp-content/uploads/2020/05/Kazakhstan-Assembly-Law-Opinion-Advocacy-2020-ENG.pdf>

⁶⁵ UNHRC, General Comment No. 15: The Position of Aliens Under the Covenant (1986), paras. 1, 7.

1.3.3. Notification or authorization

The 1995 Law established an exclusively permissive principle for organizing and holding peaceful assemblies. Pursuant to Article 3 of the 1995 Law: «*An application for holding a meeting, rally, march, picket or demonstration shall be submitted in writing no later than 10 days before the scheduled date of their holding*», and according to Article 4: «*The **local executive body** of the city of republican significance, the capital, district (city of regional significance) considers the application and **informs** the authorized people (organizers) of the **decision made** no later than five days before the time of the event specified in the application*».

In addition, Article 3 of the 1995 Law provided an exhaustive list of requirements for the content of an application for permission to hold a peaceful assembly: «*The application shall indicate the purpose, form, location of the event or routes, the time of its start and finish, the estimated number of participants, surnames, names, patronymics of authorized (organizers) and persons responsible for maintaining public order, their place of residence and work (study), date of application*».

The 2020 Law establishes a mixed procedure for organizing and holding peaceful assemblies: notification - for meetings, pickets and rallies and authorization - for marches and demonstrations.

In paragraphs 9) and 11) of Article 1 of the 2020 Law, this is defined as:

«... 9) authorization means a document issued by a local executive body to peaceful assemblies being held in the form of demonstrations, marches; ...

11) notification means a prior notification submitted by the organizer to the local executive body of a planned peaceful assembly in designated areas, to be held in the form of pickets, meetings and rallies».

The procedure for submitting a notification of a meeting, picket or rally is established in paragraph 1 of Article 10 of the 2020 Law: «*A notification of a peaceful assembly in the form of a picket, meeting, rally ought to be submitted by the organizer of peaceful assemblies to the local executive body on a paper carrier or as an electronic document certified with an electronic digital signature, not less than five working days prior to the date of the assembly*». And in paragraph 1 of Article 11, it is determined how the local executive body should react to a notification: «*...within three business days of the date of registration of the notification of a peaceful assembly, inform the organizer as follows:*

1) *that the picket, meeting, rally may proceed without yurts, tents or other structures being erected, and without use of sound-amplifying technical means;*

2) *that the picket, meeting, rally may not proceed on the grounds set out in Article 14 of this Law;*

3) *an alternative place and/or time for holding the picket, meeting, rally is proposed to ensure the protection of rights and freedoms of citizen, national security, uninterrupted functioning of public transport, infrastructure, safety of green spaces and small architectural forms, as well as other property.*

If no response is received from the local executive body within the timeframe of review of the notification, the organizer shall proceed and hold the peaceful assembly as specified in the notification given».

Therefore, essentially this notification procedure for holding assemblies, pickets and rallies is similar to the permitting procedure, because the organizers of a peaceful assembly must wait three working days for the local executive body to respond to the notification, which it can inform of the event to be held (which is not legally a permit or agreement, but sort of a positive reaction in a sense), or it may remain silent (which also seems to be a positive reaction), or it may refuse to permit the event to be held.

In addition, in paragraph 3 of Article 10 of the 2020 Law, the list of requirements for the content of the notification has been significantly expanded, and a notification should now specify:

«...1) the purpose of a peaceful assembly;

2) the form of a peaceful assembly;

3) surname, name, patronymic (if any), individual identification number, place of permanent or temporary residence of the citizen of the Republic of Kazakhstan - organizer of a peaceful assembly or his/her representative (if any) in the case of an individual, or name, business identification number, and registered address in the case of a legal entity;

4) the specially designated place for organizing and holding the peaceful assembly, and location for pickets;

5) the date, the time the peaceful assembly will start and will end;

6) the anticipated number of participants;

7) information on whether yurts, tents of other structures will be erected;

8) intent to use sound-amplifying technical means, placards, banners and other visual aids in cases stipulated by this Law;

9) the order in which the peaceful assembly will be held, as approved by the organizer, except for pickets;

10) email address, mobile phone number of the organizer of a peaceful assembly or his/her representative (if any);

11) consent of the organizer of a peaceful assembly, his/her representative (if any) for his/her personal information as specified in the notification to be collected and processed;

12) the sources of financing of the peaceful assembly;

13) the date on which the notification of the peaceful assembly was submitted, and the signature of the organizer or his/her representative (if any).»

Articles 12 and 13 of the 2020 Law establish a procedure for the submission and contents of an application requesting authorization of a march and demonstration, which is similar to the procedure and requirements pertaining to a notification. At the same time, in the case of a march or demonstration, deadlines for filing and review of application are extended. An application for an authorization for a peaceful assembly in the form of a demonstration or marches is to be submitted not later than ten business days before the event, and is reviewed within seven business days. Based on the results of the review, the local executive body may give its authorization to the demonstration, march, agree to it being held without sound-amplifying technical means, vehicles, or suggest that the route or venue for the event be changed, or it may refuse its authorization.

In addition, an application for authorization should also indicate the route of the participants will be taking, the measures to ensure public order, arrange for medical assistance, fire safety, an intention to use sound-amplifying equipment, placards, banners and other visual aids, or vehicles, and if necessary, the total number and categories of vehicles, their travel route, including the distance to be covered, starting point and finish point of the route.

From the point of view of compliance with international standards and best foreign practices, the forms of submitting notifications and applications for authorization to certain types of peaceful assembly as stipulated in the 2020 Law seem to be excessively detailed and bureaucratic. The forms should be as simple as possible and should specify the way in which the organizer or initiator of a peaceful assembly can be contacted.

For instance, there is no need to draft and submit directions for how the assembly will be conducted. The organizers and participants will decide on how to conduct their assembly on their own; besides, the order of speeches or any other steps of an assembly may change during the event. As long as it has a peaceful character, the authorities should not interfere with it in any way: neither before nor during the assembly.

It is unclear how the law enforcement officials imagine the duties to ensure public order, arrange for medical care, fire safety, etc.? Those are all things that law enforcement agencies and special government services are responsible for.

In our opinion, the notification should only indicate:

- 1) the purpose of the peaceful assembly;
- 2) the form of the peaceful assembly;
- 3) place (places) of the peaceful assembly, the route the participants will be taking;
- 4) date, time of commencement and end of the assembly;
- 5) anticipated number of participants of the peaceful assembly;
- 6) an intention to use sound-amplifying equipment during the peaceful assembly;
- 7) contact details;
- 8) date of notification.

In his letter C.N. Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, presented his broad comments on a notification or an application for authorization in the 2020 Law (at the stage of discussion of the draft law): *«With regards to the notification process, whereby depending on the type of assembly, ten or five days prior notice is required, I would like to recall that notification procedures should be subject to a proportionality assessment and their objective should be solely to facilitate the exercise of the right to freedom of peaceful assembly, to protect public safety and order and to facilitate the rights of others.*

Notification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal. In addition, notification process, may have the end result of inhibiting spontaneous demonstrations.

Furthermore, the notification process in the draft law seems to be a de facto pre-approval procedure, as the authorities can refuse the permission to hold the planned assembly and on very broad grounds. I would thus like to remind your Excellency's Government that where a notification system is in place, it must facilitate peaceful assembly, and must not operate as a de facto requirement for prior authorization.

I wish to underscore that failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for the dispersal of an assembly. I further note that this applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organizer exists. In the event of failure to notify authorities of a demonstration, the organizers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment. The requirement of prior notification must not be confused with the requirement of prior authorisation granted as a matter of discretion, which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.

The draft law makes a distinction between pickets, assemblies and rallies, which need a notification; and demonstrations and marches, which need authorization. Freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities.»⁶⁶

⁶⁶ Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. REFERENCE: OL KAZ 1/2020. 21 April 2020 // Website of the Office of the United Nations High Commissioner for Human Rights. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25194>

Similar comments are contained in the Joint Opinion of IBAHRI and ICJ, in particular: «Articles 10 and 12 of the Draft Law require the organizers of all peaceful assemblies to pursue burdensome prior notification or approval procedures, respectively, depending on the type of assembly. Organizers must submit detailed notification information five working days in advance of any assemblies, rallies and pickets, as defined in the law. For marches and demonstrations, organizers must seek prior approval 10 working days in advance. The Articles require persons providing notification or seeking authorisation of an assembly to provide an extensive list of information, including **“the purpose”, “form”, “anticipated number of participants”, “the sources of financing of the peaceful assembly”** etc. Authorization requests must also indicate **“measures that will be taken to ensure public order, provide medical assistance, fire safety”** and **“the total number and categories of means of transportation”**».

Under Article 15, before the time period for review of the notification or request for approval expires, it is illegal even to publicly talk about the assembly. Finally, even the notification procedure appears to function as a de facto approval requirement, as the Draft Law establishes extremely broad grounds on which the state may prohibit any assembly, including technical failure to comply the application requirements, as discussed below.

Separately and in combination, these requirements impose excessive restrictions on freedom of peaceful assembly, contrary to article 21. In particular, they are contrary to the principles that states should facilitate the freedom of peaceful assembly and that any restrictions on the right must be narrowly drawn»⁶⁷.

Finally, neither the 1995 Law nor the 2020 Law allow spontaneous peaceful assemblies.

This provision was pointed out at the stage of discussion of the draft law by C.N. Voule, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: «notification process may have the end result of inhibiting spontaneous demonstrations».

IBAHRI and ICJ have noted in their Joint Opinion⁶⁸: «The Draft Law does not allow for any assemblies that are not notified or authorized in advance. Spontaneous assemblies therefore are prohibited -- a restriction that is contrary to article 21.

The Human Rights Committee previously has found that punishing a participant in an assembly that was peaceful but unauthorized, and the failure to allow spontaneous assemblies, violated Kazakhstan's human rights obligations.⁶⁹

Likewise, in *Popova v. Russian Federation*⁷⁰, the Committee found that the administrative arrest and fine of an individual for participating in a spontaneous peaceful demonstration that was not notified under domestic law violated article 21. The Committee stated: while a system of prior notices may be important for the smooth conduct of public demonstrations, their enforcement cannot become an end in itself. Any interference with the right to peaceful assembly must still be justified by the State party in the light of the second sentence of article 21. This is particularly true for spontaneous demonstrations, which cannot by their very nature be subject to a lengthy system of submitting a prior notice. (Para. 7.5).»

These opinions of leading international experts indisputably indicate the inconsistency of these provisions of the 2020 Law with international standards.

⁶⁷ Sarah H. Cleveland “International Bar Association’s Human Rights Institute, the International Commission of Jurists and the Centre For Civil and Political Rights Joint Opinion on Compliance of the Draft Law on the Procedure for Organizing and Holding Peaceful Assemblies with the Republic of Kazakhstan’s Human Rights Obligations”, 1 May 2020 // Website of the International Commission of Jurists.
URL: <https://www.icj.org/wp-content/uploads/2020/05/Kazakhstan-Assembly-Law-Opinion-Advocacy-2020-ENG.pdf>

⁶⁸ Ibid.

⁶⁹ *Abildayeva v. Kazakhstan* (2019), para. 8.7 (“The State party has also failed to demonstrate why spontaneous assemblies are not protected.”).

⁷⁰ *Popova v. Russian Federation*, CCPR/C/122/D/2217/2012 (2018).

1.3.4. Place and time of peaceful assemblies

Article 5 of the 1995 Law defined: «**Meetings, rallies, marches, pickets and demonstrations, as well as speeches by their participants, are held in accordance with the goals specified in the application, at a certain time and in a specified place**». Thus, such Law did not contain direct restrictions on the time and place of peaceful assemblies.

However, Article 10 of the 1995 Law extended wide powers on this matter to local authorities: «*Local representative bodies may additionally regulate the procedure for holding meetings, rallies, marches, pickets and demonstrations, considering local conditions and in accordance with the requirements of this Law*». Oblast, city and district maslikhats took full advantage of this opportunity, and in 2009—2016 virtually all maslikhats across the country had adopted regulations defining one or two places in the capital, city of national significance, Oblast and district centres in all Oblast and district centres, for peaceful assemblies to be held.

Those legislative provisions were harshly criticized by independent experts and international organizations as being in conflict with international standards and Kazakhstan's human rights obligations.

However, in the 2020 Law such approach has been given statutory recognition.

For example, according to sub-paragraph 3) of Article 1 of the 2020 Law «**specialy designated place for organizing and holding peaceful assemblies means a common-use area a route-to-follow designated by the local representative body of a city of national significance, the capital, district (city of regional significance) for holding peaceful assemblies**».

In accordance with paragraph 2 of Article 8 of the 2020 Law «*The local representative body of the city of national significance and the capital or district (city of regional significance) shall:*

- 1) determine the specially designated places for holding peaceful assemblies, the procedure for using the specially designated places for organizing and holding peaceful assemblies, their maximum capacity, as well as the requirements for technical and organizational support for organizing and holding peaceful assemblies;*
- 2) determine the boundaries of adjacent territories in which picketing is prohibited; ...».*

Article 9 of the 2020 Law contains specific legal provisions regarding the place and time of peaceful assemblies:

«1. Peaceful assemblies shall be held in specially designated places. No peaceful assemblies may be conducted in other places, except for pickets. No pickets may be held in locations set out in paragraph 5 of this Article.

2. When determining specially designated places for organizing and holding peaceful assemblies and the procedure for their use, appropriate attention should be paid to ensuring the objectives of the peaceful assembly could be met, they are located in central and other areas of administrative units, that the organization of the peaceful assembly provides convenience for all involved parties, that the organizers and participants can use the infrastructure, that the sanitary norms and rules are observed, and safety of the organizers and participants as well other parties is ensured.

In the central parts of districts in cities of national significance, the capital, as well as in the administrative centres of oblasts, the number of specially designated places for organizing and holding picketing, meetings or rallies shall be at least three.

...

4. A peaceful assembly may not begin earlier than nine o'clock in the morning and finish later than eight o'clock in the evening of the same day, local time of the administrative unit where the assembly is held.

5. *Pickets shall be prohibited:*

- 1) *where mass graves are located;*
- 2) *at the railroad, water, air and automobile transport facilities and adjacent territories;*
- 3) *in the areas adjacent to the military, national security and essential public infrastructure facilities;*
- 4) *in the areas adjacent to the residences of the President of the Republic of Kazakhstan, First President of the Republic of Kazakhstan – Elbasy;*
- 5) *in the areas adjacent to hazardous industrial facilities and other sites that require special safety procedure for their functioning;*
- 6) *on main railway networks, main pipelines, national electric grid, trunk communication lines, and adjacent territories.*

6. *A picket may not exceed two hours per day, at the same time at the same facility, except for specially designated places for organizing and holding peaceful assemblies».*

On the basis of Article 8 of the 2020 Law, during the summer of 2020 the maslikhats at all levels began issuing regulations allocating specialized venues for peaceful assemblies.

In particular, on 23 June 2020 in Almaty the city maslikhat issued a regulation to allocate the following venues for meetings and rallies:⁷¹

- the Mahatma Gandhi park with a maximum capacity of no more than 200 people;
- a square behind the Sary-Arka cinema, with a maximum capacity of no more than 500 people;
- the Shokan Valikhanov square, with a maximum capacity of no more than 1000 people.

The only route which marches and demonstrations were allowed to follow was the one from the Shokan Valikhanov square to the Mahatma Gandhi park, along Shevchenko street, with a maximum capacity of no more than 1000 people.

It is noteworthy that according to paragraph 2 of Article 9 of the 2020 Law: *«In the central parts of districts in cities of national significance, the capital, as well as in the administrative centres of oblasts, the number of specially designated places for organizing and holding picketing, meetings or rallies shall be at least three».*

Therefore, **Almaty**, a city which according to its administrative-territorial structure has eight districts, **must have had at least 24 specialized venues**—instead, at the time of writing, there have been only three venues allocated.

Moreover, under Article 1 of the 2020 Law, specialized venues must be allocated with due account for the norms of their maximum capacity. However, since the maximum possible number of participants the venue with the largest capacity, the Shokan Valikhanov Square, can accommodate, is 1000 people—while paragraph 1 of Article 9 of the 2020 Law prohibits peaceful assemblies in venues other than specialized ones—apparently the Almaty city maslikhat, by its regulation, has banned assemblies with the number of participants exceeding 1000, which is a violation of the 2020 Law which does not establish a maximum number of participants in a peaceful assembly. Similarly, marches and demonstrations with the number of participants exceeding 1000 people have been unlawfully prohibited.

But the main problem is still the way how the specialized venues are allocated for peaceful assembly.

These provisions of the 2020 Law (at the stage of discussion of the draft law) were pointed out in the letter of C.N. Voule, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association:

⁷¹ Regulation, adopted by the Extraordinary LXIII Session of the Almaty City Maslikhat of VI convention dated 23 June 2020 No. 462 “On Determining Specialized Venues And The Procedure For The Use Of Specialized Venues For Organizing And Holding Peaceful Assemblies In The City Of Almaty” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/V20R0001622>.

«Regarding the use of public space for assemblies, I am concerned about the very restrictive provisions in the draft law, which foresees that assemblies are only allowed in "Special Venues" established by the government or local parliaments (maslikhats). I would like to reiterate that assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic. Any use of public space requires some measure of coordination to protect different interests, but there are many legitimate ways in which individuals may use public spaces.

A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance. (A/HRC/31/66 para. 32). Access to public space means concretely that organizers and participants should be able to use public streets, roads and squares to conduct (static or moving) peaceful assemblies.

Spaces in the vicinity of iconic buildings such as presidential palaces, parliaments or memorials should also be considered public space, and peaceful assemblies should be allowed to take place in those locations.»⁷²

Similar criticism of these provisions of the 2020 Law (at the stage of discussion of the draft law) was caused by IBAHRI and ICJ, which was expressed in their joint opinion⁷³: *«This provision is excessively restrictive. A core feature of the right to freedom of assembly is the right to assemble at a time and in a location where one's message will be heard. As the Human Rights Committee has held in a case involving Kazakhstan, «the organizers of an assembly generally have the right to choose a location within sight and sound of their target audience». Any restriction on this right must be justified on a case-by-case basis under article 21».⁷⁴... Any restrictions on the location of assemblies must be the least restrictive means available consistent with these considerations».*

These opinions of leading international experts also indisputably indicate the inconsistency of these provisions of the 2020 Law with international standards.

1.3.5. Planning and publicizing of an assembly

The 1995 Law did not contain any provisions regulating discussions around organization, planning and communications of peaceful assemblies. Nevertheless, it has been a number of years that the citizens who discuss, including in social networks, matters around organization of a peaceful assembly, have been held administratively liable for organizing a peaceful assembly without a permission, because the authorities consider discussions around a peaceful assembly not as citizens exercising their right to freedom of speech and expression but instead as a phase in the process of organizing and holding an assembly. Moreover, people have been brought to administrative liability and subjected to penalties even when a peaceful assembly did not take place in the end.

Such an approach is supported by a provision in paragraph 16 of the Regulatory Decision of the Supreme Court of the Republic of Kazakhstan No. 7 dated 6 October 2017 "On certain issues of application by courts of the provisions of the Special Part of the Code of the Republic of Kazakhstan on Administrative Offences,"⁷⁵ which states the following: *"until a permit for holding a mass event has been issued, its organizer as well as other persons may not place in the media, the internet or other information networks any information on the date, venue and time of the purported assembly, and may not produce and distribute leaflets, posters and other similar materials that pertain to such an event. A violation of this provision by the event's organizer*

⁷²Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. REFERENCE: OL KAZ 1/2020. 21 April 2020 // Website of the Office of the United Nations High Commissioner for Human Rights.

URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25194>

⁷³Sarah H. Cleveland "International Bar Association's Human Rights Institute, the International Commission of Jurists and the Centre For Civil and Political Rights Joint Opinion on Compliance of the Draft Law on the Procedure for Organizing and Holding Peaceful Assemblies with the Republic of Kazakhstan's Human Rights Obligations", 1 May 2020 // Website of the International Commission of Jurists.

URL: <https://www.icj.org/wp-content/uploads/2020/05/Kazakhstan-Assembly-Law-Opinion-Advocacy-2020-ENG.pdf>

⁷⁴Suleimenova v. Kazakhstan (2019), para 9.4; Toregozhina vs. Kazakhstan (2019), para 8.4. See also Turchenyak et al. v. Belarus, CCPR/C/108/D/194 (2013), para 7.4.

⁷⁵Regulatory Decision of the Supreme Court of the Republic of Kazakhstan dated 6 October No. 7 "On certain issues of application by the courts of the provisions of the Special part of the Code of the Republic of Kazakhstan on Administrative Offences" as amended on 31 May 2019 // Legal information system of laws and regulations of the Republic of Kazakhstan "Adilet".

URL: <http://adilet.zan.kz/rus/docs/K1400000235>.

entails liability under part 3 Article 488 of the Code on Administrative Offences for violating the procedure for organizing a public event.”

In the 2020 Law, this restrictive approach has been more clearly defined. According to Article 4 “Organizing peaceful assemblies”, *“the organization of peaceful assemblies shall include:*

1) notifying the potential participants in the peaceful assemblies; ...

4) campaigning using any means not prohibited by the legislation of the Republic of Kazakhstan...”

And Article 15 “Campaigning” states:

“1. The organizer of a peaceful assembly and other citizens of the Republic of Kazakhstan shall have the right to freely campaign and disseminate information on the place and/or route-to-follow or time of the peaceful assembly, its objectives, as well as other information pertaining to its organization and holding, and use the symbols and illustrative materials that are not prohibited by the legislation of the Republic of Kazakhstan, and promote the participation in the peaceful assembly, after:

1) expiry of the timeframes for review of the notification of the peaceful assembly and application for authorization, or upon receipt of a decision of the local executive body...;

2) the organizer has given his/her consent to the change of the place and/or route-to-follow or time for the peaceful assembly...

2. Flyers, placards, announcements, mass media, telecommunications networks and other methods not prohibited by the legislation of the Republic of Kazakhstan, may be used in the campaigning.”

Thus, as a matter of fact, the current legislation prohibits, under the threat of administrative liability, any discussion and planning of a peaceful assembly until a relevant notification of an assembly, rally or picket is submitted, and either a positive response is received from a local executive body, or the deadline for providing such a response expires, or an application to hold a march or demonstration is submitted and a permit to hold it, is received.

Clearly, this violates the right to freedom of speech and expression, makes meaningful public debate impossible, and creates obstacles to effective planning and organization of peaceful assemblies.

This provision of the 2020 Law (at the stage of its discussion as a draft law) was drawn attention in the Joint Opinion of IBAHRI and ICJ: *«the prohibition on discussing an assembly prior to authorization or the review period for notification is contrary to obligations with respect to freedom of assembly, and also improperly restricts the freedom of expression and association. The Human Rights Committee has previously held that publicity for an upcoming assembly before notification has taken place cannot be penalized in the absence of a specific indication of what dangers would have been created by the early distribution of the information»*⁷⁶.

1.3.6. Journalists and monitors

The 1995 Law did not regulate in any way the activity of journalists and observers dispatched by public organizations to monitor peaceful assemblies. However, journalists covered peaceful assemblies and observers from human rights organizations monitored them in order to assess how the state ensures and protects the right to peaceful assembly. In a number of cases journalists and observers did get detained at the venue of the peaceful assembly along with its participants—however, with rare exceptions, the law enforcement agencies after checking and questioning did let them go and did not bring them to administrative liability for participating in an unauthorized peaceful assembly.

The 2020 Law does not mention any possible observers-monitors from civil society organizations, but it does have a special article that describes the work of journalists:

«Article 7. Work of a journalist (a mass media representative)

⁷⁶Sarah H. Cleveland “International Bar Association’s Human Rights Institute, the International Commission of Jurists and the Centre For Civil and Political Rights Joint Opinion on Compliance of the Draft Law on the Procedure for Organizing and Holding Peaceful Assemblies with the Republic of Kazakhstan’s Human Rights Obligations”, 1 May 2020 // Website of the International Commission of Jurists.

URL: <https://www.icj.org/wp-content/uploads/2020/05/Kazakhstan-Assembly-Law-Opinion-Advocacy-2020-ENG.pdf>

1. During a peaceful assembly, a journalist (a mass media representative) shall enjoy the rights as provided by the legislation of the Republic of Kazakhstan.

2. During a peaceful assembly, a journalist (a mass media representative) must:

1) not interfere with the lawful activity of the organizer and participants of the peaceful assembly, or that of the public officers, or employees of organizations;

2) not act in a way that interferes with the uninterrupted functioning of public transport, infrastructure, or endangers the safety of property, or impedes the free movement of citizens who do not take part in the peaceful assembly».

It is unclear why the legislation on peaceful assemblies should specify that a journalist should not “interfere with the lawful activity of the organizer and participants in the peaceful assembly, and the public officers, or employees of organizations” and “not act in a way that interferes with the uninterrupted functioning ...” This applies not only to journalists but all other citizens. Besides, it is unclear what specific “state bodies and organizations” are meant.

In general, there is no point in having such special prohibiting legal provisions with respect to certain categories of citizens. It should be sufficient to specify that it is prohibited to interfere with the organizers and participants while they exercise their right to peaceful assembly, and to provide administrative liability in the legislation on administrative offenses for such interference. Similarly, the legislation on administrative offenses and criminal legislation contain legal provisions on administrative or criminal liability for obstructing law enforcement officers from ensuring public order, and not only during peaceful assemblies.

Sub-paragraph 4 of Article 20 of the Law of the Republic of Kazakhstan on the Mass Media⁷⁷ provides that journalists have the right “to be present ... at peaceful meetings, as well as at other forms of expression of public, group and personal interests...” Not only it is unclear what other forms of expression of public, group and individual interests are discussed and by which legal act they are regulated, it makes one doubt whether a journalist should be granted any special right to attend peaceful meetings. Anyone has the right to attend a peaceful assembly, as an organizer, as a participant, observer or just an onlooker, as a participant in a counter-demonstration. There is no need to specifically stipulate this right for journalists.

Sub-paragraph 13-4 of Article 4-3 of the Law on Mass Media determines that the authorized body, which is the Ministry of Information and Social Development of the Republic of Kazakhstan, “approves the rules for the work of a journalist (a representative of the media) while attending a peaceful assembly, as well as distinctive identification marks of a journalist”

On this basis, the Ministry of Information and Social Development has developed the Rules for the work of a journalist (a representative of the mass media) while attending a peaceful assembly.⁷⁸ These Rules contain a whole list of requirements for journalists.

Thus, according to paragraphs 3-4 of the Rules:

“3. When carrying out work on collection, processing and drafting of messages and materials at peaceful meetings for the media, a journalist shall have his/her journalist license, and also carries one or more distinctive signs in the form as approved in accordance with subparagraph 13-4 of Article 4-3 of the Law.

4. To ensure the professional work of a journalist (interviews, briefings), the local executive body shall take measures to provide journalists with an operational press centre for the media in the following cases:

1) if the estimated number of participants in a peaceful assembly as declared in the notification of the peaceful assembly or in the application for approval of a peaceful assembly, drafted in accordance with Articles 10 and

⁷⁷Law of the Republic of Kazakhstan of 23 July 1999 No. 451-І “On The Mass Media” as amended on 29.06.2020 r. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: http://adilet.zan.kz/rus/docs/Z990000451_#z312

⁷⁸Order of the Minister of Information and Social Development of the Republic of Kazakhstan of 14 August 2020 No. 279 “On The Approval Of The Rules Of Work Of Journalists (Representatives Of The Mass Media) While Attending Peaceful Assemblies, Distinctive Signs Of A Journalist” // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/V2000021094>.

12 of the Law of the Republic of Kazakhstan dated 25 May 2020 “On the procedure for organizing and holding peaceful assemblies in the Republic of Kazakhstan” exceeds 200 people;

2) at the request of the media which has been submitted to the local executive body.

...

5. An operational press centre shall be the place (territory) that meets the following conditions:

1) it is marked by a tape;

2) it provides sufficient visibility for photo and video recording and interviews;

3) it is provided with power supply ...”

Aside from that, the Ministry of Information and Social Development approved the form of distinctive marks for journalists.

There is a great number of questions about these Rules, both general and specific. For instance, how did the developers come up with this number of 200 participants, if even the 2020 Law does not have such a number? How do they imagine an operational press centre that would be marked by a tape should be created and provided with power supply? What happens if a journalist does not have a distinctive mark or journalist pass? Nowadays, a great number of citizen journalists and bloggers have emerged who, while realizing their right to freedom of receiving and disseminating information, through social networks, including through live broadcasts, sometimes provide information to much larger audiences than the traditional media. The fact that they do not have a journalist pass or a distinctive mark should in no way restrict their right to do their work at peaceful assemblies while not participating in them. They are also afforded protection under Article 19 and 21 of the ICCPR.

Excessive regulation of social and professional activity only creates additional bureaucratic hurdles in the implementation of various rights and, therefore, should be subjected to a test of urgent need and proportionality.

1.3.7. Restrictions on the right of peaceful assembly, use of force

Article 7 of the 1995 Law, in addition to prohibiting peaceful assembly in certain places, defined the grounds for the prohibition «*if the purpose of their holding is incitement of racial, national, social, religious intolerance, class exclusivity, violent overthrow constitutional system, infringement on the territorial integrity of the republic, as well as violation of other terms of Constitution, laws and other regulations of the Republic of Kazakhstan*».

International standards provide for the possibility of restricting the right to freedom of peaceful assembly to ensure national (state) security or public safety, public order, protection of morality, morals and health of the population, protection of the rights and freedoms of others. Therefore, the broad interpretation of the grounds for restricting freedom of peaceful assembly, in the form of other violations of the Constitution, laws and other regulations of the Republic of Kazakhstan that do not meet the principle of legal certainty and predictability, is obviously not compatible with international standards.

In paragraph 2 of Article 2 of the 2020 Law, it is established that «*the right to freedom of peaceful assembly may not be restricted, except as permitted by this Law to protect the national security, public order, public health, protection of the rights and freedoms of other persons*».

However, further in Article 14 “Refusal to authorize the holding of peaceful assemblies” the number of grounds for refusing a peaceful assembly, first of, essentially recreates similar grounds provided in the 1995 Law and, secondly, introduces new grounds that clearly go beyond even those cases that are described in paragraph 2 of Article 2 of the 2020 Law.

For example, according to paragraph 1 of Article 14 «*the local executive body shall refuse to authorize the holding of a peaceful assembly if...:*

- 1) the object of the assembly is to force a violent change of the constitutional order of the Republic of Kazakhstan, violate the sovereign integrity of the Republic of Kazakhstan, undermine national security, incite social, racial, national, religious, class and tribal discord, violate other provisions of the Constitution, laws and other regulatory legal acts of the Republic of Kazakhstan;
- 2) the organizer of the peaceful assembly is the person specified in paragraph 6 of Article 5 of this Law;
- 3) there is a threat to public safety, public order, life and public health, protecting the rights and freedoms of others;
- 4) the organizer of the peaceful assembly has failed to observe the timeframe for giving notification of the peaceful assembly or making an application for authorisation as set forth by Article 10 and Article 12 of this Law;
- 5) an incomplete information as stipulated in paragraph 3 of Article 10 and paragraph 2 of Article 12 of this Law has been provided, or there is no signature of the organizer of the peaceful assembly or his/her representative (if any);
- 6) the documents presented have been found to be inaccurate or the documents, data and information necessary for holding the peaceful assembly have been found to be inconsistent with the requirements established by the legislation of the Republic of Kazakhstan;
- 7) the peaceful assembly is financed by:
 - individuals and/or legal entities included in the list of organizations and persons associated with the financing of proliferation of weapons of mass destruction, and/or list of organizations and persons associated with the financing of terrorism and extremism;
 - a legal entity whose activity has been suspended or prohibited in a manner prescribed by the legislation of the Republic of Kazakhstan;
 - foreign citizens, stateless persons and foreign legal entities;
- 8) in the cases referred to in paragraph 4 of Article 2, paragraphs 5 and 6 of Article 9 of this Law;
- 9) if the anticipated number of participants exceeds the maximum capacity of the specially designated place for organizing and holding peaceful assemblies;
- 10) if other official, cultural, entertainment, recreational, sports and other events or construction activities take place at the same time and at the same designated places as were anticipated for organizing and holding peaceful assemblies».

These provisions of the 2020 Law (at the stage of its discussion as a draft law) were drawn attention in the Joint Opinion of IBAHRI and ICJ: «Article 14 of the Draft Law list extensive grounds on which authorities can refuse to authorize an assembly. These range from technical noncompliance with the application requirements (such as “incomplete information” or failure to sign), to excessive participants for the “specially designated place” or concurrent assemblies, to such broad rationales as undermining national security, “inciting social . . . national [or] class discord”, violating any laws or regulatory acts of Kazakhstan, or the possibility that the assembly may interfere with public transport, “threaten ... small architectural forms” or “impede the free movement” of persons not participating in the assembly.

Prohibiting peaceful assemblies on such expansive grounds is not consistent with article 21. International human rights law is clear that the presumption should be in favour of holding an assembly and that any restrictions imposed on the right to peaceful assembly must be narrowly applied. Technical noncompliance with a regulatory regime should not be grounds for prohibiting an assembly. As the Human Rights Committee observed in the context of Kazakhstan, «even in the case of assemblies for which no notification has been given and a request for authorization has not been submitted, any interference with the right to peaceful assembly must be justified under the second sentence of article 21.»⁷⁹

Even for the grounds in the Draft Law that might in principle be consistent with the grounds for restricting an assembly set forth in article 21 (such as public safety), the Draft Law does not provide limiting definitions that might ensure this consistency. For example, the Human Rights Committee has indicated that a restriction

⁷⁹Bakytgul Suleimenova v. Republic of Kazakhstan, CCPR/C/126/D/2416/2014, adopted on 17 July 2019, para.9.5. // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2014%2F2416%2F2014&Lang=en

for protection of “public safety” under article 21 requires a state to establish that the particular assembly «creates a significant and immediate risk of danger to the safety of persons (to their life or physical integrity) or a similar risk of serious damage to property»⁸⁰. As noted above, the Human Rights Committee previously has expressed concern that the Kazakhstan notification/approval regime gave excessive discretion to authorities as to whether to grant permission for an assembly».

It should also be noted that, in accordance with paragraph 5 of Article 2 of the 2020 Law, it *«does not apply to public relations pertaining to events that are held indoors, to **official, cultural, entertainment, recreational and sports events**, assemblies and gatherings of local communities, meetings of owners of apartments and non-residential premises in multi-apartment condominiums, and to religious services, religious rites, ceremonies and/or congregations that are governed by the laws of the Republic of Kazakhstan “On the Public Holidays in the Republic of Kazakhstan,” “On Culture,” “On the Physical Education and Sport,” “On the Local Government and Self-Governance in the Republic of Kazakhstan,” “On the Housing Relations,” and “On the Religious Activities and Religious Associations»*.

This rule, at least with regard to the difference in the procedure for holding peaceful assemblies and official or cultural (festive) events, can be considered discriminatory, as indicated by the UN Human Rights Committee in its views on the case “Bakhytzhan Toregozhina v. Republic of Kazakhstan” (2019)⁸¹.

These provisions of the 2020 Law (at the stage of its discussion as a draft law) were drawn attention in the Joint Opinion of IBAHRI and ICJ: *«Article 2 Paragraph 5 exempts from the Draft Law’s requirements “official, cultural, entertainment, recreational and sports events” and a number of other events that are organized by government authorities themselves. Article 14 denies authorization for a peaceful assembly if such official activities are planned for the same location.*

The Human Rights Committee has already indicated that treating government-organized assemblies more favourably than non-governmental assemblies in Kazakhstan constitutes an unacceptable form of discrimination against non-government organized assemblies. In its Views in Toregozhina v. Kazakhstan (2019), the Committee stated that the Republic of Kazakhstan had provided “no evidence . . . that might justify a distinction between the regulations applicable to events of a “social and political nature” organized by non-governmental organizations, as opposed to State-run or non-political events, contrary to the Covenant’s prohibition on discrimination. (Para. 8.7)

As the OSCE Guidelines observe, “freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any grounds.” (Para. 2.5) The draft UNHRC General Comment confirms that “states must not deal with assemblies in a discriminatory manner.” (Para. 28) Indeed, such preferential treatment for certain government-sponsored events risks discriminating on the basis of the content of the organizers’ and participants’ common expressive purpose, which would also be contrary to Kazakhstan’s obligations relating to both freedom of assembly and expression. As the OSCE Guidelines and the Committee have observed, “the regulation of public assemblies should not be based upon the content of the message they seek to communicate approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be ‘content neutral’”.

Article 18 of the 2020 Law provides for a number of grounds for ceasing peaceful assemblies, in particular:

- «1) creation of an actual threat to life and public health, public order and/or security, damage to property, including through exceeding the maximum capacity of the designated place for organizing and holding the peaceful assembly;*
- 2) inciting social, racial, national, religious, class and tribal discord, calls for a violent overturn of the constitutional order of the Republic of Kazakhstan, encroachment on the territorial integrity of the country,*

⁸⁰Draft UNHRC General Comment, para. 49.

⁸¹Bakhytzhan Toregozhina v. Republic of Kazakhstan, CCPR/C/126/D/2311/2013, adopted on 25 July 2019, para. 8.6-8.7 // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F126%2FD%2F2311%2F2013&Lang=en

and other violations of the relevant provisions of the Constitution, laws and other regulations of the Republic of Kazakhstan;

3) change in the form of the peaceful assembly;

4) the event stipulated by paragraph 3 of Article 17 of this Law (prohibited financing of a peaceful assembly. Note from the authors of the Report);

5) the organizer's refusal to conduct the peaceful assembly;

6) the time for holding the peaceful assembly has lapsed».

And according to paragraph 3 of Article 18: *«If the order to cease the peaceful assembly is not complied with, the law enforcement officers shall take the necessary measures to forcibly cease the peaceful assembly in accordance with the legislation of the Republic of Kazakhstan»*

Based on the principle of presumption in favour of assemblies, terminating a peaceful assembly because it has changed in form or because its duration has expired, provides that the assembly continues to be peaceful, constitutes a disproportionate restriction of the right to peaceful assembly, and if force is used to forcibly terminate it on these grounds, such use of force will also be disproportionate.

It should also be noted that there is one more restriction that does not meet international standards, contained in paragraph 4 of Article 5 of the 2020 Law: *«No peaceful assembly may be held in the absence of an organizer or a representative of the organizer»*. According to international standards, it is possible to hold a peaceful assembly in the absence of an organizer.

1.3.8. The liability of organizers and participants of peaceful assemblies

Article 9 of the 1995 Law stipulated that *«persons who have violated the established procedure for organizing and holding meetings, rallies, marches, pickets and demonstrations shall be held liable in accordance with the legislation of the Republic of Kazakhstan. Material damage caused during meetings, rallies, marches, pickets and demonstrations by their participants to citizens, public associations, and the state shall be subject to compensation in the manner prescribed by law. All additional costs incurred, including those related to the maintenance of public order, provision of premises, sanitary cleaning, lighting and radio equipment of the place of holding a meeting, march, picket and demonstration, are reimbursed by their organizers»*.

The 1995 Law did not establish any special rights for organizers and participants, but it did contain several prohibitions, in particular:

«-to interfere with the movement of transport and pedestrians;

- to interfere with the uninterrupted functioning of infrastructure facilities of the settlement;

- to erect yurts, tents, other temporary structures without authorization of the local executive bodies of the city of national significance, the capital, district (city of regional significance);

- to cause damage to green spaces, small architectural forms;

- to carry cold steel arms, firearms and other weapons, as well as specially prepared or adapted items that can be used to endanger public health and lives or cause property damage to the citizens and property of legal entities;

- to interfere with the activities of representatives of state bodies that ensure public order during events in any form».

The 2020 Law confers on organizers and participants in peaceful assemblies some rights to which, as a matter of fact, all citizens are entitled.

For example, in Articles 5 and 6 of the 2020 Law, organizers and participants are guaranteed the right to *«publicly express opinions, demands, make decisions while holding peaceful assemblies»*. Under the Constitution, everyone has the right to freedom of speech, including the right to express their opinion in public, and under the Law of the Republic of Kazakhstan “On The Procedure For Considering Requests

From Individuals And Legal Entities” anyone has the right, independently or jointly with others, to compose request, demands, petitions, collect signatures, and submit such requests to government agencies. To do so, a citizen does not need to be the organizer of a peaceful assembly. This is called freedom of expression.

In the 2020 Law, the organizer and the participant in a peaceful assembly are granted a whole number of rights which make one wonder why they were included there in the first place. For instance, they have the right to use posters, banners and other means of visual propaganda while holding a peaceful assembly. However, everyone, including the organizer, participant, and not even participant, is entitled to this right, unless the texts on the posters and banners violate the legislation (i.e. they do not contain calls for a violent change of the constitutional order, calls for violence or incitements of hatred or enmity, or obscene language). This is also called freedom of speech and expression.

It is unclear why it was necessary to specify in the Law that organizers (subparagraph 8 of paragraph 1 of Article 5) and participants (subparagraph 7 of paragraph 1 of Article 6) have the right to request medical assistance and safe evacuation from the venue of the peaceful assembly. Every citizen has this right, it is ensured by law enforcement agencies and medical services and guaranteed in other legislation, including legislation on the internal affairs bodies and on public health.

The 2020 Law, in addition to determining a number of rights of organizers and participants, most of which ordinary citizens have anyway which makes it redundant in the law, defines not only prohibitions but also responsibilities of organizers and participants.

For example, according to paragraph 2 of the 2020 Law, the organizer of a peaceful assembly must:

- «1) comply with the requirements set out in this Law;*
- 2) respect the law-protected rights and interests of individuals and legal entities while holding a peaceful assembly;*
- 3) comply with lawful demands of the representative of the local executive body and law enforcement officers;*
- 4) demand that the participants in the peaceful assembly observe public order and the rules of conduct of the peaceful assembly, and prevent any violations of the legislation of the Republic of Kazakhstan;*
- 5) at the request of the representative of the local executive body, law enforcement officers, suspend or stop the peaceful assembly in cases stipulated by Articles 17 and 18 of this Law, informing the participants of the peaceful assembly of such a demand;*
- 6) create safe conditions for the participants during the peaceful assembly, ensure the safety of buildings, structures, small architectural forms, green spaces, and other property;*
- 7) wear a distinguishing sign of the organizer of the peaceful assembly;*
- 8) if a decision is made by the organizer of peaceful assemblies to dispense with the peaceful assembly, give a prompt notice to this effect to the local executive body and citizens through mass media, telecommunications networks and other means not prohibited by the legislation of the Republic of Kazakhstan, and stop campaigning;*
- 9) comply with the demands of law enforcement officers and/or prosecutor’s office made to protect the life, health of participants in the peaceful assembly and other persons during the peaceful assembly, ensure public order and safety, assist the internal affairs bodies in ensuring the protection of public order;*
- 10) perform other duties as stipulated by the legislation of the Republic of Kazakhstan».*

According to Article 6 of the 2020 Law, a participant in a peaceful assembly has the same duties, but also he must comply with lawful demands of the organizer of the peaceful assembly, not interfere with the free movement of citizens who do not participate in the peaceful assembly.

A number of duties vested in organizers and participants in peaceful assemblies cause reasonable doubts. For example, the law provides for the duty to *«respect the law-protected rights and interests of individuals and legal entities during the peaceful assemblies».*

First, law-protected rights and interests should be respected by all citizens and not only the organizers or participants in peaceful assemblies, and not only during a peaceful assembly.

Second, “respect” or “disrespect” are subjective concepts, they are rather difficult to describe in legal constructions.

At the same time, both the organizer and the participant are prohibited to:

- call for violations of the Constitution of the Republic of Kazakhstan, laws and other regulatory acts of the Republic of Kazakhstan, mass riots, social, racial, national, religious, class and tribal discord, promote or publicly call for the seizure or retention of power, or violent change of the constitutional order of the Republic of Kazakhstan;
- commit any acts that disrupt the uninterrupted functioning of the public transport, infrastructure, or threaten the safety of green spaces and small architectural forms, or other property, or impede with the free movement of those citizens who do not participate in the peaceful assembly;
- interfere with the work of government bodies, organizations, officials while they carry out measures to protect the life, public health, human rights and freedoms of the citizens, public and state interests, public order and safety during the peaceful assembly;
- erect yurts, tents, other structures if they do not have a relevant authorization of the local executive body;
- carry cold steel arms, firearms and other weapons, as well as specifically adapted items that can be used to endanger human life and public health, or cause property damage to the citizens and property of legal entities;
- engage in the distribution and/or consumption of alcohol, narcotic drugs, psychotropic substances, their analogues or be in the state of alcoholic, narcotic and/or toxicomaniac intoxication;
- use clothes and/or other means that inhibit face recognition, except individual protective means aimed at protecting health;
- during the peaceful assembly, use symbols that are meant to violate the Constitution of the Republic of Kazakhstan, laws and other regulatory acts of the Republic of Kazakhstan, or incite social, racial, national, religious, class and tribal discord, and symbols and illustrative materials of terrorist or extremist organizations that are prohibited by laws of the Republic of Kazakhstan.

The participant is prohibited to receive compensation for participating in peaceful assemblies.

As noted in the Joint Opinion of IBAHRI and ICJ on the 2020 Law (at the stage of its discussion as a draft law): «*The Draft Law imposes excessive obligations on organizers and participants in peaceful assemblies in the name of ensuring “public order,” among others. ...The Draft Law accordingly appears to shift to the organizers and participants the responsibilities that human rights law ordinarily places on the state to protect and facilitate the right to peaceful assembly*».

According to Article 9 of the 1995 Law: «*Persons who have violated the established procedure for organizing and holding meetings, rallies, marches, pickets and demonstrations shall be held liable in accordance with the legislation of the Republic of Kazakhstan*».

Article 20 of the 2020 Law states that «*Violations of the legislation of the Republic of Kazakhstan on the organization and holding of peaceful assemblies shall entail liability established by the legislation of the Republic of Kazakhstan*».

Article 155 of the Criminal Code establishes criminal liability for illegal interference with the organization, holding of a peaceful assembly, or other lawful public event, or participation in such, or coercion to participation in such, which is punishable “by a fine in the amount of up to two hundred monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one hundred eighty hours, or arrest for a term of up to fifty days”...⁸²

⁸²Criminal Code of the Republic of Kazakhstan of 3 July 2014. Came into force on 1 January 2015, as amended on 06.10.2020 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/K1400000226>.

Article 400 of the Criminal Code establishes criminal liability for violating the procedure for organization and holding of a peaceful assembly: “Organization, holding or participation in an illegal meeting, rally, processions, picket, demonstration or other illegal public measure, as well as rendering assistance to organization or holding of such measures by provision of premises, communication means, equipment, transport, if these actions are inflicted substantial harm to the rights and legal interests of citizens or organizations or legally protected interests of society or the state shall be punished by a fine in the amount of up to two hundred monthly calculation indices or corrective labors in the same amount, or community services for a term of up to two hundred hours, or arrest for a term of up to fifty days.”

Administrative liability for violating the legislation of the Republic of Kazakhstan on the procedure for organizing and holding peaceful applies in accordance with Article 488 of the Code of the Republic of Kazakhstan on Administrative Offenses⁸³.

The first part of this article establishes liability for interfering with the organization or holding of peaceful assemblies, where such action does not have the elements of a criminal offense, and parts 2 through 12 establish liability for violating the legislative requirements to the procedure for organizing and conducting peaceful assemblies, by the organizer, participant, foreigner, stateless person, foreign legal entity, or those who provided premises or other property (means of communication, duplicating equipment, equipment, transport) or created other conditions for organizing and holding peaceful assemblies, as well as enhanced liability for repeat violations.

Finally, the matter of administrative liability for violating the legislation on the procedure for organizing and conducting peaceful assemblies is discussed in the Regulatory Decision of the Supreme Court of the Republic of Kazakhstan No.7 dated 6 October 2017 “On Certain Issues Of The Application By Courts Of The Norms Of The Special Part Of The Code Of The Republic Of Kazakhstan On Administrative Offences.”⁸⁴ In particular, paragraph 16 of the Regulatory Decision notes: “*By virtue of Article 21 of the International Covenant on Civil and Political Rights (New York, 16 December 1966, ratified by the Law of the Republic of Kazakhstan No. 91-III dated 28 November 2005, came into effect for the Republic of Kazakhstan on 24 April 2006) the enjoyment of the recognized right to peaceful assembly shall not be subject to any restrictions, except for those that are imposed in accordance with the law and which are necessary in a democratic society in the interests of state or public security, public order, public health and morals, or protection of the rights and freedoms of others. The same right is guaranteed by Article 32 of the Constitution of the Republic of Kazakhstan...*

The procedure for the implementation and conditions for restriction of this right are established by the Law of the Republic of Kazakhstan No. 2126 17 dated March 1995 «On The Procedure For Organizing And Holding Peaceful Assemblies, Rallies, Marches, Pickets And Demonstrations In The Republic Of Kazakhstan», Article 8 of which provides that meetings, rallies, marches, pickets and demonstrations must be unconditionally terminated at the request of a representative of the local executive body of the city of national significance, the capital, district (city of regional significance), if: no application was submitted, a decision was made to ban, their order was violated the conduct provided for in Articles 4, 5 and 7 of this Law, as well as in the event of a threat to the life and health of citizens, violation of public order.

The administrative liability of participants in such a public event, who are not organizers, for participation in illegal assemblies, rallies, marches, demonstrations, or any other public event, stipulated in the first part of Article 488 of the Code on Administrative Offences e, applies after the failure to comply with the above requirements of the representative of the local executive body. Therefore, when considering cases of administrative offenses under Article 488 of the Code on Administrative Offences, the courts need to

⁸³Code of the Republic of Kazakhstan on Administrative Offences of 5 July 2014, as amended on 07.07.2020 r. // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>

⁸⁴Regulatory Decision of the Supreme Court of the Republic of Kazakhstan dated 6 October No. 7 “On Certain Issues Of Application By Courts Of The Provisions Of The Special Part Of The Code Of The Republic Of Kazakhstan On Administrative Offences” as amended on 31.05.2019 // Legal information system of laws and regulations of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>

investigate the evidence of the factual statement of such a requirement, its validity and legality, as well as the failure to comply with it on the part of the participant in the public event in whose respect the case of administrative offense is being pursued.

The arguments regarding a violation of the principle of proportionality caused by a demand to cease an assembly may be considered later on as part of a civil proceedings; however, at the time when the representative of the local executive body declared his/her demand, his/her competence may not be challenged.

Until the permit for holding a mass event has been issued, its organizer as well as other persons may not place in the media, the internet or other information networks any information on the date, venue and time of the purported assembly, and may not produce and distribute leaflets, posters and other similar materials that pertain to such an event. A violation of this provision by the event's organizer entails liability under part 3 Article 488 of the Code on Administrative Offences for violating the procedure for organizing a public event."

What is noteworthy, while the 2020 Law has been adopted and amendments made to Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, this decision still has not been brought in line with the new legislation.

Based on the headings of Article 155 and Article 400 of the Criminal Code, and of Article 488 of the Code on Administrative Offences, they establish liability for organizing and holding peaceful assemblies whose organization and holding is determined by a special legislation, namely the Law of the Republic of Kazakhstan on organizing and conducting peaceful assemblies. All types (forms) of peaceful assemblies are defined in this Law, and include assemblies, rallies, marches, demonstrations and pickets. However, Articles 155 and 400 of the Criminal Code of the Republic of Kazakhstan use the term "*another legal*" or "*another illegal public event*", and Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences uses the term "*another public event*", which are not defined in the 2020 Law and therefore do not meet the principle of legal certainty and predictability.

As for Article 400 of the Criminal Code of the Republic of Kazakhstan, it should be removed from criminal legislation altogether. In the course of the third cycle of the Universal Periodic Review (UPR) of the fulfilment by the Republic of Kazakhstan of its obligations in the area of human rights which was held in November 2019, it was recommended to the Republic of Kazakhstan that Article 400 should be removed from the Criminal Code of the Republic of Kazakhstan (by Czech Republic, Germany). The same recommendations were given to the Republic of Kazakhstan during the previous UPR cycle in 2014 (by Switzerland, Czech Republic). Following the third cycle of the UPR, the Republic of Kazakhstan has noted those recommendations but advised it was in the process of drafting a new legislation on peaceful assemblies. However, the adoption of this new legislation did not result in the removal of this article.

It should be noted that, based on the name of the article, it is about **peaceful assemblies** that cannot cause significant harm.

Violations of the procedure for organization and holding of a peaceful assembly may only occur if a notification was not given, or if one type of assembly morphed into another, or if other minor violations pertaining to the procedure of organization and holding of said peaceful assembly were allowed—all of which should be considered as potential administrative offenses.

If a peaceful assembly stops being peaceful, morphs into riots, or otherwise results in a significant damage, then the Criminal Code has a number of articles that can be applied to those types of offenses and, accordingly, can be applied to the organizers and participants in such peaceful assembly, if their deliberate actions lead to such consequences, including:

- Article 174 "Incitement of social, national, tribal, racial, class or religious discord" (however, this article should be amended in order to comply with international standards for the definition of crimes related to "hate speech" and the principle of legal certainty and predictability);

- Article 179 “Propaganda or public calls for the seizure or retention of power, as well as the seizure or retention of power or forcible change of the constitutional order of the Republic of Kazakhstan”;
- Article 202 “Intentional destruction or damaging of property of others”;
- Article 204 “Negligent destruction or damaging of the property of others”;
- Article 256 “Propaganda of terrorism or public calls for commission of an act of terrorism”;
- Article 269 “An attack against building, construction, means of communication and communication or their capture”;
- Article 272 “Mass disorders”;
- Article 293 “Hooliganism”;
- Article 294 “Vandalism”;
- Article 379 “Disobedience to a public officer”;
- Article 380 “The use of violence against a government official”;
- Article 380-1 “Endangering the life of an employee of a law enforcement body, a special state body, a military serviceman, a state inspector for wildlife protection, an inspector of a specialized organization for wildlife protection, a huntsman”
- Article 381 “Interfering with activity of prosecutor and nonfulfillment of his (her) legal requirements”;
- Article 405 “Organization and participation in activity of public or religious association or other organization after court decision on prohibition of their activity or liquidation in connection with carrying out by them the extremism or terrorism” (this article also needs to be brought in line with the principle of legal certainty and predictability).

Similarly, Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences needs to be revised entirely. It also speaks of **peaceful** assembly, therefore any violations of the procedure for organizing, holding and participating in peaceful assemblies cannot be formulated in such a way and subjected to such harsh punishments.

The entire article consists of very general provisions that do not meet the principle of legal certainty and predictability. This Article needs to be shortened to a maximum possible extent, or specific administrative



offenses should be presented as a detailed list, as it is done in the chapter of the Code of the Republic of Kazakhstan on Administrative Offences Kazakhstan dealing with administrative offenses infringing on electoral rights.

Violations of the procedure of organizing and conducting peaceful assemblies may be due to the lack of a notice or due to one type of assembly morphing into another, or other minor violations by organizers or participants in terms of the procedure for organizing and conducting peaceful assemblies—which should be viewed as minor administrative offenses, provided that they have not resulted in significant damages to property or law-protected interests of the state and society.

If such damage has been caused, then such acts have the elements of a criminal offense.

Besides, the Code on Administrative Offenses has a number of other articles which may be applicable if a disturbance of public order occurred during a peaceful assembly:

- Article 434 “Disorderly conduct”;
- Article 434-2 “Contamination of common areas”;
- Article 440 “Drinking alcoholic beverages or appearing in public places in a state of intoxication”;
- Article 443 “Disobedience to the legal demand of a person participating in ensuring public order”;
- Article 476 “Violation of the state of emergency”;
- Article 505 “Violation of the rules for the improvement of the territories of cities and settlements, as well as destruction of infrastructure facilities, destruction and damage to the green plantings in cities and settlements”;
- Article 506 “Unlawful entering into protected facilities”.

The excessive and disproportionate sanctions in the 2020 Law (at the stage of its discussion as a draft law) are also indicated in the Joint Opinion of IBAHRI and ICJ: *«the sanctions imposed under the law are excessive and disproportionate, particularly with respect to organizers of assemblies. The Draft Law places excessive responsibility on organizers for failing to respect the rules established in relation to freedom of assembly. In particular, the Draft Law would amend the Code on Administrative Offences and the Criminal Code to establish fines of approximately \$7,000 USD for organization of, and fines of \$3,500 USD for participation in, an unauthorised assembly that does not comply with the requirements of the Draft Law and results in “a significant harm”. For other non-compliant peaceful assemblies, organization and participation is subject to fines of \$700 USD and \$350 USD, respectively. Organizers of assemblies face increased liability of approximately \$7,000 USD for repeated violations.*

Any sanctions imposed against persons exercising the right to peaceful assembly must satisfy the strict requirements of article 21. In other words, the sanctions must not improperly burden or impair the freedom of assembly; they must not sanction conduct that is protected by the right, and they must be necessary and proportionate to a legitimate government aim under article 21.

Thus, for example, the Human Rights Committee has held that where administrative sanctions are imposed for the failure to notify, this must be justified by the authorities.⁸⁵ As the Committee elaborates in its draft General Comment, “where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where the conduct is protected by the right.” (Para. 76)

A failure to notify the authorities of an assembly . . . should not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or the imposition of undue sanctions such as charging them with criminal offences. It also does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants. (Para. 81)».

⁸⁵See, e.g., Popova v. Russian Federation, paras. 7.4-7.6.

2. PRACTICE OF REGULATING PEACEFUL ASSEMBLY IN THE REPUBLIC OF KAZAKHSTAN

2.1. General overview of the practice of regulating peaceful assemblies in the Republic of Kazakhstan in 2010-2017

Since 2009, the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR) has been monitoring the situation with the freedom of peaceful assemblies in Kazakhstan.

However, in 2009 the monitoring existed in the form of a pilot so it was conducted in the format of an incomplete coverage of all regions across Kazakhstan. Over the course of this pilot, working methods were tested and parameters and observation procedures were defined.

In 2010 KIBHR began regular monitoring of the situation with peaceful assemblies using a specially developed methodology that offers a comparative year-by-year analysis and makes it possible to identify trends in the process of Kazakhstan citizens exercising their right to peaceful assemblies.

The monitoring's main objective was to track the law enforcement practices of regulating peaceful assemblies through observations of peaceful assemblies and recording the measures the authorities were employing in order to control and restrict--primarily--protests.

In general, the monitoring covered all significant and resonant public peaceful assemblies. However, given the lack of branches in several regions across the country, it might be possible that some individual manifestations of civic activity in the form of peaceful assemblies were not included in the monitoring. However, as the ten-year practice has shown, this could not possibly have a significantly impact on the overall assessment of the situation with peaceful assemblies over the period under review.

Procedurally, monitoring was conducted in the form of recordings of peaceful assemblies and assessment using standard parameters, in accordance with a specially designed map of observations which was completed by the monitors who tracked the relevant events.

Based on the results obtained, annual statistics were prepared as well as an analysis of the situation in terms of how the peaceful meetings held by Kazakhstan citizens were regulated by the authorities.

A comparison of the data accumulated over years enabled us to see the general dynamics of changes in terms of citizens' rights in the relevant field, reflected in regular annual reports.

Monitoring of peaceful assemblies was conducted by KIBHR staff who recorded their observations in special observation maps. Those maps served as primary documents for obtaining the relevant generalized statistical data and for analysis. KIBHR staff also carried out data analysis and wrote reports.

That being the case, both the field monitors and report writers were full responsible for the accuracy of the information and conclusions contained in the reports.

2.1.1. Introduction. General information

The procedure of monitoring required that the monitors were directly present at peaceful assemblies and made visual recordings of events that were taking place. This included the records of the venue of the assembly, a count of the number of participants, determining the duration of the event, whether the relevant attributes (posters, banners, leaflets, etc.) were present at the event, whether the representatives from a prosecutor's office and police officers were present at the event, and what were the actions they took.

The monitors were responsible for obtaining verbal information of whether the events were authorized, and if not, what were the reasons for refusal of permission. Also, the way the participants were notified was recorded.

In addition, if a peaceful assembly was impeded in some way, its participants detained, the monitors recorded the legal consequences for the protesters, including presence at their trials as observers. All this information was entered into standardized observation maps which served as the basis for a final report.

In some cases, when monitors could not be physically present at the event for objective reasons, the relevant information was collected from the media, social networks and testimonies of direct participants.

2.1.2. Dynamics of civic engagement (quantitative indicators)

The obtained monitoring data recorded in annual reports over a period of eight years starting from 2010, enable us to make a comparative analysis of the situation on a year-by-year basis and a general picture of the practice of how peaceful assemblies has been regulated in Kazakhstan.

Statistical data on the numbers of peaceful assemblies in the years covered in the reports are summarized in a table and clearly demonstrate the dynamics of how the demonstration activity has manifested during those years. (Table 1 below)

Table 1. Number of peaceful assemblies by year

	2010	2011-2012	2012-2013	2014	2015	2016	2017
Almaty	47	67	58	43	29	21	17
Astana	7	16	26	26	37	9	9
Uralsk	4	28	22	15	9	4	2
Aktau	-	26	4	2	1	1	-
Karaganda	4	7	6	5	1	-	1
Shymkent	-	7	2	-	1	-	3
Atyrau	-	-	-	2	1	4	1
Pavlodar	1	-	1	2	1	1	1
Ust-Kamenogorsk	-	2	-	-	-	3	-
Kostanay	-	-	-	1	-	1	-
Aktobe	-	-	-	3	-	2	-
Taldykorgan	-	-	-	-	1	-	1
Kyzylorda	-	-	-	-	-	1	-
Zhezkazgan	-	-	-	-	1	-	-
TOTAL	64	162	119	114	71	52	36

For a comparative analysis, the index of “rally activity” was used. It is a generalized indicator of the number of peaceful assemblies (rallies, pickets, demonstrations, flashmobs, etc.) per month.

This index enables situations in different years to be compared and contrasted, thus making identifying trends and various peculiarities possible.

The eight-year-long monitoring has shown that the number of civic events has been steadily declining in Kazakhstan over the years. Thus, the number of annual peaceful meetings has decreased five-fold over the course of six years.

This trend can be explained by a number of reasons, including liquidations of political parties, conditions and procedures for organizing peaceful assemblies being made more difficult, and increased pressure on activists and public organizations that organize peaceful assemblies.

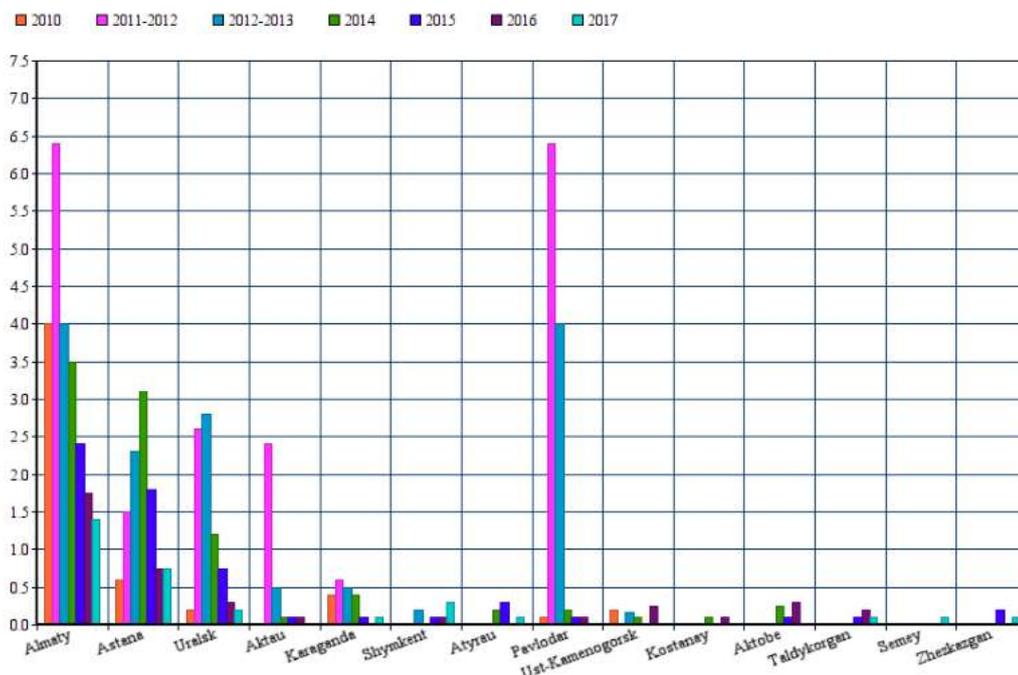
At the core of it lies the state’s overarching policy to limit the citizens’ rights to hold peaceful assemblies. This is incorporated at the foundation of an official political doctrine which states that any peaceful assemblies potentially pose a threat to social and political stability and thus require strict state regulation and control. Therefore, all actions by the authorities, their initiatives, their adopting new laws--everything is aimed primarily at ensuring this control and restrictions.

The monitoring demonstrates this well, by showing the dynamics of the authorities’ efforts to limit the rights of citizens to peacefully gather on the country’s streets and squares.

Another quantitative indicator obtained as a result of monitoring is the one that shows the data on peaceful assemblies in individual cities. (Table 2 below)

Table 2. Peaceful assemblies, by years and regions

	2010	2011-2012	2012-2013	2014	2015	2016	2017
Almaty	4.0	6.4	4.0	3.5	2.4	1.75	1.4
Astana	0.6	1.5	2.3	3.1	1.8	0.75	0.75
Uralsk	0.2	2.6	2.8	1.2	0.75	0.3	0.2
Aktau	-	2.4	0.5	0.1	0.1	0.1	-
Karaganda	0.4	0.6	0.5	0.4	0.1	-	0.1
Shymkent	-	-	0.2	-	0.1	0.1	0.3
Atyrau	-	-	-	0.2	0.3	-	0.1
Pavlodar	0.1	6.4	4.0	0.2	0.1	0.1	-
Ust-Kamenogorsk	0.2	-	0.17	0.1	-	0.25	-
Kostanay	-	-	-	0.1	-	0.1	-
Aktobe	-	-	-	0.25	0.1	0.3	-
Taldykorgan	-	-	-	-	0.1	0.2	0.1
Semey	-	-	-	-	-	-	0.1
Zhezkazgan	-	-	-	-	0.2	-	0.1
TOTAL	5.8	15.4	10.5	9.5	5.9	4.3	3.0



The table gives a clear picture which Kazakhstan cities have shown the greatest citizens activity when it comes to peaceful assembly, and where that activity was less pronounced.

The table shows that Almaty has been the undisputed leader in terms of peaceful assembly activity all these years, accounting for a half of all registered peaceful assemblies in Kazakhstan over this period.

The peaceful assembly activity in Astana was about half of Almaty figure. Uralsk came in third.

Thus, the monitoring gives an idea which regions have been most active in terms of peaceful assemblies. The eight-year statistics gives an objectively comprehensive picture and, accordingly, ability to make conclusions as to which regions have been keenest on organizing peaceful assemblies.

2.1.3. Nature and direction of peaceful assemblies (qualitative indicators)

Along with quantitative indicators, monitoring provides qualitative assessments of peaceful assemblies. One of such indicators is the nature and topical focus of the peaceful assemblies.

Initially, three groups of peaceful assemblies had been selected which all peaceful assemblies fell into.

The first group includes meetings that deal with political topics. This is, first of all, criticism of the actions of the authorities at all levels and making demands. This also includes protests that touch upon various political issues, or criticism of representatives of the state power and their supporters.

The second group includes public actions pertaining to economic issues. Those may include disputes with employers, mortgage issues, solving housing problems, communal solutions, etc.

The third group includes meetings that cover all other social problems that are not covered by the first or second group.

It is clear that, when specific peaceful assemblies are considered, it is important to make a detailed itemization of the topics they cover. This is what was done in the analysis of high-profile and large-scale peaceful assemblies. However, when it comes to analysing the general dynamics of civic attitudes and trends, dividing all topics into those three groups was fully justified and allowed measuring the general trends in terms of protest emotions in society.

Tracking the nature of peaceful assemblies over the years indicated enabled us to record a steady trend of depolitisation of peaceful assemblies. (Table 3 below)

Table 3. Nature of peaceful assemblies in 2010-2017

	2010	2011-2012	2012-2013	2014	2015	2016	2017
Political	40%	9%	1% (1PA)	-	-	15.5%	5.5%
Economic	53%	58%	70%	49%	45%	15.5%	16.6%
Social	7%	33%	29%	51%	55%	69%	78%

The table shows that after a complete absence of political rallies in 2013, 2014 and 2015, they reappear again in 2016 (15.5%) and 2017 (5.5%). However, after reappearance their number was noticeably lower compared to 2009-2012. However, the main difference was that they had changed, both thematically and content-wise.

In 2009-2012, political rallies were normally organized by a fully-formed opposition, were large in scale and, accordingly, carried significant societal resonance.

As for the increase in the number of peaceful political rallies in 2016, this surge was due to the so-called “land protests” during which political demands were often presented, including even the demands for President Nazarbayev to step down. Mass protests and single-person pickets against the land reform which allowed foreigners to purchase land as property were held across different cities in Kazakhstan.

Over the course of the monitoring, nineteen of such actions had been recorded which accounted for the reflected growth of political topics.

However, soon after the land reform had been dropped from the agenda, the political component of peaceful assemblies returned to its original state of zero.

As for 2017, the political component in general was only represented by two public actions: a single-person picket by pensioner Raisa Dyusembayeva against political repression, which was held on 25 August 2017 in Astana near the Presidential Administration building, and a rally on 1 December 2017 in Almaty which was attended by 300 people carrying the banner supporting the current President.

The decrease in the number of public political actions was due to a number of reasons.

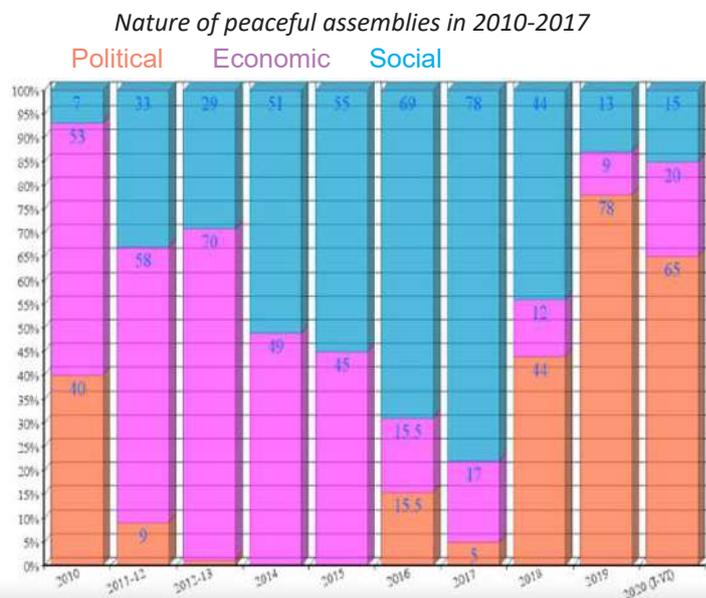
The first reason was the cleansing of the political field of opposition political parties and creation of problems and threats to public organizations that were disloyal to the authorities or criticized them. As a matter of fact, almost all opposition parties that actually oppose the existing political regime have shut down in Kazakhstan.

The second reason was the 1995 Law “On The Procedure For Organizing Rallies, Marches, Demonstrations And Pickets” which, while strictly regulating the way in which peaceful assemblies are to be held, not only created serious obstacles for those who wished to organize unauthorized peaceful assemblies, but also made it possible to severely punish those who did not comply with the established procedures for organizing peaceful assemblies. Organizers of an unauthorized rally may be slapped with an administrative arrest of 5 to 15 days, while the fines may be as high as \$700, which in Kazakhstan is a very significant amount for an ordinary citizen.

This entire restrictive mechanism had been used in an especially egregious way against those who tried to organize political rallies. For instance, activists and public figures who opposed the authorities and tried to organize political protests were subjected to serious pressure in the form of refusals of permits to hold rallies, detentions if attempting to hold single-person pickets, and even preventive detentions prior to the start of public events.

In parallel, the official mass media were busy at building a public opinion that rallies posed a threat to social and political stability in Kazakhstan and that their organizers were irresponsible people who did not realize what kind of threats they posed to public order.

The result of the closure of opposition parties was that there were no people remaining in the country who could organize mass protests with political demands. It was only in 2018, with the revival of the now-banned “Democratic Choice of Kazakhstan”, that the political slogans reappeared in the protesters’ demands.



On the other hand, the monitoring did highlight just how passive in terms of holding peaceful assemblies the formally existing opposition parties were. The political parties that positioned themselves as an opposition, refused in principle to use peaceful assemblies as a form of political activity. This is due to those parties' being agreeable to the rules of the game that have been established by the state, and fully agreeable to complying to all prohibitions and restrictions imposed on peaceful assemblies.

All this, altogether, has had an impact on Kazakhstan citizens' activity in terms of public actions and led to a decrease in the number of politically-themed peaceful meetings.

The monitoring also showed an overall decrease in the number of peaceful assemblies with economic topics. While in the first years of monitoring the number of peaceful assemblies with economic topics reached 50-70 per cent, in 2017 only 16.6 per cent of peaceful assemblies were held with economic problems in mind. At the same time, the number of peaceful assemblies with social topics has been steadily trending upward--from 7 per cent of the total number of peaceful assemblies in 2010, to 78 per cent in 2017.

In order to understand what precise issues were of concern to Kazakhstan citizens, below is a list of issues that peaceful assemblies grouped under the "social" category in 2017 were dedicated to:

- protest against sexism and violence against women;
- action in memory of mortgage holders who had died over the course of confrontation with banks;
- protest against the construction of a motorway;
- protest against radical actions by mortgage holders;
- protest against amendments to a law on mass media;
- demand that assistance not be provided to an opposition blogger (addressed to the Kazakhstan International Bureau for Human Rights and, separately, to NSDP);
- protest against the acquittal of Judge Serimov;
- protest against unfair actions by the judges;
- protest against the arrest of film director Talgat Zhanybekov;
- protest against the closure of independent trade unions;
- protest against Kazakh women marrying Chinese men;
- demand to ensure the child's right to obtain citizenship;
- demand to meet with the prosecutor;
- demand that the problem of safe street-crossing be solved;
- protest against the mandatory registration of temporary residents;
- indignation of parents of children who did not receive educational grants;
- demand that a driver who had run over people be punished;
- protest against illegal distribution of housing.

Table 4. Activity of public organizations in terms of peaceful assemblies

2014	2015	2016	2017
42%	18%	29%	17%

The monitoring also revealed another trend: a decrease in the activity of public organizations when it comes to holding peaceful assemblies. (Table 4 below)

The process of NGOs being "washed out" from the field of rallies and assemblies occurred in parallel to the decline in the assemblies' activity of political parties. This was a consequence, on the one hand, of the general process of reduction in the public civic activity of public organizations and, on the other hand, of the purposeful state policy aimed at limiting the citizens' right to peaceful assemblies. The latter, it can be argued, was a steady trend throughout the entire period of monitoring.

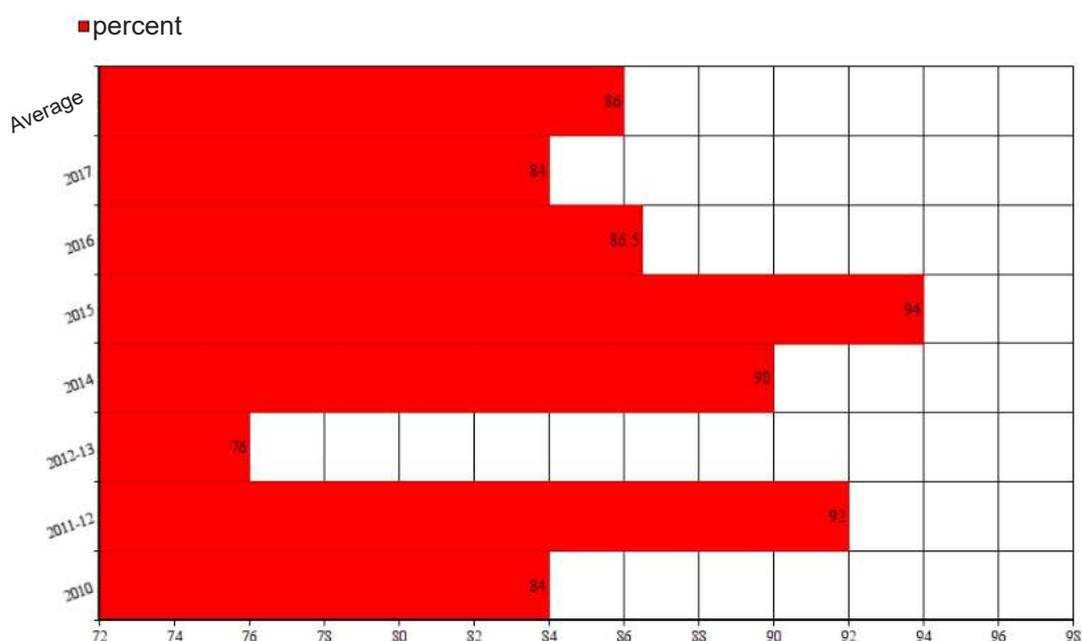
2.1.4. Citizens' compliance with the law while exercising their right to peaceful assembly

As part of the monitoring, we tried to trace and understand the question of citizens' attitude toward the mandatory requirement of having to obtain a permit before a peaceful assembly can be held.

In accordance with the current legislation, holding peaceful assemblies a permit to be issued by the relevant departments of city akimats. This is a special procedure that includes filing an application for a rally and agreeing on the place and procedure for holding the rally with local executive bodies.

However, the monitoring revealed that most citizens who conduct public events do violate the law-established procedure and carry out their public events in violation of established requirements—that is, unauthorized.

Table 5 below shows the number of peaceful assemblies that were held without a proper authorization.



2010	2011-12	2012-13	2014	2015	2016	2017	Average
84%	92%	76%	90%	94%	86.5%	84%	86%

As can be seen from the table, an overwhelming majority of peaceful assemblies in Kazakhstan during the period under review were held without proper authorization.

It should be noted that arranging and participation in an unauthorized rally entails administrative liability in the form of significant fines and administrative arrests from five to fifteen days.

However, despite the risk of fines or administrative arrests, an average of 86 per cent of all peaceful assemblies in the country held during the period under review were not properly authorized. In some years this figure even exceeded 90 per cent. As a matter of fact, the citizens kept ignoring this legal requirement and continued to hold peaceful assemblies, by default, without authorisation of the authorities.

A survey of participants in unauthorized rallies and an analysis of the situation show that one of the reasons for this situation was that the authorities pursued a policy of double standards when it came to suppressing unauthorized rallies and punishing them.

Practice has shown that as a rule, the authorities “turned the law on” when the protesters raised questions that the authorities considered uncomfortable and dangerous from the point of view of their political interests or people who represented them. Naturally, this concerned, first and foremost, the opposition and those of the protesters who presented political demands.

What followed in those cases were tough preventative countermeasures and administrative penalties against the organizers and participants in unauthorized rallies.

However, when questions raised by the protesters were not about politics, police either had no reaction whatsoever to such events, or they did it formally, stopping short of harsh measures such as crowd dispersals, arrests of participants, and court trials. Conflicts like those often ended in verbal warnings or small fines.

Thus, in 2017 the police intervened only in six out of 31 rallies. In five cases, the matters went to trial with protesters being fined by an administrative court. In all other cases, the participants in unauthorized rallies were not punished for violating the law on peaceful assemblies.

This kind of selectivity and leniency toward the violators of the law on peaceful assemblies largely contributed to the citizens being not particularly afraid to attend rallies that were held under social and economic banners. Such a specificity of the response to unauthorized peaceful assemblies to a large extent determined citizens' behaviour in not applying to akimats for permits for their public gatherings.

A poll revealed three main reasons why the majority of citizens attended unauthorized rallies.

The first reason was that the citizens were not fully aware of the law: many of those who attended unauthorized rallies had little idea that such behaviour constituted an administrative offense and could result in a fine or administrative arrest.

The second reason was that a significant part of those who conducted peaceful assemblies failed to file applications for authorisation because of a general perception that the authorities would deny them anyway. So, the people felt like they were wasting their time with the akimats so they just went ahead and held the rallies without even bothering about obtaining a permit.

Finally, the third reason revealed during the monitoring was that certain sections of the citizens were unwilling in principle to ask for a permit to exercise their constitutional right to peaceful assembly.

Table 6 below shows the data from citizen surveys which explained why the organizers of actual (planned) gatherings failed to apply for authorisation to the akimats.

Table 6. Reasons for failing to file an application for authorisation to hold a peaceful assembly

	2010	2011-2012	2012-2013	2014	2015	2016	2017
In principle, not willing to bend to an undemocratic law	25%	41%	-	25%	12%	25.5%	-
Believed the application would be denied anyway	45%	42%	32%	31%	27%	24%	28%
Did not know they needed an authorisation	19%	16%	68%	44%	61%	11%	11%
Acted spontaneously, did not think about obtaining an authorisation	-	-	-	-	-	11%	13%
Reason not identified	-	-	-	-	-	18%	48%

Unfortunately, over the course of monitoring it was not always possible to find out why a peaceful assembly was not authorized. Many respondents found this question to be difficult to answer in any sensible way. The fact that there were no data for every second rally makes it impossible to draw any firm conclusions, let alone conduct a comparative analysis of the past years.

The data obtained during the monitoring make it possible to calculate an index of law compliance demonstrated by the Kazakhstani nationals while attending peaceful assemblies in Kazakhstan. It is a ratio of assemblies that were authorized by the authorities to the total number of peaceful assemblies that were held. We call it the “law-compliance index.”

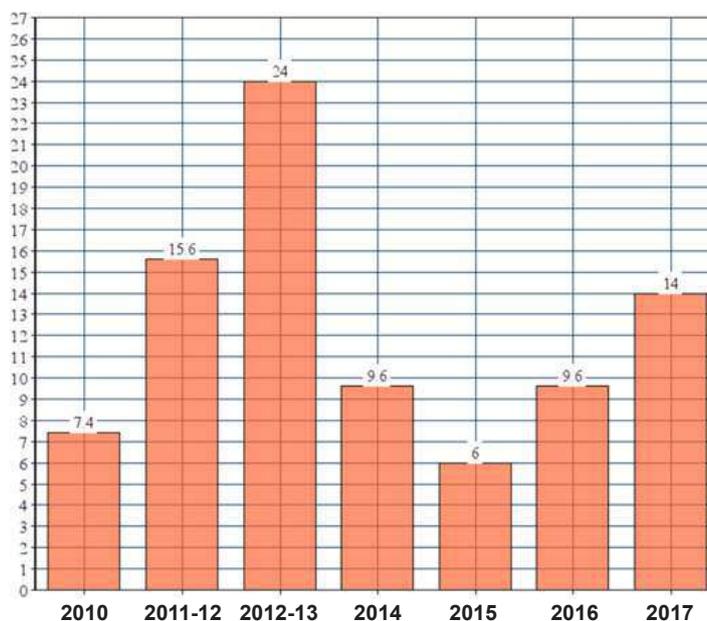
This indicator shows the degree to which the organizers of public gatherings complied with the law on peaceful assembly which prescribes a procedure for obtaining an authorization to hold a public assembly. It also allows making comparisons of unauthorized peaceful assemblies across different cities and keep track of the dynamics over a number of years.

For instance, if every peaceful assembly held in a country (city) has been authorized, the law-compliance index will be equal to 100. This is the highest possible figure.

Therefore, the lower the index the lower the level of law compliance when it comes to holding peaceful assemblies.

Table 7 below shows the level of law-compliance in terms of peaceful assemblies over the past seven years.

Table 7. “Law-compliance index” by years



2010	7.4%
2011-12	15.6%
2012-13	24%
2014	9.6%
2015	6%
2016	9.6%
2017	14%

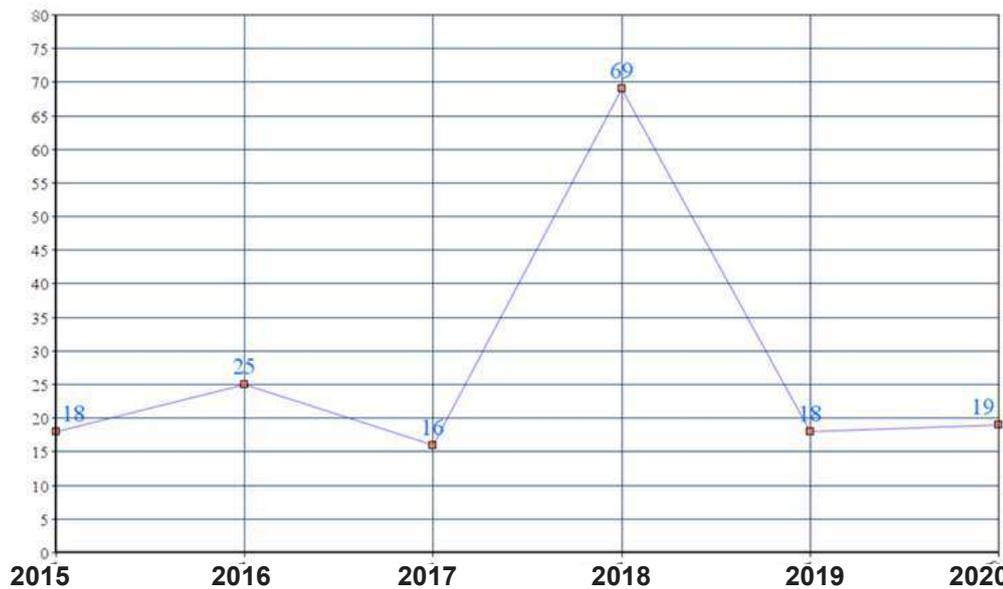
As can be seen from the table, the law-compliance index was low across all those years, on average hovering at around 10 per cent. This means that out of ten peaceful assemblies held in Kazakhstan, only one was conducted in accordance with the law.

The means that the Law on peaceful assemblies was not complied with during all those years, since most of the public gatherings were held without proper authorization. However, as was said above, such level of non-obligatoriness for everyone sit well with the authorities who applied the law selectively, as they saw fit and against those organizers and participants who they deemed dangerous or posing political threats.

This is also confirmed by the monitoring data on unauthorized peaceful assemblies that went on to trial. (Table 8 below)

Table 8. “Percentage of unauthorized peaceful assemblies that reached the trial phase”

2015	2016	2017
18%	25%	16%



In other words, despite the requirements of the 1995 Law, only a small part of cases of unauthorized peaceful assemblies reached the trial phase in Kazakhstan in 2015-2017. Most of the cases of unauthorized public gatherings (over 80%) “were thrown overboard” the scope of the Law. Those gatherings were of no interest whatsoever to the officials as they had no political threats to the political system, people in

power, or interests of the government officials.

2.1.5. Authorities’ response to unauthorized peaceful assemblies

Under the 1995 Law, in the event of an unauthorized peaceful assemblies representatives of akimats must warn the organizers or participants that it is not permitted to hold assembly that has not been agreed on with the local executive body.

In parallel, representatives of the prosecutor’s office should explain to the assembly participants that their actions are unlawful.

However, as mentioned above the local authorities and prosecutor’s office’s reaction to peaceful assemblies was rather selective. Some assemblies, they would show up and make warnings, while other times they would not be there at all, or would be present only nominally, without interfering with the course of events.

Also, representatives of the akimats are authorized to issue warnings requiring peaceful assemblies to be terminated; however, their actions were also somewhat selective, due to the reasons already mentioned above.

Another specific feature of the actions by the security forces toward unauthorized rallies is when those assemblies are suppressed and even dispersed with no warning at all. There have been examples of organizers and participants of unauthorized assemblies being detained even before the event started. That such actions by the authorities are illegal does not even need explanation.

One of the examples is a preventive detention in Astana in 2017 of Muratbek Argynbekov, who had announced he would hold an unauthorized rally “on the matter of land law and price spikes.” He was detained and convicted by a court to a 10-day administrative arrest, without ever having committed an offense.

2.1.6. Policing during peaceful assemblies

It should be noted that police are present at almost all peaceful assemblies. Even when they cannot be seen it does not mean that they are not there—they are still there only they are plain-clothed or hiding nearby.

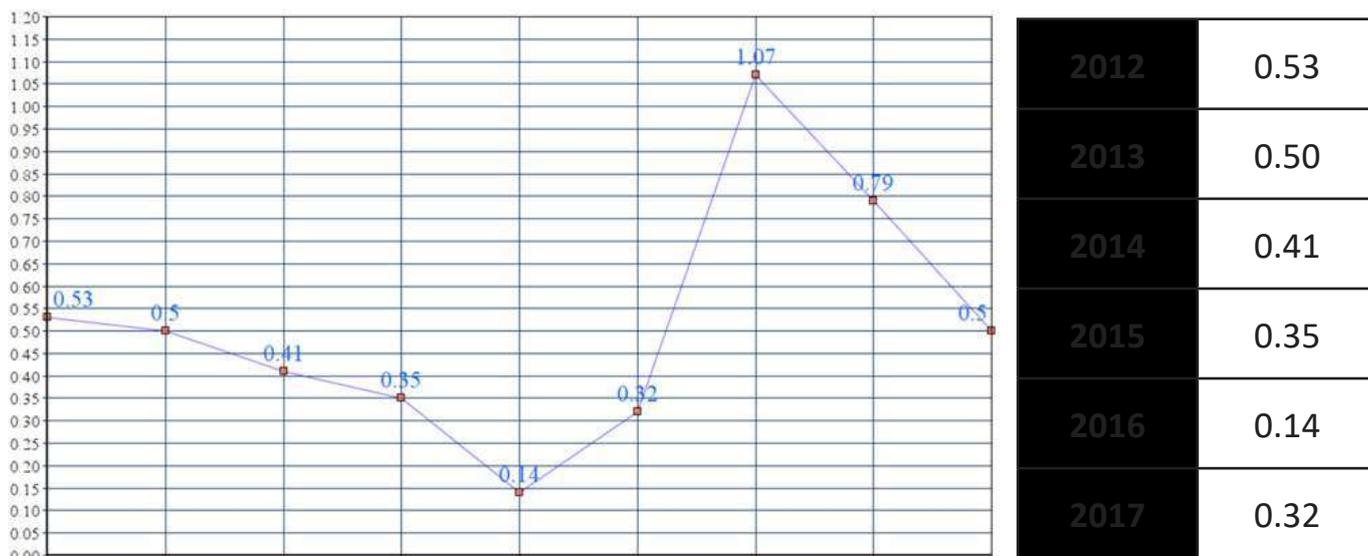
The monitoring showed that during unauthorized peaceful assemblies in Kazakhstan the police is preoccupied with ensuring control over the situation as a minimum, and with terminating or dispersing the assembly and detaining its participants, as a maximum. Maintaining order during a peaceful assembly is not even an issue

under consideration. It seems like this has always been the standard for Kazakhstan policing of peaceful assemblies.

Clearly, ensuring control over the situation during an unauthorized rally requires various number of police officers to be present. This is a function of a number of factors, such as how many protesters there are, what kind of demands they have, what their intentions are, and what their level of aggressiveness is. For the convenience of making comparisons and tracing the dynamics, we have developed the so-called “police control index (PCI).” PCI equals the number of police officers per one protester.

Table 9 below shows comparative information on police control in 2012-2017.

Table 9. Police Control Index 2012-2017



Here are what police control indices in the table denote.

In 2012-2013, there was one police officer for every two protesters in Kazakhstan.

In 2014, police control had weakened.

In 2015, there was one police officer per three protesters.

The lowest PCI was recorded in 2016: one police officer per seven protesters.

However, in 2017 it had increased again, to one police officer per three protesters.

In general, the monitoring has shown that there has been a general trend of decrease of PCI over peaceful assemblies. But this decline is attributed mostly to a decrease in the political component in the citizens’ demands.

An analysis of the situation shows that this has been caused primarily the opposition forces retreating from the political field and a general decrease in the activity of civil society. A decrease in the political component and an increase in the number of peaceful assemblies under social and household banner, as well as small numbers of participants and them being generally politically loyal toward the authorities, reduces the risks for the state that is concerned about assemblies as an instrument of escalation into large-scale social protests—outcomes that the authorities are actually concerned about thus trying to ensure police control over political and protest events.

2.1.7. Findings

In concluding the review of practices of regulating peaceful assemblies in the Republic of Kazakhstan in 2010-2017, we would like to offer several findings that were made based on the results of an eight-year monitoring effort.

1. The 1995 Law of the Republic of Kazakhstan “On The Procedure For Organizing And Conducting Peaceful Assemblies, Rallies, Marches, Pickets And Demonstrations In The Republic Of Kazakhstan” introduced a permit-based principle for holding public events, which made it procedurally significantly more difficult to obtain authorizations for holding peaceful assemblies.

Making the authorization procedure with authorities more convoluted has resulted in serious restrictions on the rights and freedoms of Kazakhstan citizens in terms of their right to peaceful assembly.

In 2010-2017, Kazakhstan citizens were deprived of the ability to hold peaceful assemblies wherever they wanted. The venues for peaceful assemblies in all major cities across Kazakhstan were tightly regulated. Not only were they regulated, their locations are often made to be in sparsely populated, remote corners, rendering actions the objective of which is to ensure maximum coverage and publicity essentially meaningless.

Even though the Law makes it only a recommendation, in practice police, prosecutor’s offices and courts regard it as a mandatory element that must be followed by organizers of peaceful assemblies.

During these years, Kazakhstan citizens were deprived of their right to hold spontaneous peaceful assemblies.

The law provided for no impromptu or spontaneous public gatherings. Whatever the case might be, the organizers were supposed to obtain an authorization within 10 days in advance of the event.

In the same vein, the Law stipulated no right for the citizens to hold single-person pickets. Only organizations and groups of individuals were eligible to apply.

It should be noted that the Law gave government officials the right to refuse to issue permits for peaceful assemblies on any of the numerous reasons it stipulated.

Add to these numerous violations committed by the government officials. Those would range from delays in application reviews to unmotivated refusals for no reason at all.

But even when every procedure was followed and protesters gave their consent to hold a gathering in a designated venue, that still would not be a guarantee that authorisation would be issued. A peaceful assembly could still be refused if the officials did not like its topic or if they had doubts about the organizers’ political loyalty to the authorities and the ruling regime.

2. Monitoring of the situation with peaceful assemblies in the years under review shows a steady trend: this activity generally tends to be on the decline.

This has been taking place against the backdrop of opposition parties being pushed out from the political field—those same parties that once were the main organizers of peaceful assemblies. Accordingly, the number of public events under protest political banners has been declining as well.

In parallel, the NGOs that used to practice peaceful assembly on a fairly frequent basis were also being “washed out” from this field. This was primarily due to a negative attitude that was being nurtured by the authorities toward assemblies who branded them as a factor that undermined social stability in the country. Secondly, the authorities and law enforcement bodies put organizations which practiced public gatherings under pressure.

3. As a result of real opposition withdrawal from the country's political life and a reduction in the NGOs' activity on organising peaceful assemblies, the protest actions have increasingly become an instrument of lone truth-seekers and ad-hoc groups of citizens who attempted to stage a fight against injustice of the judicial system and were outraged by the level of social injustice. The political component has been almost completely removed from the field of peaceful assemblies.

In 2010-2017 there was an increase in the number of peaceful assemblies staged by individual citizens. As a rule, those people were so driven by despair, they came out to protests in order to draw the attention of the public and authorities to their problems.

In 2017, such assemblies accounted for a third of all monitored gatherings. In a similar way, individual groups of social activists who were seeking solutions to certain social and everyday problems made their bid at having their interests addressed. However, compared to previous years their numbers were also much smaller.

Along with this, the number of spontaneous public events increased. More and more "people from the streets" were becoming organizers and participants in a significant number of peaceful assemblies—those people had never been seen in public life and were unknown in terms of civic activity. In other words, such factor as spontaneity and unpredictability has risen in the field of peaceful assemblies.

4. An analysis of the situation with peaceful assemblies that had set in by 2018 shows that Kazakh authorities have been able to significantly reduce such activity of the people and change its characteristic features. Instead of serious socio-political protests that affect the interests of the entire society and the country, peaceful assemblies were increasingly focused on solving individual and group problems.

This became an expected result, once political opposition was eliminated and disloyal public organizations and individual civil activists were put under severe pressure. As a matter of fact, the authorities had cleansed the field from those who did not suit them for political and ideological reasons, to the point that they are now fully satisfied with the social and everyday nature of peaceful assemblies organized by the "people from the streets."

The rally activity, the likes of which were seen back in 2017, no longer pursues political agenda but is only focused on everyday, at best, socio-economic problems. This explained the relatively soft treatment of organizers and participants in such events: they were not hindered, they were not preventively arrested, and as a rule they were not dispersed or subjected to detentions and administrative punishments.

Such a "protest" activity apparently suited the authorities quite well, so much so that they were willing to regulate and control it without resorting to harsh measures stipulated in the 1995 Law.

5. By 2018, as a result of official Kazakh and Russian propaganda a stable trend had been formed in public mind: fear of rallies and disbelief that serious social problems could be solved through public actions. In the mind of an average Kazakh layman, the word "rally" has acquired a strongly negative connotation. This attitude towards rallies has become entrenched in the public consciousness and become one of the serious reasons for rejecting "rallies" as an instrument for solving socio-economic and political problems.

This attitude has become pre-eminent in the significant sections of the population, and is successfully used by the authorities by placing the protesters in the category of troublemakers who work to destabilize the situation in the country.

2.2. Monitoring of regulation of peaceful assemblies in the Republic of Kazakhstan in 2018—first half of 2020⁸⁶

2.2.1. Discussions and planning around peaceful assemblies, including in social media, prior to holding them

Discussions and planning are an integral part in the process of preparation of any peaceful assembly. In the overwhelming majority of cases, discussion and planning of peaceful assemblies happens in social networks where the leaders publish so-called “posts” and make so-called “reposts.”

As mentioned in para. 1.3.5 of this Report, the 1995 Law did not contain any provisions that would regulate discussions, planning and information flows around the organization of peaceful assemblies. Nevertheless, citizens were brought to administrative liability for having discussions, including on social networks, on the issues pertaining to organizing peaceful assemblies—which, under the paragraph 16 of Regulatory Decision of the Supreme Court of the Republic of Kazakhstan No. 7 dated 6 October 2017 “On Certain Issues Of Application By Courts Of The Provisions Of The Code Of The Republic Of Kazakhstan On Administrative Offenses, Special Part”,⁸⁷ is deemed to be a violation of the procedure for organizing a public event.

The 2020 Law expressly stipulates this restrictive provision: disseminating information about the objectives of a peaceful assembly and other information pertaining to its organization and holding may only be allowed after a local executive body has positively responded to a notification of a picket, gathering or rally, or after the deadline for such a response has passed, or after a permit to hold a march or demonstration has been issued.

Even though the law on administrative offenses does not provide for liability for planning, discussing and preparing an administrative offense, initiators and participants may still be held administratively liable for discussing a peaceful assembly, even if the event itself may not have materialized.

The monitoring shows that in Kazakhstan, there has been a stable practice of holding citizens administratively liable for discussing and planning peaceful assemblies, including in social networks, before they are actually held.

An analysis of this practice shows that citizens, irrespectively of whether they submitted or did not apply for an authorization (under the old law) or a notification or an application for approval (under the new law) for holding a peaceful assembly, if they had a discussion around it in the public domain prior to the event (as is often the case on social networks), they will likely be persecuted and even arrested.

Subsequently, they are held administratively liable under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences “Violating the legislation of the Republic of Kazakhstan on the procedure for organizing and conducting peaceful assemblies, rallies, marches, pickets and demonstrations.” Although, at the time when the person in question is held administratively liable and even detained, they have not even had a chance to participate in a peaceful assembly, because no peaceful assembly has been held as a matter of fact.

This is how the authorities explain such practice of detentions and bringing citizens to administrative liability: by way of having a discussion in social networks, preparations have been made to commit an administrative offense in the form of holding an unauthorized peaceful assembly—that is, the procedure for holding such an event has been violated.

⁸⁶Since the work on the report continued until December 2020, the results of the monitoring for July-December 2020 are included in it.

⁸⁷Regulatory Decision of the Supreme Court of the Republic of Kazakhstan dated October 6, 2017 No. 7 “On Certain Issues Of The Application By Courts Of The Norms Of The Special Part Of The Code Of The Republic Of Kazakhstan On Administrative Offenses” as amended on 31.05.2019 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>

On 20 April 2019, civil and human rights activist B. Blyalov was detained in Nur-Sultan. Earlier, Ms. Blyalov had posted on his Facebook page that he had applied to the Akimat of Nur-Sultan for authorization to hold a rally on 26 April against the construction of a nuclear power plant.

The same day, an administrative court held him administratively liable under Part 3 of Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, and he was placed under a 15-days administrative arrest. As the ruling of the Specialized Interdistrict Administrative Court for the city of Nur-Sultan stated, “until an authorization to hold a mass event has been issued, its organizer as well as any other persons may not announce the date, place and time of such an event in the media, Internet or other information networks.” Three days after Ms. Blyalov had been arrested, the Akimat of Nur-Sultan sent a response to his request, basically stating that he had been provided the permit to hold a protest because *subbotniks* (Saturday clean-up day) will be held at the place of the planned protest, during the month in question, i.e. from 26 April through 26 May 2019.⁸⁸

In July 2019, N. Abdrakhmanov was detained by police in Almaty for actively using his messenger and social networks to urge fellow citizens to participate in an unauthorized rally. The rally itself had not yet occurred, but Mr. Abdrakhmanov was held administratively liable under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, and placed under a 10-days administrative arrest by a ruling of an administrative court.⁸⁹

On 21 February 2020, two individuals, Zh. Mamai and Zh. Rakhmatolla, were detained for appealing in social networks to fellow citizens to participate in an unauthorized rally, even though the rally itself had not taken place yet. By an administrative court ruling, Mr. Mamai was placed under an administrative arrest for three days, and Mr. Rakhmatolla for 15 days.⁹⁰

Therefore, citizens who discuss issues around organization of peaceful assemblies in social networks have no effective remedies protecting their freedom of speech and expression, and practically any “legitimate” discussions of such issues end up in appeals to the authorities with notifications or applications for approval and hoping they would respond positively. In any other cases, citizens may be held to administrative liability for violating the legislation on peaceful assemblies.

2.2.2. Communications with authorities (filing applications for permit or notifications of peaceful assemblies)

As already noted, the 1995 Law introduced a stringent procedure for obtaining authorizations whereunder in order to hold peaceful assemblies, citizens were required to obtain authorization from authorities no later than ten days before the scheduled date of the event. In doing so, the Law prescribed that only those representatives of labour collectives, public associations or individual groups of citizens of Kazakhstan who were of age of 18 or older, had the right to obtain an authorisation.

Aside from that, the Law prescribed that *maslikhats*—local representative bodies—were empowered to assign specific venues where the authorized gathering could be held—usually in the city outskirts. For example, in Almaty, Kazakhstan’s largest city, a local *maslikhat* by its decision allocated a single venue for authorized public gatherings—a square behind Sary-Arka cinema, approximately seven kilometres away from downtown and offices of city authorities.

⁸⁸“An activist was arrested for 15 days for calling for a rally against the construction of a nuclear power plant,” 20 April 2019 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/29893031.html>

⁸⁹“Several people were detained in Almaty for calling for a rally”, 5 July 2019 // Website of the Internet magazine “Vlast”. URL: <https://vlast.kz/novosti/34249-v-almaty-za-prizvyvy-k-mitingu-zaderzali-neskolko-celovek.html>

⁹⁰“Two residents of the Almaty region were detained for calling for a rally”, 22 February 2020 // Website of the newspaper “Liter”. URL: <https://liter.kz/za-prizvyvy-k-mitingu-zaderzhany-dvoe-zhi/>

Against this backdrop, almost all attempts by the protest-minded citizens to obtain authorizations to hold pickets or rallies—even if they were in strict compliance with the application procedure as prescribed by the Law—ended in the authorities refusing to grant authorisation.

In doing so, while denying citizens an authorization to hold peaceful assemblies, the authorities would normally cite a standard wording: *“in view of an already planned event,”* which would be planned at the same place and the same time, or *“due to repair work to be done at the place (of planned gathering).”*

For example, in order to obtain an authorization to hold a rally—at a legally designated venue, a park behind Sary-Arka cinema in Almaty—local resident Alnur Ilyashev had to receive 35 denials in the period from August 2018 to June 2020, before he was able to obtain authorization on his 36th attempt.⁹¹

An equally absurd situation has developed around the citizens’ right to hold a single-person picket. A good example is a decision issued by the Karaganda city Akimat on 1 October 2018 whereunder a local resident, Aliya Sadyrbayeva, who had previously applied for authorization to hold a single-person picket in the square in front of the building of the Karaganda regional akimat demanding the resignation of the government of the Republic of Kazakhstan, was denied permit under the pretext that *“the purpose of the picket violates the Constitutional Law “On The Government Of The Republic Of Kazakhstan.”* The Akimat pointed out that holding a picket in Karaganda under such a banner *“was inappropriate since no state bodies or officials who make decisions on resignations of the government are represented in the city of Karaganda”*.⁹²

Since the new Law on the Procedure for Organizing and Holding Peaceful Assemblies entered into force in June 2020, law enforcement practice has seen little change.

As an example, the Almaty city akimat’s Department of Public Development, in spite of state authorities’ assurances that peaceful assemblies in the form of a picket, a gathering, or a rally would be allowed under the new law to proceed on the basis of a notification, denied a notification of a single-person picket from citizen Azhimoldayev which he had filed in full accordance with all prescribed procedures, citing that in their opinion, the citizen in question should have indicated an estimated number of participants in a **single-person picket**⁹³.

The already-mentioned civic activist Alnur Ilyashev, who on 12 November 2020 applied to the Almaty city akimat with a notification of a single-person picket, was denied on the basis of subparagraph 1, paragraph 6, Article 5 of the 2020 Law, stating that *“the organizer of a peaceful assemblies may not be a person who has been sentenced under a court sentence to correctional labour, community service, restriction of freedom, arrest, imprisonment, during the entire period of sentence.”* Indeed, Mr. Ilyashev had been sentenced to a restraint of freedom for allegedly engaging in dissemination of false information, but his sentence did not stipulate anything to the effect of depriving him of any other political rights and civil liberties.

Also, under the same paragraph of Article 5 of the 2020 Law, the organizer of a peaceful assembly may not be someone who has been found by court as having limited legal capacity.

What is worth noting, is that under paragraph 3 Article 33 of the Constitution of the Republic of Kazakhstan, *“The right to elect and be elected, to participate in the all-nation referendum shall not extend to those citizens judged incapable by a court as well as those held in places of confinement upon a court’s sentence..”*

⁹¹“An Almaty activist obtained permit for a rally on a 36th attempt,” 25 June 2019 // Azattyk Radio website.
URL: <https://rus.azattyq.org/a/30018892.html>

⁹²“Why do the authorities prohibit single-person pickets?”, 9 February 2019 // Kokshetau Asia website.
URL: <https://kokshetau.asia/socialnews-mobile/37253-pochemu-vlasti-zapreshchayut-provodit-odinochnye-pikety>

⁹³“The Almaty Akimat refused to approve a single-person picket due to the lack of the number of participants in the application,” 19 August 2020. URL : <https://news.mail.ru/politics/4303078/gallery/7266731/>

Therefore, according to the Constitution a person who a court of law has sentenced to correctional labour, community service, restriction of freedom, or arrest, or a person deemed to have limited legal capacity—may be nominated as a candidate for President, deputies of the Mazhilis of Parliament of the Republic of Kazakhstan, or deputies of local maslikhats and actually be elected into those positions—while those same persons may not organize a picket, rally or demonstration.

After the 2020 Law came into effect, the authorities in several cases cited incomplete information provided in a notification as the basis for denying permit to hold a single-person picket or a rally.

In actuality, communications with the authorities (local executive bodies, called akimats) regarding authorizations to organize and conduct peaceful assemblies (under the old law) or filing a notification of a gathering, picket or rally, or an application for approval of a march or demonstration (under the new law) have been extremely ineffective and do not have it as an objective to assist the citizens in ensuring their constitutional right to peaceful assembly.

2.2.3. Preventive detentions

One of the most egregious violations of the right to liberty and personal security in the context of peaceful assemblies in the Republic of Kazakhstan are in the form of so-called preventive detentions.

Under subparagraph 31, paragraph 1 of Article 6 of the Law of the Republic of Kazakhstan “On The Bodies Of Internal Affairs Of The Republic Of Kazakhstan” police officers are authorized to detain persons who have committed a crime or administrative offense, and under subparagraph 21 of the same Article they are authorized to bring individuals to the departments of internal affairs for having committing an administrative offense.⁹⁴

Detentions and bringing people in for committing administrative offenses are also regulated by Articles 14 and 785 of the *Code of the Republic of Kazakhstan on Administrative Offences*.⁹⁵

Under part 1 of Article 14 of the Code of the Republic of Kazakhstan on Administrative Offences, “*No one may be subjected to administrative detention, bringing-in, checking-in to the bodies of internal affairs (police) or other government bodies, body search and inspection of personal belongings of an individual, or to other measures to support the process in an administrative offense case, on any grounds other than those established by this Code.*”

Under subparagraphs 1 and 2 of part 1 of Article 785 of the Code of the Republic of Kazakhstan on Administrative Offences, “For the purpose of suppression of administrative offence, establishment of identity of a person suspected in its commission, drawing up a protocol on administrative infraction, when its drawing up is impossible on location of the administrative infraction, ensuring well-timed and proper consideration of a case and execution of a decree adopted on the case, prevention of a direct danger to life or health of people, threat of accident or technogenic disasters, the authorized civil servant shall have the right to apply the following measures of ensuring the administrative infraction proceeding within the competence in respect of an individual:

- 1) bringing to the place of drawing up of a protocol on administrative infraction;
- 2) administrative detention of an individual...” ;

⁹⁴Law of the Republic of Kazakhstan No. 199-V of 23 April 2014 “On The Bodies Of Internal Affairs Of The Republic Of Kazakhstan” as amended on 15.11.2020 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/Z1400000199>

⁹⁵The Code of the Republic of Kazakhstan on Administrative Offences dated 5 July 2014 as amended on 15.11.2020 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”.

URL: <http://adilet.zan.kz/rus/docs/K1400000235>.

In addition, under subparagraphs 9 through 11 of paragraph 1 of Article 6 of the Law on Bodies of Internal Affairs, the police is empowered to “bring to medical organizations or internal affairs stations individuals who are found to be in public places in a state of intoxication that offends human dignity and public morality; conduct search and detain and bring to special-purpose medical establishments individuals who evade the compulsory medical measures prescribed by a court ruling; to bring to adaptation centres the neglected minors between three to eighteen years old, as well as those children that have been left without the supervision of their parents or substituting their parents.”

Finally, detentions and bringing-in of individuals that are suspected of committing criminal offenses are governed by the Criminal Procedure Code of the Republic of Kazakhstan.⁹⁶

Under subparagraph 29) of Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan, “actual detention is a restriction of the freedom of a detained person, including his/her freedom of movement, his/her compulsory detention at a certain place, his/her compulsory bringing-in to the bodies of inquiry and investigation (capture, closing in a room, compulsion to proceed to a place or to remain in place, etc.), as well as any other actions that significantly restrict a person’s personal freedom, from the moment—to the minute—when such restrictions became real, irrespectively of whether the detainee was given a procedural status or any other formal procedures were performed.”

Under Article 128 of the Criminal Procedure Code of the Republic of Kazakhstan, a person may only be detained on the following grounds: when the person has been caught while committing a crime or immediately thereafter; when eyewitnesses (witnesses), including victims, have directly pointed at this person as the one who committed the crime, or detained him/her; when clear traces of the crime have been found on this person or his/her clothes, on him/her or in his/her home; when the lawfully-obtained field materials from investigative activities and/or covert investigation against the person of interest contain reliable information on a criminal offense that has been committed or is about to be committed.

Under Article 157 of the Criminal Procedure Code of the Republic of Kazakhstan, “when a suspect, accused, witness or victim fails to appear (before the authorized body) without a justified reason, that person may be forcibly brought in on the basis of a substantiated decision of the person who carries out the pre-trial investigation, or a court ruling.”⁹⁷

Thus, the criminal procedure legislation and the legislation on administrative offenses (in part concerning the procedural norms) establish both the grounds and procedures for detentions and bringing in individuals to police stations, the legal status of detainees, as well as their rights and responsibilities. To this end, the Law of the Republic of Kazakhstan on the Bodies of Internal Affairs only points at the powers of police to forcibly detain and bring in individuals, while the procedural legislation governs everything that pertains to the grounds and procedure for detention and bringing-in.

It is also worth noting that Article 8 of the 1995 Law actually provided for the internal affairs bodies to intervene and take the necessary measures to terminate a gathering, rally, march, picket or demonstration, only after the participants would refuse to comply with the requirement of the representative of the local executive body to unconditionally terminate the public event when: an application was not submitted, a decision was made to ban (the event), the procedure for holding (the event) was not followed, and when there was a threat to human life and health, or violation of public order.

In other words, the criminal procedural and administrative procedural legislation, as well as the legislation on peaceful assemblies, provides an exhaustive list of grounds and procedures for detaining and bringing in individuals in connection with their participation in peaceful assemblies.

⁹⁶The Criminal Procedure Code of the Republic of Kazakhstan dated 4 July 2014, as amended on 16.11.2020 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/K1400000231>

⁹⁷ Ibid.

However, preventive detentions of citizens before anticipated peaceful assemblies that are not based on the law (i.e. the detentions) are not uncommon in Kazakhstan. In doing so, police often use various pretexts for detaining citizens, ranging from an urgent need for a “preventive talk” which does not even stipulate detention and forced bringing-in, to unexpected “appearances” on the eve of a peaceful assembly of subpoenas demanding civil activists to appear as witnesses in various criminal cases. Moreover, in spite of the legally established procedure which provides that the fact of a witness failure to appear without a valid reason when subpoenaed must first be established, and only then should a substantiated decision to bring such person in be issued by the authorized person carrying out the pre-trial investigation, citizens are forcibly brought in the police stations immediately.

On the eve of a peaceful rally that was scheduled to take place on 23 June 2018, Kural Medeuov, a resident of Almaty, was forcibly brought in to the Alatau District Department of Internal Affairs for the city of Almaty in the evening of 20 June. The police questioned him about his participation in a “potential rally” and then let him go. According to him, he was able to talk to other people at the police station who also were forcibly brought in for the same reason. On 21 June, officers from the Bostandyk District Department of Internal Affairs for the city of Almaty came to the house of civil activist Suyundyk Aldabergenov and also forcibly brought him in to the police station. In his words, *“most of the questions were about the 23 June rally, and whether I was planning on taking part in it; some of the other questions asked were: “Are you a member of DCK? Are you present in the chat? Did you hand out the flyers? Do you know Mr. Ablyazov? Who do you know?” - they asked me. They wrote down everything I said, gave it to me to read, and I signed the paper. Then they let me go,”* he added.⁹⁸

Similar “pre-emptive detentions” took place these days in the capital as well. According to local resident Nazym Serikbekova, over the past two weeks on the eve of the expected date of the peaceful rally, about 20 people had been called to local police stations.⁹⁹

One striking example is the preventive detentions that have been made over a number of years on the eve of the Independence Day of Kazakhstan on 16 December, which is associated with the events that took place on 16 December 1986 in Almaty and on 16 December 2011 in Zhanaozen. Before the holidays dedicated to the declaration of independence, apparently assuming that protest moods would be escalating, authorities take preventive measures to suppress them.

On the eve of Independence Day of 16 December 2019, at least 12 activists had been detained in the cities of Almaty and Nur-Sultan on charges of “violations of the Law on peaceful assemblies.” In Almaty, civil activists Askhat Zheksebeyev, Noyan Rakhimzhanov and Bakdaulet Alibekov were detained under Article 488 of the Code on Administrative Offences. They were placed under arrest for 13 and 15 days, and Mr. Alibekov was fined 20 monthly calculation indices.

The early presidential election was held in Kazakhstan on 9 June 2019. It was accompanied by mass citizen protests in a number of large cities across Kazakhstan: Almaty, Nur-Sultan, Shymkent and others. The protests lasted two days, from 9 June through 10 June. In anticipation of the Election Day, a number of media outlets reported on 8 June that some activists had been detained: *“Against the backdrop of the protests expected on the Election Day and the following day, searches and detentions of activists were carried out the capital this Friday.”*¹⁰⁰

The Ministry of Internal Affairs provided the following commentary on the 9-10 June rallies: *“As a result of actions carried out by activists of a banned organization, on 9 June a number of citizens violated the*

⁹⁸“Activists in different cities continue to receive warnings”, 22 June 2018 // Radio Azattyk website.
URL: <https://rus.azattyq.org/a/kazakhstan-activists-warnings-rally/29313991.html>

⁹⁹ibid.

¹⁰⁰“8 June 8 in Kazakhstan is the “day of silence” before the election”, 8 June 2019 // Radio Azattyk website.
URL: <https://rus.azattyq.org/a/29986805.html>

laws of our country and were brought to justice for this. On 10 June, based on the results of monitoring of social networks, DCK activists chats, as well as based on an analysis of the instructions the DCK leaders were sending from out of country, it was obvious they were not going to cease their destructive acts and again were calling on the people to attend the unauthorized rallies, the Ministry of Internal Affairs said. Taking this into account and also given the fact that in the previous days there were cases of use of stones, sticks and pepper sprays, the regional headquarters in the cities and regions decided to restrict people's access to the venues that had been announced by the DCK leaders for their rallies. Despite the preventive measures taken by the law enforcement agencies in these places, certain groups of citizens, incited by DCK activists, made attempts to organize illegal rallies. As a result, they were brought in to the police stations and some of them were held administratively liable. Some of them were released after explanatory work was done with them," the department's press service informed.¹⁰¹

Another example is the preventive detentions that took place on the eve of a rally announced by the Democratic Party of Kazakhstan's initiative group to take place on 22 February 2020 at the Astana Square in Almaty, and rallies announced by the banned movement "Democratic Choice of Kazakhstan" to take place the same day in different cities across Kazakhstan.

After these peaceful protests had been announced, more than 100 people were preventively detained.

After the Democratic Party's organizing committee had received registration with the Ministry of Justice in December last year, the new party was planning on holding a founding congress on 22 February in Almaty. However, against the backdrop of pressure on its supporters in the regions, e.g. delegates heading to Almaty being removed from trains, activists being detained and arrested¹⁰², the party's organizing committee announced on 19 February that the congress would be cancelled, and called on its supporters to come to a rally on 22 February. On the night of 22 February, Zhanbolat Mamai, the party's leader, was forcibly detained and placed under a 3-day arrest by a court in Kaskelen, a city in Almaty oblast, on charges of "calling for an unauthorized rally."

On 22 February, arrests began in Almaty at least two hours before the announced start of the rally which was scheduled for 11:00 at Astana Square. From early in the morning, the police installed a cordoned-off perimeter around the square and would not allow even passers-by to cross the area. In the morning of the same day, more than thirty party activists were detained while leaving a hostel in the centre of the city. The people were forced into police "wagons" without affording them any explanations of legal reasons and grounds, and taken to various police departments across Almaty. After a few hours they were released, in most cases without even filing a protocol of detention.

Another rally was scheduled for 2 pm at the same square in Astana, called for by Mukhtar Ablyazov, a former banker and opposition politician and leader of the banned movement "Democratic Choice of Kazakhstan" (DCK). In Kazakhstan, DCK has been branded as an "extremist organization" by a court, even though it is named a "*peaceful opposition movement*" in a resolution of the European Parliament.¹⁰³ Detentions of the activists began long before the start of the rally and continued near Astana Square until almost 4 pm, after which time there were only police and journalists there.¹⁰⁴

Generally, after the 2020 Law was adopted the practice of application of the current legislation in terms of preventive detention has remained essentially unchanged.

¹⁰¹Commentary of the Ministry of Internal Affairs of the Republic of Kazakhstan in connection with the rallies on 9-10 June 2019. URL: <https://toppress.kz/article/51552/>

¹⁰²"Authorities Getting Ready". Scheduled meetings and detentions of activists", 18 February 2020 // Site of Radio Azattyk. URL: <https://rus.azattyq.org/a/kazakhstan-arrests-of-opposition-activists/30440773.html>

¹⁰³European Parliament Resolution of 14 March 2019 on the human rights situation in Kazakhstan // Website of the European Parliament. URL: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0203_EN.html

¹⁰⁴"Saturday events: Detentions and Police "Reinforcements", 22 February 2020 // Azattyk Radio Website. URL: <https://rus.azattyq.org/a/kazakhstan-protests-22-february/30448430.html>

Under Article 18 of the 2020 Law, police may be called in to take the necessary measures to forcibly terminate a peaceful assembly under the legislation of the Republic of Kazakhstan also on the ground of the rally organizers and participants failing to comply with a local executive body representative's demand for the gathering to be terminated.

However, preventive detentions of participants in a planned peaceful assembly continue not because they failed to comply with the police demands. To justify preventive detention of citizens prior to a potential rally, police had begun to use the tactic of accusing the detainee of committing a similar violation previously.

Based on the foregoing, it can only be stated that the actions by law enforcement officers in carrying out preventive detentions of citizens prior to planned peaceful assemblies in Kazakhstan and in ensuing court proceedings whereunder detainees are fined and placed under administrative arrests even before the peaceful assembly in question has taken place, with Article 488 of the Code on Administrative Offences being used as the basis for punishment for participation in an unauthorized assembly, can only be characterized as lacking legal basis and clearly contradicting Kazakhstan's international obligations.

The practice by the authorities in executing preventive detentions can be defined as detention without legal basis in the run-up to important political or social events. *"The purpose of such detentions is to isolate activists thereby preventing them from participating (explicitly or allegedly) in public actions, from communicating with foreign delegations or the media, or from otherwise engaging in political and civic activity."*¹⁰⁵

A research of the national legislation showed that there are no grounds that would justify preventive detentions in connection with peaceful assemblies. There are no direct or indirect legal norms that would allow preventive detentions. Using preventive detentions can in no way be backed within the framework of the current legislation which governs the procedure for detentions and bringing-in of individuals. In spite of this, as noted above, the authorities have been widely using such procedures.

After the 2020 Law came into force which established the principle of presumption in favour of peaceful assemblies and a notification procedure in their holding, at least in relation to rallies and pickets, the organizing committee of the Democratic Party submitted a notification of a rally to be held on 6 June in 10 cities across Kazakhstan: Almaty, Nur-Sultan (capital), Atyrau, Semey, Zhanaozen, Aktobe, Kostanay, Shymkent and Taraz.

However, two days prior to scheduled date journalist Inga Imanbay, a member of the organizing committee, told the Vlast.kz analytical publication that they had been denied. She also mentioned the pressure the party activists were facing. *"Almost everyone who handed in the notification [of the rally] in ten cities is either being sought or has been found. Some people are in jail, e.g. in Shymkent (where, according to Ms. Imanbay, two party activists had been placed under a 5-day arrest - V)."*¹⁰⁶

From the most recent examples, we can cite an "authorized" meeting which was held at the Chokan Valikhanov Square in Almaty on 31 October 2020 with a title "For political reforms, against political repressions!" organized on the initiative of human rights defenders Ms. Bakhytzhana Toregozhina and Mr. Gylym Ageleuov.

Despite the fact that the meeting was agreed on and organized in full compliance with the requirements of the new Law, in the run-up to the meeting the authorities conducted a flurry of preventive arrests and detentions, raids, subpoenas for questionings, and installations of CCTV cameras to record the would-be participants in Almaty and a number of cities across Kazakhstan.

On 28 October, the organizers of the meeting "For political reforms, against political repressions!" organized a press conference at the press centre of the Kazakhstan International Bureau for Human Rights and the

¹⁰⁵"Arbitrary Preventive Detentions of Activists in Belarus (October 2014)," FIDH Report. URL: <https://www.osce.org/ru/>

¹⁰⁶Rally in Almaty on 6 June: Protest Amid Disinfection. Two opposition forces gathered supporters for the first large protests during quarantine, 6 June 2020. // Website of the Internet magazine "Vlast". URL: <https://vlast.kz/politika/40046-miting-v-almaty-6-iuna-protest-na-fone-dezinfekcii.html>

Rule of Law, and the following day the meeting organizers--human rights defenders G. Ageleuov and B. Toregozhina--made a statement regarding the wave of persecutions of activists all across Kazakhstan that had unfolded in anticipation of the meeting. In their statement, they made an account of preventive detentions, raids, intimidation, subpoenas to appear to the police, issuance of not-to-leave-town undertakings, in the cities of Astana, Shymkent, Ust-Kamenogorsk, Uralsk, Aktobe, and Almaty.

In their statement, they noted that the individuals who were subjected to preventive detentions had no court sentences, were not recognized as members of any banned organizations, had no restrictions on their movements, no restrictions on their right to a peaceful assembly--nothing that might have served as a justification of the measures they were subjected to.¹⁰⁷

In the morning of the day of the meeting, 31 October, B. Toregozhina made a post on her Facebook page informing that the activists, Danaya Kaliyeva and Alimzhan Izbassarov, who had been detained the previous night, were released. Activists Daulet Abilkasimov, Marat Turymbetov and Aizhan Amirova, who had been detained earlier by the police, were also released.

In the evening of 30 October 2020, activist Sharbat Karzhaubayeva was also detained without explanations while on her way home, and was kept at the police station for more than three hours without an advocate (despite her demand to have an advocate). Later on, she was released, and there were several police officers keeping watch at her residence.¹⁰⁸

The human rights defenders gave accounts of detained individuals having to give a not-to-leave-town undertaking.

Civic activist Daniyar Khassenov posted on his Facebook page information on the detention of Kuandyk Alzhanov and Alibek Karakulov, and on CCTV cameras being installed: "*K. Alzhanov, an activist from Aktobe, and A. Karakulov, an activist from the town of Kobda, were summoned to the police on the day of the meeting, 31 October, at 09:00.*" "*CCTV cameras were installed near the residences of activists Murat Zhimbayev (Karaganda) and Galiya Tamabayeva (Astana) on 30 October.*"

According to the information from the human rights movement "Kaharman," there have been cases of preventive measures being taken against activists in several cities across Kazakhstan:

On 31 October 2020:

- *illegal outdoor surveillance at the residence of civic activist Azamat Rakhanov (Aktobe), from a white Hyundai plate number P633PM, Russian registry, Region 750. According to the operative who conducted surveillance, the authorities were alarmed and thought there was going to be some sort of an action at the Aktobe's central stadium today, namely a potential peaceful assembly;*
- *illegal surveillance of the car of civic activist Bauyrzhan Sarkulov (Aktobe), he was being followed around the city;*
- *illegal outdoor surveillance of the house of civic activist Asylkhan Zhaubatyrov (Aktobe), conducted by three police officers, district police officer Dauren Dusenov driving a dark Infinity, and the officer from the "extremism" bureau, an operative, major of police Adilkhan Nurbek, driving a black Lada;*
- *illegal outdoor surveillance of the residence of civic activist Alibek Moldin (Aktobe);*
- *civic activist Nurbol Talgarbekov (Almaty) detained in his own house and taken away;*
- *police were following the car of civic activist Gulsara Kussainova (Almaty) who was going to go to the rally. She went live to record the police's attempt to block her from participating in the rally and inform the*

¹⁰⁷"The authorities terrorize activists in the run-up to an authorized meeting", 28 October 2020 // Website of the Kazakhstan International Bureau for Human Rights and the Rule of Law. URL: <https://bureau.kz/novosti/vlast-koshmarit-aktivistov-nakanune-soglasovannogo-mitinga/>

¹⁰⁸"In Almaty, on the eve of the 31 October meeting, several activists were detained and released", 31 October 2020 // Website of Azattyk Radio. URL: <https://rus.azattyq.org/a/30922313.html>

audience that she had become a sudden witness in a criminal case so she was going to be subpoenaed;

- civic activists Didar Kairova and Diana Baimagambetova (Almaty) were detained with the use of force in Almaty;
- activist and human rights defender Bayan Akberdinova (Almaty) was followed by the police;
- civic activist Anuar Ashiraliev (Almaty) was detained at 12:00 while on his way to the protest in Almaty;
- civic activist Saken Zhusupbekov (Almaty) was detained and brought to the Almaty city police department under a subpoena in order to be questioned as a witness in a criminal case. He said there were three other people with him at the police station, a woman and two men;
- civic activist Aidyn Nusipaliev (Almaty) noticed that he was under surveillance near his house. He was going to go to the rally but then changed his mind out of concern that they might illegally keep him at the police station until the rally was over;
- a police officer came to the house of activist Saule Aitmukhametova (Almaty). She went live to record how her rights were being violated, however the officer grabbed her phone;
- illegal surveillance over the house of activist Sabyrzhan Kassenov (Almaty) was conducted from 19:00 on 30 October 2020 until 31 October 2020, the day of the rally. The surveillance was conducted from two cars, two or three unidentified individuals in each car;
- civic activist Bibigul Imangalieva (Almaty) was detained at 10:00 while on her way to work. She was brought to the Auezov district police station where she was kept until 17:45. She was questioned about the banned “Democratic Choice of Kazakhstan” movement, and about the rally. She was deprived of her right to a phone call, and was given no explanations as to the reasons of her detention.¹⁰⁹

The detentions of activists on 31 October continued even after the rally: Assiya Bakayeva (Astana), Aibek Sabitov (Astana), Sakhil Zhanabaeva, Kuanysh Serikpekov and others were detained after the rally in Almaty.

It has become known from the open sources that several preventive measures taken against the would-be participants of the 31 October meeting.

With respect to two activists, Rakilya Rakhat and Bibigul Imangalieva (both from Almaty), their residences were raided in the run-up to the 31 October rally, after which Ms. Rakhat was demanded to vacate the rented apartment, as the owner stated that they did not want to have problems with the police. Earlier on, Ms. Rakhat had been fired from her work due to her civic position. As for Ms. Imangalieva, after the raid she was also asked by her management to file in a resignation letter, on her own accord.¹¹⁰

Mr. G. Ageleuov, one of the organizers of the 31 October rally, posted on his Facebook that he had received a phone call from civic activist Kalas Nurpeisov informing him that the police were on their way to his home to raid it. He was presented no subpoena or detention protocol. According to Mr. Ageleuov, K. Nurpeisov was going to make a speech at the rally in Almaty.¹¹¹

On account that the preventive measures taken by the authorities in respect of the would-be participants of the peaceful assembly on 31 October 2020 in Almaty took the form of not only preventive detentions but also other procedures that are usually employed as part of a pre-trial investigation (e.g. raids, surveillance, questionings), our position is that all those measures had the elements of preventive acts that were aimed at creating barriers for people exercising their right to freedom of peaceful assembly, which constitutes a violation of international standards guaranteeing the right to freedom of peaceful assembly.

The preventive measures that have been employed in cities across Kazakhstan other than Almaty where the rally was to take place, are likely explained by the authorities’ concerns about initiatives that the activists

¹⁰⁹An article in group “#IHaveAChoice #ActivistsNotExtremists” on Kaharman's Facebook page
URL: <https://www.facebook.com/groups/ActivistsNotExtremists/permalink/2829849597334305>

¹¹⁰“The political activists are being fired and evicted in the run-up to a meeting on 31 October”, 27 October 2020 // Website of Current Time. URL: <https://www.currenttime.tv/a/activists-kazakhstan-fired-evicted/30915717.html>

¹¹¹“On the eve of the meeting on 31 October 2020, an activist in Almaty has his residence raided”, 30 October 2020 // Exclusive Website.
URL: <http://www.exclusive.kz/expertiza/daily/121640/>

might choose to carry out--after all, they (the activists) had made attempts to hold similar assemblies in other cities before, but were always denied by local executive authorities.

In his recommendations to Kazakhstan in 2015, the UN Special Rapporteur on the right to freedom of peaceful assembly and of association noted that it would be necessary «(b) to implement the rights to security, to liberty and to be presumed innocent until proved otherwise, including by ensuring that **no one is subject to “preventive detention” for the exercise of the right to peaceful assembly...**».¹¹²

He noted that «he is also concerned about the use of “preventive detention” or “preventive warning”. Government officials justified such measures by saying that they were used as a public service to “inform” citizens about the law. However, in the Special Rapporteur’s view, this is a form of intimidation. It is also a blatant violation of the right of peaceful assembly, as well as the right to security and liberty».¹¹³

Preventive detentions of organizers and potential participants in peaceful assemblies are fairly widespread in many regions of Kazakhstan.

2.2.4. Blocking of potential organizers and participants

On the days of alleged rallies, even before the rally starts, there are often reports that police officers are “on duty” at the homes of activists and human rights defenders, thereby blocking their movement. This is done to create obstacles to their participation in peaceful assemblies precisely for the duration of the rally. Police officers can be “on duty” until the end of the peaceful assembly, and a civil activist knows that police officers are “on duty” outside and understands that if he/she leaves the house, he/she will be detained.

No legal grounds exist for such actions by law enforcement, because legislation contains no such procedure for restricting freedom of movement, just as it does not have legislative norms that would allow the use of preventive detentions. On the contrary, such actions by law enforcement agencies are clearly illegal and may be regarded as a violation of the right to freedom of peaceful assembly (Article 21 of the ICCPR), the right to liberty and security of person (Article 9 of the ICCPR), the right to freedom of movement (Article 12 of the ICCPR), and the right to privacy (Article 17 of the ICCPR).

On 9 May 2019, the day on which a rally organized at the initiative of DCK was to take place, the media received information from civil activists in various cities reporting that they saw police “on watch” at their houses.

Pensioner Sahib Zhanabayeva told Radio Azattyk in the morning that a police car was parked at her home and that she was afraid to come out. Olzhas Eskeyev, a resident in Nur-Sultan, said that a police outfit was waiting at his place of work. Dulat Agadil, a civic activist in Nur-Sultan, told a Radio Azattyk journalist that police stood around his house since the morning of 9 May.¹¹⁴

As noted in the Guide “Right to Liberty and Security of the Person: Article 5 of the European Convention on Human Rights”: **“Deprivation of liberty will undoubtedly occur in cases where a person is forcibly held in a police or prison cell; however, there are many other forms of restriction of liberty to which Article 5 may become applicable. Without a doubt, an example of this would be the case where a law enforcement officer (regardless of whether or not force is actually used) makes it clear that a person either cannot leave a particular place, or is obliged to follow him to some other place. ... In addition, it does not really matter that**

¹¹²Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai, Addendum “Following a visit to the Republic of Kazakhstan”, 16 June 2015, paragraph 97.b) // Website of United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. URL: <http://freeassembly.net/reports/kazakhstan/>

¹¹³Ibid, paragraph 70.

¹¹⁴“Detention in the squares and at the exits from the houses. Obstacles for journalists.” 9 May 2019 // From the Azattyk Radio.

URL: <https://rus.azattyq.org/a/kazakhstan-detentions-activists-almaty-nur-sultan-regions/29930475.html>

the person deprived of liberty is not aware of this; it suffices that this person can no longer freely leave his location."¹¹⁵

This statement is also valid in establishing a violation of Article 9 of the ICCPR on the right to liberty and security of the person.

Even in subparagraph 29) of Article 7 of the Criminal Procedure Code, the concept of "actual detention" implies "...any other actions that significantly restrict a person's personal freedom, from the moment—to the minute—when such restrictions became real, irrespectively of whether the detainee was given a procedural status or any other formal procedures were performed."

However, in contrast to individuals who have been officially detained, persons whose freedom is restricted in this way are not held accountable, have no legal status in terms of an administrative or criminal process against them, and there are no legal grounds for restricting their freedom. In doing so, those who try to leave their house are immediately detained on the spot, while the police do not try to carry out detentions inside the house or apartment, because they know they have no legal grounds to enter a house/apartment to detain a specific person. This leads to obvious arbitrariness on the part of law enforcement whereunder the ideas of the legality of the actions by law enforcement are distorted.

Paragraphs 30 and 32 of the Guide on Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms state: "It should also be noted that any deprivation of liberty must be consistent with the objectives of protecting a person from arbitrariness ... The concept of arbitrariness may vary to some extent depending on the type of deprivation of liberty in question. The Court pointed out that arbitrariness can arise when there is an element of bad faith or deception on the part of the authorities; if the decision on deprivation of liberty and the execution of this decision do not comply with the objectives of the restrictions permitted by the relevant subparagraph of Article 5 § 1; if there is no connection between the aforementioned grounds for admissible deprivation of liberty and the place and conditions of detention; and if proportionality has not been respected between the grounds for deprivation of liberty referred to and the detention in question ..."¹¹⁶

2.2.5. Actions of the authorities in places of planned peaceful assemblies (blocking places, detention of organizers and participants, treatment of media representatives and independent observers)

As the monitoring has shown, on the days of supposed peaceful assemblies, potential participants are expected to be and usually are detained in places and even in districts where the peaceful assembly is supposed to be held. Detentions happen without a clear understanding and evidence that the person being detained actually had an intent to participate in the assembly in question. In some cases, even journalists carrying out their professional duties are also detained.

On 9 May 2019, on the day of the rally announced by the banned DCK, activist Sahib Zhanabayeva was detained in the Green Bazaar area in Almaty at about 2:30 pm. She was headed to the Immortal Regiment march in honour of Victory Day in the Great Patriotic War to honour the memory of her friend, a war veteran. Ms. S. Zhanabayeva was detained by approximately seven uniformed police officers, who rudely pushed her into a wagon and brought to the Almaty City Police Department. After being brought in, she simply stayed in the building until 8 pm after which time she was released on the condition that she would not give any interviews and would go straight back home. During her stay at the police department, she asked for clarifications of reasons she had been detained, the answer to which was she was on the list of "opposition activists" so she was detained.

¹¹⁵Guide "Right to liberty and safety of the person: Article 5 of the European Convention on Human Rights"// Web resource of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: hrlib.kz

¹¹⁶Ibid.

Following her detention, a request was sent to the prosecutor's office to clarify the statute and procedure under which Ms. S. Zhanabayeva had been detained. The response from the Almaty prosecutor's office stated that she was interrogated as a witness in a criminal case registered by the Almaty City Police Department under Article 405 part 2 of the Criminal Code of the Republic of Kazakhstan "Organization and participation in the activity of a public or religious association or another organization after a court ruling has been issued banning it or liquidating it due to its links to extremism or terrorism." The response also said that no unlawful acts on the part of the Almaty City Police Department were registered.

On 6 July 2019, on the Day of the Capital, DCK a movement that has been banned in Kazakhstan, called on the citizens to take part in anti-government rallies. Among those detained at the rally were those who had not demonstrated any involvement whatsoever: "Azattyk reporters witnessed several hundred people being detained. Random bystanders happened to be among them, in all likelihood. During Azattyk's live broadcast from the scene, a woman said the police had detained her 15-year-old son with whom she was walking along the river embankment. On the evening of 6 July, there were many police officers, police cars, minivans and buses which were parked near the embankment.¹¹⁷ "In Shymkent, a city of national significance in southern Kazakhstan, an Azattyk reporter witnessed approximately four dozen people being detained at Al-Farabi Square (this place was also indicated as a gathering point for DCK supporters). The police in uniform and plain-clothed people were taking men and women into the buses and minivans who did not shout any slogans. Some of the detainees were just sitting on the benches, minding their business. Azattyk reporter's question to the police and unidentified men in plain clothes about the reasons for detentions was left without an answer.¹¹⁸

Cases like these are not isolated. KIBHR had received multiple reports of people being detained at the venues of unauthorized rallies or even en-route to them, near their own homes, which law enforcement agencies explained as detentions for interrogations as witnesses in cases of membership or participation in the banned "Democratic Choice of Kazakhstan" movement (see also section 2.2.3 of the Report).

Under the current criminal procedural law, any person may be questioned as a witness in a criminal case. In doing so, as the monitoring and practice of detentions of participants in peaceful assemblies have shown, a potential witness in such a criminal case may not even be aware that he/she has the status of a witness, which later may change into a suspect. The legislation provides for a procedure for interrogating witnesses and even forcibly bringing them in for interrogation, but it does not have a provision for detaining a person without first sending them a subpoena for questioning, then establishing the reason why they did not appear for the questioning, and only then—if the reason is unsubstantiated—issuing an order to forcibly bring the witness in.

In accordance with paragraph 17 of General Comment No. 35 to Article 9 of the ICCPR "Liberty and security of person": "Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (Art. 19), freedom of assembly (Art. 21), freedom of association (Art. 22), freedom of religion (Art. 18) and the right to privacy (Art. 17)".

However, the facts of detentions of participants in the rallies which we recorded prove that those people were detained precisely because they were exercising their right to freedom of assembly.

Under the 2020 Law, in the event of an unauthorized assembly representatives of akimats must issue a warning to the organizers or participants that an assembly not agreed with the local executive authorities may not proceed. When it comes to practice, however, the results of monitoring over the last two years show that in the overwhelming majority of cases unauthorized peaceful assemblies have been suppressed and even dispersed without any warnings.

¹¹⁷"Day of the Capital: Detentions at Failed Rallies", 6 July 2019 // Azattyk Radio website.

URL: <https://rus.azattyk.org/a/kazakhstan-antigovernment-protests-day-of-the-capital/30040603.html>

¹¹⁸ Ibid.

As an example, dozens of people were detained on 23 June 2018 in Almaty, Astana, and Shymkent. The detainees did not express any demands nor did they hold banners. At the venues that DCK (a movement banned in Kazakhstan) had designated for the rallies, policemen accompanied or literally threw the detainees into the buses.

In the morning of 23 June, the Azattyk reporters noticed significant number of police officers in the central part of Almaty, as well as police cars that were parked near the Opera and Ballet Theatre. Arrests began after 2 pm. Special police units selectively “picked out” people who were approaching the pedestrian part of Panfilov Street, accompanied them to the buses or even threw them in. The detainees did not chant any slogans, nor did they carry any posters or banners. Those who were detained by the special police units in Almaty were in the dozens. Human rights activist Yevgeny Zhovtis, director of the Kazakhstan Bureau for Human Rights, told Azattyk that an employee of the bureau, journalist Andrei Sviridov, had been detained in Almaty. According to Mr. Zhovtis, the police asked Mr. Sviridov to produce his documents, and after he did as asked, they forced him onto a bus and brought him to the Medeu District Police Department.¹¹⁹

In Astana, police were on duty at the approaches to a square near the city akimat. Azattyk correspondent Madi Bekmaganbetov was briefly detained but then released after a document check. The police selectively allowed people through to the square, dozens of people were detained and taken to the police stations on buses. The detainees in Astana also did not voice any demands.

In Shymkent, police detained dozens of people at Tauke Khan Square near the city akimat. An Azattyk reporter witnessed as several women who had been brought to the Al-Farabi District Department of Internal Affairs were demanding “to be returned to the place of detention.” “We were walking on the side of the road, and then we were detained. We have no idea why we were brought to the police station,” said one woman. In the morning of that day, Sanat Urnaliyev, an Azattyk reporter, was detained. He was kept at the police station for more than six hours, during which time he was being questioned, first in a criminal case into a comment made on a YouTube channel operated by the local newspaper Uralskaya Nedelya (Uralsk Week), and then in a different that had to do with Uralsk activist Bakiza Khalelova who was suspected of participating in an organization that was “recognized as extremist by a court”. Sanat Urnaliyev said he had nothing to do with those cases and suggested that he was detained because the authorities wanted to prevent him from covering the afternoon rally. On 23 June, several journalists working for the Uralsk Week newspaper were detained in Uralsk.¹²⁰

On 16-17 December 2018, police blocked several activists from coming to the Republic Square in Almaty where they wanted to honour the memory of people murdered during the 2011 Zhanaozen events (when police opened fire on oil workers in the Mangistau oblast who were demanding the improvement of their working conditions) and victims of the 1986 December events in Almaty (a period when demonstrations by the Kazakh youth who expressed their dissatisfaction with a decision by Moscow’s central authorities to appoint a Kremlin protégé, unknown in the republic, as the head of the Kazakh Soviet Socialist Republic, were suppressed). The head of the non-governmental organization “Ar.Rukh.Khak”, human rights activist Bakhytzhan Toregozhina and civic activist Rinat Rafkhat reported on Facebook that human rights activist, co-author of this Report Yerlan Kaliyev, publisher of the opposition newspaper “Dat” Yermurat Bapi, activists Suyundyk Aldabergenov, Kural Medeuov, and Geroykhan Kystaubayev, as well as several other people, were detained on 17 December in Almaty. They were released after having spent several hours at the police stations.

Journalist Yermurat Bapi says while at the police station, they questioned him about “Democratic Choice of Kazakhstan” (a movement that has been banned in Kazakhstan). According to him, on 17 December he and other like-minded participants in the “New Kazakhstan” (“Zhana Kazakhstan”) forum were going to lay flowers at the Independence Monument on the Republic Square.

¹¹⁹“Dozens of detainees and failed rallies”, 23 June 2018 // Radio Azattyk website.

URL: <https://rus.azattyq.org/a/kazakhstan-almaty-shymkent-astana-zaderzhania/29315337.html>

¹²⁰Ibid.

“Several police officers were waiting for me as I was leaving my house. They handed me a subpoena, saying that I had been summoned to the police station as a witness in a criminal case, and cited the case number. They asked me, “Do you know about DCK?” “Do you support DCK?” “Do you have a presence in DCK chats? To all questions, I said no. I was released after two hours. I think that this [detention] was carried out to keep us out of the square. And the questions they asked were just a pretext,” Yermurat Bapi told Azattyk.¹²¹

The police did not officially explain the reasons for arrests. The Bostandyk District Police Department confirmed to Azattyk the information about several citizens that had been brought there, and added they had all been released after one hour. To Azattyk reporter’s question why they were detained, the officer on duty said the detainees were alleged to be “going to a rally.” As for any other questions, the recommendation was that they be asked at the city police department. It was not possible to receive any comments from the city police department. In Uralsk, in western Kazakhstan, on 16 December Raul Uporov and Maria Melnikova, journalists working with the independent regional newspaper “Uralskaya Nedelya”, were detained for several hours. Adil Soz, an organization that works to protect the press, reported on Sunday that police had been on duty outside the houses of the newspaper’s editor-in-chief Lukpan Akhmedyarov and publisher Tamara Yeslyamova. Mr. Akhmedyarov and Ms. Yeslyamova did not leave the apartment.¹²²

On 9 May 2019, the day state authorities officially held the “Immortal Regiment” march dedicated to the victory in the Great Patriotic War, police detained several people in Almaty and Nur-Sultan. Moreover, the websites of several Kazakhstani internet publications were blocked on the same day. The websites of Vlast.kz, Holanews.kz, Informburo.kz, Exclusive.kz, Time.kz, regional editions of Uralskaya Nedelya, Ak Zhaiyk, the website of the Kazakhstan Bureau for Human Rights, were not accessible in the morning. Informburo.kz and Time.kz were reinstated by noon Almaty time, followed by the rest of the publications and organizations.

Civil activists in various cities across the country reported police “on duty” near their houses. Some of those who had come out were detained. In Almaty, the police detained human rights activist Yerlan Kaliyev as he was leaving his house. In the morning, pensioner Sahib Zhanabayeva told Azattyk that a police car was parked at her house and that she was afraid to come out. Bibigul Tuyakova, a participant in an unauthorized 1st of May rally, was also detained on 9 May in Nur-Sultan. Local residents Dariya Uzhigaliyeva and Dianara Mukatova were detained in Atyrau, and brought to the police station.¹²³

The adoption of a new law on the procedure for organizing and holding peaceful assemblies has brought barely any changes.

On 6 June 2020, the organizers in Almaty originally planned to hold a rally at a square near the Abay monument at the Palace of the Republic. However, no one could reach the square that day. The police blocked the passages adjacent to the square. Despite the fact that more than a hundred people had gathered near the rally venue, people were not allowed through, with authorities citing that the streets were to be disinfected. A total of 53 people was detained that day, according to the press service of the Ministry of Internal Affairs of the Republic of Kazakhstan. “Fifty-three people were brought to the police stations. Of them, eight were held to administrative liability, including seven who were fined, and one person was issued a warning. In respect of two offenders, a pre-trial investigation had been initiated for insults and violence in respect of a government official. The rest of them were released after a preventive talk,” said the communication.¹²⁴

Amendments and additions to the Law of the Republic of Kazakhstan “On Bodies Of Internal Affairs” were introduced in March 2016. Article 19 of the Law (Authority of internal affairs officials) gives a detailed

¹²¹“Detentions of activists in Almaty on 16-17 December 2018”, 17 December 2018 // Radio Azattyk website, URL: <https://rus.azattyq.org/a/police-in-kazakhstan-detain-activists-journalists-for-second-day-/29660500.html>

¹²²Ibid.

¹²³Ibid.

¹²⁴“53 people were detained by the police at the rallies in Kazakhstan on 6 June” // InformBuro website. URL: <https://informburo.kz/novosti/na-mitingah-kotorye-proshli-v-kazahstane-6-iyunya-policiya-zaderzhala-53-h-chelovek-107375.html>

“Approximately a hundred people came out to a rally in Almaty, despite the quarantine and disinfection. How did it go? A photo report” // InformBuro website. URL: <https://informburo.kz/stati/v-almaty-okolo-sotni-chelovek-vyshli-na-miting-nesmotrya-na-karantin-i-dezinfekciyu-kak-eto-bylo-fotoreportazh.html>

breakdown of the actions of internal affairs officials. In particular, paragraph 3 stipulates that the actions of police officers when placing temporary restrictions on the rights of individuals (read, detentions – editorial team) must be accompanied by the words “In the name of the law!” Article 19 states that, if police use any coercive measures, they must warn so in advance. In no cases in which people were detained at protest rallies or during preventive detentions, were the required words or warnings uttered—therefore, such detentions may be deemed arbitrary de-jure.

Compared to previous years, starting in 2019 the police began to unjustifiably use excessive force, causing bodily injuries or breaking limbs of participants in peaceful assemblies. In some cases, people were beaten and tortured in the police stations after being detained, in the presence of plain-clothed people, presumably national security. Not only were the perpetrators never held to any account, the authorities even refused to initiate criminal cases against law enforcement officers.¹²⁵

In 2020, the authorities began using a new tool to “restrain” protesters. On 16 December, the Independence Day, an unauthorized rally announced by the unregistered Democratic Party and the Oyan Kazakhstan movement was held in Almaty. At this rally, special police units used the method of containment known as “kittling” (“corralling”). A SOBR unit (special police force), which included a number of SOBR female officers, surrounded the activists in a ring-shaped block and held them for three hours.¹²⁶

This method is described in the 2017 OSCE Human Rights Handbook on Policing Assemblies *“One of the more controversial methods used by police is the police restricting the movement of (parts of) the assembly by physically containing them in a specific area (“kettling”).”*¹²⁷ The handbook says this method is used to *“restrict the movement of a group of people who are behaving in a violent manner or where there is an imminent risk of public disorder or serious damage to property”*. The OSCE notes that protesters must be notified of the reasons and the likely duration of the detention. They must be given the opportunity to take care of their basic physical needs, which was not done on 16 December. Kazakhstani activists stood out in the cold trying to keep themselves warm by jumping and dancing.¹²⁸

It should be noted that in 2000 the Rules for organization of the work of subdivisions of the internal affairs bodies to ensure the protection of public order and safety of citizens during events organized by public associations on the streets and in other public places, approved by Order No.665 of the Minister of Internal Affairs dated 6 December 2000¹²⁹, were adopted and were quite reasonable. The Rules defined “the tactics of detention of organizers and active participants”:

- a detention must be carried out competently and professionally, so as not to cause doubts in the legality of actions carried out by police officers;
- during a detention, the reasons for the detention should be explained in a correct and accessible form;
- it is strictly prohibited to detain organizers and activists directly at the venue of the event and in the presence of participants, so as not to cause agitation which may lead to negative consequences.

However, over fifteen years since this order was issued, police have barely ever referred to it and have never followed it; in October 2015 this Order was quietly cancelled to never be replaced by anything similar—in any case, there is no document of this nature in public domain.

¹²⁵“Feeding hatred with arbitrariness” // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: https://bureau.kz/publ-all/sobstvennaya_informaciya/vzrashivanie_nenavisti_proizvolom/

¹²⁶“Big Brother and the Women’s Platoon: New Measures Police Use Against the Protesters” // ORDA website. URL: <https://orda.kz/stories/parsing/bolshoj-brat-i-zhenskij-vzvod-o-novyh-merah-protiv-mitingujushhih/>

¹²⁷Human Rights Handbook on Policing Assemblies. OSCE website. URL: <https://www.osce.org/ru/odihr/247656>

¹²⁸“Big Brother and the Women’s Platoon: New Measures Police Use Against the Protesters” // ORDA website. URL: <https://orda.kz/stories/parsing/bolshoj-brat-i-zhenskij-vzvod-o-novyh-merah-protiv-mitingujushhih/>

¹²⁹Order No. 665 of the Minister of Internal Affairs dated 6 December 2000 «On Approval Of The Rules For Organization Of The Work Of Subdivisions Of The Internal Affairs Bodies To Ensure The Protection Of Public Order And Safety Of Citizens During Events Organized By Public Associations On The Streets And In Other Public Places” // Website - URL: https://online.zakon.kz/Document/?doc_id=1021592

In general, restrictions on freedom and detentions at the venues of peaceful assemblies of organizers, alleged participants, journalists and bystanders, are not an exception to the rule but the rule itself, because the vast majority of peaceful protests are not authorized by the authorities.

2.2.6. Bringing-in and treatment of detainees, observance of their rights, including the right to professional legal assistance

Under Article 16 of the Constitution of the Republic of Kazakhstan, every person who is detained, arrested or accused of committing a crime, has the right to avail himself of the services of an attorney (defence lawyer) from the moment he has been detained, arrested or charged.

Under subparagraph 31, paragraph 1 of Article 6 of the Law of the Republic of Kazakhstan “On The Bodies Of Internal Affairs Of The Republic Of Kazakhstan” police are only authorized to detain those who have committed a criminal or administrative offense. When exercising their powers, under paragraph 5 of Article 19 of the Law police officers are obliged to:

- introduce themselves and show their ID when addressing citizens;
- inform the person being detained of the grounds on which they are being detained, explain that they have the right not to testify against themselves and their close relatives;
- give the person being detained an opportunity to make a phone call and exercise their right to a defence lawyer, inform the person’s close relatives about the fact of detention;
- respect the rights and law-protected interests of the person being detained, not use torture, violence, cruel, inhuman, degrading treatment, deliberate infliction of physical pain and mental suffering.

In doing so, under Regulatory Decision of the Supreme Court No. 7 dated 28 December 2009, *“actual detention is a restriction of the freedom of a detained person, including his/her freedom of movement, his/her compulsory detention at a certain place, his/her compulsory bringing-in to the bodies of inquiry and investigation (capture, closing in a room, compulsion to proceed to a place or to remain in place, etc.), as well as any other actions that significantly restrict a person’s personal freedom, from the moment—to the minute—when such restrictions became real, irrespectively of whether the detainee was given a procedural status or any other formal procedures were performed.”*

Within the framework of the Code of the Republic of Kazakhstan on Administrative Offences, detention is usually preceded by a person being brought in a law enforcement agency whose purpose is set out in part 1 Article 786 of the Code on Administrative Offenses. The process of bringing-in should be completed as soon as possible. However, in every case of a person being brought in, a protocol must be drawn up or an appropriate entry made in the protocol an administrative offense or administrative detention.

Detention of a person after they have been brought in a law enforcement agency for a period of less than three hours or more than three hours—moreover, without an appropriate administrative protocol being drawn up—constitutes a gross violation of the law and human rights. A deliberately unlawful detention may entail criminal liability under Article 414 of the Criminal Code of the Republic of Kazakhstan.

Moreover, under Article 414 part 4 of the Criminal Code of the Republic of Kazakhstan, deliberate failure to notify the relatives of the suspect about the fact of his detention and his whereabouts, unlawful refusal to provide information about the place of detention to a person who is entitled to receive such information, as well as falsification of the time when a protocol of detention or time of actual detention were recorded—is punishable with a fine of up to 160 times the monthly calculation index, or correctional labour in the same amount, or community service of up to 160 hours, or an arrest of up to 40 days, with a ban to hold certain positions or engage in certain activities for a period up to 2 years, or without such penalty.

In the overwhelming majority of cases, detentions carried out in connection with peaceful assemblies were executed without regard to those statutory provisions.

As an example, following the mass detentions that took place on 27 February 2019, on the day the congress of the presidential Nur-Otan party was taking place, Amnesty International, an international human rights organization, issued a statement condemning the detentions of citizens in Kazakhstan and calling on Kazakh authorities to ensure the rights of citizens to a peaceful protest are respected.

In a statement released on Monday, 4 March 2019, the London-based human rights organization noted that hundreds of peaceful demonstrators were arbitrarily detained across Kazakhstan that day. The largest arrests took place in Astana and Almaty. *“The Kazakh authorities have once again demonstrated that they are not fulfilling their obligations to protect the right to peaceful assemblies, and that those who try to exercise this right are subjected to harsh repressions”*, said Heza McGill, an Amnesty International researcher on Central Asia. Videos of the arrests, Amnesty International noted, showed how the police used force against peaceful demonstrators. It was noted that in some cases, random bystanders were detained. As estimated by the human rights activists, approximately a hundred people were detained in Almaty. The statement cites the human rights activist from KIBHR Dmitry Tikhonov, who happened to be at that place at the time of the arrests, and was also detained. According to Dmitry’s testimony, the people had no posters or banners, did not shout any slogans, and gathered there to have a talk and give commentary to journalists.¹³⁰

The same day, Uralskaya Nedelya reported detentions of several civil activists in Uralsk. Some residents reported that police were on duty outside their houses on 27 February. Another article which was published on the same day described how a 80-year-old pensioner Maya Lukyanova was detained in the street without explanation and brought to the police station, where she was held for five hours. *“In the morning I went to the bank, I needed to make a transfer of money to my grandson in Russia. I came to one branch, it was closed, so I went to another. As I was crossing the street near the Abay Square, four men came up to me and said that I had to go with them to the police station”*, Ms. Lukyanova told Uralskaya Nedelya. As the newspaper writes, *“a pensioner was detained with apparent violations: she was not given a subpoena, they did not explain her the purpose of the detention, they did not even mention the name of the police station where she was summoned by an investigator”*.¹³¹

According to this Report, detentions of citizens on the most massive scale took place against the backdrop of an early presidential election in Kazakhstan, on 9-12 June 2019.

The total number of detainees, according to the Ministry of Internal Affairs of the Republic of Kazakhstan, was over 4000, while according to human rights activists the police across the country, acting in gross violation of the law, detained at least 5000 people. Journalists that were covering the protests were also among those who had been detained. They detained the Azattyk correspondent Pyotr Trotsenko, AFP journalist Chris Rickleton who was observing the protests, and Dmitry Tikhonov of KIBHR. Pyotr Trotsenko was brought in to the Bostandyk police station and kept there for about an hour. *“They took my testimony, interrogated me along with other detainees, although I had repeated many times that I was a journalist. Then a man in civilian clothes came in and asked: “Who is Trotsenko?” I said it was me. And then I was released. A man in a police uniform asked me why I did not immediately say that I was a journalist. I said that I had said that many times, but they would not listen to me”*, he said after his release.

Human rights defenders who helped those detained from 9 to 12 June 2019, said that they had faced great difficulties. In those days, at least several thousand people were brought in to police stations in Almaty and Nur-Sultan. Most of them were released after some time, but dozens were still serving administrative arrests.

¹³⁰“After arrests, Astana was called upon to “respect” the rights of citizens to peaceful assembly.” 5 March 2019 // Azattyk Radio website. URL: https://rus.azattyq.org/a/29803872.html?fbclid=IwAR26o839AMUp1JOtv4YVLX7bQjnr13SNoPic_2YRWudLh4Nd-iVVZQqCdEU

¹³¹“Detentions on the day of the Nur Otan congress, thoughts on devaluation and an attack on a journalist” 5 March 2019 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/kazakhstan-regional-media-review/29799414.html>



When Aliya Talapkerova (the girl's name was changed at her request) came home from work in the evening of 9 June, she found out that her father had left many hours ago and had not yet returned. The phone was on, but he would not answer calls. *"This had never happened to my father before,"* Aliya recalls. *Mom said that in the morning he was supposed to be near that place where they were holding the rally. I started looking on the internet for information where the detainees could be taken, and just by chance saw a video on Azattyk in which I recognized my father. It was said in the video that the detainees had been taken to the Bostandyk police station.* According to the KIBHR legal assistance coordinator Yerlan Kaliyev, during the days of the arrests he received at least a hundred calls from people who could not find their relatives and close ones. In an interview with Azattyk, Mr. Kaliyev noted that human rights defenders' work is made more difficult by the fact that *"the detentions were executed in a completely random fashion, random people were grabbed in whichever way, and then taken to whichever locations."*¹³²

According to official figures released by the Ministry of Internal Affairs, the total number of detainees exceeded one thousand [at the time of the interview – noted by Report authors], says Yerlan Kaliev. We have confirmed information that people were taken to the Issyk, Kaskelen and other police stations (police stations in other districts – editor's note). There is also unconfirmed information that people who were detained and then hastily administratively arrested were transported to different villages [near Almaty]. The problem is that according to the law, in order to ensure access to his client an attorney must have knowledge of the name of the person who he intends to defend. If the attorney cannot name his client, then he will not be granted access to him/her. According to Mr. Kaliev, whereabouts of approximately five or seven people who had been lost by their relatives were finally established. We helped a woman to locate her son," says Yerlan Kaliev. *Aydar Dzhunusov, born in 1981, was detained in the night of 11 June. His parents, worried about his absence, began search and finally found out that his car had been impounded and police did not care to report his whereabouts. Via the Department of Internal Affairs, almost resorting to our personal connections, we were able to establish that Aydar was placed in a special administrative detention centre on Lobachevsky Street. According to the human rights activist, the attorney was able to meet with Dzhunusov in the evening of 12 June. He and 13 other people had written appeals even before the attorney's arrival, but they were all denied. The attorney tried to submit appeals with the detention centre's office, but was denied. Representatives of*

¹³²"How and with what difficulties help is being provided to those arrested at the rallies", 14 June 2019 // Azattyk Radio website.
URL: <https://rus.azattyq.org/a/kazakhstan-how-human-rights-defenders-help-those-arrested-during-protests/29999598.html>

the centre's management said that every detainee must submit his own complaint personally, and that the attorney was not authorized to represent the other 13 detainees.¹³³

Detentions in Nur-Sultan took place on 9 and 10 June, Detentions in Almaty were executed on 9 and 10 June, as well as on the night of 11 and 12 June. According to eyewitnesses, random passers-by who had nothing to do with the rallies were detained on multiple occasions. According to official data, 957 people were brought to administrative liability for participating in the rallies in Almaty and Nur-Sultan. Six hundred and seventy were arrested for 6 to 15 days, a hundred and fifteen were fined. As of 13 June, about a hundred and eighty people were serving arrests in special detention centres.¹³⁴

In conclusion it can only be stated that, based on the difference between the total number of detained during these days, police (approximately four thousand officers, according to the Ministry of Internal Affairs) and those who were brought to administrative liability (a total of 957 citizens according to official data), at least three thousand people had been unlawfully detained by police during those days.

In addition, the vast majority of those people were detained without any protocols of detention that would be properly drawn up in accordance with the law-established procedure, with their relatives being uninformed of their detention, and with access to an attorney denied.

Article 14 of the Code of the Republic of Kazakhstan on Administrative Offences provides for a whole number of guarantees of the rights of the detainee:

"1. No one may be subjected to administrative detention, bringing-in to an internal affair body (police) ... except on the grounds and in the manner as established by this Code.

...

3. Every detainee, every person who has been brought in to an internal affair body (police) or other state body, shall be immediately informed of the grounds for the arrest, bringing-in, as well as the legal qualification of the administrative offense the person is being accused of committing..."

Under Articles 786 and 787 of the Code of the Republic of Kazakhstan on Administrative Offences, police have the right to bring in and place under administrative detention any person in whose respect there is an administrative proceeding underway, and Article 788 part 4 of the Code of the Republic of Kazakhstan on Administrative Offences, the detained person shall be explained his/her rights and responsibilities under the Code, which fact shall be recorded as an entry in the protocol of administrative detention.

As the monitoring showed, in the vast majority of cases those legislative requirements, not to mention international standards, were not complied with. The detainees were not given the grounds for why they were detained or brought in to the police stations, legal aspects of the administrative offense were not communicated to them, and they were not explained what right they had.

2.2.7. Trials

Article 9.4 of the ICCPR provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court so that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful.¹³⁵

¹³³"In the special detention center in Almaty, appeals are reviewed from those arrested after the protests", 14 June 2019 // From the website of the Internet magazine "Vlast". URL: <https://vlast.kz/novosti/33803-v-specpriemnike-almaty-rassmatrivaut-apellacionnye-zaloby-arestovannyh-posle-protestov.html>

¹³⁴Anger and Rage mustered over the last 30 years. Prominent people on the protests". 17 June 2019 // From Radio Azattyk.

URL: <https://rus.azattyq.org/a/kazakhstan-protests-after-election-opinions/30003113.html>

¹³⁵International Covenant on Civil and Political Rights. Adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966 // United Nations website. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

According to Article 14.1 and 14.3 of the ICCPR, in the determination of any criminal charge against him/her or of his/her rights and obligations in an action at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of any criminal charge against him/her, everyone shall be entitled to the following minimum guarantees, in full equality:

- to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her own choosing;
- to defend himself/herself in person or through legal assistance of his/her own choosing;
- to examine, or have examined. The witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her¹³⁶

As the monitoring has established, there is practically no point to even talk about international standards of the right to personal liberty and guarantees against arbitrary detention in connection with peaceful assemblies, as well as the right to a fair trial during court proceedings in such cases, being respected or followed.

Most of the court proceedings in administrative courts under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences were primarily related to the absence of an authorization to hold an assembly. A significant number of citizens were detained prior to the alleged peaceful assemblies, mainly in connection with an **intent** to hold an assembly without obtaining appropriate authorisation.

Most often, the administrative penalty judgements specify the absence of an authorization to hold an assembly as the only ground for the offence. When drawing up a protocol of administrative offense, police request information from local executive bodies (akimats) on whether an authorization was issued to hold an assembly, and whether an application had been submitted. Usually, the police already have a written response that an authorization to hold an assembly was not issued, which they use as the basis for initiating administrative proceedings and as evidence of the administrative offense taking place. The legality of the termination procedure is never established by the court.

In the majority of cases, those brought to administrative responsibility for organizing or participating in an illegal assembly referred in their defence to the provisions of the International Covenant on Civil and Political Rights and the Constitution of the Republic of Kazakhstan which guarantees the right to a peaceful assembly. However, over the course of the trials it appeared that the judges and prosecutors had no knowledge or understanding of international standards and completely ignored the arguments that ICCPR provisions should be applied.

Article 14 paragraph 1 of the ICCPR and the Code of the Republic of Kazakhstan on Administrative Offences stipulate that the proceedings should be open to public. In view of the fact that cases brought under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, and considered in administrative courts are nowhere near the point where any documents and information containing state secrets or issues of private life would be under review, it is obvious that such cases should be public and the public, including journalists, should be able to attend them freely. However, in a whole number of cases the judges ignored the law and international standards and held trials behind closed doors, without bothering to give any reasons for doing so.

The attorneys of choice were not always able to get access to their clients. On the other hand, public attorneys in many cases had no sufficient qualifications to handle cases such as these, seemed only formally present in the trial and, moreover, it looked like they actually put themselves at a certain risk by participating in such cases.

¹³⁶International Covenant on Civil and Political Rights. Adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966 // United Nations website. URL: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

In the provision of legal assistance to civil activists brought to administrative responsibility for participating in peaceful assemblies, attorneys and human rights defenders faced obstacles, including with respect to guarantees of professional legal assistance in accordance with Kazakhstan legislation and international law.

The monitoring showed that law enforcement practices lack uniformity: legislation is often interpreted at the whims and discretion of law enforcement. As an example, single-person pickets, carried out under identical circumstances and having practically no harmful consequences, entail liability in some cases, including up to an administrative arrest, and in some cases they end up with no penalty at all. A similar situation has been observed around prosecution for participating in a peaceful rally or a march.

There are clear signs of discrimination on political grounds. Having committed the same offense, unlike a regular citizen a civic activist could be regarded as an opposition and resultantly harassed for much longer, i.e. he/she can be taken to the police station, made write an explanatory note, kept for more than three hours, and then released. Within two months thereafter, he/she could be subjected to a repeat questioning on the same topic, and then bring to administrative liability.

The attorneys believe that when a protocol of administrative offense is made at the police station, if the client had already written an explanatory note, the presence of an attorney is totally formal and is only good as a sort of moral support. A protocol often cannot be appealed because the case is immediately referred to a court while the fact of appeal of the protocol of administrative offense does not cause the trial to be suspended.

The judges often treat cases very formally, do their best to rush through the process as quickly as possible while ignoring the arguments of the defence, as well as the norms and guarantees provided by the national legislation and international treaties ratified by Kazakhstan, and the punishment is imposed in a very selectively manner based on the “wishes” of law enforcement authorities and prosecutors.

As the monitoring showed, problems exist when it comes to appealing the first-instance court’s rulings on administrative arrests. There have been cases when detained civil activists were subjected to moral pressure before being visited by attorneys in order to draft an appeal.

It should be noted that under Article 50 of the Code of the Republic of Kazakhstan on Administrative Offences, an administrative arrest prescribed for a term of up to thirty days, should be prescribed by a judge in exceptional cases within the limits stipulated in the Special Part of this section. Obviously, the serving of an administrative arrest as a measure of administrative punishment should begin only after the relevant ruling has been issued. In truth, according to part 3 of Article 50, the duration of administrative detention is included in the duration of an administrative arrest, however the administrative detention itself, under part 2 of Article 789 of the Code of the Republic of Kazakhstan on Administrative Offences, may not last more than three hours, and in the case of a proceedings initiated in a case of an administrative offense that entails administrative arrest as a measure of administrative punishment, then, according to part 3 of the same article, until such time as the case of the administrative offense is reviewed, but not more than twenty four hours in any case.

At the same time, the reason for an attorney to have access to his client is to appeal the court ruling. There are certain difficulties in exercising this right, because an attorney, before he can have a meeting with his client, e.g. at the Almaty special detention centre for administratively arrested, must secure a relevant permit from the head of the local executive service at the Police Department. This procedure takes a long time and, in fact, makes the attorney’s work difficult since he often cannot get to the head of the relevant station quickly, or that head of the station may take some time to sign an application, etc. There have been cases when this procedure took several days to complete.

In the regions, there is no practice of attorneys' visits to provide professional legal assistance to persons who have been subjected to administrative detention and held in temporary detention centres (TDC). Thus, during a visit to a client the head of the administrative police suggested that the attorney's application for access to his client be submitted to the front-office, adding that he would review the application within 10-15 days and then give a written response by mail. Objections and arguments about attorney's work being obstructed are not taken into consideration. Only if the attorney is persistent in his efforts, e.g. files a complaint or appeal with the prosecutor's office, will this result in a positive outcome.

Mobile courts, when they review appeals, represent yet another barrier to a fair public trial, and make it difficult for defenders to do their work. The absence of audio and video recording makes it possible for judges to conduct trials in a formal fashion; no observers are permitted to attend such trials.

Online processes during a lockdown are characterized by a poor internet connection, absence of observers, and inability in a short period of time to collect and provide factual data and evidence that are significant for a correct outcome, due to the fact that the person against whom the protocol has been drawn up is located far away from his defence attorney—all of which significantly complicates the work of the defence. During the trial, the attorney is not afforded the opportunity to talk with his client confidentially to discuss a position.

There have been cases when the courts did not afford the accused opportunity to take part in the trial at all, citing that the case file already contained a statement from the administratively arrested giving his/her consent to the process being held in his/her absence. It is impossible to have access to the statement in question since the trial is not conducted in a courtroom it may not be suspended to give the opportunity to review the document due to poor internet connections.

As noted, the trials are conducted in a formal fashion, arguments of the defence are not considered or accepted, references to the norms of international treaties, in particular the International Covenant on Civil and Political Rights which has been ratified by Kazakhstan and views of the UN Human Rights Committee on individual complaints from Kazakhstanis about violations the rights to peaceful assemblies as guaranteed by the Article 21 of the Covenant, are all ignored.

Attorney Amanzhol Mukhamedyarov gave on his Facebook page a concise description of a typical situation with the trials in the run-to to and on the day of the rallies (post 9 June 2019 presidential election) (the post was made about the events on the night following the election): "I have just arrived from the Almaty District Police Department for the city of Nur-Sultan. There are approximately 50 people, courts are in session in two rooms. People are brought into the rooms one by one, a judge and prosecutor awaiting them. The prosecutor has only two questions: does he person in front of him have a disability, and what is his/her age, in full years. After that, the court rises and reads out its ruling: almost everyone gets an administrative arrest..."¹³⁷

On June 9, businessman T. Omirzakov was headed along Respublika Street in Nur-Sultan to buy some honey, when he was detained and eventually ended up under arrest in the city of Shakhtinsk, some 260 km from the capital. The court did not accept his explanations, and a protocol was read out about his participating in a rally where he allegedly carried a banner with a slogan.¹³⁸

According to human rights defenders Ye. Kaliyev and M. Aspandiyarova, on the night of 9-10 June 2019 in Almaty not a single attorney was allowed to see their clients who were on trial in the building of the Bostandyk district police department, which lasted until next morning. At least four ambulances were seen leaving the police building carrying citizens whose health had been damaged as a result of illegal detentions with brute force.¹³⁹

¹³⁷A link from the page of human rights activist T. Chernobil. URL: [https://www.facebook.com/tatiana.chernobil?__cft__\[0\]=AZWfltbXV2_6KNcHS5SRC5AIYxx848yLwrHgdZ7rm6qsCujPvfrkwlVdK7CMkvaOgPp9WgO2hrzyP3iDFCSxIRG8r5JykoqvVXVIN_b2JrTcpYc_pXwJx2MUPOlO9X9WHQ&__tn__=-UC*F](https://www.facebook.com/tatiana.chernobil?__cft__[0]=AZWfltbXV2_6KNcHS5SRC5AIYxx848yLwrHgdZ7rm6qsCujPvfrkwlVdK7CMkvaOgPp9WgO2hrzyP3iDFCSxIRG8r5JykoqvVXVIN_b2JrTcpYc_pXwJx2MUPOlO9X9WHQ&__tn__=-UC*F)

¹³⁸"People detained at the rallies in Nur-Sultan complained about the work of the police", 20 June 2019 // Azattyk Radio website.

URL: <https://rus.azattyq.org/a/30009044.html>

¹³⁹"Sailau kuni ustalgandar zhaily akparat zhok." 10 June 2019 // Radio Azattyk website. URL: <https://www.azattyq.org/a/29990699.html>

A very telling case was one of Andrei Pakhotnov, an ambulance paramedic, who in the evening of 9 June 2019 was supposed to start his shift at one of the city's substations, watch the night and come back home. However, he came back home only eight days later.

According to his story, several judges had arrived at the police station late in the evening. The detainees, a total of approximately 80 people, according to Mr. Pakhotnov, were offered to avail themselves of a public attorney. *"The people were asking that human rights defenders and attorneys be allowed into the building—they had already arrived to the police building and were waiting outside in the street—but were denied," said Andrei. As for him, he refused to have a public defender. "The court session was held in an office in the police building—there was a judge, a secretary, a prosecutor, a district police officer who drew up a protocol, and two special force officers in black uniforms", - Mr. Pakhotnov continued.*

"The entire trial was over in three minutes. The prosecutor read out (the protocol). The judge said to the district police officer who had initiated the case: "What do you say?" He mumbled something inaudible. She whispered in his ear. I said, if I was at a meeting, shouted slogans, then please be guests, judge me. Otherwise, I object. I was just a random passer-by. There were no witnesses. I asked to see the video recording, but she said she had already read that I was there. I do not deny that I was there. Show me evidence. The judge said: "It is the court that is entitled to ask you questions, you may not ask the court questions." At 23:55 she gave me 10 days (of administrative arrest)', according to Mr. Pakhotnov, this is how this day ended for him—the day the country held a presidential election, the first in history without the name "Nursultan Nazarbayev" on the ballots.¹⁴⁰

On 16 December 2019, Independence Day, in Almaty and Nur-Sultan, the country's two largest cities, as well as several other cities across Kazakhstan, people held events in memory of victims of the crackdown on oil workers in Zhanaozen, and of December 1986 events in Almaty. Several activists were grabbed from their houses before the protests even started. According to the Ministry of Internal Affairs, fifty-five people were detained in Almaty and Nur-Sultan on 16 December. According to human rights defenders and activists, more people were detained than the Ministry of Internal Affairs let in. Trials lasted well late into the night, most of them without attorneys.

At least 24 people who had been arrested for 10 to 15 days against the backdrop of dispersals by security forces of a peaceful march in the centre of Almaty on Independence Day went on a hunger strike to protest their arrest and unjust court rulings, and to demand immediate release of all those who had been arrested under the Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences "Violation of the procedure for organizing and holding peaceful assemblies". A copy of the statement by the arrestees that was provided by attorney Zhanar Balgabayeva stated that the hunger strike was to protest "illegal and unjust judgments of the first-instance court and appellate court." In violation of the law, mobile courts of appeal were held in the building of a special detention centre for administrative arrestees. The judge and prosecutor ignored the arrestees' demand, which was to ensure the publicity of the court hearing and audio and video recording of the process. The judge was challenged as a result, but the challenge was dismissed.¹⁴¹

On 20 December 2019, the cases of those detained in Almaty during the rally on 16 December and in the run up to that date were reviewed at the Almaty special detention centre for administrative arrestees on Lobachevsky Street. Journalists and observers were not allowed to attend the process which, it was announced, would be open to public. An employee told the Azattyk journalist on the Friday afternoon that the appeals of thirteen people were reviewed.

¹⁴⁰"I was just passing by. They arrested me for 10 days. The story of a detainee at a rally", 20 June 2019 // Radio Azattyk website. URL: <https://rus.azattyq.org/a/kazakhstan-zaderzhanny-na-mitinge-9-iyunya/30008495.html>

¹⁴¹"Activists say that approximately 20 people arrested "for participating in a rally" are on a hunger strike in the isolation ward", 23 June 2019 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/30340191.html>

The 47-year-old civil activist Askhat Zheksebeyev has been placed under administrative arrests on five occasions this year, after participating in protests that authorities deemed illegal. One arrest of those arrests was prescribed when Mr. Zheksebeyev was already in the middle of serving another administrative arrest.¹⁴²

Administrative court trials of participants in peaceful assemblies may be set a week or a month after the event. The police quite often employ the “accumulation” method—which is when a person is prosecuted “in aggregate” for participating in two or three peaceful protests, by summing up several administrative arrests, sometimes going over a month in duration. In doing so, protocols of administrative offense are almost never made on-site.

2.2.8. Serving an administrative arrest

Under Article 50 of the Code of the Republic of Kazakhstan on Administrative Offences, an administrative arrest is imposed for a term of up to thirty days, and for a term of up to forty-five days for violation of the requirements of a state of emergency. An administrative arrest is set by a judge in exceptional cases within the limits as stipulated in the Special Part, and it may not be applied to pregnant women and women with children under the age of fourteen, persons under the age of eighteen, category 1 and 2 disabled persons, women over the age of fifty-eight, men over the age of sixty-three, and men who raise alone children under the age of fourteen. The term of the administrative detention is included in the duration of the administrative arrest.

The rights and obligations of administratively arrested citizens are stipulated in the Law of the Republic of Kazakhstan “On The Procedure And Conditions Of Detention Of Persons In Special Institutions, Special Premises That Provide Temporary Isolation From The Society”,¹⁴³ and in the Rules for organizing the activity of special detention centres (collectors) operated by the bodies of internal affairs.¹⁴⁴

A special detention centre (collector) is a special establishment operated by an internal affairs body which is intended for reception and detention of persons who have been placed under an administrative arrest. Persons placed under an administrative arrest are placed in the special detention facilities on the basis of an arrest order issued by a judge. The administration of the special detention centre informs the arrestee’s close relatives at their place of residence of the fact that the person has been placed in the detention centre or a medical organization. At the detention centre, medical workers arrange for and provide the arrestees with medical assistance and exercise control over sanitary and epidemiological requirements. Special detention centres may only be operated if they are equipped with premises that meet sanitary-epidemiological and fire safety requirements and are suitable for safe detention of persons placed under administrative arrest.

However, despite the aforementioned legislative norms that protect the rights of administratively arrested citizens, including their right under the Article 20 of the Code of the Republic of Kazakhstan on Administrative Offences to receive professional legal assistance, the monitoring of law enforcement practice in relation to administratively detained and administratively arrested persons has resulted in disappointing conclusions.

A comparison between the rights of suspects held in custody in special institutions as stipulated in Chapter 2 of the Law “On The Procedure And Conditions Of Detention Of Persons In Special Institutions, Special Premises That Provide Temporary Isolation From The Society” and those of persons placed under an administrative arrest and forcibly brought to special detention centres, temporary detention facilities, it becomes obvious that the rights of the latter are more limited.

¹⁴²“Activists accused of participating in “Koshe Partyyasy” have their detentions extended,” 14 October 2020 // Radio Azattyk website. URL: <https://rus.azattyq.org/a/30892972.html>

¹⁴³Law of the Republic of Kazakhstan “On The Procedure And Conditions For Keeping Persons In Special Institutions, Special Premises That Provide Temporary Isolation From Society” dated 30 March 1999, as amended on 19.12.2020 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”. URL: http://adilet.zan.kz/rus/docs/Z990000353_

¹⁴⁴Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated May 23, 2011 No. 232 “On The Approval Of The Rules For Organizing The Operation Of Special Collectors Of Internal Affairs Bodies” // Information and legal system of regulatory legal acts of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/V1100007030>

A telling story happened to civil activist Gennady Krestyansky, who was brought to administrative responsibility for “disobedience” to law enforcement officers, which manifested in him recording a police checkpoint that had been set up in relation to the announced lockdown due to the COVID-19 pandemic.

In April 2020, he was sentenced to 10 days of arrest for covering the situation at the road block, which he filmed on 26 March. After the conviction, he went on a hunger strike.¹⁴⁵ At the same time, he wrote: *“The detention takes place in an extremely unsanitary conditions. Most of the sanitary and epidemiological rules are not being followed. On several occasions I pointed out these gross violations to the prison staff and medical assistance. Because of this, the staff started to treat me unkindly ...”* According to him, the only hygienic product they had was one piece of soap for all. After constant complaints, he was transferred to another cell on the fifth day where his new inmates began to issue threats to his life and health. Fearing for his safety, he jumped into the corridor as the guards were not paying attention to his calls for help. In the corridor, he fainted: the doctors diagnosed an ischemic attack and took him to a hospital.¹⁴⁶

On 10 June 2019, mass detentions took place in Almaty of people who were protesting the results of the presidential election. After a court trial, many detainees were sent to temporary detention facilities in the nearby districts across the Almaty region. Thus, doctor Andrei Pakhotnov was brought to the village Utegenbatyr in the Ile district, along with a few others from Almaty. *“The food is horrible,”* Mr. Pakhotnov said of the conditions. *“Three-layer cage on the window. Two windows, 50 cm by 50 cm each. Six beds, three two-story bunk beds in a nine-square-meter space. An old lumpy mattress. A horrible pillow. A toilet in the corner, with nothing for a cover. We used bed sheets to put up a screen of sorts. A tiny sink. One bedside table for six people,”* this is how he described the conditions in which he spent his 10-day administrative arrest.¹⁴⁷

As noted before, under the current Regulation on special reception centres of internal affairs for keeping persons placed under an administrative arrest, the management of such a facility informs the close relatives of the arrested person of the fact that he/she has been placed under an administrative arrest and placed in the special reception centre or medical organization, within 24 hours at their place of residence.

However, these legal provisions are rarely complied with. Those detained on 9 and 10 June 2020 in Almaty were taken out of the city because the specialized reception centre on Lobachevsky Street was overwhelmed. Human rights activist Yerlan Kaliyev (a co-author of this Report) who arrived at the scene confirmed this and said that he had received more than a hundred calls on those days from the relatives of the detainees, asking his help in identifying their whereabouts.

One of those people was located only three days later. *“One of the detainees’ sister, a resident of the village in Talgar district, was told that he was at the centre on Lobachevsky Street. I came there, they said he was not on the list. At the Talgar district police department they told he might have been taken out of the city. He was not there. Today I had to contact a representative of the Department of Internal Affairs for clarifications. Eventually we found him in Issyk,”* Mr. Kaliyev said.¹⁴⁸

In general, the holding of administrative detainees and arrestees, especially where the number of detainees exceeds the maximum capacity of special detention centres, seems to be a rather arbitrary process, especially in terms of the conditions of detention.

Many administrative arrestees started being held in temporary detention facilities, where conditions of detention are more severe in many respects.

¹⁴⁵“Went on a hunger strike”, 20 April 2020 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: https://bureau.kz/publ-all/sobstvennaya_informaciya/ushel-na-golodovku/

¹⁴⁶“Finishing Krestyansky”, 27 April 2020 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: https://bureau.kz/publ-all/sobstvennaya_informaciya/dobit-krestyanskogo/

¹⁴⁷“I was just passing by. They arrested me for 10 days. The story of a detainee at a rally”, 20 June 2019 // Radio Azattyk website. URL: <https://rus.azattyq.org/a/kazakhstan-zaderzhanny-na-mitinge-9-iyunya/30008495.html>

¹⁴⁸“Detainees in Almaty are taken out of the city”, 12 June 2019 // Website of the “Diapazon” newspaper (Aktobe). URL: <https://diapazon.kz/news/90593-zaderzhannih-v-almati-vivozyat-za-predeli-goroda>

On 10 August 2020, late at night in Taraz activist Bagdat Baktybayev was attacked by unidentified individuals, presumably the so-called “titushki.” Mr. Baktybayev was released on that day at 11:40 pm from the temporary detention centre after the term of his administrative arrest had expired, although by law he should have been released no later than 5:00 pm. He immediately went to the bus station to go to Shu, his home town. He had been detained in Shu on 6 August 2020 and was placed under a four-day administrative arrest for participating in march on 24 July 2020 in the village of Talapker in the Akmola region to honour the memory of activist Dulat Agadil who had died in a pre-trial detention centre. He was sent to serve his administrative arrest to Taraz.¹⁴⁹

On 20 November 2020 Mikhail Seysebayev, an LGBT activist, was arrested for three days in Almaty for doing a single-person picket. Even though single-person pickets, especially if they are held for the first time, result in administrative liability only in exceptional cases and are usually limited to fines, in this case the more severe punishment was obviously associated with his LGBT affiliation.¹⁵⁰ Moreover, he was placed in a temporary detention centre instead of a collector for administrative arrestees. *“They gave me three days of arrest for a single-person picket. After my arrest on 20 November, I was taken to a temporary detention centre (TDC), even though I was supposed to be sent to a special detention centre for administrative arrestees on Lobachevsky Street. In other words, MY LIFE WAS IN DANGER as the temporary detention centre is where criminals are held. Thank God I was there for less than a day, after which they finally transferred me to the centre on Lobachevsky Street,”* he wrote.¹⁵¹

Detention of administrative detainees and the serving of administrative arrests in temporary detention centres or in special detention centres, and even in temporary detention centres in other cities and regions, instead of special detention collectors, took on an especially large scale after mass protests on 9-10 June 2019. Those detained in Astana were sent to police stations in the regional centres across the Akmola region and even to the neighbouring Karaganda region, including the cities of Karaganda and Saran. Similarly, in Almaty those detained were dispatched to the TDCs across the Almaty region. What is noteworthy, the judges from Astana travelled to those cities to conduct field trials, a practice that hardly meets the criteria of fair trial.

Zhemis Turmagambetova, Executive Director of the Charter for Human Rights Foundation, member of the Council for Legal Policy under the President of the Republic of Kazakhstan, member of the Public Council of the Ministry of Internal Affairs of the Republic of Kazakhstan, and Yevgeniy Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law and Co-Chair of the Working Group of the Advisory Consultative Body “Dialogue Platform on Human Dimension” under the Ministry of Foreign Affairs, member of the Public Council of the Ministry of Information and Public Development of Kazakhstan, issued a joint statement which stated, in particular: *“On the night of 9-10 June and in the morning of 10 June, according to available information, closed trials were being held without public in attendance with the participation of a judge and a prosecutor and without attorneys of choice for the detainees, which is a gross violation of existing legislation. Dozens, if not hundreds of people were held administratively liable for participating in peaceful protests, subjected to administrative arrests and dispatched to various temporary detention centres and other places of detention, because the existing special reception facilities for administrative arrestees do not have such a capacity. In doing so, the law enforcement agencies provided no information about the detainees, did not inform their relatives who had gathered at the police stations, did not inform about the court rulings and places where the administrative arrestees were placed.”*¹⁵²

Under part 2 of Article 835 of the Code of the Republic of Kazakhstan on Administrative Offences, a complaint against a judgement on administrative arrest—if the person is serving an administrative arrest—must be reviewed within 24 hours from the date it is submitted. Under Article 35 of the Law of the Republic of

¹⁴⁹See: URL: <https://www.facebook.com/groups/ActivistsNotExtremists/permalink/2753497918302807/>

¹⁵⁰“An activist was arrested for three days in Almaty after staging a picket for LGBT rights.” 20 November 2020 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/30960572.html>

¹⁵¹See: URL: https://www.facebook.com/permalink.php?story_fbid=189733442709168&id=100050175409367

¹⁵²“A joint appeal regarding massive violations of citizens’ rights on 9-10 June 2019”, 10 June 2019 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: https://bureau.kz/publ-all/sobstvennaya_informaciya/sovместное_обращение_ден_выборов/

Kazakhstan “On Advocacy And Legal Assistance”¹⁵³, an attorney’s rights are not subject to restrictions except for cases directly stipulated by the legislation of the Republic of Kazakhstan. Interference or obstruction of lawful advocate activity entails liability as set forth by the legislation of the Republic of Kazakhstan.

However, the staff at the special establishments of internal affairs where administrative arrestees are received and detained, in order to openly obstruct attorneys’ access to their clients who are held in those establishments, often come up with various excuses to refuse said access, citing the need to obtain special permission from the management of the relevant police departments.

*“Murat Shormanov was tried at night. The court’s sentence concerning Askhat Zheksebeyev was issued in the afternoon. Mr. Zheksebeyev’s lawyer, Ms. Zhanar Balgabayeva, was not allowed to attend his trial. We have not yet established whether he has been provided with a public attorney. Zhanar Balgabayeva received permission from the Almaty city police department to visit the special detention centre for administrative arrestees on Lobachevsky Street, and is now proceeding there”,*¹⁵⁴ – Marzhan Aspandiyarova, human rights activist (and a co-author of this Report) informed Radio Azattyk.

The conditions in which the administrative detainees and administrative arrestees are kept in deserve a special mention.

Abaybek Sultanov, placed under an administrative arrest under Article 488 part 2 of the Code of the Republic of Kazakhstan on Administrative Offences on 19 June 2020, filed a complaint with the Almaty regional prosecutor’s office about the conditions of detention in the temporary detention facility in Otegen Batyr village, Ile district of the Almaty oblast. In particular, he pointed at the following facts:

- during his placement in the temporary detention facility, his decorative shoelaces were cut off;
- bed sheets are wet, smell like rot;
- despite a COVID-19 lockdown, no antiseptics, laundry soap, wet wipes, toilet paper is available;
- the food is tasteless, contains no meat, estimated cost of daily portion is approximately 350 tenge (less than US\$1) per day;
- taken to Otegen Batyr village to serve the arrest, despite his place of residence being in Almaty;
- was not given the opportunity to exercise his right to a telephone call, either to relatives or to an attorney;
- had to wait for the prosecutor until the evening; he arrived wearing civilian clothes, not a uniform;
- was kept inside, deprived of walks outside the cell.

In response to A. Sultanov’s complain, the Ile district’s prosecutor sent a response which contained no answers to the actual questions posed in the complaint.

Similar information was received from other regions across the country where administrative detainees and administrative arrestees were being kept.

At least in Almaty, a rather strange situation had arisen with “care packages” at the special detention centre for administrative arrestees. No official regulation was announced other than the time for bringing “care packages” to be transferred to the arrestees was limited to one hour a day. At the same time, the list of items that were acceptable for handover was at the discretion of the man at the reception, who could change it on a daily basis.

¹⁵³Law of the Republic of Kazakhstan “On Advocacy And Legal Assistance” dated 5 July 2018 No. 176-VI ZRK as amended on 15.11.2020 // Information and legal system of normative legal acts of the Republic of Kazakhstan “Adilet”.
URL: <http://adilet.zan.kz/rus/docs/Z1800000176>

¹⁵⁴“An Almaty court sentenced two activists for 15 days”, 16 November 2019 // Azattyk Radio website.
URL: <https://rus.azattyq.org/a/30275325.html>

2.2.9. Criminal prosecution

The Criminal Code of the Republic of Kazakhstan has only one article which could be used to hold the organizers and participants liable for participating in unauthorized peaceful assemblies; however, activists in general are prosecuted under articles that do not directly deal with peaceful assemblies but whose application suggests that criminal liability has to do with organizing or participating in protest actions.

Under Article 400 of the Criminal Code of the Republic of Kazakhstan, criminal liability is stipulated for “Violating the procedure for organizing and holding peaceful assemblies”: *“Organizing, holding or participating in an illegal assembly, rally, march, picket, demonstration or other illegal public event, as well assistance in the organization or holding such events through the provision of premises, communications, equipment, transport, if these acts have caused significant damage to the rights and law-protected interests of citizens or organizations or the law-protected interests of society or state, shall be punishable with a fine of up to two hundred monthly calculation indices or correctional labour in the same amount, or community service of up to two hundred hours, or arrest for up to fifty days”*.¹⁵⁵

This article speaks of a material corpus delicti; however, in the criminal law the definition of “substantial damage” is rather vague.

According to subparagraph 14) of Article 3 of the Criminal Code of the Republic of Kazakhstan, *“significant damage covers the following consequences in cases where they are not defined as an element of a criminal offense stipulated by this Code: violation of constitutional rights and freedoms of the man and the citizen, of the rights and law-protected interests of organizations, of the law-protected interests of the society and state; causing significant damage; the emergence of a difficult life situation for the victim; disruption of normal operation of organizations or government agencies; disruption of important military events or a short-term decrease in the level of combat readiness and combat effectiveness of military units and subunits; delayed detection or repelling of an attack by armed groups or armed individuals, by land, air or naval military, allowing unhindered illegal passage by individuals and transport means across the State Border of the Republic of Kazakhstan, movement of contraband cargo, conniving at the actions which damage border facilities, technical means of border protection; other consequences that indicate the significance of damage caused”*.¹⁵⁶

It is not clear how and based on which criteria the “materiality” of damage will be determined—based, for example, on this definition: *“violation of constitutional rights and freedoms of the man and the citizen, of the rights and law-protected interests of organizations, of the law-protected interests of the society and state.”* Perhaps for this reason, this article is practically never used.

Aside from this article, there is a number of other articles that have been used against activists in connection with their participation in protest actions. Those include Article 405 of the Criminal Code of the Republic of Kazakhstan which has been widely used since 2018 and is still in use today, “Organization and participation in the activity of a public or religious association or another organization after a court ruling has been issued banning it or liquidating it due to its links to extremism or terrorism”; Article 379 “Disobedience to a public officer” and Article 378 “Insulting a representative of the state authority”, Article 174 “Agitating social, national, tribal, racial, class or religious discord” (as of 29 June 2020 this article has been renamed “Inciting social, national, tribal, racial, class or religious discord”), Article 274 “Dissemination of knowingly false information”, Article 256 “Propaganda of terrorism or public calls for an act of terrorism”, Article 130 “Libel” (as of 29 June 2020, this article has been moved over to the Code of the Republic of Kazakhstan on Administrative Offenses), and—more recently—Article 182 “Creating, leading or participating in an extremist group.”

¹⁵⁵The Criminal Code of the Republic of Kazakhstan dated 3 July 2014. Came into force on 1 January 2015, as amended on 6.10.2020 // Information and legal system of regulatory legal acts of the Republic of Kazakhstan “Adilet”. URL: <http://adilet.zan.kz/rus/docs/K1400000226>

¹⁵⁶Ibid.

In 2018—2020, an incomplete account shows that approximately 180 people were prosecuted under aforesaid articles, many of whom were sentenced to imprisonment or restriction of freedom and prohibited from engaging in social activity.

It is noteworthy that in many such cases, activists were served additional punishments in the form of a prohibition to engage in “social activity.” This practice of imposing additional sentences has been used to combat political opposition and civic activism, thereby demonstrating the political context of such cases.¹⁵⁷

Generally, criminal prosecution was linked to the banned movement “Democratic Choice of Kazakhstan.” DCK is a public organization that has been active in social networks and was branded as extremist by a court in Astana—and, therefore, banned in the Republic of Kazakhstan.

According to independent observers and human rights activists, accusations of extremism against DCK are groundless and, essentially, are no more than persecution for freedom of speech, freedom expression and freedom of public activity.

The main direction in promoting the ideas of the banned DCK is in the activity of its leader, Mukhtar Ablyazov, who has been calling for peaceful meetings. He believes it is possible to effect a change in the country by way of mass protests. He has been campaigned specifically for “peaceful” assemblies. Using a variety of social networks, calls were made to the citizens of Kazakhstan to come out under certain slogans and demands on specifically scheduled dates, time and venues. The activists who share the movement’s ideas came out to announced protests in different cities across the country. The police suppressed those assemblies, with participants being detained, and some of the more active ones being subjected to criminal prosecution.

From the moment DCK was officially declared an “extremist organization,” any direct or indirect links with the movement have been criminally prosecuted on charges of participation in its activity.

“Participation is understood as agitation and propaganda of DCK ideas, production, issue, mass publishing and distribution by any means of publications, leaflets, posts, comments and other information materials of DCK.”¹⁵⁸ “In addition, organization and holding of rallies, demonstrations, public actions and other mass events in support of DCK and its leader Mukhtar Ablyazov will also be considered as participation.”¹⁵⁹

Activists Anuar Ashiraliyev, Oksana Shevchuk, Gulzipa Dzhaukerova and Zhazira Demeuova were also criminally prosecuted and on 19 November 2019 convicted under Article 405 of the Criminal Code of the Republic of Kazakhstan. According to the case file, from March to May 2019, the defendants on several occasions took part in unauthorized rallies in support of DCK and its ideas. The women took an active part in the peaceful assemblies on 1 May 2019. They were each sentenced to one year of restriction of freedom, and an additional punishment in the form of a two-year ban on engaging in social activity.¹⁶⁰

On 12 December 2019, the Abay District Police Department for the city of Shymkent initiated criminal prosecution against 52 civil activists on charges of committing a crime under Article 405 part 2 of the Criminal Code of the Republic of Kazakhstan. They were given the status of “a witness with the right to defence,” which, essentially, means “a suspect.” The activists are known for promoting the citizens’ right to peaceful assemblies in Kazakhstan over a number of years. They had participated in unsanctioned rallies in Shymkent on multiple occasions. Some of them were members of opposition political parties. The criminal prosecution ended in a termination of the pre-trial investigation after an expert opinion was issued.¹⁶¹

¹⁵⁸“What does a DCK ban mean?”, 13 March 2018 // Website of Radio Azattyk. URL: <https://rus.azattyq.org/a/dvk-zapretili-zachem/29096803.html>

¹⁵⁹“The Prosecutor General’s Office: Ablyazov may face criminal liability for his comments under posts,” 13 March 2018 // Сайт «Times.kz» URL: <https://timeskz.kz/31986-genprokuratua-za-komentarii-pod-postami-ablyazova-mozhet-grozit-ugolovnaya-otvetsvennost.html>

¹⁶⁰“DCK supporters convicted in Almaty”, 20 November 2019 // Tengrinews website. URL: <https://tengrinews.kz/crime/uchastnikov-dvk-osudili-v-almaty-384522/>

¹⁶¹“Information notes on persons subjected to criminal prosecution for political reasons (52 activists)”, 15 June 2020 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: <https://cv.bureau.kz/cases/52.html>

A new political movement, called "Koshe Partyyasy," emerged in February 2020. According to its participants, it is "an independent peaceful movement operating openly and publicly within the bounds of the Constitution of Kazakhstan and the International Covenant on Civil and Political Rights." The movement's leaflets contained the socio-political and economic program of the "Koshe Partyyasy."¹⁶²

At the request of the General Prosecutor's Office of the Republic of Kazakhstan, the movement was declared illegal, because, in the opinion of the supervisory authority, DCK had simply changed its name into "Koshe Partyyasy," while still being one and same extremist organization. The Prosecutor's Office reminded that any participation in the activities of DCK, including under the name of "Koshe Partyyasy," as well as propaganda and support of its ideas, and financing of its activity is prohibited and may result in criminal liability under Article 182 (participation in an extremist group), Article 258 (financing of extremism) and Article 405 (participation in an extremist organization) of the Criminal Code of the Republic of Kazakhstan.¹⁶³

The court's ban of the public initiative "Koshe Partyyasy" has resulted in a new surge of political persecution and use of charges of criminal offenses.

Dana Zhanay of the "Qaharman" Human Rights Foundation informed that over the course of just two days—25 and 26 May 2020—they and another human rights initiative, called "405," and the Polish Open Dialogue Foundation, recorded 20 cases of Koshe Partyyasy supporters being issued subpoenas for interrogations, mainly in connection with charges under Article 405 of the Criminal Code. In some cases, subpoenas were filled out in the activists' apartments.¹⁶⁴

Despite the criminal prosecution of civil activists, mainly in connection with their participation in protests, during the period covered by the Report no cases were recorded of the use of Article 400 of the Criminal Code of the Republic of Kazakhstan, which directly relates to criminal liability for violating the procedure for organizing and holding peaceful assemblies.

In addition to being held administratively liable under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, a number of citizens were soon subjected to criminal liability under different articles.

On 7 October 2019, the Aktobe city court issued a sentence under Article 380 of the Criminal Code of the Republic of Kazakhstan against Aslan Makatov (3rd category of disability) and sentenced him to one year of restriction of freedom. According to the prosecution, A. Makatov on 6 July 2019 while in front of the Aktobe regional akimat building called on residents to come out to a rally and recorded police officers that were on duty there. When the police officers tried to interfere, A. Makatov resisted by hitting the police officer with his head and tearing his trousers.¹⁶⁵

On 25 October 2019 the Aktobe city court issued a sentence against the local activist Karlygash Asanova, on charges under Article 380 of the Criminal Code of the Republic of Kazakhstan for using violence against a government official, and sentenced her to 18 months of restriction of freedom. K. Asanova was accused of sticking a needle into the buttocks of a police major who participated in her arrest on 9 June 2019—when she and approximately a dozen other people came out to a square in front of the Aktobe oblast akimat for a gathering that the authorities considered unauthorized. The charge was based only on the testimony of a police officer who said he had identified her as a woman who stuck a needle into his right buttock at the rally.¹⁶⁶

¹⁶²"A new movement "Koshe Partyyasy" announced in Kazakhstan", 18 February 2020 // Radio Azattyk website. URL: <https://rus.azattyq.org/a/30442018.html>

¹⁶³"Palaces vs Streets", 31 May 2020 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: <https://bureau.kz/novosti/dvorczy-protiv-ulicz/>

¹⁶⁴ Ibid.

¹⁶⁵"In Aktobe, a court's sentence issued against a defendant who was accused of violence against a police officer." 8 October 2019 // Radio Azattyk website // URL: <https://rus.azattyq.org/a/30204387.html>

¹⁶⁶"A court's sentence issued in Aktobe against an activist accused of "violence" against a police officer." 26 October 2019 // Azattyk radio website. URL: <https://rus.azattyq.org/a/30237312.html>

The Zhetysu District Court of Almaty on 29 April 2020 issued a sentence against the civil activist Danaya Kaliyeva on charges under Article 378 of the Criminal Code of the Republic of Kazakhstan, for insulting a government representative, with a penalty of 20 times the monthly calculation index, or 55,560 tenge (approximately USD 130).

The incident for which Ms. Kaliyeva was held responsible took place on 22 February 2020, when anti-government rallies were planned in Almaty and other cities. According to Ms. Kaliyeva, in the morning of that day she was at a bus stop with her three-year-old daughter and a friend, Ms. Sh. Karzhaubayeva. All of a sudden two unidentified men grabbed Ms. Karzhaubayeva who was sitting on the bench by the arms and started dragging her; Ms. Kaliyeva's daughter, who was sitting on her laps, fell to the ground and started crying. The activist started live Facebook broadcast of what was going on; during the broadcast, in Mr. Kaliyeva recollection, she cursed at the men who had not introduced themselves and did not produce any documents. Earlier on Ms. Kaliyeva had reported that she had to sign a non-disclosure document which prevents her from even naming the "victims."¹⁶⁷

The mysterious death of activist Dulat Agadil at an investigation detention centre in Nur-Sultan on 25 February 2020 was marked by a public outcry and a protest surge among his supporters. They believed that his death was not an accident but a murder. The same day, activists in several regions across Kazakhstan came out with demands that the authorities clarify the situation with his death; some of the actions ended in detentions. Since that time, any initiative associated with Dulat Agadil has become a sensitive issue for the authorities. Those citizens who participated in the commemorations, memorial dinners and "Asar" for the construction of a house for Dulat Agadil were subjected to administrative liability in-bulk for "participating in unauthorized gatherings," and some of them were even prosecuted as a matter of criminal liability.

At least 39 cases of administrative and criminal prosecution that have been established were directly linked to people participating in the Asar, As (commemoration) and providing humanitarian help to the family of the deceased Dulat Agadil.¹⁶⁸

By a sentence of Saryarka District Court No. 2 in Nur-Sultan issued on 14 September 2020, Aibek Sabitov was issued a fine of 212,080 tenge under Article 378 part 2 of the Criminal Code of the Republic of Kazakhstan. He was accused of publicly insulting the honour and dignity of government officials, namely the officers at the Nur-Sultan police department, including the police department responsible for the protection of Logistics Directorate buildings, at approximately 16:05 on 25 January 2020 in the building of the Nur-Sultan Police Department.

The fact of the matter is that on 25 January, a group of activists arrived at the police department to demand answers to their complaints about violation of their rights. In spite of the criminal case being opened on 29 January 2020, the court trial was held only seven months later. Apparently, the persecution of A. Sabitov was associated with his participation in an "Asar" and commemoration of Dulat Agadil.¹⁶⁹

Criminal cases were initiated against activists Nazym Serikpekova and Roza Musayeva under Article 378 of the Criminal Code of the Republic of Kazakhstan "Insulting a government official" for allegedly insulting police officers on 25 February 2020 at the Baikonur District Police Department (the day of the news of Dulat Agadil's death). On 25 February 2020, the day when the news came of Dulat Agadil's death, a group of civil activists gathered at the building of the Ministry of Internal Affairs to demand answers to their questions in connection with the activist's death and hold those responsible for his death accountable.¹⁷⁰ The pre-trial

¹⁶⁷"An Almaty court sentenced activist D. Kaliyeva to a fine", 29 April 2020 // Radio Azattyk website. URL: <https://rus.azattyq.org/a/30583715.html>

¹⁶⁸"Fifty cases of political, criminal and/or judicial persecution of civil activists, human rights defenders and journalists", 27 September 2020 // Tired info website. URL: <http://tired.info/50-sluchaev-politicheskogo-ugolovnogo-i-ili-sudebnogo-presledovaniya-grazhdanskih-aktivistov-pravozashhitnikov-i-zhurnalistov-na-27-sentyabrya-2020-goda/>

¹⁶⁹"Information on political persecutions in Kazakhstan", 16 September 2020 // Tired info website. URL: <http://tired.info/dir/8620/sabitov-ajbek/>

¹⁷⁰"Information on political persecutions in Kazakhstan", 13 October 2020 // Tired info website. URL: <http://tired.info/politicheskoe-presledovanie-vlastyami-kazahstana-pravozashhitnits-i-grazhdanskih-aktivistov/>

investigation was launched on 29 February, but they were only informed of the charge on 9 October 2020.

Two pre-trial investigations under Article 378 of the Criminal Code “Insulting a government official” were launched against activist Yerbol Yeskhozhin, D. Agadil’s associate and initiator of the “Asar,” for the words he addressed to a police officer during his participation in protest actions on 20 January 2020 in front of the US Embassy in Nur-Sultan and on 3 February 2020 at the Baiterek monument. Even though the charges were presented under one and same article, each case was reviewed separately. For participation in the same actions, he had been already held administratively liable under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences, so he was placed under a 15-day administrative arrest.¹⁷¹

Following case review, on 14 September 2020 the Almaty District Court No. 2 for the city of Nur-Sultan, found Yerbol Yeskhozhin guilty of insulting police officers and set him a penalty of 80 times the monthly calculation index (212,080 tenge, or approximately USD 500).¹⁷² In the second case, brought under Article 378 of the Criminal Code of the Republic of Kazakhstan, the Yesil District Court for the city of Nur-Sultan on 24 September 2020 sentenced Yerbol Yeskhozhin to a fine of 53,020 tenge (approximately USD 125).¹⁷³

Civil activist Asiya Tulesova was detained on 6 June 2020 at an anti-government rally in Almaty announced by the banned DCK and the Democratic Party of Kazakhstan. A pre-trial investigation was launched against her under Articles 378 and 380 of the Criminal Code of the Republic of Kazakhstan (insulting a government official and using violence against a government official). The accusation was connected with the fact that during the rally A. Tulesova knocked down a police officer’s cap and allegedly made statements that were found to be offensive.

According to A. Tulesova, this conflict was provoked by the police themselves who used brutal physical force against her while she was trying to prevent other citizens from being detained. She said that five of six police officers knocked her to the ground, none of them introduced himself or reacted to the illegal actions of their fellow officers.¹⁷⁴

Following a court trial at Medeu District Court No. 2 for the city of Almaty, it was ruled to find A. Tulesova guilty and sentence her to one year and six months of restriction of freedom with a probation thereafter. In addition to that, A. Tulesova was ordered to pay a fine of 20 times the monthly calculation index (55,000 tenge).¹⁷⁵

Diana Mukhametova, another participant in the rallies on 6 June 2020, was prosecuted under Article 378 of the Criminal Code of the Republic of Kazakhstan “Insulting a government official” for the statements she made against the President of Kazakhstan Kassym-Zhomart Tokayev and the Minister of Internal Affairs Yerlan Turgumbayev after her arrest. The video recordings with her statements were circulated on social networks. In the video, D. Mukhametova, after being detained at the rally and brought to the Almaty district police department, speaks emotionally about a portrait of the Soviet dictator Joseph Stalin she saw in the police office building, then says some words against President Tokayev and Minister Turgumbayev; the statements she made, however, were not obscene language.¹⁷⁶

¹⁷¹“Nazarbayev’s Puppies” Is it an insult? What is an activist in the capital being sued for” 3 September 2020 // Radio Azattyk website.

URL: <https://rus.azattyq.org/a/kazakhstan-activist-yerbol-eskhozhin-case/30816252.html>

¹⁷²“A 212,000 tenge fine for “Nazarbayev’s puppies”, 14 September 2020 // Azattyk radio website. URL: <https://rus.azattyq.org/a/kazakhstan-an-activist-yerbol-yeskhozhin-trial-verdict/30838616.html>

¹⁷³“Activist Yeskhozhin fined for a second time after uttering the words “Nazarbayev’s puppies”, 24 September 2020 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/30855331.html>

¹⁷⁴“A court issued a sentence against Asiya Tulesova.” 12 August 2020 // Analytical Internet portal - Ratel.kz.

URL: https://ratel.kz/raw/sud_vynes_prigovor_ase_tulesovoj

¹⁷⁵“A court’s sentence issued against Asiya Tulesova”, 12 August 2020 // Forbes-Kazakhstan website.

URL: https://forbes.kz//process/probing/vyinesen_prigovor_v_otnoshenii_aktivistki_asii_tulesovoy/

¹⁷⁶“Activist Mukhametova summoned to the police in the case of “insulting a government official”, 9 June 2020 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/30661385.html>

Summing up the results of the monitoring of persecution of organizers and participants in peaceful assemblies, it should be noted that in the overwhelming majority of cases they were held to administrative, not criminal, liability under Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences. Article 400 of the Criminal Code of the Republic of Kazakhstan was practically never used. However, active participation in the protests was regarded as participation in the activity of banned organizations—accordingly, the activists were prosecuted for participation in the activity of such banned organizations, or for insulting government officials.

2.3. General overview of the practice of regulating peaceful assemblies in the Republic of Kazakhstan in 2018- first six months of 2020

2.3.1. Introduction

In 2018-2020, the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR) continued monitoring the situation with freedom of peaceful assembly in Kazakhstan, KIBHR has done since 2010.

The monitoring is carried out using to a special methodology which makes it possible to conduct a comparative years-over-year analysis and identify trends in the process of Kazakhstani citizens exercising their right to peaceful assembly.

The main task of this monitoring was to track the law enforcement practice of regulating peaceful assemblies by the authorities by observing peaceful assemblies and recording measures taken by the authorities to control and restrict, first of all, protest actions.

We hope that our monitoring has covered all significant and resonant public peaceful assemblies. However, this does not exclude the possibility that some separate peaceful assemblies that did not have a great resonance might not be included in this review. Although, as practice shows for ten years, this could not significantly affect the overall assessment of the situation with peaceful assemblies in Kazakhstan over the period under review.

Procedurally, monitoring was a recording of peaceful assemblies and their assessment according to standard parameters, in accordance with the points of the developed observation map, which was filled with monitors tracking events.

Based on the results obtained, statistics were prepared for the year and an analysis of the situation in terms of regulation was carried out, which Kazakhstanis experienced on the part of authorities when holding peaceful assemblies.

Accordingly, the comparison of data over the years allowed us to see the general dynamics of changes in respect of observance of citizens' rights in this area which was reflected in regular annual reports.

2.3.2. Overall results of monitoring

Over the course of the monitoring, unique data has been collected on what kind of practice Kazakhstan authorities employed to regulate peaceful assembly in 2018, 2019, and first six months of 2020. This information made it possible to conduct a proper analysis of the situation with the citizens exercising their right to peaceful assembly and to prepare this overview. The analysis of the data and drafting of the reports has been done by the KIBHR staff. Both field monitors and writers of the report are fully responsible for the accuracy of information and conclusions contained in the reports.

Let us begin by demonstrating the general dynamics of peaceful assembly in Kazakhstan.

It should be reminded here that since 2012, there has been a steady decline in the number of peaceful assemblies in Kazakhstan. This dynamic lasted six years. In 2018, the number of peaceful assemblies was the lowest. Despite this, 2018 can be regarded as the beginning of a new wave of political and civic activity in Kazakhstan.

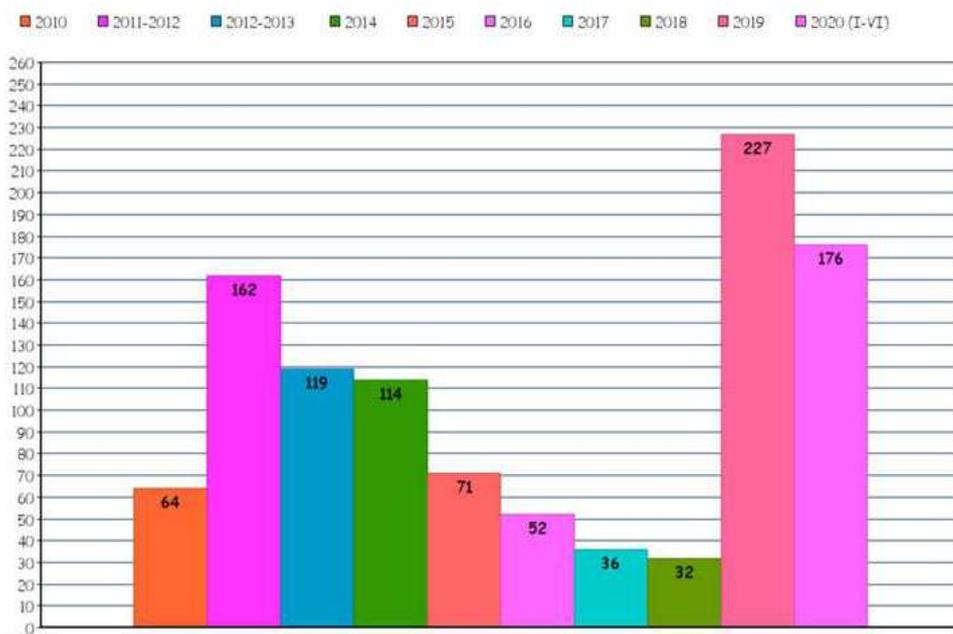
It was in 2018 that “Democratic Choice of Kazakhstan” (DCK), a movement that has been banned in Kazakhstan, organized a series of rallies calling for a change of government. All rallies were harshly suppressed, their participants were detained, and lawsuits were initiated against DCK activists; even criminal cases were initiated against some of them. The police were not too selective: anyone who protested was seen by the police as a supporter of the movement. This scared the rest of the civil society activists and forced them to refrain from the protests they had previously held. Indirectly, DCK pushed everyone else out of this field of publicity, and forced them to wait out for better timing to organize their own events.

Aside from that, in an effort to prevent peaceful actions by DCK activists, the police carried out extensive preventive work among those who made it to the unofficial lists of suspected of being loyal to the banned movement. Some of them were visited at their houses and warned that participating in any protests would be unacceptable. Others were summoned to the police where they were given “preventive talks” to remind them there is a liability for participation in the activity of an organization that has been recognized as extremist in Kazakhstan by a district court ruling. Criminal cases were brought against those more active on social networks, with some of them being sentenced to restriction of freedom or imprisoned.

However, starting in 2019 the situation began to change. In addition to DCK rallies, other organizations and movements began to have their own events. This was facilitated by the fact that for some time in mid-2019 the authorities were not “fighting” single-person pickets, not in the same way as they had done before. So the people perceived it as de-facto permission to hold single-person pickets. A wave of events that started off as a single-person picket and ended up being a full-blown public gathering, swept across Kazakhstan. Once the authorities realized that, the old practice of bans and prohibitions was promptly re-activated, only it was already too late. The process of rally activity could no longer be stopped.

This is clearly demonstrated by Table 10 below which shows a dramatic increase in the number of peaceful assemblies over the last two years.

Table №10



Year	Number of peaceful assemblies held
2010	64
2011-2012	162
2012-2013	119
2014	114
2015	71
2016	52
2017	36
2018	32
2019	227
2020 (I-VI)	176

Given that 176 peaceful gathering were already held in the first six months of 2020, it can be argued with confidence that over the last two years, rally activity (by use this term to describe the manifestations of the protest mood of citizens) has dramatically increased and exceeded the same indicators from previous years: a 6-7-fold increase at least. Even the record number of peaceful assemblies in 2011-2013 has been doubled.

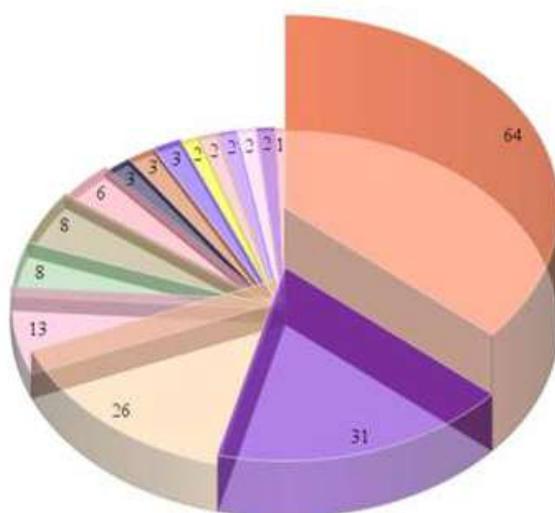
In addition to the overall country results, we have comparative data for each region (see Table 1 below)

This table gives a clear region-by-region picture of citizens’ activity and protest moods.

More than half of all peaceful assemblies in Kazakhstan have been held in three cities: Almaty, Uralsk and Astana/Nur-Sultan. In 2020, these three cities accounted for two-thirds of all peaceful assemblies in the country. See Table 12 below.

Table 12. Number of peaceful assemblies in the first half of 2020

1	Almaty	64	36.4%
2	Western-Kazakhstanskaya Oblast (Uralsk)	31	17.6%
3	Nur-Sultan	26	14.8%
4	Shymkent	13	7.4%
5	Mangistauskaya Oblast (Aktau)	8	4.5%
6	Kostanayskaya Oblast (Kostanay)	8	4.5%
7	Aktyubinskaya Oblast (Aktobe)	6	3.4%
8	Akmolinskaya Oblast	3	1.7%
9	Zhambylskaya Oblast (Taraz, Shu)	3	1.7%
10	Atyrauskaya Oblast (Atyrau)	3	1.7%
11	Eastern-Kazakhstanskaya Oblast (Ust-Kamenogorsk, Semey)	2	1.1%
12	Karagandinskaya Oblast (Karaganda)	2	1.1%
13	Kyzylordinskaya Oblast	2	1.1%
14	Southern-Kazakhstanskaya Oblast	2	1.1%
15	Almatinskaya Oblast	2	1.1%
16	Zhanaozen	1	0.6%
	TOTAL	176	100%



Almaty has been the undisputed leader in holding peaceful assemblies over all these years. It was only in 2018 that it was overtaken in this ranking by the capital, Nur-Sultan.

Over the years under review, Astana/Nur-Sultan has accounted for less than a half of Almaty’s number in terms of peaceful assembly. In the first half of 2020, the capital was in third place in terms of rally activity, behind Uralsk. This did not come as a surprise because the residents of Uralsk all these years have demonstrated high civic activity and protest moods. Residents of Shymkent and Aktobe have recently become relatively active in terms of peaceful assemblies. In other regions, this indicator was not so significant, although Aktau and Kostanay demonstrated an increase in rally activity in the first ix months of 2020.

2.3.3. Citizen engagement dynamics

The available quantitative data on peaceful assemblies make it possible to calculate the indicator of citizen rally activity, both separately for each region, and overall for the country in comparison with past measurements.

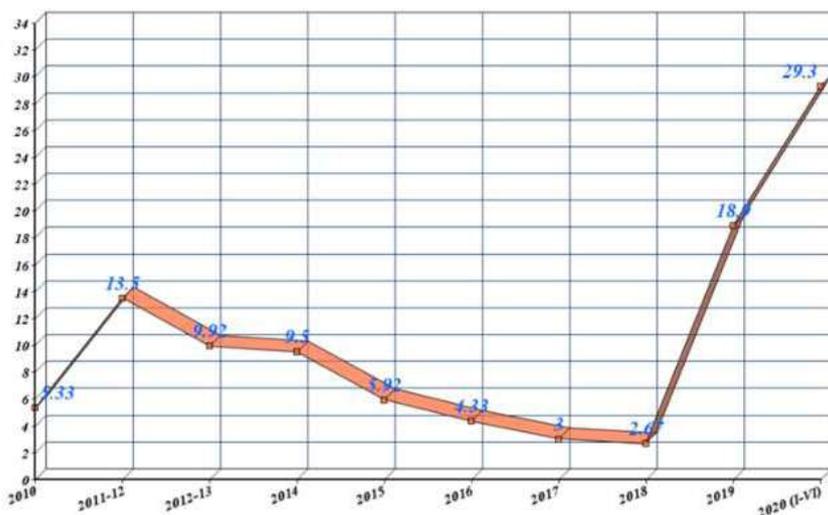
The Rally Activity Index is an indicator of the number of peaceful assemblies (rallies, pickets, flash mobs and demonstrations) per conditional unit of time. In our case, one month is taken per unit of time. The more peaceful assemblies, the higher the rally activity index. See Table 13.

Table 13. Peaceful assemblies, by years

	2010	2011-12	2012-13	2014	2015	2016	2017	2018	2019	2020 (I-VI)
Rally Activity Index	5.33	13.5	9.92	9.5	5.92	4.33	3	2.67	18.9	29.3

This index allows for a comparative analysis of the situation with peaceful assemblies on a year-by-year basis which, in turn, makes it possible to determine a common trend in the development of rally activity.

As can be seen, a general decline in rally activity observed since 2011 has changed into a significant increase over the last two years. It looks like a sharp, 6-7-fold, jump in the activity.



A record number of peaceful assemblies for Kazakhstan was recorded in 2020. In the first half of the year, an average 29 peaceful assemblies had been held in the country every month. That means, there was a public display by someone on an almost everyday basis. With the exception of Aktyubinskaya Oblast, Eastern-Kazakhstanskaya Oblast and Zhanaozen, all other sites have shown an increase in activity compared to 2019.

Table 14 below shows the dynamics of rally activity broken down by regions, over the course of monitoring.

The table shows that the highest growth in meeting activity has been observed in Almaty. After a historic minimum in 2018, this indicator had increased 16-fold in 2019. The rally activity in Uralsk had grown at a similar rate. In the capital, this number had increased five-fold. Over the past two years, rally activity in Shymkent had noticeably grown: three-fold in 2019 and almost five-fold in 2020. A similar level of rally activity has been observed in Kostanayskaya and Mangistauskaya Oblasts. This goes to show that the number of peaceful assemblies was observed to be growing not only in the both capitals and large cities, but also in place where such activity had never been observed before.

2.3.4. Character and topics of peaceful assemblies (qualitative indicators)

For the convenience of analysis, all peaceful assemblies were divided into three groups.

First group includes meetings that touch on political topics. This includes everything that, in one way or another, is characterized by disagreement with the actions of the authorities, manifestations of political disloyalty, open protests addressed to the authorities.

Second group includes public actions on the topics of public issues that does not reach the level of political protests.

Third group includes public actions dedicated to economic issues. Those include employee-employer

Table 14. Peaceful assemblies, by regions

	2010	2011-12	2012-13	2014	2015	2016	2017	2018	2019	2020 (I-VI)
Almaty	3.92	5.58	4.83	3.58	2.42	1.75	1.42	0.5	8	10.67
Astana / Nur-Sultan	0.58	1.33	2.17	3.08	3.08	0.75	0.75	0.83	4.25	4.33
WKO / Uralsk	0.33	2.33	1.83	1.33	0.75	0.33	0.17	0.42	1.67	5.17
Karagandinskaya oblast/ Karaganda	0.33	0.58	0.5	0.42	0.16		0.08		0.33	0.33
Mangistauskaya oblast/ Aktau	-	2.17	0.33	0.25	0.08	0.08	-	-	0.25	1.33
Pavlodarskaya oblast / Pavlodar	0.08	-	0.08	0.17	0.08	0.08	0.08	-	0.08	-
EKO / Ust-Kamenogorsk	-	0.17	-	0.08	-	1.33	-	0.17	0.91	0.33
Aktyubinskaya oblast / Aktobe	-	-	-	0.25	-	0.17	-	0.42	3.25	1
Atyrauskaya oblast / Atyrau	-	-	-	-	0.08	0.33	0.08	-	-	0.50
Shymkent	-	-	-	-	0.08	-	0.25	0.25	0.83	2.17
Kostanayskaya oblast/ Kostanay	-	-	-	-	-	-	-	-	0.25	1.33
Kyzylordinskaya oblast/ Kyzylorda	-	-	-	-	-	0.08	-	-	-	0.33
Zhanaozen	-	-	-	-	-	0.08	-	-	0.58	0.17
Almatinskaya oblast	-	-	-	-	0.08	-	0.08	0.33	0.25	0.33
Zhambylskaya oblast/ Taraz	-	-	-	-	-	0.08	-	-	0.25	0.50
SKO / Turkestan oblast	-	-	-	0.08	-	-	-	-	-	-
Akmolinskaya oblast	-	-	-	-	-	-	-	-	-	0.50
NKO	-	-	-	-	-	-	-	-	-	0.33

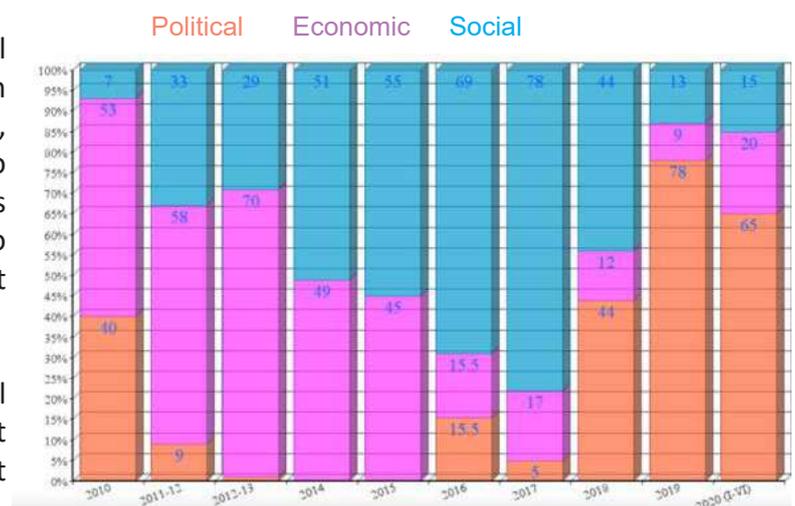
disputes, welfare and benefits, issues of mortgage, housing problems and questions pertaining to public and housing utilities.

Table 15 below shows the data on the said topical groups in dynamics over the years of monitoring.

	2010	2011-2012	2012-2013	2014	2015	2016	2017	2018	2019	2020 (I-VI)
Political	40%	9%	1%	-	-	15.5%	5%	44%	78%	65%
Economic	53%	58%	70%	49%	45%	15.5%	17%	12%	9%	20%
Social	7%	33%	29%	51%	55%	69%	78%	44%	13%	15%

As can be seen from the table, peaceful assembly under political banners has shown a declining trend since 2017. Starting in 2018, the number of peaceful assemblies begins to grow dramatically. Moreover, it was from this moment that the word “politics” began to dominate the topics of peaceful assemblies, at a level of 70 per cent.

Below are the lists of main topics of peaceful assemblies; it should be taken into account that a single assembly might have several different topics.



A list of the most popular political topics raised by participants in peaceful assemblies in 2018-2020:

2018

Subject	Number
Freedom for political prisoners	9
Free education	3
Against Kyrgyzstan extraditing the opposition figure Muratbek Tungishbayev	1
Against the sale of land to foreigners	1
Total	14

2019

Subject	Number
Freedom for political prisoners	78
Against the “transfer” of factories from China over to Kazakhstan	21
A wide spectrum of political demands	15
Demanding the release of defendants or detained politicians and civil activists	13
Against unfair presidential election in the Republic of Kazakhstan	10
Against the authoritarian form of government	10
Demands for the EU and US to pay attention to the human rights situation in Kazakhstan	5
Against the renaming of Astana	3
In support of the convicted participants of the action “You cannot run away from the truth”	3
OTHER (including: against China’s repressions of Muslims; demands for freedom of peaceful assembly; against the ban on DCK; others)	17
Total	175

First half of 2020

Subject	Number
Freedom for political prisoners	40
Against political persecution	22
Demand to investigate the death of Dulat Agadil	16
Revise the criteria whereunder “Democratic Choice of Kazakhstan” has been banned, or express support for the movement’s programme	14
Demand for Nursultan Nazarbayev to resign and the Security Council to dissolve	10
Releasing relatives in China or provide information on them	10
Release detained or accused political and civil activists	6
Against the ban on the “Koshe Partyyasy” movement	4
OTHER (freedom of peaceful assembly; against the disruption of the congress of the Democratic Party; against the Democratic Party; draw the West’s attention to violations of human rights in Kazakhstan, others)	40
Total	152

In the years under review, peaceful assemblies devoted to economic topics ranged from 10 per cent to 20 per cent of the total number of gatherings. The 20 per cent growth in 2020 is explained by a series of protests that were carried out by motorists, owners of license plates from the CIS countries, who demanded to be exempted from customs clearance of their cars.

Below is a list of such topics raised at peaceful assemblies in 2018-2020:

2018

Subject	Number
Unhappy with the amount of pensions	1
Protest against rising prices for gasoline at filling stations	1
Co-investors in a housing project demanding completion of the construction	1
Against illegal accrual of debt by the apartments owners committee	1

2019

Subject	Number
Abolish the requirement to restrict the use of vehicles with CIS plates	13
Cancel the requirements for repayment of bank loans	7
Demands for the provision of housing and increase in the amount of benefits	5
Reopen shopping centres, markets, restaurants	5
OTHER (including: demands to pay wages and benefits; remove checkpoints at the city gate; provide with food).	6

First half of 2020

Subject	Number
Demands for the provision of housing and benefits for mothers with many children	9
Against illegal firings/dismissals	2
Against rising prices	2
OTHER (including: against the seizure of land by authorities; demands for payment of wages and pensions; demands for subsidies for farmers; demand to a bank to reduce the amount of debt repayment on the loan; others).	8

As the political topics of peaceful assemblies intensified, the number of actions dedicated to social issues decreased markedly. In 2018 the “social sector” accounted for 44 per cent, but 2019-2020 it had fallen more than three times.

List of topics raised in the social block:

2018

Subject	Number
Protest against unfair court rulings	6
Protest against police actions	2
Feminist action against stigmatization of women	1
Against evictions	1
Disagreement with the actions of an akim	1
Against illegal dismissals/firings	1
Protest by a pensioner who was dissatisfied with the amount of his pension	1
Demand to solve the problem of safety of a street crossing	1

2019

Subject	Number
Demand for a fair trial / resignation of judges	10
Demand for a fair investigation	5
Protest against arbitrary actions by the police	3
In memory of the victims of 16 December 1986 and Zhanaozen	3
OTHER (including: against the use of torture; against domestic violence; for tougher punishment for rape; against the construction of a nuclear power plant and a new road; others)	23

2020

Subject	Number
Demand to solve social and economic problems	3
For fair courts and judicial system	3
Protest against arbitrary actions by the police	3
OTHER (including: against the crowded housing development; against the transfer of national parks into private hands; for women equality; against a coronavirus centre built in the district).	17

The more popular topics at peaceful assemblies in the past three years have been “the release of political prisoners.” In 2018 those demands were voiced at protest rallies only nine times, but in 2019 their number increased to 78 times, and to 40 occasions in the first half of 2020.

The other topic of rallies and pickets that has come up in the past two years has been the demand to stop persecutions of civil activists for political reasons. In 2019, this demand was voiced 13 times, but 22 times in the first half of 2020.

The death of civil activist Dulat Agadil in a pre-trial detention facility in the capital shocked the society. This was reflected in 16 peaceful assemblies that demanded an independent and transparent investigation into his death.

Increasingly, demands were made at peaceful assemblies to lift the ban on DCK and “Koshe Partyyasy”, with voices of support for those movements. In 2020, this was heard at 14 peaceful assemblies.

One of the resonant topics was the demands by the owners of cars with license plates from the CIS countries to be release from the “customs clearance” of their cars. Thirteen public actions were dedicated to this.

Ten peaceful assemblies were dedicated to the situation with ethnic Kazakhs in the Xinjian Autonomous Region of China. Protesters came up to the Chinese diplomatic missions urging them to provide information on their relatives who had disappeared.

Another ten public actions called for the resignation of Nursultan Nazarbayev, former President and currently the head of the Security Council.

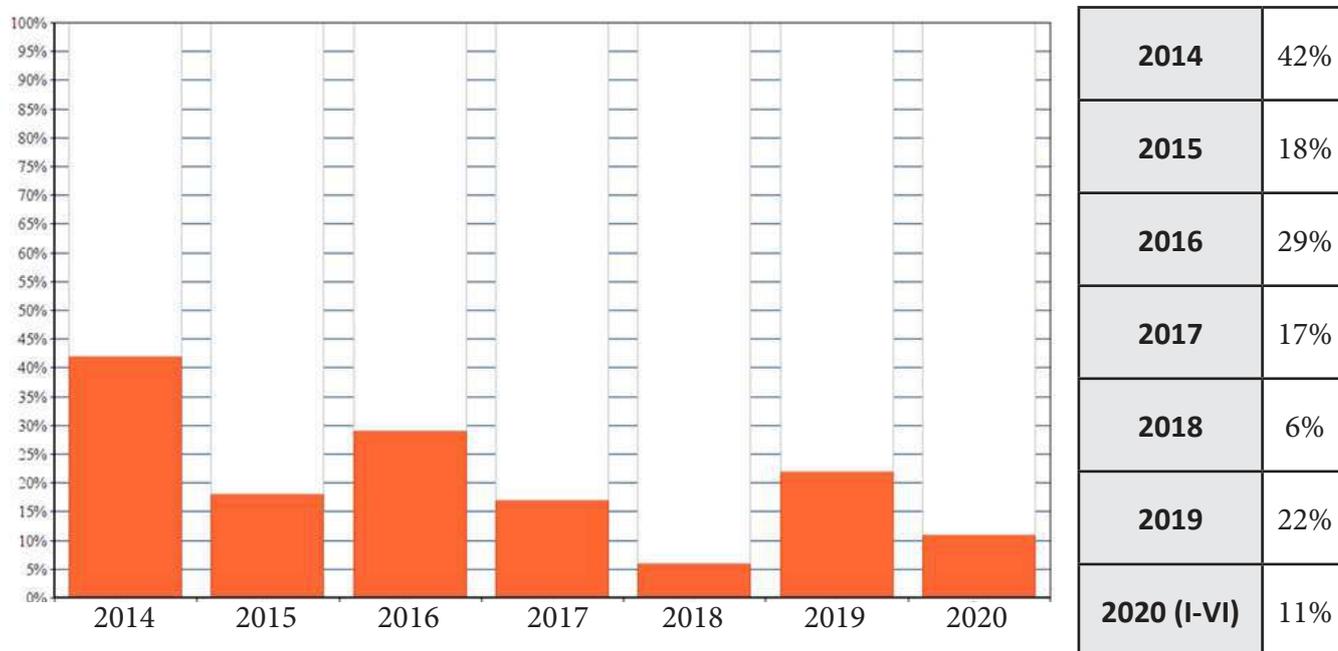
Other topics were not so grave as to invoke a serious and sustained reaction in the form of a series of peaceful assemblies.

2.3.5. Activity of public organizations in terms of peaceful assemblies

Beginning in 2014, we have monitored the participation of public organizations in the organization of peaceful assemblies. The peak activity was recorded up until 2014.

Since 2015, a sharp decrease public associations' activity in terms of peaceful assembly has been observed in Kazakhstan. To a large extent, this has been due to the general policy promoted by state authorities to make the procedure for holding peaceful assemblies more restrictive, and their practice of preventing public gatherings from being organized and held. Currently, peaceful assemblies organized by various public organizations account for approximately 20 per cent of the total number of public events.

Table 16. Activity of public organizations in terms of peaceful assemblies



The lowest rally activity of public organizations was observed in 2018 (6%). That this indicator jumped by 16% in 2019, was attributed primarily to the increased activity of DCK supporters who periodically organized rallies under political banners.

In the first half of 2020, the main contributors to the number of peaceful assemblies under political banners were the opposition movements: DCK (with seven events), "Koshe Partyyasy" (with five events), and the Democratic Party (with three events).

In 2019, Oyan, Qazaqstan movement came to the fore and held two peaceful assemblies in Almaty. The environment movement "Protect Kok-Zhailau" held a public event in 2020 which was dedicated to the protection of a mountain reserve. The feminist initiative KazFem in 2019 organized a sanctioned rally on the issue of domestic violence. In Zharkent, the local city akim initiated a rally due to a critical situation that had arisen around accumulations of trucks at the China-Kazakhstan border. The public foundation "Do Not Be Silent KZ" and opposition movement "Respublika" organized two public actions each.

In the rest of the cases, actions were organized by groups of people that were not members of any particular organization, or by individual participants.

2.3.6. Forms of peaceful assemblies (qualitative indicators)

Peaceful assembly a collective name for a variety of forms of public civil protest. In Kazakhstan, the most popular form of a peaceful assembly is a rally and a picket.

Up until mid-2020, Kazakhstan legislation understood peaceful assemblies only as those public events that are organized by a group of citizens or an association of citizens. In this regard, up until 25 May 2020 (when the new Law on peaceful assemblies was adopted) single-person pickets, it seemed, did not fall under the

jurisdiction of the 1995 Law. Nevertheless, they were equally banned by the authorities, suppressed by the police, and entailed administrative liability.

In Kazakhstan, out of the general list of public actions called peaceful assemblies, rallies accounted for about 30 per cent during the years under review. What is called a picket accounted for 50-60% of the total number of events. All other forms of peaceful assembly accounted for 10-20 per cent. Table 17 below show how many peaceful assemblies and in what forms have been held in Kazakhstan over the last four years. It should be noted that in some cases one form could morph into another: for example, a picket could morph into a rally, a rally into a march.

Table 17. Ratio of forms of peaceful assembly in 2017-2020

	2017	2018	2019	2020 (I-VI)
Rallies	6 (17%)	10 (31.2 %)	76 (32.5%)	49 (27.1%)
Pickets	12 (33%)	6 (18.7 %)	40 (17.1%)	22 (12.1%)
Single-person pickets	9 (25%)	9 (28.1 %)	80 (34.2%)	89 (49.2%)
Marches	3 (8%)	-	18 (7.7%)	7 (3.9%)
Highway blockage	3 (8%)	1 (3.1%)	6 (2.6%)	4 (2.2%)
Performance/Happening	-	-	4 (1.7%)	5 (2.8%)
Chaining or handcuffing	1 (3%)	3 (9.4%)	2 (0.9%)	2 (1.1%)
Hunger strike	1 (3%)	1 (3.1%)	2 (0.9%)	-
Threat of public suicide/seizure of an object	1 (3%)	-	3 (1.3%)	3 (1.6%)
Signature gathering	-	1 (3.1%)	-	-
Picket with the threat of self-arson	-	1 (3.1%)	-	-
Attempt to get to a meeting with the President	-	1 (3.1%)	-	-
Car rally	-	-	1 (0.4%)	-
Laying flowers	-	-	2 (0.9%)	-

It is worth noting that single-person pickets in terms of numbers dominated all other forms of peaceful assembly for all three years. They accounted for 47 per cent of total number of events in 2018, 51 per cent in 2019, and 61 per cent in 2020. Characteristically, their share in the total number of public events has been constantly growing. This suggests that discontent in the country is being formed outside opposition and public organizations.

Rallies have constituted a third of all peaceful assemblies.

In recent years, marches began to be used more often in Kazakhstan, whereas they had almost never been observed before.

Other forms of peaceful assemblies are statistically insignificant, rare and only episodically used in Kazakhstan's social and political life. At the same time, the authorities get confused when a peaceful assembly does not correspond it its form to their idea of how a public protest should look like. For that reason, their participants are subjected to the same sanctions as those who conduct a protest or a picket.

On 21 April 2019 in Almaty, during an annual charity marathon, young people from creative circles hung a banner along the road on which the participants of the sport event were running which said "You cannot run away from the truth," "I have a choice," "Adilsailayshin." Law enforcement agencies detained five people

on the spot. The police wrote in their protocol that the young people had hung a banner with the words “The Law on the Leader of the Nation is the nation’s shame.” Late in the evening, a Specialized Interdistrict Administrative Court arrested Asiya Tulesova and Beybarys Tolymbekov for 15 days, charging them with a violation of Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences and classifying the artistic performance as a peaceful protest assembly.

On the same charges, the next day, the operators who filmed this action, Aigul Nurbulatova and Suinbike Suleimenova, were sentenced to fines in the amount of 25 times the MCI. This action caused a series of sequels, including Kazakhstani students abroad held at least ten actions of solidarity with the convicts.¹⁷⁷

Another example: on 17 May 2019 in Nur-Sultan, police officers used a stun gun to detain Darkhan Umirbayev who was shouting political slogans from his balcony and calling for a boycott of the upcoming presidential election. He was accused of “disobeying” the law enforcement (Article 667 of the Code of the Republic of Kazakhstan on Administrative Offences) and sentenced to a 2-day administrative arrest the same day.¹⁷⁸

2.3.7. Citizens’ compliance with the law while exercising their right to peaceful assembly

The monitoring measured the level of citizens’ observance of the norms of the law that prescribe a procedure for obtaining permits to hold peaceful assemblies.

In accordance with the current legislation, holding peaceful assemblies requires a permit to be obtained from relevant departments of the city akimats (beginning 6 June 2020 there must be a notification that suggests the possibility of prohibition of a picket, meeting or rally, or an application to approve a march or demonstration that requires permit in order to be conducted).

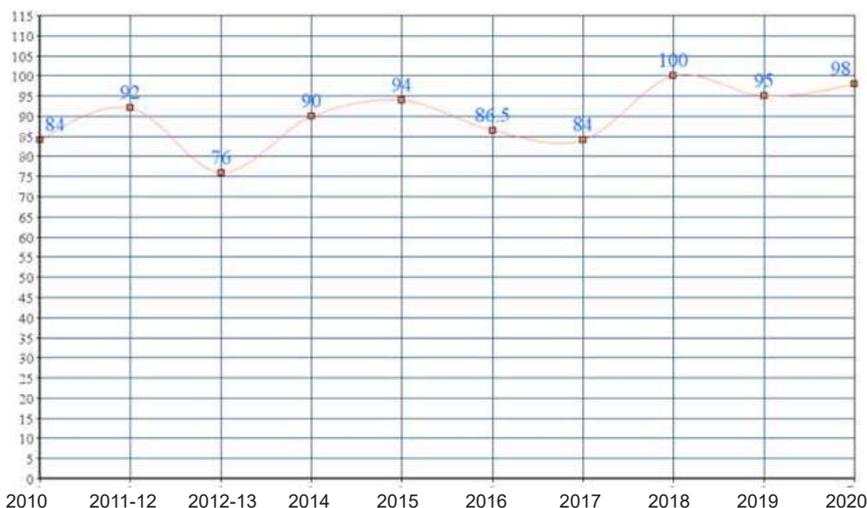
The monitoring showed that the majority of citizens who hold public actions violate the law-established procedure and conduct their public actions in violation of established procedures—in other words, unauthorized.

Table 18. Number of unauthorized rallies by year (as a percentage of the total number of assemblies held)

2010	2011-12	2012-13	2014	2015	2016	2017	2018	2019	2020 (I-VI)	Average for all years
84%	92%	76%	90%	94%	86,5%	84%	100%	95%	98%	90%

As you can see, for all the years of monitoring, the overwhelming majority of peaceful assemblies held in Kazakhstan were unauthorized. All this time, no serious deviations have been observed.

It should be noted that arranging and participation in an unauthorized rally entails administrative liability in the form of significant fines and administrative arrests up to fifteen days.



¹⁷⁷“Is there a choice? A chronology of detentions of activists for the “You cannot run away from the truth” banner”, 21-22 April 2019 // The Village website. URL: <https://www.the-village.kz/village/city/situation/5541-zaderzhanie-za-plakat-na-almaty-marafone-hronologiya>

¹⁷⁸An activist who yelled from his balcony to “boycott the election” arrested for two days.” 26 May 2019 // Azattyk Radio website. URL: <https://rus.azattyq.org/a/29963511.html>

However, despite the risk of fines or administrative arrests, on average 90 per cent of all peaceful assemblies in Kazakhstan during the last 10 years were held without proper authorization. As a matter of fact, the citizens kept ignoring this legal requirement and continued to hold peaceful assemblies without the consent of the authorities, by default.

A survey of participants in unauthorized rallies and an analysis of the situation show that one of the reasons for this situation was that the authorities pursued a policy of double standards when it came to suppressing unauthorized rallies and punishing them.

Practice has shown that as a rule, the authorities “turned the law on” when the protesters raised questions that the authorities considered uncomfortable and dangerous from the point of view of their political interests or people who represented them. Naturally, this concerned, first and foremost, the opposition and those of the protesters who presented political demands.

As a rule, then preventative countermeasures and administrative penalties were against the organizers and participants in unauthorized rallies.

When questions raised by the protesters were not about politics, police either had no reaction whatsoever to such events, or they did it formally, stopping short of harsh measures such as crowd dispersals, arrests of participants, and court trials. Conflicts like those often ended in verbal warnings or small fines.

This kind of selectivity and leniency toward the violators of the law on peaceful assemblies largely contributed to the citizens being not particularly afraid to attend rallies that were held under social and economic banners. Such a specificity of the response to unauthorized peaceful assemblies to a large extent determined citizens’ behaviour in not applying to akimats for permits for their public gatherings.

A poll revealed three main reasons why the majority of citizens attended unauthorized rallies.

The first reason was that the citizens were not fully aware of the law: many of those who attended unauthorized rallies had little idea that such behaviour constituted an administrative offense and could result in a fine or administrative arrest.

The second reason was that a significant part of those who conducted peaceful assemblies failed to file in applications for a permit because of a general perception that the authorities would deny them anyway. So the people felt like they were wasting their time with the akimats so they just went ahead and held the rallies without even bothering about obtaining a permit.

Finally, the third reason revealed during the monitoring was that certain citizens were unwilling in principle to ask for an authorisation to exercise their constitutional right to peaceful assembly.

Table 19 below shows the data from citizen surveys which explained why the organizers of actual (planned) gatherings failed to apply for an authorization to the akimats.

One of the most common reasons for citizens not applying for authorizations to akimats has been the belief that this all was pointless, because the authorities would not give permit anyway. More than a third of the organizers of peaceful assemblies said this in 2018-2020.

A decrease in the number of refusals of permits for peaceful assemblies issued by the authorities has been observed due to the organizers’ unwillingness to comply with the principle of having to have a permit in order to hold a peaceful assembly. In 2018 and 2019, the number of such reasons had decreased by about 30% compared to previous years. In 2020, the number of such reasons bottomed out. It may be assumed that such a change had been caused by the harsh persecution of the protesters on the part of the authorities over the past two years.

Table 19. Reasons why citizens refuse to apply for an authorisation to hold peaceful assemblies

	2011	2011-12	2012-13	2014	2015	2016	2017	2018	2019	2020 (I-VI)
In principle, not willing to bend to an undemocratic law	25%	41%	-	25%	12%	25,5%	-	16%	15%	3%
It makes no sense. The application would be denied anyway	55%	42%	32%	31%	27%	24%	28%	41%	29%	36%
Did not know they needed a permit	19%	16%	68%	44%	61%	11%	11%	9%	0,5	1%
Acted spontaneously, did not think about obtaining an authorization	-	-	-	-	-	11%	13%	9%	6%	10.5%
Applied but did not receive authorization	-	-	-	-	-	-	-	-	2,5%	2%
No authorization required	-	-	-	-	-	-	-	-	38%	31%
Reason not identified	-	-	-	-	-	18%	48%	25%	9.5%	15%
Didn't have time to apply	-	-	-	-	-	-	-	-	-	0.5%

At the same time, the number of spontaneous rallies has increased (10.5%) and, especially, those where the organizers were certain that no permit was necessary to hold them (31%). The latter began to manifest itself in mid-2019, during the time when the authorities allowed single-person pickets to be conducted. This was perceived by people as if single-person pickets were permitted. However, the police soon returned to detentions, however for some time the picketers still continued to believe that permits were not necessary.

Unfortunately, it was not always possible to find out why a peaceful assembly was not authorized. Many picket organizers found this question to be difficult to answer in any sensible way. The fact that complete information was absent for this section of monitoring makes it impossible to conduct a comparative analysis and draw any conclusions.

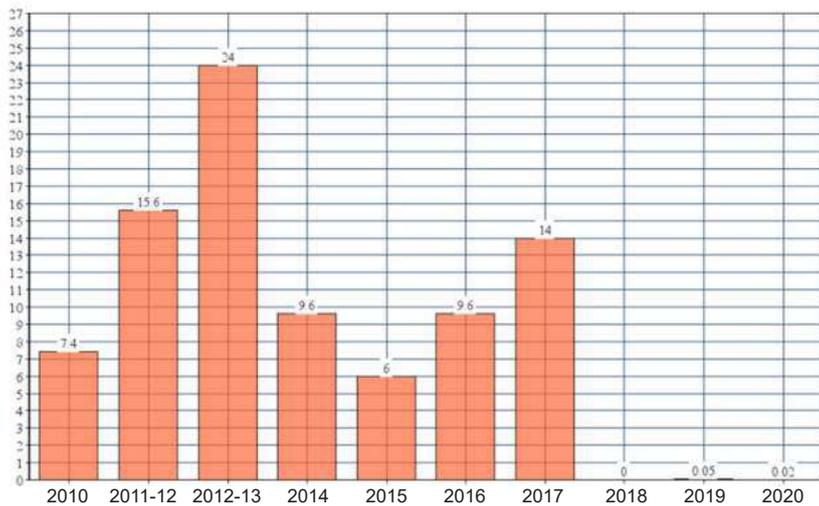
The data obtained during the monitoring make it possible to calculate an index of law compliance demonstrated by the Kazakhstanis while attending peaceful assemblies. It is a ratio of rallies that were authorized by the authorities over the total number of peaceful assemblies that were held.

We call it the “Law-compliance index.” This indicator most accurately shows the extent to which the organizers of peaceful assemblies complied with the Law on peaceful assemblies which prescribes a procedure for obtaining a permit to hold a peaceful assembly. It also allows making comparisons of unauthorized peaceful assemblies across different cities and keep track of the dynamics over a number of years.

The table below shows the level of law-compliance in terms of peaceful assemblies over all years of monitoring.

Table 20. “Law-compliance index” by years

2010	2011-2012	2012-2013	2014	2015	2016	2017	2018	2019	2020 (I-VI)
7.4%	15.6%	24%	9.6%	6%	9.6%	14%	0%	0.05%	0.02%



In 2018-2020, the level of law observance during peaceful assemblies was the lowest across the entire period of observation. In the previous years it averaged out at 10 per cent, but more recently it has dropped down to almost zero.

This is primarily explained not so much by the unwillingness of citizens to apply for authorizations to hold peaceful assemblies as by the bans imposed by the authorities becoming more stringent. A practice of prohibitions likely reduces the total number

of peaceful assemblies, but those that are still held are pushed out of the lawful field. In other words, by their actions the authorities push the social and political activity of the citizens out of the bounds of the law, thereby promoting tensions between state and society, opposition and authorities, authorities and people.

However, despite all this, peaceful assemblies continued to be held for the entire period under review, meaning the Law on peaceful assemblies has been violated by citizens regularly and universally. Thus, a conclusion can be made that the refusals by the authorities to issue permits for peaceful assemblies have not achieved their intended result: rallies, pickets and other protest actions have continued and even grown in numbers.

A first attempt to hold a peaceful assembly under the new law turned out unsuccessful.

On 6 June 2020—the first day after the new Law on peaceful assemblies had come into effect—attempts were made to hold opposition rallies organized by the initiators of the Democratic Party in various cities across the country. Notifications of rallies had been submitted by the initiative groups; however, refusals were issued everywhere because, under the new law, they had to submit notifications five days before the announced rallies, counting from the date the new law came into effect (that is, not earlier than 6 June). Then the party activists announced their intention to hold rallies demanding the cancellation of bank loans which the citizens were not able to repay due to the general situation with the coronavirus. Other unregistered initiatives—the youth movement “Oyan, Qazaqstan” and the banned “Democratic Choice of Kazakhstan” and “Koshe Partyyasy” — announced their support for the protest.

In Almaty, in the morning police cordoned off the centre of the city; however, about a hundred supporters of the Democratic Party attempted to hold a rally while disinfection services constantly sprayed them with a chlorine solution and the police surrounded them. A total of over a hundred people were detained at the venue of the rally and in adjacent areas. Fifteen people were sentenced to a 15-day arrest; a few dozens more were fined. Attempts to hold rallies in other cities, such as Nur-Sultan, Uralsk, Kyzylorda, Semey, Shymkent, developed along similar lines.¹⁷⁹

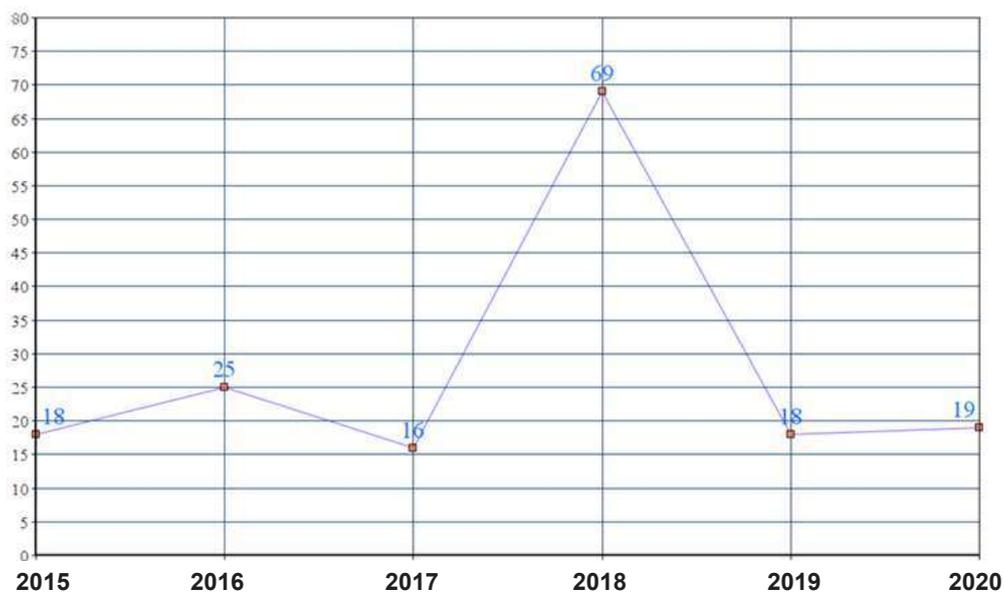
2.3.8. Unauthorized peaceful assemblies whose organizers have been prosecuted

As a rule, about 20 per cent of cases involving unauthorized peaceful assemblies make it to a courtroom. A sole exception was the year of 2018, when the authorities stepped up the persecution of DCK activists who organizing unsanctioned rallies. See Table 21 below.

¹⁷⁹“The Corona is hiding behind the virus”, 7 June 2020 // Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: <https://bureau.kz/goryachee/korona-prikryvaetsya-virusom/>

Table 21. "Percentage of unauthorized peaceful assemblies that reached the trial phase, for the last five years"

2015	18%
2016	25%
2017	16%
2018	69%
2019	18%
2020 (I-VI)	19%

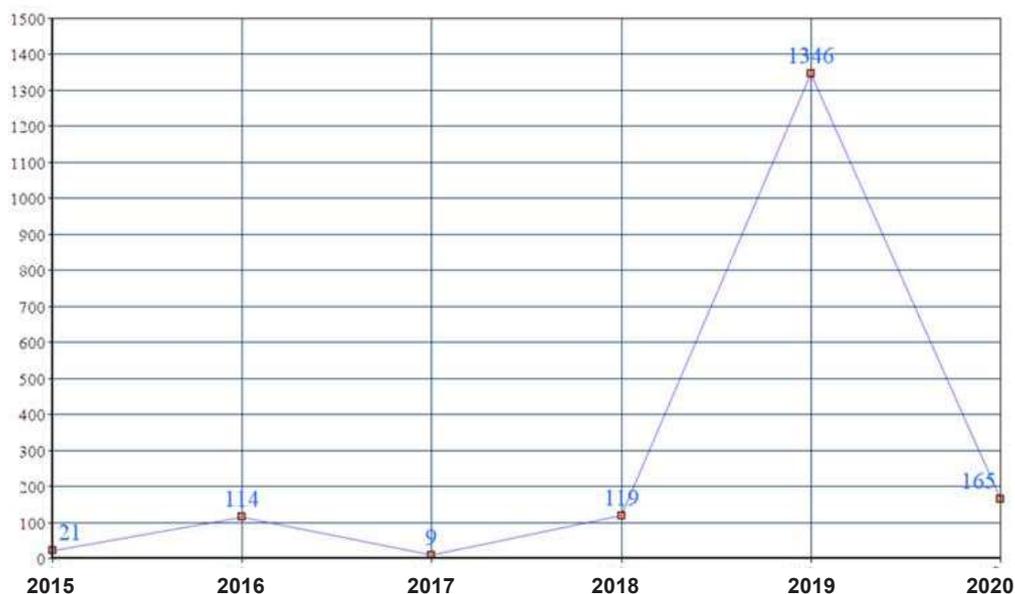


This is what could be regarded as the manifestation of a double standard in the way the authorities have acted in persecuting the organizers and participants in unauthorized peaceful assemblies. Eight per cent of all peaceful actions carried out in violation of the law remained out of sight of the law enforcement agencies. And only twenty per cent of those which, in the opinion of the authorities, pose a threat to the political system, powerful persons, and the interests of officials, are processed through the judicial system.

The same picture is shown by the statistics on those who have been held administratively liable and convicted for organizing and participating in unauthorized actions. See Table 22 below.

Table 22. Number of participants of peaceful assemblies who have been held accountable over the last five years

2015 year	21
2016 year	114
2017 year	9
2018 year	119
2019 year	1346
2020 year (I-VI)	165



In 2018-2020, an average of no more than 25% of participants were prosecuted for participating in unauthorized rallies, a figure that is comparable to the overall value of this indicator in previous years. An exception was the year of 2019, when the number of convicts increased more than ten-fold. This was due to the fact that the authorities made harsher the punitive measures in respect of activists of "Democratic Choice of Kazakhstan", a movement that has been banned in Kazakhstan, and significant numbers of people detained at the protests during the presidential election.

As an example, on 6 and 13 June 2020 musical events called “Subbotazh” were held in Almaty on Panfilov Boulevard and the Arbat. Participants, while playing musical instruments, demanded that the authorities stop political persecution of civil activists. These events were organized by the supporters of the opposition movement “Koshe Partyasy” which had been banned on 19 May 2020 by a ruling of the Yesil district court in Nur-Sultan.

On 18 June, Noyan Rakhimzhanov, Abaybek Sultanov, Askhat Zheksebeyev, and Kairat Klyshev were held administratively liable for violating Article 488 of the Code of the Republic of Kazakhstan on Administrative Offences by participating in the “Subbotazh” event on 13 June. A criminal case was initiated against pensioner Sahib Zhanabayeva under Article 405 of the Criminal Code “Organization and participation in the activity of a public or religious association or another organization after a court ruling has been issued banning it or liquidating it due to its links to extremism or terrorism.”

While the administrative arrestees served their sentences, new trials were held against them, resulting in Noyan Rakhimzhanov getting an additional 15 days of arrest for the 6 June rally, and all the others getting an additional five days of arrest for their participation in a musical event that had been held earlier.¹⁸⁰

2.3.9. Authorities’ response to unauthorized peaceful assemblies

Under the 1995 Law, in the event of an unauthorized public gathering representatives of akimats must warn the organizers or participants that it is not permitted to hold a rally that has not been agreed on with the local executive body.

In parallel, representatives of the prosecutor’s office should explain to the rally participants that their actions are unlawful.

However, as mentioned above the local authorities and prosecutor’s office’s reaction to public gatherings was rather selective. Some gatherings, they would show up and make warnings, while other times they would not be there at all, or would be present only nominally, without interfering with the course of events. It all depended on the personality of the organizer, and nature and topic of the action in question. Peaceful assemblies that have social issues as their topics, as well as single-person pickets are often ignored by both the akimat and the prosecutor’s office.

At the same time, the prosecutor’s office and akimat are extremely attentive when it comes to any events that have a political and acute social tone. In such cases a warning is dispatched either from the prosecutor’s office or an akimat representative, on the day before. And on the day of the event, would-be participants may even be grabbed at their house and taken away for an “explanatory talk” and released several hours later, after the announced event would have been finished already.

The venue of the event also affects how the prosecutor’s office and akimat would react. If an event is planned to be held in the central part of the city, near government offices or in a busy place, then one can expect an increased degree of attention and “explanatory talks” in the offices of various officials or people in uniform.

However, such preventive work does not mean that police would not grab people even before the start of a peaceful assembly, without waiting from the akimat or prosecutor’s office to issue warnings that the action is illegal and needs to be stopped.

2.3.10. Police behaviour during peaceful assemblies

It should be noted that police are present at almost all peaceful gatherings. Even when they cannot be seen it does not mean that they are not there—they are still there only they are plain-clothed or hiding nearby.

¹⁸⁰“Several activists arrested or summoned to the police after the Saturday event in Almaty”, 19 June 2020 // Azattyk Radio website.
URL: <https://rus.azattyq.org/a/30679299.html>

The monitoring showed that the police in Kazakhstan during unauthorized peaceful assemblies are preoccupied with ensuring control over the situation as a minimum, and with terminating or dispersing the assembly and detaining its participants, as a maximum. Maintaining order during a peaceful assembly is not even an issue under consideration. There are plenty examples when the police did not react to provocateurs who attempted to instigate fights with the protesters.

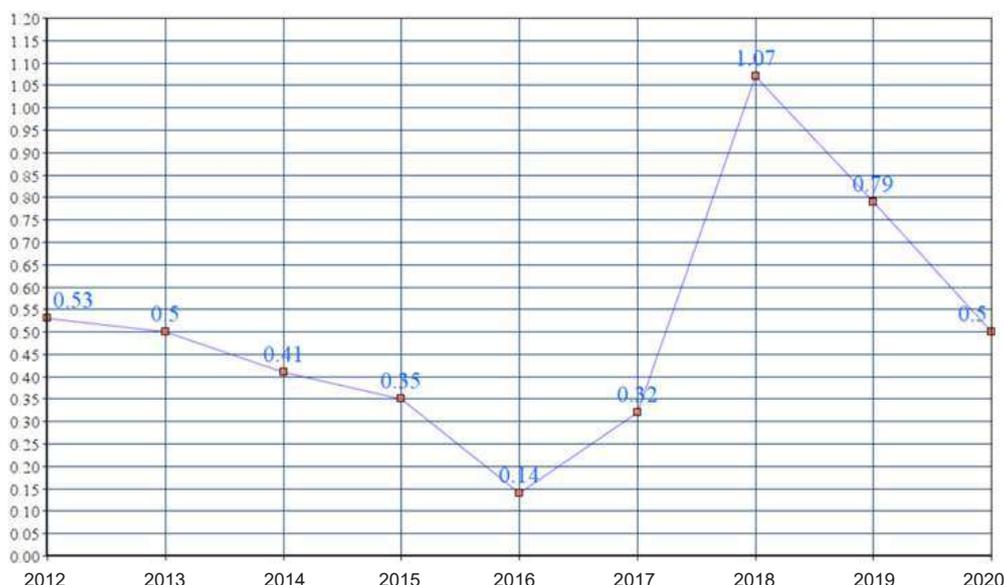
Clearly, ensuring control over the situation during an unauthorized rally requires various number of police officers to be present. This is a function of a number of factors, such as how many protesters there are, what kind of demands they have, what their intentions are, and what their level of aggressiveness is.

For the convenience of making comparisons and tracing the dynamics, we have developed the so-called “police control index (PCI).” PCI equals the number of police officers per one protester.

Table 23 below shows comparative information on police control in 2012-2020.

Table 23. Police Control Index

2012	0.53
2013	0.50
2014	0.41
2015	0.35
2016	0.14
2017	0.32
2018	1.07
2019	0.79
2020 (I-VI)	0.50



Here is what police control indices in the table denote.

According to the monitoring data, the police control index was 0.53 in 2012. This means that in 2012, there was one police officer for every two protesters.

In 2012-2016, the police control index showed a downward trend. The lowest indicator of police “guardianship” was observed in 2016 (IPC=0.14), or one policeman for every seven protesters. The main reason for this, in our opinion, was a decrease in both the number of peaceful assemblies and a decrease in the political component in the demands of citizens at these peaceful assemblies.

In 2017, the police control index began to grow again – one policeman for every three protesters. Apparently, this can be explained by DCK becoming more active and, generally, the protest moods increasing in the society.

In 2018-2019, this figure had grown even more—one policeman for every single protester. This growth can also be explained by DCK becoming even more active as well as new political movements and initiative in opposition to the authorities entering the field.

However, the police presence at peaceful assemblies was not limited to just observations. In recent years, the police have increasingly been used for the prevention of peaceful assemblies and mass detentions of participants. There have been examples when organizers and participants in unauthorized events were detained before the event even started.

In 2018-2020, the authorities applied preventive measures to stop peaceful assemblies that were organized by the banned DCK movement and several other opposition organizations.

Through social networks and messengers, the police and intelligence officers identified potential participants in the DCK rallies and carried out preventive work with them, with the purpose of intimidating the people and forcing them to refuse to participate in peaceful meetings.

In addition, the police detained individual civil society activists and opposition supporters on the day of the peaceful assembly, in order to prevent them from participating in the events.

Aside from that, people heading to the venues of peaceful assemblies were detained en masse. They were blocked from coming to the venue of the event, and those who objected were detained and taken away in police wagons. Moreover, casual passers-by were often detained.

In 2019, in eleven cases in Almaty and eleven case in Astana/Nur-Sultan, the police used unjustified force during arrests, causing injuries or even breaking limbs of participants in peaceful events. In 2020, at least in three cases in Almaty and one case in Nur-Sultan, Kyzylorda and Uralsk, the police used unjustified force while arresting people. In the capital, police broke the hand of one of the participants during the arrest; in Almaty, detainee suffered a broken nose and a concussion; in Kyzylorda, the police injured a disabled person during the arrest.

Also, in several cases participants in peaceful assemblies who were detained by the police reported that they were subjected to torture; according to the detainees, national security officers, perpetrated those acts.

As an example, Yerlan Fayzullayev and Medet Arystanov from the capital, and Birzhan Toleubekov, Ruslan Nurkanov and Yermek Baigulin from Eastern-Kazakhstan, were captured in the evening of 25 October 2019 by a group of security officers in Almaty in a rented apartment and taken to the Zhetysu district police department.

The reason for their detention, as the law enforcement officials explained to them, was that they had intended to take part in a rally “against Chinese expansion” scheduled for 26 October. In his complaint, Yerlan Fayzullayev described that, once he had been brought to the police station, they began to demand that he confess of being a member of the banned opposition movement “Democratic Choice of Kazakhstan”. In the process, he was beaten and strangled by several police officers who were joined by an officer from the national security agency. When Yerlan admitted that he did intend to go to the rally, he was placed in a temporary detention centre and on the following day sentenced to ten days of administrative arrest, “for making calls for a rally.” As soon as he was released, he recorded the beatings in a hospital and obtained supporting documents. At the same police station, Medet Arystanov was beaten and also demanded to confess in being a member of DCK. Just like Yerlan, after the beating he was sentenced to 10 days of arrest. The victims and their defenders tried to initiate a criminal lawsuit under the article “Torture;” however, neither police nor the prosecutor’s office were willing to register the case.¹⁸¹

In 2019, police used the so-called “titushki” on seven occasions in order to intimidate participants in a peaceful assembly and obstruct the work of journalists.

¹⁸¹“Feeding hatred with arbitrariness”// Website of the Kazakhstan International Bureau for Human Rights and Rule of Law. URL: https://bureau.kz/publ-all/sobstvennaya_informaciya/vzrashivanie_nenavisti_proizvolom/

In more than ten cases the police detained journalists who had all required papers; in another three cases the police obstructed the work of journalists. On two occasions, police beat up a journalist who was covering the protest crackdowns: Shokan Alkhabayev from Tengrinews.kz and Christopher Rickleton, a British journalist with the Associated France Press. On two occasions, independent journalists were put on trial on fabricated charges for covering police actions against participants in peaceful assemblies. Svetlana Glushkova, a correspondent with Current Time, was held administratively liable and fined in the amount of 10 MCI, and also received a warning under Article 73-2 part 1 of the Code of the Republic of Kazakhstan on Administrative Offences “Beatings” and Article 653 part 1 of the Code of the Republic of Kazakhstan on Administrative Offences “Contempt of Court.” Saniya Toiken, a correspondent with Radio Azattyk, was held administratively liable and fined in the amount of 20 MCI under article 667 of the Code of the Republic of Kazakhstan on Administrative Offences “Disobedience of the request of a police officer.”

During this period, on at least two occasions in Almaty and one in Astana, the police detained teenagers who just happened to be near the venue of an unsanctioned assembly.

2.3.11. Findings

In concluding the review of practices of regulating peaceful assemblies in the Republic of Kazakhstan in 2018-2020, we offer several findings:

1. In the two and a half years under review, the authorization principle of holding public events continued to be employed, which as a result of the highly restrictive procedures for obtaining authorizations for peaceful assemblies with broad discretionary powers vested in the authorities have resulted in the authorities being able to prohibit peaceful assemblies as it suited them.

But even in those rare cases when peaceful assemblies were permitted, their venues in all major cities across Kazakhstan were tightly regulated. Normally, they are assigned to sparsely populated, remote places far away from a city centre, thereby making the event lose its meaning in terms of its reach, publicity and public attention to the demands.

Even though the law considers those restrictions only as recommendations, the police, prosecutors and courts regarded them as a mandatory element that organizers of peaceful assemblies had to comply with.

2. After a steady decline in rally activity in the past years, the number of peaceful assemblies significantly increased in 2019 and 2020.

It is characteristic that the main gain was on account of events that had political banners. They were organized primarily by the supporters of “Democratic Choice of Kazakhstan”, a movement that has been banned in Kazakhstan, as well as by the participants in civic initiatives that have emerged in the wake of civic activism after the 2019 presidential election.

It can be argued that 2018-2019 marked the end of an era of old opposition, the one that traces its roots back to 2001, with a new opposition emerging in the form of more radicalized organizations and a new generation of youth who have come into politics.

3. As a result of emergence of new players in the country’s political life, in 2018-2020 contrary to previous years there was a significant change in the topics of peaceful assemblies.

One of the most popular topics was the release of political prisoners. Demands for the head of state and his entourage to resign were heard increasingly more often. The topic of reforms of the political system became the leitmotif of the majority of political rallies.

4. Despite the regulations on the conduct of peaceful assemblies becoming more restrictive, bans and outright repressions against participants, the authorities were not able to keep the rally activity of the masses at the low 2017 level.

Equally, the authorities were not able to force citizens to comply with the provisions of the Law on peaceful assemblies in terms of authorizations that needed to be obtained from local authorities. In 2019-2020, while the rally activity was growing, the vast majority of peaceful assemblies were still held without proper authorizations, just like in the past.

In other words, the majority of organizers of peaceful assemblies de-facto ignored the legal provisions on the need to obtain an authorization to hold them. And this happened against the backdrop of severe restrictions placed on the conditions for holding peaceful assemblies and repressive measures by law enforcement agencies against unauthorized peaceful assemblies.

5. Beginning from 2018, the public perception in Kazakhstan has been undergoing a process of attitude change toward assemblies, in general, and unauthorized assemblies, in particular.

In the past years, through the efforts of the official Kazakh and Russian propaganda, a notion had been formed that assemblies in general, and prohibited assemblies in particular, undermine socio-political stability in the country. Such an attitude toward assemblies has taken hold in the minds of a significant part of the population and become one of the serious reasons to reject “rallying” as a tool to solve socio-economic and political problems.

However, the world is changing: the events in Ukraine, Armenia, Belarus and Moldova have made their own adjustments to the understanding of the role of assemblies and civil initiatives in a country’s life. More and more people are beginning to gain an understanding that peaceful assemblies are that instrument lacking which it is impossible to push the authorities to usher in reforms and changes in the country.

Such an understanding is becoming one of the main motivations for people who are coming out to peaceful assemblies. The significant growth in the number of peaceful assemblies over the past two years is a confirmation of this conclusion.



3. GENERAL RECOMMENDATIONS

Based on the results of the monitoring of the observance of the right to peaceful assembly in the Republic of Kazakhstan in 2010-2020 and Kazakhstan's international obligations, in particular within the framework of the International Covenant on Civil and Political Rights (ICCPR) that the country has ratified, as well as the fact that Kazakhstan is a member of the Organization for Security and Cooperation in Europe (OSCE) and a member of the Venice Commission of the Council of Europe "For Democracy through Law," it follows that there is a need for a radical reform of the national legislation on peaceful assemblies and changes in law enforcement practice.

To bring Kazakhstan's legislation and law enforcement practice in the field of ensuring guarantees of the right to peaceful assemblies in line with international standards, in particular with the provisions of General Comment No. 37 of the UN Human Rights Committee to Article 21 of the ICCPR on the right to peaceful assemblies¹⁸² (2020) and the OSCE and the Council of Europe Venice Commission Guidelines on freedom of peaceful assemblies (second edition, 2011¹⁸³, third edition, 2019¹⁸⁴), and in view of the recommendations of Maina Kiai—the UN Special Rapporteur on the right to freedom of peaceful assemblies and freedom of association, who visited the Republic of Kazakhstan in 2015¹⁸⁵, and the opinion of Sarah Cleveland—the leading international expert, former vice-chairman and member of the UN Human Rights Committee (2015-2018), former member of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) (2013-2019), member of the International Commission of Jurists, member of the Council of the Institute for Human Rights of the International Bar Association, who prepared a legal opinion on the draft Law of the Republic of Kazakhstan on the procedure for organizing and conducting peaceful assemblies¹⁸⁶, it is suggested that the legislation of the Republic of Kazakhstan on peaceful assemblies, including the Law of the Republic of Kazakhstan 2020¹⁸⁷, as well as legal acts regulating the relations between organizers and participants in peaceful assemblies and the government authorities, including representatives of law enforcement agencies, as well as other applicable legislation, be revised.

In the revised legislation and general approaches to law enforcement practice:

- recognize, de-jure and de-facto, that respect for the right to freedom of peaceful assemblies plays a critical role in promoting pluralism, tolerance and open-mindedness, teaching the respect and protection of the opposing views and beliefs, i.e. those that are different from those generally accepted or not shared by the majority of population;
- ensure that any restrictions on the right to freedom of peaceful assemblies pursue a legitimate objective, are established by law, are proportionate to the objective being pursued, and are necessary in a democratic society;
- set forth, unequivocally and clearly, a presumption in favour of the freedom of organization and holding of peaceful assemblies;
- spell out the principle of non-discrimination with respect to the use of the right to peaceful assembly;
- introduce a clear concept structure with respect to the forms of peaceful assembly that need to be regulated;

¹⁸²General Comment No. 37. Article 21: Right to Peaceful Assembly // Website of the Office of the United Nations High Commissioner for Human Rights. URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fGC%2f37&Lang=ru

¹⁸³Guiding Principles on Freedom of Peaceful Assembly. Second edition, OSCE / ODIHR and the Venice Commission of the Council of Europe, 2010 // Website of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. URL: <http://www.osce.org/ru/odihr/83237>.

¹⁸⁴Joint guidelines on freedom of peaceful assembly (Third edition), European Commission for Democracy through Law (Venice Commission) OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR), CDL- AD (2019) 017-e, 8 July 2019 // Website of the Council of Europe. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e).

¹⁸⁵Report of the UN Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai, Addendum "Follow up to a visit to the Republic of Kazakhstan", 16 June 2015, subparagraph b of paragraph 97 // United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. URL: <http://freeassembly.net/reports/kazakhstan/>

¹⁸⁶Sarah H. Cleveland "International Bar Association's Human Rights Institute, the International Commission of Jurists and the Centre For Civil and Political Rights Joint Opinion on Compliance of the Draft Law on the Procedure for Organizing and Holding Peaceful Assemblies with the Republic of Kazakhstan's Human Rights Obligations", 1 May 2020 // Website of the International Commission of Jurists. URL: <https://www.icj.org/wp-content/uploads/2020/05/Kazakhstan-Assembly-Law-Opinion-Advocacy-2020-ENG.pdf>

¹⁸⁷Law of the Republic of Kazakhstan No. 333-VI ZRK dated 25 May 2020 "On The Procedure For Organizing And Holding Peaceful Assemblies In The Republic Of Kazakhstan" // Information and legal system of regulatory legal acts of the Republic of Kazakhstan "Adilet". URL: <http://adilet.zan.kz/rus/docs/Z2000000333>.

- provide effective guarantees for the protection of freedom of speech and expression when having discussions in social networks around the issues related to the organization of peaceful assemblies, irrespectively of whether applications to the authorities with notices of such gatherings are filed or not;
- establish a possibility to hold peaceful assemblies exclusively by notification;
- determine the forms of peaceful assemblies that do not require notification based on the numbers of participants;
- provide for the possibility of holding unplanned/spontaneous meetings;
- include an exhaustive list of places and locations where peaceful assemblies may not be held, or are restricted;
- establish clear procedures for agreeing on a location, time and procedure for holding peaceful assemblies between organizers and authorized state bodies;
- establish procedure that allow for expedited and effective review of complaints, including through judicial channels, against refusals or other restrictions of the right to freedom of peaceful assembly;
- respect the right to security and liberty and the right to be presumed innocent until proven otherwise, including by ensuring that no one is subjected to “preventive detention” for exercising their right to peaceful assembly;
- establish the main rules of conduct for law enforcement officers, including the standards of training of law enforcement officers in using alternatives to brute force and firearms, including peaceful resolution of conflicts, understanding crowd behaviour, and learning methods of convincing, negotiating and mediation, as well as the use of technical means in order to limit the use of brute force and firearms;
- ensure that no one is held to criminal liability for exercising their right to freedom of peaceful assembly or subjected to threats of violence or violence, abuse, harassment, intimidation, or repressions.

