



*KAZAKHSTAN INTERNATIONAL BUREAU FOR
HUMAN RIGHTS AND RULE OF LAW*

***Freedom of Peaceful Assembly in
Kazakhstan:
Authorization Denied***

*Final Report on Monitoring Freedom of Peaceful Assembly
in the Republic of Kazakhstan
During its Chairmanship of the OSCE*

Almaty December 2010

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This report was produced by the Kazakhstan International Bureau for Human Rights and Rule of Law (hereinafter the Bureau), based on: 1) monitoring of peaceful assemblies in six cities of Kazakhstan (Astana, Almaty, Karaganda, Uralsk, Ust-Kamenogorsk, Pavlodar) conducted by staff members of the Bureau during the year of Kazakhstan's chairmanship of the OSCE; 2) analysis of the legal framework regulating the freedom of peaceful assembly in the Republic of Kazakhstan; 3) fifteen years of observing peaceful assemblies in Kazakhstan by staff members of the Bureau.

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I. Executive Summary

The Kazakhstan International Bureau for Human Rights and Rule of Law (the Bureau) monitored the status of the freedom of peaceful assembly in the Republic of Kazakhstan during the year of Kazakhstan's chairmanship in the OSCE. Staff members of the Bureau have monitored peaceful assemblies in six cities of Kazakhstan from January through November 2010.

The Bureau's research confirmed that even during the year of Kazakhstan's chairmanship of the OSCE, the freedom of peaceful assembly was not realized. Both the legal framework governing the freedom of peaceful assembly and the actual implementation of laws violate Kazakhstan's Constitution and its international commitments, *inter alia*, commitments under the International Covenant on Civil and Political Rights and the OSCE Copenhagen Document.

Kazakhstani law regulates not only peaceful assemblies such as mass demonstrations in public areas by citizens, but also all actions undertaken by citizens (or one citizen) in public areas. Holding a picket or hunger strike, or erecting a yurt, tent or other installation, is tantamount to holding an assembly, meeting, march, or demonstration. Distributing leaflets, joining flash mobs, wearing T-shirts or carrying umbrellas with political signs or slogans, laying flowers at memorials, are all considered to be "*form[s] of expressing public, collective or personal interests and protest.*" Indeed any gathering where citizens discuss social or political issues requires permission from local authorities.

The authors have concluded that the main consideration of officials in deciding whether to grant permission for peaceful assemblies is the political loyalty of the applicants. Public events by pro-government political parties and public associations are carried out without restriction. Since the adoption of the Law on Freedom of Assembly in 1995, the Bureau has not found a single case where members of pro-government parties were prevented from holding an assembly or public event, or required to conduct an event in a location designated for peaceful assemblies.

Quite a different situation faces opposition political parties and public associations that express alternative views to those of the government. Since 1995, the Bureau has not found a single case when Kazakhstani authorities allowed the political opposition or a public organization expressing views different from those espoused by the authorities to hold a peaceful assembly in a downtown area or in front of local government offices, ministries or agencies. In most cases, they are denied permission to hold assemblies. In the best case, they are allowed to hold assemblies in specially designated areas.

Authorities demonstrate a pattern or practice of restricting the freedom of peaceful assembly. ***Harsh methods are used to prohibit any display of civic engagement, whether it is an assembly, a picket, or simply a meeting of activists that is held indoors.*** Prosecutors immediately inform the participants that holding unauthorized assemblies violates the law. The police guarantee full containment of an assembly (one policeman per participant), with buses hidden some distance away that are used to take all those arrested to police stations. In some cases, field officers have arrested the organizers of protests before the events even start.

The authors conclude that the system of regulating freedom of peaceful assembly in Kazakhstan completely eliminates any freedom of citizens to assemble peacefully and to express their opinions.

Key Findings

Kazakhstani authorities blatantly disregard international standards on freedom of peaceful assembly. The practice of restricting the freedom of peaceful assembly violates the International Covenant on Civil and Political Rights (ICCPR), the OSCE Copenhagen Document, and the OSCE ODIHR Guidelines on Freedom of Peaceful Assembly.

The reasons most often cited by authorities when restricting or banning peaceful assembly violate the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.

Authorities consistently prohibit peaceful assemblies for political reasons. Applications to hold peaceful assemblies that come from the political opposition or from critics of the authorities are denied.

Authorities frequently prohibit peaceful assemblies in public areas. Assemblies that are allowed must be held far from downtown city districts. This practice deprives the assembly of its most important element – the audience – and thus restricts the full realization of the right to peaceful assembly.

In general, authorities strive to prohibit displays of civic engagement, including assemblies, pickets, or even meetings of activists that are held indoors. ***As a rule, citizens are discouraged from voicing their opinions or airing their demands publicly, and their attempts to do so are immediately suppressed.***

Kazakhstani authorities selectively apply the rules governing peaceful assembly. Prosecutors, police, and judges tolerate assemblies about social and economic issues, but react harshly to all assemblies about political issues. This selective treatment is reflected in judges' imposition of sentences against the organizers of and participants in political events, while they impose almost no punishments for social and economic assemblies.

Since the Law came into force in 1995, the Bureau is not aware of any instance when Kazakhstani authorities allowed the political opposition or a public organization expressing views different from those espoused by the authorities to hold a peaceful assembly in a downtown area or in front of government offices, ministries or agencies.

The excessive use of force by police and severe sanctions imposed by courts against those who organize and participate in unauthorized assemblies are disproportionate to any threat to public security. Law enforcement agencies and judicial bodies typically respond to public civic initiatives by arresting the organizers of peaceful assemblies, obstructing assemblies, issuing warnings, imposing fines and administrative arrests, with up to 15 days in custody.

Recommendations

1. Kazakhstani laws and regulations on peaceful assembly must be brought into line with international standards and Kazakhstan's international human rights obligations. The draft law on the organization and conduct of peaceful assemblies that was proposed in 2007 by Kazakhstani nongovernmental organizations and submitted to the President's Commission on Human Rights should be adopted.
2. Until the adoption of a new Kazakhstani law that complies with international standards, all cases involving peaceful assemblies should be considered according to the provisions of the International Covenant on Civil and Political Rights.
3. Governmental authorities and law enforcement must implement the principle of assisting citizens to realize their right to peaceful assembly and protecting participants of peaceful assemblies, rather than infringing their rights.
4. Citizens must be allowed to conduct spontaneous assemblies and rallies, without a long application period.
5. Neither laws nor the decisions of local authorities may place excessive restrictions on the locations where demonstrations may be held.
6. New rules must be developed to ensure that police cooperate with organizers and participants of public assemblies in order to maintain public security during peaceful assemblies.

II. From the Authors

This report includes: 1) analysis of the legal framework regulating the freedom of peaceful assembly in the Republic of Kazakhstan; 2) results of monitoring of peaceful assemblies in six cities, conducted by staff of the Bureau; and 3) recommendations and conclusions based on fifteen years of observing peaceful assemblies in Kazakhstan by staff of the Bureau.

Article 32 of the Constitution of the Republic of Kazakhstan states that “*citizens of the Republic of Kazakhstan have the right to convene, hold assemblies, meetings and demonstrations, marches and pickets peacefully and without weapons. The exercise of this right may be restricted by law in the interest of state security, public order, and the protection of health, rights and freedoms of other persons.*” The exercise of freedom of assembly is limited by a number of conditions: a) peaceful assembly should not run counter to the interests of national security; b) it should not threaten public order; c) it should not harm the health of other people; and d) it should not violate the rights and freedoms of other people.

Thus, the Kazakhstani Constitution both guarantees the right of citizens to hold peaceful assemblies, and provides a rationale for the enactment of laws and regulations that restrict this right. The authors of this report believe that this contradiction in the Constitution is fundamental to understanding the legal and practical grounds for impeding the freedom of peaceful assembly in Kazakhstan.

Kazakhstani officials are not held responsible for implementing Constitutional norms, are used to working in the absence of rule of law, and are oriented toward controlling and restricting initiatives of citizens. For these officials, complaints about restricting the freedom of peaceful assembly are obviated by a law that, in their view, was adopted in full compliance with the Constitution. Kazakhstani authorities view international standards as irrelevant or not deserving of attention. In the opinion of the authors, this problem is caused by different approaches to the assessment of international standards and their applicability in the implementation of Kazakhstani laws.

III. Kazakhstani legal framework governing peaceful assembly and its compliance with international standards

The main Kazakhstani law regulating the exercise of the freedom of peaceful assembly is the Law of the Republic of Kazakhstan of 17 March 1995, “On the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations in the Republic of Kazakhstan” (hereinafter the Law). According to the Law, Kazakhstani citizens wishing to organize an assembly must obtain permission from local government authorities (*akimats*). An assembly held without permission of authorities is considered a violation of the law, and its organizers are subject to administrative penalties.

Kazakhstani law stipulates that assemblies, meetings, pickets, demonstrations and marches may be held only if allowed by authorities and if certain requirements are met, including:

- a) submission of a special application ten days before the date of an assembly; and
- b) agreement to hold an assembly in specially designated areas.

If these procedures and requirements are not met, or there is no agreement to hold an assembly in specially designated areas, authorities refuse to grant permission to hold an assembly.

Kazakhstani law regards holding a picket or hunger strike, or erecting a yurt, tent or other installation, as tantamount to holding an assembly, meeting, march, or demonstration. Distributing leaflets, joining flash mobs, wearing T-shirts or carrying umbrellas with political signs or slogans, laying flowers at memorials, are considered to be *“form[s] of expressing public, collective or personal interests and protest.”* Indeed any gathering where citizens discuss social or political issues requires permission from local authorities.

Those seeking an assembly permits must submit an application at least 10 days before their event. Article 7 of the Law requires that applicants to state the *“goal, type, and place of an event or a march route, the time when it is expected to start and to end, and the expected number of participants, as well as full information about the organizers. A relevant local authority should review the application and grant (or not grant) permission to conduct an event.”*

Authorities have the right to ban any peaceful assembly that is intended to *“incite racial, ethnic, social and religious intolerance and clan superiority [...] as well as to violate other provisions of the Constitution, laws and other regulatory acts of the Republic of Kazakhstan,”* or any assembly that *“threatens public order and safety.”* In practice, however, any peaceful assembly about a social and political issue may be regarded as threatening public order or inciting intolerance. Given that the Constitution regulates all areas of life, any criticism of it may be considered sufficient reason to ban an assembly. In addition to the Constitution, a plethora of regulatory acts and laws cannot be criticized. Such *“thematic compliance”* is the first obstacle to the exercise of the freedom of peaceful assembly in Kazakhstan.

Authorities are not required to justify their decisions to ban assemblies or to provide evidence that an assembly may lead to unrest. It is enough for a public official to think that a meeting poses a threat to public safety, since any mass event in a public area is deemed to pose a threat to public safety.

A further obstacle to exercising the freedom of peaceful assembly in Kazakhstan is posed by the following legal standard: *“it is not allowed to hold mass events at railroad, water and air transport sites, as well as in the vicinity of organizations responsible for defense, state security and livelihood of the population (public transportation in cities, water, energy and heating supply, and other utilities), and near health care and educational facilities.”* This standard allows public officials to limit the possible locations for peaceful assemblies significantly, excluding, among others, the National Security Committee, Ministry of the Interior, and the Ministry of Defense.

The Code of the Republic of Kazakhstan on Administrative Offences (Article 373 of the COAO RK) and the Criminal Code (Article 334 of the CC RK) introduce liability for violating the law on the procedure for organizing and holding peaceful assemblies,

meetings, marches, pickets and demonstrations, with sanctions varying from warnings, fines, and administrative arrest (up to 15 days), to imprisonment for (up to one year).

These provisions of the COAO and CC RK are explicitly repressive in nature, as they are disproportionate to and inconsistent with the principle of legal certainty and predictability. Such legal norms enable the authorities to hold the organizers of assemblies liable for the actions of the third parties (e.g. instigators), as well as to penalize participants of such assemblies for participating in an illegal meeting and third parties for facilitating such assemblies (even if they didn't know they were facilitating illegal meetings).

Apart from the Law, decisions of local governments (*akimats*) regulate the conduct of peaceful assemblies in every settlement.

International standards of peaceful assembly

International standards of peaceful assembly are documented in the OSCE Guidelines on Freedom of Peaceful Assembly, which note the following fundamental principles. In the opinion of the authors, these principles are *not* reflected in Kazakhstan's application of laws:

- 1. Restrictions imposed on the freedom of peaceful assembly should be proportionate to risks and threats that may be posed to public order, and the rights and freedoms of other citizens.***

In Kazakhstan this principle is violated pervasively. Having analyzed refusals to allow peaceful assemblies by the opposition and organizations critical of the government, the authors conclude that none of them contains legal or reasonable explanations of the risks and threats that such assemblies may pose.

- 2. If citizens may not hold their assembly at a place of their choosing, nevertheless authorities should allow the assembly to be held. The underlying principle provides for the right to hold an assembly at a designated location, provided that all legal and reasonable regulations are followed.***

The general trend in Kazakhstan of refusals to hold peaceful assemblies demonstrates that this principle is violated. In most cases, citizens are not permitted to hold their peaceful assemblies where they choose.

- 3. The opinions expressed by those participating in a peaceful gathering may cause inconvenience to others, but this is no reason to prohibit or terminate an assembly. Some inconvenience must be tolerated.***

In Kazakhstan, one of the most common reasons given for refusing to allow an assembly is that an assembly would inconvenience other people.

- 4. Authorities should protect those holding an assembly from any attempts by others to disrupt it; however, the expression of opposing views is not in itself a disruption, and therefore, should not be suppressed.***

In violation of this principle, Kazakhstani legislation assigns the responsibility for maintaining order to assembly organizers, which makes them vulnerable to targeted provocation.

5. ***Any sanctions imposed for violating the provisions regulating the freedom of peaceful assembly should be proportionate to the threats an assembly poses to public safety and the rights and freedoms of other individuals.***

In Kazakhstan sanctions imposed on the organizers and participants of peaceful assemblies are absolutely disproportionate to the threats to public order that are posed by such assemblies, and they are determined arbitrarily by judges.

6. ***The law should distinguish between the rights and responsibilities of assembly organizers and participants.***

As Kazakhstani law does not distinguish between the organizers and participants of peaceful assemblies, judges impose sanctions in an arbitrary manner.

7. ***While conditions may be imposed on the conduct of peaceful assemblies, such conditions are acceptable only when there are reasonable legal grounds for them, and when the conditions do not unduly interfere with holding events.***

Kazakhstan's practice clearly demonstrates a lack of reasonable grounds for taking restrictive and prohibitive legal and administrative measures.

8. ***Freedom of peaceful assembly may be regulated only in exceptional cases, where such restrictions are unavoidable. It is not acceptable to apply restrictions on general grounds or based on precedent.***

In violation of this principle, Kazakhstani practice does not provide for exceptions due to special circumstances. Restrictions and bans are the dominant principle of Kazakhstan's laws in application, and are in most cases based on political concerns, leaving no room for exceptions.

9. ***A prohibition on assemblies is allowed only under special circumstances, when it is proven that an assembly would cause serious threats to public safety.***

During 15 years of observing restrictions and prohibition of peaceful assembly in Kazakhstan, not a single case has been recorded in which evidence was offered that the assembly, if allowed, could lead to serious disruptions of public safety.

10. ***Participants may be arrested and an assembly dispersed, but these measures should be proportionate to the threats that such an assembly poses to public safety and the rights of others.***

Kazakhstan violates this principle with mass arrests of assembly participants. In the overwhelming majority of cases, this is an absolutely disproportionate measure, since there is no threat to other persons.

Gap between Kazakhstan's Practice and its Domestic and International Commitments

The Constitution of the Republic of Kazakhstan both grants priority to international instruments over national laws, and envisions the implementation of international standards: "International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law." (Article 4, Paragraph 3)

Kazakhstan ratified the International Covenant on Civil and Political Rights (ICCPR) on November 28, 2005.¹ However, Kazakhstani officials continue to follow the local law regarding freedom of peaceful assembly, rather than the ICCPR and other international human rights instruments.

Kazakhstani violations of international standards on Freedom of Peaceful Assembly include the following:

1. The notion of assembly envisaged in the Kazakhstani law on peaceful assembly does not conform to international standards. The Kazakhstani law regulates not only peaceful assemblies such as mass demonstrations in public areas by citizens, but also **all actions undertaken by citizens (or one citizen) in public areas**.
2. The Law prescribes a **notification-based procedure** for exercising the freedom of peaceful assembly (at best, a peaceful assembly may be held ten days after a decision is made by the authorities). Thus, it becomes impossible to conduct spontaneous meetings in response to any urgent event.
3. The Law prescribes that only a group of individuals may submit an application to hold an assembly, **without giving the same right to individual citizens**.
4. The Law establishes unconditional liability of assembly organizers for disruption of public order, and their liability for the safety of participants, which contradicts both the Constitution of Kazakhstan and international standards.
5. The reasons most often cited by authorities for restricting or banning peaceful assembly violate the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.

‘Activists of the opposition Alga political party submitted 159 applications for assembly permits to protest the “Leader of Nation” law. Authorities denied every application.’

IV. Application of freedom of peaceful assembly law in Kazakhstan

Kazakhstani authorities demonstrate a pattern or practice of restricting the freedom of peaceful assembly, in violation of international standards and Kazakhstan’s commitments. Having observed for 15 years officials’ practice in applying the Law on Peaceful Assembly, the authors have concluded that the main consideration of officials in deciding whether to grant permission for peaceful assemblies is the political loyalty of the applicants.

¹ Законом Республики Казахстан от 28 ноября 2005 года Республика Казахстан ратифицировала Международный пакт о гражданских и политических правах.

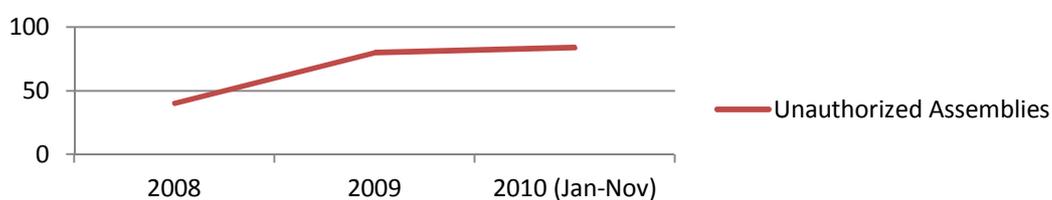
Various public events by pro-government political parties and public associations are carried out without restriction. Not only during 2010, but since the adoption of the Law on Freedom of Assembly, the Bureau has not found a single case where members of the Nur Otan political party or other pro-government parties (*Auyl, Party of Patriots, Rukhaniyat*, etc.) were prevented from holding an assembly or public event, or required to conduct an event in a location designated for peaceful assemblies. This freedom granted to Nur Otan political party may relate to the fact that all officials are party members, so that granting permission to fellow partisans is a mere formality.

However, quite a different situation faces opposition political parties and public associations that express alternative views to those of the government. Our observations have demonstrated that, in most cases, opposition political organizations and NGOs that position themselves against the authorities, as well as citizens who wish to express their discontent with the actions of public officials, are denied permission to hold assemblies. In the best case, they are allowed to hold assemblies in specially designated areas. We can state with certainty that this is a general trend in the application of Kazakhstani law since its adoption, which has continued during Kazakhstan's Chairmanship of the OSCE.

'Guided by political loyalty to the authorities, officials allow government supporters to exercise their freedom of peaceful assembly, but restrict this freedom for citizens who oppose government policies by forcing them to hold their assemblies in isolated areas or prohibiting the assemblies altogether.'

When we talk about refusals to allow peaceful assemblies in public and socially important places (e.g. in downtown areas), it is important to note that public officials commonly cite the reluctance of organizers to hold assemblies in locations designated by officials as grounds for refusing permission for assemblies. The following case illustrates this argument best.

Unauthorized Assemblies in Kazakhstan



On 28 May 2010, leaders of some 20 public associations in Astana applied to hold a meeting, to demand that the Parliament of Kazakhstan bring national legislation and the application of laws in the area of human rights into compliance with Kazakhstan's international commitments. The organizers evinced their desire to hold a meeting in the square in front of the *akimat* (realizing that they would not be allowed to demonstrate in

front of the Parliament). They stated that it was not possible for them to hold a meeting in a “specially designated area” because one such area was unavailable due to construction, while the other was not fit for the purpose (in the rainy weather the non-asphalted ground turns boggy). Trying to reach a compromise, the organizers wrote the following in their application: *“We are kindly asking you to allow us to use the old square in front of Astana’s akimat for holding our meeting, or **identify some other place.**”* However, the local authorities did not appreciate such an offer of compromise and refused to allow holding a meeting *“due to the fact that the place for holding a meeting fails to conform to the decision of the Astana maslikhat² ...”*

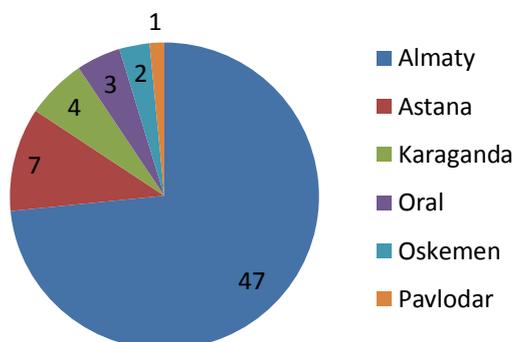
Rising number of unauthorized assemblies

Despite the generally prohibitive practice regarding peaceful assembly in Kazakhstan, the number of unauthorized assemblies in the country has been growing recently. While a few years ago the number of unauthorized assemblies did not exceed 40% of the total number of assemblies held, in 2009 about 80% of assemblies were unauthorized, and during 11 months of 2010, the number of unauthorized assemblies was over 84% (94% in Almaty).

‘Almaty is the center of civic activity in Kazakhstan today’

Staff members of the Bureau observed 64 peaceful assemblies held from January through November 2010 in six cities of Kazakhstan: Astana, Almaty, Karaganda, Uralsk, Ust-Kamenogorsk, and Pavlodar. Of these, 84% were not authorized by authorities.

Peaceful Assemblies



Of the 64 assemblies that were observed, in 51 cases (80%) the assembly organizers did not seek permission. Organizers provided different reasons for this. Over half of them (28 cases, 55%) believe that it is simply a waste of time to apply, as permission will be denied. Others (11 cases, 22%) believe that the law contradicts the International Covenant on Civil and Political Rights (ICCPR), and therefore, they refuse to comply with it as a matter of principle. The third group (12 cases, 24%) believes that their types of assemblies, e.g., a flash mob, are not regulated by the law and thus did not require permission.

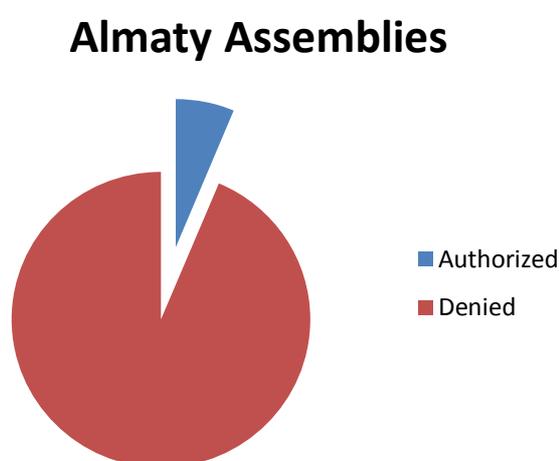
Applications for assembly permits were submitted in 172 cases. Permission was granted in only 10 cases (6%), and assemblies took place as authorized. In

² Local representative bodies in Kazakhstan (*Translator’s note*)

the other 162 cases (94%), authorities denied permission for the assemblies to be held. Notably, activists of the Alga political party submitted 159 applications for assembly permits to hold pickets in front of Nur Otan party offices to protest adoption of the “Leader of Nation” law. Authorities denied every one of these applications.

Almaty is the center of civic activity in Kazakhstan today, with the most public assemblies and the most unauthorized assemblies. Of the 64 assemblies that were observed during 2010, 47 (73%) were held in Almaty. Only three assemblies (6%) were permitted in Almaty. The other 44 (94%) were held without permission.

Other regions that were monitored demonstrated a low level of civic activity. Only seven public actions were registered in Astana; four in Karaganda; three in Uralsk; two in Ust-Kamenogorsk; and one in Pavlodar.



‘Only three assemblies (6%) out of 47 were permitted in Almaty. The other 44 assemblies (94%) were held without permission.’

Out of 64 assemblies that took place in six cities, in 51 cases (80%), the organizers did not attempt to obtain permission. Organizers provided different reasons for this. Over half of them (28 cases, 55%) believe that it is simply a waste of time to apply, as permission will be denied. Others (11 cases, 22%) believe that the law contradicts the International Covenant on Civil and Political Rights (ICCPR), and therefore, they refuse to comply with it as a matter of principle. The third group (12 cases, 24%) believes that their types of assemblies, e.g., a flash mob or address to the *akimat*, are not regulated by the law and thus did not require permission.

Types of peaceful assembly

All peaceful assemblies held in Kazakhstan can be divided into two categories: authorized and unauthorized. At the same time, all authorized peaceful assemblies can be also split into two groups, comprising assemblies that were allowed without any conditions (applicants received everything that they requested in their applications) and those allowed under certain conditions.

As a rule, authorized peaceful assemblies are held at sites determined by the authorities. In all large cities of Kazakhstan, special sites have been identified by local authorities for such purposes. Normally, these are isolated and seldom frequented areas. In Almaty, the location is a public garden in a suburb where most of the Soviet monuments were taken at

some point in the past, which is why people call this area a “historical junkyard.” In Astana there are two such areas, both adjacent to the organizations *PKF Gazservis* and *OAO Okan Atriko*. Currently, there is some construction going on at one of the sites, and therefore, no peaceful assembly can be held there. The other place is located in the outskirts of the city, close to what used to be a swamp.

Since the Law came into force in 1995, the Bureau is not aware of any instance when Kazakhstani authorities allowed the political opposition or a public organization expressing views different from those espoused by the authorities to hold a peaceful assembly in a downtown area or in front of *akimats*³, ministries or agencies. In the overwhelming majority of cases, they are refused to hold a peaceful assembly or allowed to hold their assembly only in special areas. It makes no sense to hold a peaceful assembly in areas determined by the state, far from the “target audience” sought by the organizers. Obviously, any peaceful assembly is held to draw public or government attention to certain issues or to protest in front of those government agencies whose actions cause dissatisfaction among the public. If such protests or opinions of those assembling do not reach their target audience, the peaceful assembly will not achieve the desired results. In this case, freedom of peaceful assembly is stripped of any significance and meaning, and turns into a meaningless formality. This practice is a far cry from international standards, and a restriction of the freedom of peaceful assembly that belongs to all citizens of Kazakhstan.

Importantly, as types of peaceful assembly, marches and demonstrations *de facto* do not exist in the application of Kazakhstan’s laws. Given that the political opposition and organizations expressing different views from those espoused by the authorities at best may be allowed to organize assemblies only in specially designated areas, marches and mass demonstrations have lost any meaning for them, since it is difficult to imagine a demonstration limited to within one public garden or a small, strictly delineated area. While observing the freedom of peaceful assembly in Kazakhstan, staff members of the Bureau noted that no one who intended to organize an assembly applied for authorization to hold a march or mass demonstration. When asked by the Bureau why they didn’t do it, their common answer was, “*It makes no sense, no one will allow it anyway.*” Therefore, most of the desultory attempts to hold marches and demonstrations that took place in Kazakhstan during the reporting period were not authorized by authorities and were suppressed by the police.

In terms of their nature, peaceful assemblies can be divided into two categories: (1) public and political: and (2) social and economic. The first category includes all campaigns by the political opposition, and actions of organizations and citizens protesting various political steps taken by the authorities. An example of a typical public and political assembly is the laying of flowers at the Independence Memorial, which was held by the *Azat* political party on 17 April 2010 in Almaty, and which opposition leaders called a protest. Initially, the opposition submitted an application asking to hold an assembly in one of the squares downtown Almaty, but their request was denied. Then members of *Azat* laid flowers at the Independence Memorial. The police did not attempt to stop their action, but afterwards the Almaty Administrative Court classified the laying of flowers at the memorial site as a type of “peaceful assembly” and brought one of the

³ A municipal, district or provincial government in Kazakhstan (*Translator’s note*)

organizers to administrative liability, pursuant to Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses. The organizer was later fined.

The following are other examples of public and political assemblies:

1. On 10 March 2010, representatives of the public foundation “Ar.Rukh.Khak” held an art mob near the Mahatma Gandhi Monument in Almaty. The main subject of the art mob was to discuss which present public figure in Kazakhstan can be considered the nation’s spiritual leader and who deserves the name of Kazakhstan’s Gandhi. A prosecutor and policemen were observing the meeting. One week later, the leader of the organization was brought to administrative liability and fined by the Almaty Administrative Court for violating Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses.
2. On 20 March 2010, Ermek Narymbayev, head of the public association “Arman,” was planning to hold a public action in the main square of Almaty, calling to impeach the President of Kazakhstan. When he came to the square, he was immediately arrested and taken to the police station. He was convicted by the Almaty Administrative Court of committing an offense under Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses, and sentenced to 15 days in custody for organizing an unauthorized meeting.
3. On 13 and 20 March 2010, two protest actions were held against the unfair court verdict in case of Mukhtar Zhakishhev. The event was organized by *Alga* political party representatives. On 13 March, leaflets were distributed on one street in Almaty. On 20 March, the action took the form of a walk, when party activists were strolling along a street in Almaty and talking to passers-by. In both cases, the police and the prosecutor were observing the action, prepared to interfere and stop them at any moment. In this case, no one was punished.
4. On 4 May 2010, activists of the public association “Socsopr” held a picket close to a court building in Almaty, demanding review of a judicial decision concerning their leader Ainur Kurmanov. Kurmanov was convicted of violating Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses, and sentenced to 10 days in custody. The place of the picket was sealed off by the police, while the prosecutor, having warned against holding an unauthorized assembly, wrested from the hands of the picketers a sign saying, “Freedom to Ainur Kurmanov.” Afterwards, the Almaty Administrative Court convicted the picketers of violating Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses, and issued warnings.
5. On 21 April 2010, activists of the public foundation “For Free Internet” picketed in front of the central office of Kazakhtelecom, demanding to stop blocking websites opposing the authorities. A prosecutor who attended the picket reminded participants of the liability for holding unauthorized assemblies. The police were observing the action from outside. After the event, the Almaty Administrative Court convicted the picketers of violating Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses, and issued warnings.
6. On 22 April 2010, representatives of the Communist Party of Kazakhstan held a meeting in Astana dedicated to the 140th anniversary of Lenin. Astana’s local authorities refused to allow the Communists to gather in the “old city center”. The meeting was allowed on unpaved ground at an industrial site. The meeting, which was attended by 65 people, was held under the banner, “Lenin’s testaments are still with us.”

7. On 1 May 2010, representatives of the Communist Party of Kazakhstan applied to hold a festive action. Although refused, they attempted to launch their action. Those who assembled agreed not to use any banners or posters, but to hold their meeting using only balloons, small red flags and bows. However, the police did not allow them to do it. Sixteen activists of the party were dragged forcibly into a bus and taken to the police station, where they were detained for three hours before being released.
8. On 16 and 24 June 2010, journalists held two protests in Almaty's Republic Square against the adoption of the Law "On the Leader of the Nation." The journalists were arrested and fined by the Court.

The following are some examples of social and economic assemblies:

1. On 2 March 2010, a spontaneous protest action was held in the Old Square of Almaty by the drivers of regular commuter buses. Crews of over 30 buses that were not satisfied with their working conditions left their buses in the square, demanding that their problems be settled. After the managers of their bus companies arrived, chief officers of the traffic police and officials of the *akimat* reached an agreement whereby they were going to continue their cooperation and conduct a conciliation meeting. Neither the organizers nor the participants of the meeting were prosecuted.
2. On 13 March 2010, about 60 equity holders of the construction company "Kazkommercingeering" met near the Almaty *akimat* in order to present their complaints to the *akim*⁴. They were escorted by about 40 policemen, and two buses were prepared for those who might be arrested. The prosecutor warned all those present that they were violating the Law by congregating without the permission of authorities. The meeting ended after the deputy *akim* told those assembled that they should address their complaints to the provincial *akimat*, rather than the city *akimat*, since the construction company was registered in the Almaty province. Neither the organizers nor the participants of the meeting were prosecuted.
3. On 22 April 2010, 45 citizens who were defending their right to own houses in the Shanyrak District of Almaty convened in front of the Almaty *akimat*, protesting the refusal to issue property deeds. The participants began playing football in front of the building entrance, using a ball marked with the word "people," to symbolize how the authorities play with the people. The police cordoned off the *akimat* building and blockaded its entrance. The prosecutor explained to the participants that their assembly was illegal, but they continued their symbolic game. Later, none of the organizers or participants was prosecuted. On 28 April 2010, the same group of people held another action, demanding that land be legalized and heads of the *akimat* meet with them. To avoid another symbolic football game, the police attempted to take away the ball. A skirmish ensued, and one of the women protesters fell to the ground, after which a doctor had to be brought. Neither the organizers nor the participants of the action were prosecuted.
4. On 22 April 2010, individuals who took mortgage loans from *Temirbank* organized a picket near the entrance of the bank, demanding that the bank not foreclose on their houses. Having announced their demands, the picketers smashed glass jars with the word "Temirbank" on them. The police pushed the

⁴ Mayor (Translator's note)

picketers away from the building, not allowing them to regain their position. The picketers had to walk away. Later, one of the organizers of the picket was brought prosecuted for administrative offenses and sentenced to 15 days in custody.

5. On 9 June 2010, activists of the movement “Leave Houses to People” picketed the office of the Almaty branch of Nur Otan party. The picketers demanded to meet with the party leaders to remind them about party’s electoral campaign promises to settle their problems. Those who assembled were chanting the slogan, “Leave the houses to people.”
6. On 30 August 2010, a group of pensioners met in the small park near Astana Square to protest against rising tariffs for communal services. When the police arrived, they interfered with the protest and forced the pensioners to roll up their banners.
7. On 15 October 2010, the workers of the roads maintenance authority “Avtobaza” picketed the of Almalinskiy district *akimat* building in Almaty, demanding payment of five months’ back wages. No action was taken against the picketers.

Almaty was the site of the highest percentage of political assemblies, from opposition protests to demonstrations demanding the resignation of the president. Of all the assemblies held in Almaty, 58% concerned political topics and 42% concerned social and economic issues.

Assemblies that were monitored in other cities of Kazakhstan mainly concerned social and economic issues. In Astana, 72% of all actions were about social and economic issues. The remaining 28% can be considered more ritualistic than political (e.g., celebrating Communist holidays and Lenin’s anniversary). The political irrelevance of such events organized by the Communists is also reflected in the attitude of the authorities, who grant permission to conduct *assemblies in most cases, and take no action when events are held without permission.*

Authorities’ Efforts to Prevent Peaceful Assemblies

After the events in Bishkek⁵ which led to the deposition of Kyrgyzstan’s ex-President Kurmanbek Bakiyev, Kazakhstan’s law enforcement bodies became much more active in preventing any public assemblies. Presumably, the Kazakh authorities were daunted by Kyrgyzstan’s events, and started treating any manifestation of “street democracy” with more caution, as menacing political stability.

In February 2010, a few youth organizations in Almaty initiated a meeting under the slogan, “We Demand Change!” A request was submitted, but the authorities refused to grant permission. However, youth leaders announced they were going to hold a meeting without any permission from the authorities. The meeting was scheduled for 11 April 2010. However, a few days before the meeting, youth leaders “decided” to hold it in the conference hall of the Almaty *akimat*. It became known later that municipal authorities exerted pressure on the youth leaders and forced them to cancel their meeting.

In April 2010, the *Azat* political party announced publicly that it was preparing a meeting that was expected to take place on 12 April 2010 in front of the Chokan Valikhanov

⁵ Social unrest that occurred in Kyrgyzstan on 6-7 April 2010 (*Translator’s note*)

Monument close to the Academy of Sciences in Almaty. Party leaders announced beforehand that the meeting would take place in this square even if the authorities attempted to ban it or allowed it to be held at the “historical junkyard.” However, after “appropriate” works were carried out with the opposition by the authorities, their plans changed. Instead of a meeting in the square where they were going to express their distrust of the present political regime, the opposition confined its actions to laying flowers at the Independence Memorial, while the meeting itself did not take place.

Kazakhstani authorities exercise strict control over all activities of the political opposition, and the unregistered Alga political party in particular. The prosecutor’s office and police usually observe their assemblies, even those held indoors on private property. On 1 May 2010, the political parties Alga and the Communist Party of Kazakhstan held an assembly inside the Alga party premises to protest unpopular policies of the authorities. While the meeting was taking place, police sealed off all access points to the party’s headquarters. When party activists attempted to organize a march in the city, police interfered and arrested some activists. Later, the Almaty Administrative Court convicted Alga’s leader, Vladimir Kozlov, of organizing an unauthorized march, a violation of Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses. Kozlov was sentenced to 15 days in custody. A similar situation occurred on 27 March 2010, when activists of the “Movement Kazakhstan 2012” held a meeting in the back yard of a private house in Almaty. Police watched the house, and videotaped everyone entering and exiting the assembly. A police bus was parked just around the corner.

In general, authorities use harsh methods to prohibit any display of civic engagement, whether it be an assembly, a picket, or simply a meeting of activists that is held indoors. As a general rule, any attempt by citizens to voice their opinions or air their demands publicly is immediately suppressed. Prosecutors immediately inform participants that holding unauthorized assemblies violates the law. The police guarantee full containment of an assembly (one policeman per participant), with buses hidden some distance away that are used to take all those arrested to police stations.

In some cases, field officers have arrested the organizers of protests before events even start. For example, Ermek Narymbayev was arrested as he was leaving his own house to attend a meeting. He was carrying a sign, “*Nazarbayev ket!*”⁶. Similarly, some people have been arrested before they could join an assembly. This happened on 1 May 2010, when police suppressed a Communist party protest in Astana. They forced sixteen political party activists onto a bus and took them to the police station, where they were detained for three hours before being released.

V. Kazakhstani judicial practice on unauthorized peaceful assembly

Authorities brought 64 legal cases over unauthorized assemblies. Seventeen of these (27%) cases ended with sentences, including 13 fines and four administrative arrests. Almost all of the sentences were imposed in Almaty. In Almaty, where 44 unauthorized assemblies were held, 16 administrative cases were brought against assembly organizers,

⁶ Kazakh: “Down with Nazarbayev!” or “Nazarbayev, go!” (*Translator’s note*)

amounting to 36% prosecution rate. The only other sentence was a fine that was imposed on a picketer in Karaganda.

The Bureau's analysis indicates that, in general, only the organizers of and participants in social and political assemblies are prosecuted. Organizers of and participants in social and economic assemblies usually are warned by a prosecutor, and their assemblies are observed by the police.

Judges dealing with administrative cases based on Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses interpret any action as an assembly that must be authorized by the State. When there is no such permission, they bring the organizers and participants of such actions to administrative liability, punishing them with fines or deprivation of liberty.

Judges are not guided by the principle of proportionality in restricting the freedom of peaceful assembly when considering lawsuits containing complaints against the refusals by authorities to allow holding peaceful assemblies and when dealing with administrative cases on the basis of Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses.

Judicial practice of considering cases based on Article 373 of the Code of the Republic of Kazakhstan on Administrative Offenses clearly demonstrates that the main evidence that is used to prove the guilt of citizens who exercise their freedom of peaceful assembly is the absence of permission from the State to hold an assembly. The courts tend to ignore other factors, such as level of threat to national security, people's health, or violations of Constitution.

VI. Conclusions

The study that has been conducted by the Bureau clearly demonstrates that Kazakhstan's legal framework governing the freedom of peaceful assembly, and its practices, do not comply with Kazakhstan's international commitments under the OSCE Copenhagen Document and the International Covenant on Civil and Political Rights.

The system of regulating freedom of peaceful assembly in Kazakhstan enforces restrictions in the interest of State security, public safety, and the protection of people's health as well as their rights and freedoms. This approach completely eliminates any freedom of citizens to assemble peacefully and to express their opinions. The constitutional guarantee to freedom of assembly, which, to be exercised, is fully dependent on the decisions of public officials, cannot be viewed as FREEDOM. Given the applicable legislation in Kazakhstan regulating this area of relations between the public and the State, and also taking into account the existing prohibitive practices of applying the law, this freedom can, at best, be regarded as a POSSIBILITY of citizens to hold peaceful assembly. This possibility is determined, first and foremost, by (1) the degree of political loyalty to the authorities among those willing to hold an assembly and (2) compliance with a number of procedural conditions outlined by public officials.

Thus, Kazakhstan's application of the law concerning the exercise of the freedom of peaceful assembly in Kazakhstan presents a well-established system of administrative

and court restrictions, which is aimed at preventing political protest and dissent over State policy.

The Bureau's research also demonstrates that Kazakhstani authorities selectively apply the rules governing peaceful *assembly*. ***Prosecutors, police, and judges tolerate assemblies about social and economic issues, but react harshly to all assemblies about political issues. This selective treatment is reflected in judges' imposition of sentences against the organizers of and participants in political events, while they impose almost no punishments for social and economic assemblies.*** This trend is evidenced in the example of assemblies that are held by the political opposition and civil activists who express disagreement with State policies.

Based on its research, the Bureau must conclude that, even during the year of Kazakhstan's chairmanship of the OSCE, the freedom of peaceful assembly has not become a true freedom for the people of Kazakhstan. Instead, it remains only a possibility that is strictly controlled by authorities.

Recommendations

1. Kazakhstani laws and regulations on peaceful assembly must be brought into line with international standards and Kazakhstan's international human rights obligations. The draft law on the organization and conduct of peaceful assemblies that was proposed in 2007 by Kazakhstani nongovernmental organizations and submitted to the President's Commission on Human Rights should be adopted.
2. Until the adoption of a new Kazakhstani law that complies with international standards, all cases involving peaceful assemblies should be considered according to the provisions of the International Covenant on Civil and Political Rights.
3. Governmental authorities and law enforcement must implement the principle of assisting citizens to realize their right to peaceful assembly and protecting participants of peaceful assemblies, rather than infringing their rights.
4. Citizens must be allowed to conduct spontaneous assemblies and rallies, without a long application period.
5. Neither laws nor the decisions of local authorities may place excessive restrictions on the locations where demonstrations may be held.
6. New rules must be developed to ensure that police cooperate with organizers and participants of public assemblies in order to maintain public security during peaceful assemblies.



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