

This Individual Report is submitted by "Ar.Rukh.Khak." Public Association (Almaty) in line with the Procedure of the Universal Periodic Review and covers fulfillment by the Republic of Kazakhstan of its commitments under article 21 Right to Peaceful Assembly. Concluding Observations of the Human Rights Committee has stated in 2011: *"The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant, and ensure that the exercise of this right is subjected to restrictions which comply with the strict requirements of article 21 of the Covenant".*

Following publication of the UN HRC Concluding Observations in 2011, the Secretary of the RK Human Rights Commission Tastemir Abishev has repeatedly stated at conferences and in media that a new law on peaceful assembly will be drafted in Kazakhstan and that "a notification procedure will be applied in case of peaceful assembly and meetings (<http://kzinform.com/ru/news/20111019/03895.html>). The law has not been drafted yet.

One must state the fact that starting 2010 the Republic of Kazakhstan has not only failed to fulfill Concluding Observations of the UN HRC, but, on the contrary has tightened the measures restricting freedom to peaceful assembly.

The new Criminal Code of the Republic of Kazakhstan which is being drafted presently sets criminal liability for an unauthorized assembly (article 398)¹, introduces criminal punishment for violating the order and procedure of conducting an assembly. Detention for up to 2 months is foreseen as maximum punishment representing therefore a harshening of liability for unauthorized peaceful assembly and violating principle of proportionality of the punishment for committed "criminal misdemeanor" such as organization or participation in an unauthorized peaceful assembly.

BRIEF REVIEW OF THE NATIONAL FREEDOM OF PEACEFUL ASSEMBLY LEGISLATION

In the Kazakh law freedom of peaceful assembly is guaranteed under article 32 of the RK Constitution: Citizens of the Republic of Kazakhstan shall have the right to peacefully and without arms assemble, hold meetings, rallies and demonstrations, street processions 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 freedoms of other persons.

Further legal regulation of freedom of peaceful assembly is carried out in line with the Law No.2126 of RK "On Order of Organizing and Conducting Peaceful Assembly, Meetings, Rallies, Pickets and Demonstration in the Republic of Kazakhstan" of 17.03.1995 (hereinafter the Law).

The Law sets **permissive** procedure applied to enjoyment of freedom of peaceful assembly according to which persons willing to conduct an assembly may exercise freedom of peaceful assembly only after relevant permission is granted by executive authorities (akimats). Assembly conducted without one is a violation of the Law, while individuals who have organized such an assembly are subject to administrative liability.

Along with the Law, there are decisions of local representative body that regulate order and procedure of conducting peaceful assembly in certain residential settlements.

¹ Article 398. Violation of the procedure of organizing and conducting assembly, meeting, picket, rally and demonstration

1. Organizing or taking part in an unauthorized assembly, meeting, rally, picket, demonstration or any other illegal public event, as well as assisting organization or conducting of such events by providing premises, communication means, transportation are penalized by fine in the amount of up to one hundred monthly calculation index or by correctional works constituting the same amount or by community works for up to one hundred and twenty hours or detention for up to two months.

2. Same acts that resulted in material damage to rights and legal interests of citizens or organizations or interests of the society or the state protected by the state are penalized by fine in the amount of up to three hundred monthly calculation index or by correctional works constituting the same amount or by community works for up to two hundred and forty hours or detention for up to four months.

BRIEF REVIEW OF RESPECT FOR THE RIGHT TO PEACEFUL ASSEMBLY

Neither officials nor courts in Kazakhstan apply the ICCPR provisions as well as provisions of other international treaties on freedom of peaceful assembly in their daily practice, relying exceptionally on the norms of national legislation, despite the national constitution which determines the priority of international norms over national ones.²

According to Kazakh legislation all the assembly, meetings, pickets, demonstrations and rallies must be conducted with the authorities' permission only, along with fulfillment of certain procedures and conditions, including:

- a) submission of a special request 10 days prior to the date of the event, and
- b) consent to conduct assembly in specially designated places.

Non-compliance with these procedures and conditions (or discontent to follow) results in denial of the authorities to grant permission to conduct assembly. Criteria used by the authorities in order to hinder conducting of an assembly are of particular importance. Experience gathered in 19-years of the Law on Peaceful Assembly application allows one to assert that crucial criterion for deciding whether to grant or not grant the permission is political loyalty to the ruling power of persons willing to conduct a meeting.

All sorts of public events of pro-governmental parties and NGOs are conducted without any reservations. Guided by the criterion of political loyalty to ruling power, the authorities grant unlimited possibilities for enjoyment of freedom of peaceful assembly, while limiting the same freedom for persons critical of the authorities, hence denying them conduct of meeting at location of their own choice or ultimately prohibiting the assembly³.

During January 2012 – May 2012, dissentients all over Kazakhstan have filed 146 requests to conduct assembly, pickets, protest actions, rallies or one-man-pickets and all of them were dismissed⁴.

The state also applies the Law on Peaceful Assembly selectively during electoral campaigns. Public meetings of election candidates are of permissive nature. The election campaigning lasts 2 months as per the Law on Election, and local bodies selectively, with regard to the candidates of opposition parties only, prohibit conducting assembly, meetings and protest actions on the street without prior authorization of the authorities. For instance, election campaigning of Maslikhat Deputy Candidate has been compromised in 2011, election took place on January 15, 2012⁵.

Kazakhstan materially breaches proportionality principle - the fourth principle of OSCE six guiding principles concerning obligation of the State to protect freedom of peaceful assembly. The authorities often resort to force in order to disperse protesters, at times using weapons against civilians, which entailed tragic consequences in December 2011 in Zhanaozen and Shetpe where 17 people died, and in Almaty on February 2012 when physical force and beating was used to disperse a peaceful meeting. Police used physical force against 10 most active protesters.

While monitoring respect for freedom of peaceful assembly the "Ar.Rukh.Khak." public association has noted that starting 2014 a tendency to charge participants of an unauthorized assembly with

² RK Constitution, Article 4, para 3 reads: 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 requires the issuance of law.

³ Expert conclusion of V.A.Tyuleneva, Lawyer of the Kazakhstan International Bureau for Human Rights and Rule of Law

⁴ Own information

⁵ Own information

offences under other articles of the Code of Administrative Offences (CAO RK) has evolved, namely:

- Violation of the pedestrian crossing rules (case on 15.02.2014 in Astana of Antiheptyl movement activists, all 11 participants were penalized by fine of 5 MCIs);
- Petty crime (conviction on 16.02.2014 in Almaty of Zhanna Baitelova, Yevgeniya Plakhina and Valeriya Ibrayeva for action to protest ban on lace underpants, fined with 10 MCIs), and
- Petty crime (conviction of 05.02.2014) in Almaty of bloggers D.Shelokov, R.Kibrayev and N.Aitelenov for expressed intention to attend a meeting of A.Yesimov, Mayor of Almaty with pro-governmental bloggers, 10 days detention of administrative arrest each).

Since June 5, 2013, the Ar.Rukh.Khak Fund has prepared and submitted 26 complaints to the UN High Commissioner for Human Rights Ms. Navenethem Pillay and UN Special Rapporteur on assembly and association Mr. Maina Kiai.

From the effective date of the 1st Optional Protocol to ICCPR for Kazakhstan (30.09.2009) the Ar.Rukh.Khak Fund has prepared and filed 11 individual complaints to the UN Human Rights Committee concerning violation of articles 21 and 19 of the Covenant. UN HRC has registered 6 of these complaints and is processing them now.

COMPLAINTS FILED AND REGISTERED BY UN HRC

1. Complaint **Toregozhina versus Republic of Kazakhstan**, accepted by UN HRC, registration No.2311/2013 of 09.12.2013.

Complaint was filed for violation of article 21 of ICCPR by Kazakhstan in the following situation. In 2012 the Ar.Rukh.Khak Fund has submitted an application with Almaty city municipality (local executive body) to request conducting a peaceful assembly. The Fund has offered municipality to choose location for the meeting other than one designated by the municipality namely, the park behind Sary-Arka cinema theater. The fund proposed 30 different sites. Akimat (municipality) did not allow conducting a meeting in neither of 30 locations, due to "*inconformity of proposed locations to decision by Almaty city maslikhat whereby designated location for such events is the one behind Sary-Arka cinema theater*"...

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2. Complaint **Toregozhina versus Republic of Kazakhstan**, accepted by UN HRC, registration No.2257/2013.

The law stipulates absolute liability of peaceful assembly organizers for breeching public order and undermining safety of assembly participants, hence contradicting both Kazakh Constitution and international standards.

In the last 2 years, starting 2012 Kazakhstan has begun using administrative charges against organizers of peaceful assembly, who did not attend the meeting in person. Detention of human rights activists take place before the start of peaceful assembly and anticipated participants are imposed administrative penalties and detention for *intention* to take part in peaceful assembly only. Law enforcement agencies apprehend activists when they leave their homes before the event and take them to police station where protocols on administrative offence is drafted instantly in line with CAO Article 373⁶ based on the assumption about alleged organizers and posts in social media. The

⁶ Article 373. Violation of the legislation on the organization and holding of peaceful assemblies, meetings, demonstrations, pickets and demonstrations

1. Violation of the laws of the Republic of Kazakhstan on the order of organization or holding meetings, rallies, marches, pickets, demonstrations or other public event, or hindering their organization or conduct of, or participation in illegal gatherings, meetings, rallies, demonstrations or other public event, if these actions no signs of a criminal offence - entails a warning or a fine for individuals of up to twenty monthly calculation indices, on officials - a fine of up to fifty monthly calculation indices.

2. Providing by top-officials and other officials of the organizations to participating unauthorized meeting, rally, picketing, demonstrations or other public event premises or other property (communication, copy machines, equipment, vehicles) or creating other conditions for the organization and conduct of such activities - entails fine in the amount of twenty monthly calculation indices.

3. The same actions, if repeated within a year of application of administrative punishment or organizer of meetings, rallies, marches, demonstrations, - entails a fine in the amount of up to fifty monthly calculation indices or administrative arrest for up to fifteen days.

complaint No.2257/2013 challenges detention and conviction of B.A.Toregozhina of 28.04.2012, who was arrested administratively for 15 days, before the peaceful assembly and who did not attend the meeting in person.

3. Complaint Toregozhina versus Republic of Kazakhstan, accepted by UN HRC, registration No.2137/2012.

Definition of assembly provided in the Kazakh legislation does not conform to internationally accepted categories. Legislation of Kazakhstan regulates not only peaceful assembly of citizens in a sense of mass civil actions in public places, but any actions of political nature carried out by citizens publicly.

We defended in the national court our right to conduct in a park a politically motivated art-mob of 4 persons, which we organized on 11.04.2010, following which administrative charges were pressed against B.A.Toregozhina, as an organizer of an art-mob and penalty of 50 MCI (\$500 prox.) was imposed.

Kazakh courts denied our right to recognize art-mob as not constituting a rally and complaint No.2137/2012 was registered by UN HRC.

4. Complaint Toregozhina versus Republic of Kazakhstan, accepted by UN HRC, registration No.2334/2014

The law permits submission of an application to conduct an assembly by group of persons only, while denying such right for individual citizens.

The state and local executive bodies rather extensively interpret the right to conduct a one-man-picket, which is not regulated by the Law. However, across the country, individuals conducting politically motivated one-man-picket are detained by police, and are either released upon explanations and receipt of explanatory note from detainee or convicted for administrative offence and get imposed warnings or fines. On February 8, 2013 blogger Dina Baididayeva has conducted a solidarity action in form of a one-man-picket to support her blogger friends, who were arrested earlier for intention to meet Mayor of Almaty. She received a "warning" under COA article 373, part 1 for administrative offence. We challenged in court restoration of the right to conduct a one-man-picket, filed a suit against Almaty city municipality as a body restricting enjoyment of the right to one-man-picket, arguing that national legislation has no mention of one-man-picket resulting in absence of procedure to submit application for such action. Nevertheless, Kazakh courts failed to serve justice. The complaint having passed all internal procedures was registered by UN HCR on 7 October, 2013, registration No. 2334/2014.

5. Complaint Anar Abildayeva versus Republic of Kazakhstan registered by UN HRC, No.2309/2013

Under the Law, permissive procedure is set for enjoyment of the right to freedom of peaceful assembly (best case scenario is that a peaceful assembly may take place 10 days past the decision to hold a meeting). Such procedure leaves no room for any spontaneous actions, inspired by some breaking news.

To prove this assumption we challenged conducting of a spontaneous rally on 15.06.2012, that started at 17:00, following a press-conference, which moved towards the National Security Committee due to arrest of Zhanbolat Mamay and Bolat Atabayev. For this act on 28.02.2012 Inga Imanbay and Anar Abildayeva were subjected to administrative detention of 10 days. We also challenged in court denial to exercise the right to spontaneous actions, have underwent all internal procedures and complaint filed by Anar Abildayev was registered by UN HRC, registration No.2309/2013.

6. Complaint Ruslan Dzhumanbayev versus Republic of Kazakhstan registered by UN HRC, registration No.2308/2013.

The State of Kazakhstan does not only press administrative charges against organizers of a

peaceful assembly, but does so against humble participants of a peaceful meeting, namely those who attended poem recitation of great Kazakh enlightener Abai. On 02.06.2012 R.Dzhumanbayev was detained by police and taken to Specialized Inter-District Administrative Court of Almaty. In court he said that he came to Abai monument as is customary to discuss with his friends shooting in Zhanozen and to cite poems of poet and enlightener Abai, and argued that he has the right to freedom of speech and freedom of expression and dissent. Nevertheless, his arguments were ignored by the court. All national remedies have been exhausted and complaint was registered under No.2308/2013 by the UN HRC.

7. Complaint Toregozhina versus Republic of Kazakhstan

Because local bodies deny permission to conduct a peaceful assembly based on the decision of local maslikhat, we have filed lawsuits in 2012 to find decision of Almaty city maslikhat as contradicting legislation of the Republic of Kazakhstan and international treaties, for such decision represents a bylaw. The court has revealed that the decision is of recommendatory nature and is not binding, but local executive bodies still resort to this decision when they do not permit an assembly. The court did not grant the appeal, and by now the complaint upon completion of all internal procedures has been filed to UN HRC.

8. Complaint Kanat Ibragimov versus Republic of Kazakhstan

Disproportionality in the actions of both police and prosecution is particularly outstanding. In order to limit the right to freedom of expression and dissent by an anticipated participant of an unauthorized meeting, the prosecutors deliver warning notice 1 day prior to the meeting date. While doing so the prosecutors often make visits late at night, after 21:00. When anticipated recipient of such warning notice refuses to accept the document prosecutors invite neighbors to be attesting witness of such refusal to receive the "caution" about implications of participating in an unauthorized meeting. We are convinced that such actions are deterrent. The artist K.Ibragimov has been punished twice by 15 days of administrative arrest, first time for taking part in a peaceful assembly and second time for announcing the date of the next meeting at the meeting, police also used physical force against him. Thus he served double punishment for the same offence. Complaint of K.Ibragimov about unlawful detention for 15 days has been too sent to UN HRC.

9. Complaint Toregozhina versus Republic of Kazakhstan

There is no understanding among general public as to what actions during a peaceful assembly may entail negative implications. Some pickets seemingly identical may be either dispersed or may not give rise to concern, whilst participants may be convicted for unauthorized meeting.

Thus, on 15.12.2012 B.Toregozhina has been detained and arrested administratively for 15 days, despite permission from the city municipality to place flowers that was to take place on 16.12.2012. The human rights activist was convicted for an event that did not take place, i.e. for an uncommitted offence. B.Toregozhina was charged following witness information, who asserted in a letter that an unauthorized meeting is being planned. Court dismissed motion of the accused to summon the witness for testimony and ignored arguments that planned action was not to be an unauthorized meeting but merely authorized placing of flowers. This case demonstrates that Kazakhstan breaches also the third principle of legality of OSCE six guiding principles, concerning obligation of the state to protect freedom of peaceful assembly. Upon exhaustion of all internal procedures the complaint concerning unfair trial has also been submitted to UN HRC.

RECOMMENDATIONS

1. To expedite terms of reviewing by UN HRC of Ar.Rukh.Khak. filed complaints concerning violation of articles 19 and 21 of ICCPR, this way accelerating progress of international practice towards Kazakhstan;
2. Draw attention of Kazakh delegation to the norms of the national legislation concerning freedom of peaceful assembly that are inconsistent with international standards, including need to cancel permissive procedure applied to peaceful assembly and introduction of provision allowing conduct of spontaneous meeting and counter-meetings;
3. To recommend Kazakh delegation rely on international norms on freedom of peaceful assembly in judiciary and enforcement practice, including Syracuse principles;
4. To recommend Kazakh delegation determine all public places as eligible for peaceful assembly and cancel decisions of local executive bodies permitting conduct of peaceful meetings in specially designated places only;
5. To recommend using proportionality principle in police actions against protesters, to ensure that local executive bodies and law enforcement bodies facilitate citizens' enjoyment of their constitutional right to peaceful assembly rather than resist and allegedly prevent crime, as well as to cease bad practice of prosecutors serving warnings to anticipated participants;
6. To recommend recognizing one-man-protest as action not regulated by the Law, and
7. Abstain from applying Law on peaceful assembly for pre-electoral campaigns of candidates during election.