

CIVIL AND POLITICAL RIGHTS AND FREEDOMS

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I. EQUALITY AND NON-DISCRIMINATION

1. Basic laws of the Republic of Kazakhstan proclaim the principle of equality of rights and freedoms in Kazakhstan and contain general prohibition of discrimination, including a ban on the violation of the equality of citizens (Article 141 of the Criminal Code). However, there is no specific anti-discrimination legislation, which would contain, along with protection mechanism a definition of "discrimination", including the concepts of direct and indirect discrimination in line with Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was ratified by the Republic of Kazakhstan in 1998.¹
2. Inadequate anti-discrimination legislation hampers judicial protection of citizens. The country has almost no jurisprudence on cases of discrimination on any grounds, including on the grounds stipulated in the ICERD. In legal practice, the cases of discrimination are usually given another legal qualification. Lack of clear definitions blurs legal instruments with which one can determine the forms and methods of discrimination. Such lack of criteria prevents the victim from effectively proving the fact of discrimination in a particular case.
3. In a country where there are more than 120 nationalities, with 48 % of the population consisting of different ethnic groups, persons of Kazakh nationality are the main group involved in the political structure of the country. For example, in the current Majilis, the lower chamber of the Parliament, less than 25 % are non - Kazakhs. This figure is not significantly better than in previous convocations, where it was 23%. The main problem, however, is the lack of adequate representation of ethnic minorities in the executive branch and the law enforcement structures. For example, in North-Kazakhstan region of the country, where Kazakhs make up only 33.3 % of the population, they hold 86.2 % of key positions in the executive branch.
4. Survey of national minorities also showed that there are problems with education and receiving information in ethnic languages. Schools in ethnic languages have great difficulty with the availability of textbooks, as well as training of the teaching staff.

Recommendations:

- Develop and adopt a set of legislative, administrative and organizational measures to establish effective anti-discrimination institutions, mechanisms and procedures.
- Introduce definition of discrimination in the legislation RK and ensure access to justice for all persons who have suffered as a result of discriminatory actions.
- Take measures to ensure fair and equitable representation of ethnic minorities in the government.

¹ Besides the Law of the Republic of Kazakhstan "On State Guarantees of Equal Rights and Opportunities for Men and Women" from 08.12.2009 N 223-IV, which defines gender discrimination.

- Take measures to fully implement the recommendations of the UN Committee on the Elimination of Racial Discrimination towards Kazakhstan, including measures on equal opportunities in education and information for national minorities.

II. FREEDOM OF EXPRESSION

5. In general, none of the problems identified by NGOs in the first cycle of the Universal Periodic Review (the "UPR") in relation to Kazakhstan's compliance with Art. 19 of the ICCPR have been effectively addressed by the government. None of the recommendations of states - members of the UN Council on Human Rights against Kazakhstan, on freedom of speech have been implemented.
6. Since the first UPR report legislative regulation of freedom of speech has become tougher. In 2010, the Criminal Code was amended to include a new article 317-1 "Public humiliation and other infringement upon the honor and dignity of the First President of the Republic of Kazakhstan - the Leader of the Nation, the desecration of the image of the First President of the Republic of Kazakhstan - the Leader of the Nation, obstruction to the lawful activities of the First President of the Republic of Kazakhstan - the Leader of the Nation". Thus, the Criminal Code now contains five articles providing increased protection of the reputation of government officials.
7. Adopted in 2011, a legal provision imposing administrative precedent against slander and insult to limit premature imposition of penal sanctions for these offenses was not put into effect, as no appropriate changes were made to the Code of Administrative Offences.² Thus, in spite of such half-hearted measures to decriminalize libel, journalists remain subject to de facto criminal liability.
8. As a positive development, the government adopted a new law on March 25, 2011, according to which legal persons are denied the right to recover moral damages for defamation.
9. Adopted in 2012, the Law "On Television and Radio Broadcasting» restricts citizens' right to freely receive and disseminate information. Upon introduction of the law the number of cable operators was reduced: in 2011 - 134, in January, 2014 - 98.³ The law requires mandatory registration of foreign broadcasters in the authorized body (Ministry of Culture and Information). This led to a significant reduction of foreign television channels broadcasted in Kazakhstan: 250 in 2011, 217 - in January 2014).⁴ The law restricts the ability of individual satellite receivers. It also fails to regulate the creation of public television, even in the long term.
10. The Draft Criminal Code extends criminal liability for libel and provides punishment by imprisonment of up to 3 years, or fine of more than \$ 30,000. The Draft Code on Administrative Offenses preserves all existing sanctions against the media, such as confiscation of circulation, suspension and termination of media for administrative offenses.
11. At present, there are no journalists imprisoned in connection with professional activities in Kazakhstan. On January 6, 2012 the Chief editor of the newspaper "Alma - Ata Info", Ramazan Yesergepov, was released from prison after serving a three – year term for disclosure of state secrets. From January 23, 2012 the Chief editor of the newspaper "The View", Igor Vinyavskiy, was under arrest for criminal charges of “Calls for the violent overthrow or change of the

² "On amendments and additions to some legislative acts of the Republic of Kazakhstan on further humanization of criminal legislation and strengthening the guarantees of legality in criminal proceedings" from January 11, 2011.

³ http://www.mki.gov.kz/rus/gos_uslugi/licenzirovanie_teleradio/

⁴ http://www.mki.gov.kz/rus/gos_uslugi/post_na_uchet_2/

constitutional order or the violent disruption of territory of Kazakhstan, conducted through the use of media”, prohibited by Art. 170, part 2 of the Criminal Code. On March 15, 2012 the court released him on amnesty.

12. According to the Committee on Legal Statistics of the General Prosecutor's Office, there were 89 people, including journalists, convicted on charges of defamation; 124 – on charges of insult for the period of 2010 - the first half of 2013. According to the NGO "Adil Soz", during the same period, there were 324 lawsuits brought against journalists and media on protection of the reputation with the total amount of damages of more than \$ 12 billion tenge (about \$ 80 million).
13. In 2011-2012, 9 opposition print publications and 25 online resources were closed, based on court decisions, made in gross violation of the national legislation and international standards.
14. Annually hundreds of Internet resources are blocked for being extremist and contrary to the legislation of Kazakhstan, based on accelerated judicial proceedings conducted behind closed doors. Extrajudicial blocking of network publications and harassment of independent and opposition media are in full progress. For instance, on December 27, 2012 the Almaty Medeu District court suspended the website <www.guljan.org> for three months at the request of the prosecutor. The prosecutor claimed that almost one year ago, on January 21, 2012, the website published an article "Why I will come to the monument of Abay on January 28", which was accompanied by the video. The prosecutor established that the video calls for participation "in an unauthorized protest", which is regarded as a "call to commit an administrative offense". The 3 month suspension ended in March 2013; however, the website was officially unlocked only on July 3, 2013. On July 27 it was blocked again. The government officially denied its involvement in the repeated blocking of the website. An independent study showed that the signal for blocking the site originates from Kazakhstan.
15. The opposition press is regularly subjected to confiscation of the circulation, fines and suspension on formal grounds. For instance, the independent paper "True newspaper" was set up in April 2013. Before the year end, it was fined, subjected to confiscation of circulation and twice suspended for 3 months. And in February 2014 it was closed at the request of the prosecutor, who accused the paper for violating requirements regarding information about the publisher.

Recommendations:

- Decriminalize libel and insult. Remove enhanced protection of the reputation of officials from criminal legislation. Decriminalize violations of privacy.
- Limit the use of such penalties as suspension and closure of media outlets only to exceptional cases.
- Revoke the legislation on the regulation of the Internet as undemocratic and in violation of international principles and norms on freedom of expression.
- Put an end to the practice of extrajudicial blocking of Internet publications.
- Introduce amendments to the law "On Television and Radio Broadcasting» in order to bring it in accordance with the right of citizens to freely receive information regardless of frontiers.
- Regulate the amount of compensation for moral damages to avoid unreasonable burden on the media.

III. RIGHT TO FREEDOM OF ASSOCIATION

16. Kazakhstan's Constitution and the legislation do not recognize the right of citizens to form informal organizations, i.e. organizations that do not require state registration as a legal entity.

Thus, the NGOs formed by a group of citizens, who do not claim the status of public associations and do not acquire the status of legal persons, are in practice regarded by justice and law-enforcement bodies as unregistered public associations and their leaders are subject to administrative liability. Similar problems face unregistered religious groups.

17. Kazakhstan legislation allows the use of extreme measures of suspension and elimination of public associations for any violation of the national legislation, however insignificant it may be, if they are made after the imposition of an administrative penalty. NGOs can also be held administratively liable for activities carried out entirely within the law, as long as they do not “extend well beyond the statutory goals and objectives” of the organization. The Article 49 of the Civil Code of the Republic of Kazakhstan stipulates that systematic implementation of activities contrary to the statutory goals of a legal entity may be the ground for its liquidation.
18. The Criminal Code of the Republic of Kazakhstan contains a number of provisions that impose enhanced criminal liability for members of public associations and their leaders as compared to citizens who are not members of public associations. For instance, Article 336 of the Criminal Code establishes criminal liability for "unlawful interference by public associations in the activities of public bodies". The sanctions for this crime differ for simple members of public associations, which is a fine and arrest for up to four months, and for leaders of associations, which is imprisonment for up to one year
19. Registration of political parties remains highly constrained and do not meet international standards. The law requires 40,000 party members, including at least 600 members in each district for a party to be eligible for registration. The procedure for starting a political party is strictly regulated by law. It requires a series of actions, such as the election of the organizing committee, notification registration, holding founding convocation of 1,000 members within two months, and presentation of the list of 40,000 members within four months. Violation of any of these terms or other procedural requirements leads to denial of registration.
20. Legislation contains a broad definition of grounds for suspension of activities of political parties, such as "a violation of the Constitution and laws of the Republic of Kazakhstan", "systematic pursuit of activities contrary to the charter of the political party ", and other.
21. Civil society of Kazakhstan brings special attention to current efforts of Kazakhstan government to legitimize repressive policies against independent public associations. The government is in the process of adopting the new Criminal Code, which in the Article 403 stipulates criminal liability for leading and participating in unregistered or banned public or religious association, as well as financing of its activities, and is punishable by an arrest for up to 3 months. Article 402 of the Draft Criminal Code criminalizes establishment or management of any religious or voluntary association whose activities involve motivating citizens to refuse to fulfill their civic duties or to commit other unlawful acts. It also prohibits establishment or leadership of the party, formed on the basis of religion, as well as establishment or leadership of the party or trade union financed from sources, prohibited by the laws of Kazakhstan. Violation of such prohibition is punishable by limitation of freedom or imprisonment for up to 6 years. Given the lack of clear criteria, definitions and vagueness of the terms used in the criminal law, the state prosecution may use these provisions against any opposition organization or informal groups of citizens.

Recommendations:

- Bring the legislation regulating the right to association in line with international human rights standards, establishing the right of a person to create or join formal or informal associations, unions and alliances.

- Amend the law to eliminate compulsory state registration of associations of citizens and revoke criminal liability merely for the lack of state registration.
- Bring the restrictions and sanctions regulating the exercise of the right to association in line with international standards and criteria for permissible limitation of human rights.
- Reduce the membership requirement for political parties to the level of 1-10 thousand members and bring the procedure for state registration of political parties in accordance with international standards.

IV. RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

22. Kazakhstan has not implemented the UPR recommendations of the first cycle on the observance of the freedom of peaceful assembly. The right to peaceful assembly in Kazakhstan continues to be denied. The government failed to take any action or measures to amend the law or practice regulating the exercise of the freedom of assembly.
23. In general, the legislation establishes the following procedure for the exercise of the freedom of assembly: 1) persons wishing to hold any public event should submit an application for the approval to the city administration 10 days prior the planned date; 2) receive the permission in writing before conducting a public event.
24. Monitoring of practice shows that in general the city administrations impose various impediments to hold public events. For instance, the city administration designates only special places for public demonstration. Such places are usually remotely located away from the city center to prevent drawing public attention to the demonstration. In case of refusal to accept the designated place, the group is denied permission to hold a public event. For instance, for the period of January – May 2012, there were 146 petitions to hold public demonstrations submitted to city administrations throughout the country. All 146 were denied.⁵
25. The Code of Administrative Offences in the Article 373 and the Criminal Code in the Article 334 impose liability for violation of the rules on organization and holding peaceful meetings, rallies, marches, pickets and demonstrations. Sanctions include warnings, fines and an administrative arrest for up to 15 days, and imprisonment for up to 1 year.
26. The Civil society organizations are particularly concerned with the trajectory of the government's repressive policy. For instance, the Article 398 of the new Draft Criminal Code, currently under consideration, stipulates the punishment of up to 2 months of arrest for holding, conducting, participating in an unauthorized gathering, rallies, picketing, demonstrations or any other unauthorized public events, as well as for providing assistance to the organization or the conduct of such activities, in the form of premises, means of communication, equipment and transport. The same acts, if they cause significant damage to the rights and legitimate interests of citizens or organizations or lawful interests of the society or the state, are punishable by arrest for up to 4 months.
27. In practice, the organizers are harassed by the police and prosecutors for planning to hold public demonstrations without prior permission. The organizers of public events are issued advance warnings about the unlawful nature of their actions, which is considered duress and intimidation. The organizers are even apprehended to police custody for preemptive reasons to prevent public demonstrations from taking place.
28. Administrative courts litigate cases on the right to assembly with gross violations of fair trial

⁵ Monitoring by the NGO “Ar.Ruh.Hak”

standards. Trial monitoring of cases brought to courts under the Article 373 of the Code of Administrative Offenses revealed the following violations:

- a) The court hearings run on average 15-20 minutes, which is insufficient for a full examination of the case and it leads to the formality of the process;
- b) The administrative court hearing usually takes place in the absence of defense lawyers;
- c) The administrative court uses evidence from anonymous sources, for instance denunciations;
- d) The defendants do not get the administrative court decisions against them in time for the appeal. The court clerks provide the written decisions only upon payment of the administrative fees, which is being challenged on the appeal. Thus, the defendants are forced to pay fines before the decision enters into force, without the right to appeal.

Recommendations:

- Review the legislation on citizens' right to peaceful assembly in order to bring it in line with international standards, ensuring simple notification procedure for holding meetings, including the possibility of spontaneous assemblies. Eliminate criminal liability for violation of the rules for organizing public demonstrations.
- Denounce the practice of city administrations designating limited venues for public events. Ensure that all public places are available for holding public events.
- Revise the scope of an administrative offense under Article 373 of Code of Administrative Offense, in order to eliminate criminal liability for failing to obtain permission to hold public events, as well as criminal liability for the participants of such events. Amend the Article 373, to ensure that it fully complies with the OSCE "Guidelines for the freedom of peaceful assembly".

V. RIGHT TO FREEDOM OF RELIGION AND CONSCIENCE

29. The recommendations given by the UN Human Rights Council with regard to Kazakhstan on the right to freedom of conscience, religion and belief are not implemented adequately and in full. The government took some measures only with regards to general recommendations of the UPR not directly aimed at improving the implementation of the right to freedom of religion. For example, the government authorities continued promotion of the inter-religious dialogue, exchange of best practices and experiences with other countries through international conferences and seminars. The key recommendations, however, aimed at taking concrete steps to improve the legislation and practice, have not been implemented properly. For example, the following UPR recommendations remain relevant:

30.

- a. Revision of the rules for registration of religious associations ;
- b. Adoption of measures to achieve interfaith harmony, including religions considered non-traditional in the country;
- c. Preservation of achievements in the field of freedom of religion;
- d. Ensuring equal standards for regulation of rights of believers of traditional and non-traditional religions, allowing all peacefully practice religion without interference from the government;
- e. Full implementation of the National Action Plan on Human Rights for 2009-2012, including the commitments on freedom of religion.

31. Since the first report to the UPR in 2011, Kazakhstan adopted a law "On religious activities and religious associations" which considerably tightened the regulation of religious communities. The

law does not comply with the provisions of the Article 18 of the ICCPR. It does not mention the right to freedom of religion and belief and provide no definitions for discrimination, religious communities and groups. The law puts in place strict requirements for registration of religious associations and eliminates the possibility for small religious communities to exist due to the minimum membership requirement of 50 persons. In addition, the law imposes mandatory re-registration of already registered religious groups and examination by the religious expert board to ensure compliance with a particular creed. All these provisions present direct government interference to the exercise of the freedom of religion.

32. As a result of re-registration in 2012, out of 4551 religious associations and small religious groups, representing 46 faiths and denominations existing in the religious field in Kazakhstan, there were left 3088 religious associations and their branches, representing 17 denominations. From the earlier 666 Protestant religious organizations, only 462 were re-registered (or 69 %). Out of 48 non-traditional organizations, only 16 were registered as associations. The Chairman of the Agency for Religious Affairs stated that all those associations that did go through re-registration shall be liquidated by court order.
33. Code of Administrative Offenses prescribes administrative liability for violation of legislation on the freedom of conscience and religious associations, as well as for management, participation and funding of unregistered association (Articles 375, 374-1). Along with this, the government introduced administrative liability for violation of requirements governing the performance of religious ceremonies.
34. The government encourages establishment of public associations whose main objective is to combat the influence of unconventional and destructive sects in the country and to assist their victims. Their activities include conducting public events, seminars and advocacy in mass media, which contain information offending the religious feelings of non-traditional religious groups.

Recommendations:

- Bring national policy and legislation in accordance with Article 18 of the ICCPR and other international law standards on freedom of religion;
- Introduce moratorium on the prosecution of believers and religious groups for "unauthorized" peaceful religious activity in the absence of official registration of a legal entity, missionary activity, religious education, charity and other types of religious social activities;
- Amend the Law "On religious activities and religious associations" to include the following:
 - a. the right to freedom of conscience and religion, according to international standards;
 - b. definition of the "discrimination on religious grounds " including liability for discriminatory practice of official persons in regulating religious affairs;
 - c. definition of "religious group", "religious minority" and forms of organization;
 - d. principle of voluntary registration of religious associations;
 - e. new rules for voluntary registration of religious associations must be in line with general rules of registration for legal entities;
 - f. prohibition of state censorship – abolishing the current practice of examination of religious literature and statutory documents necessary for registration of religious groups on the subject of their compliance with religious doctrines.

VI. ELECTIONS

35. Since the first UPR report there have been no significant changes to the electoral legislation. The country continues to be a system that limits political pluralism and the possibility of the formation of representative political structures. The main problems of electoral legislation in the country are as follows:

36. *The practice of early elections.*

Under Kazakhstan law the incumbent president has the right to appoint an extraordinary presidential election at his/her sole discretion. The government systematically abuses this power calling for early presidential and parliamentary elections, choosing the most time convenient time for the ruling party. Opposition and independent candidates are in unequal position, experiencing greater difficulties with mobilizing resources in the short term.

37. *Limitation of passive suffrage*

Deputies of the Majilis (the lower chamber of the Parliament) are elected through 2 paths: on party lists or elected by the Assembly of Peoples of Kazakhstan. In the first case, only political parties can nominate candidates. Officially only 16.5 % of the voters are members of political parties. In the second case, the Council of the Assembly nominates the candidates for the voting by the Assembly members. In 2012, the Council nominated only 9 candidates for the possible 9 seats in the Parliament. The list of voters included 394 members of the Assembly. Each candidate eventually got 90% of votes. Thus, the majority of voters who are not members of the ruling political party or the Assembly are not able to nominate themselves or their candidates for the elections to the Parliament.

38. For the elections of the Senate, the law allows self-nomination of candidates. To be registered as a candidate for the Senate a person must gather signatures of no less than 10% of all deputies of Maslihats (local governments) in one region of the country. The candidates are elected by the joint session of all deputies of Maslihats. The regular voters are not allowed to lobby deputies of Maslihats to have influence on the election of senators.

39. *Restrictions of the local elections*

The deputies of Maslihat, the local representative body, votes for the candidates to elect the mayor of rural districts and cities of regional subordination. The right to nominate candidates for elections of mayors belongs only to the Mayor of the upper territorial unit, which includes the given entity. The Mayors of such territorial units are all members of the ruling party and are appointed by the President. Therefore, the ballot consists only of the candidates nominated by the ruling party.

40. *Formation of election commissions*

Electoral Commissions in most cases consist of government employees, who are usually the members of the ruling party "Nur Otan". As a result, the decisions of Electoral Commissions are under the overwhelming influence of the politicians from the ruling party.

41. There are numerous technical procedures that create practical obstacles for independent candidates. For instance, any candidate must submit a tax return as one of the requirements for candidate registration. The law, however, does not stipulate any threshold for the possible errors in submitting declarations. In practice, the candidates are denied registration due to minor inadvertent errors.

42. Another problem is the procedure for conducting the language test. The candidates must demonstrate the working knowledge of the official Kazakh language. The exam is administered by the Linguistic Commission, which issues the final decisions. There are no clear-cut criteria to determine fluency in the state language, thus allowing the Linguistic Commission to arbitrarily

determine the parameters of the examination process in each individual case.

43. The government also creates obstacles for independent observers to monitor the election process. In 2007 amendments to the Law on Elections in Kazakhstan severely curtailed the rights of local observers. The observers are not allowed to be present at all stages of the electoral process and receive information from the Electoral Commission. The activities of the Electoral Commissions, such as making amendments to the list of voters, issuing absentee ballots, examination of application of candidates, handling of bulletins, etc., are no longer subject of independent monitoring. Given that these procedures are crucial for the candidates, the lack of observation raises legitimate concerns about the fairness and equality of electoral process.

Recommendations

- Ensure that the elections are held within constitutionally designed periods of time to guarantee equal playing field for all candidates and political parties.
- Amend the law to guarantee the full scope of the right to elect and be elected by:
 - i. maximizing the right to nominate candidates;
 - ii. allowing for equal representation of parliamentarians elected through party list and directly by constituents;
 - iii. reducing the entrance barrier for political parties to enter the Parliament to 1-3 %;
 - iv. for local elections, allowing the possibility of self-nomination and the right to nominate candidates by the local community members;
- Review the procedure for appointing the members of the Electoral Commissions to ensure proportionality with regards to voting districts and representation with regards to number of political parties. Carry out transparent and fair appointment of members of the Electoral Commissions with due consideration to all political parties.
- Reduce any technical barriers for registration of candidates, such insignificant errors in tax declarations. Establish clear and objective criteria for conducting language examinations to avoid discrimination on political grounds.
- Expand the rights of independent observers to include the possibility of monitoring all stages of the electoral process.

VII. HUMAN RIGHTS DEFENDERS

44. The number of activists and human rights defenders subjected to threats from October 2012 to June 2013 decreased from 202 (for 9 months in 2012) to 139. The number of types of threats has increased from 84 in 9 months of 2012 to 107 (from October 2012 to June 2013), of which 88 were the cases of violent threats.
45. Most of the activists who have been threatened are public figures, leaders of religious groups, journalists, trade union leaders from the south of Kazakhstan. Incidents of threats were recorded in 37 cities of Kazakhstan. The map of threats expanded to 8 more cities in comparison to the last year.
46. On October 26, 2011, unknown persons opened fire on the journalist crew of the independent news website "Stan", who were in Mangystau region to cover the strike of oil workers in Zhanaozen. The journalist, Orken Bisenov, was wounded in the arm and in the back. The camera person, Asan Amilov, was wounded in the head and the leg, and then was beaten with a stick. The attackers were identified and are currently wanted by the police.
47. On February 25, 2012, the journalist of the Republican newspaper "Adilet" was attacked by

unknown persons. He claimed that the attack was related to his professional duties of the leader of public movement against corruption. The attackers were not found.

48. The journalist of the closed opposition newspaper “Voice of the Republic”, Guzyal Baidalinova, was attacked in the evening of April 26, 2013. An unknown man attacked her with a sharp object and screamed that she was infected. Baidalinova claims that this was yet another attempt to intimidate her for carrying out her professional duties.