



**REPORT**  
**on the monitoring of trials related to peaceful assembly**  
**in the Republic of Kazakhstan**

**2012-2014**

**Almaty, 2014**

The report is prepared by the International Legal Initiative Public Foundation as part of the project on monitoring of the implementation of the right of peaceful assembly in the judicial system of the Republic of Kazakhstan financially supported by the National Endowment for Democracy (NED).

The report reflects the view of the International Legal Initiative Public Foundation. It cannot be considered an official view of the NED.



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## **Foreword**

The International Legal Initiative Public Foundation is a non-profit non-governmental organization established in 2010. Its core team consists of people with long-term experience in human rights protection and promotion of legislative reforms.

Given the importance of the right to freedom of peaceful assembly in a democratic society as a means of expressing opinion and the will of people, and remembering the tragic moments in the recent history of Kazakhstan – from Zheltoksan in 1986 to Zhanaozen in 2011 – it can be surely said that all progressive forces of the society should strive to improve the political and legal culture to ensure that assemblies are perceived by both the state and society as a peaceful method of expressing opinion and protest. It will be impossible to achieve this without step-by-step implementation of internationally recognised standards of the right to peaceful assembly in the national laws and judicial practice.

In this context, the rationale behind the project called "Monitoring of the right to peaceful assembly in the Kazakhstan's judicial system" is to promote legislative changes and changes in prosecution of citizens who organize and take part in peaceful assemblies by judicial and law enforcement bodies.

After Kazakhstan ratified the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR) in 2005, which recognizes the right of peaceful assembly in the Article 21 and provides for extensive fair trial guarantees in the Article 14, the issue of bringing judicial practice in compliance with the ICCPR, especially that of administrative courts, is in the agenda. From now on, jurisprudence of the UN Human Rights Committee becomes a long-term guiding reference point and will contribute to the legal and judicial reform of the countries, which recognized the competence of the Committee to receive and consider communications from individuals. In 2009, Kazakhstan recognized the competence of the Human Rights Committee to receive and consider individual communications.

This report logically continues a series of projects monitoring the exercise of the right of peaceful assembly by other human rights

organizations in Kazakhstan, but at the same time has its own original subject as monitoring focused at administrative proceedings in relation to violations under Article 373 of the Code of Administrative Offences of the Republic of Kazakhstan (the CAO) "Violation of legislation on the order of organization and holding of peaceful assemblies, rallies, pickets and demonstrations." In the course of observing of tens of administrative court hearings valuable information was collected on how such cases are considered by the Kazakhstan's courts and how the right of peaceful assembly and other rights provided for by the ICCPR are respected. Conclusions and recommendations made in the report will be presented to all judicial, legislative and other bodies of the Republic of Kazakhstan concerned, national and international non-governmental organizations and diplomatic missions and international organizations.

International Legal Initiative Public Foundation expresses its appreciation for great contribution to the preparation of the report to the project coordinator Mr. Amangeldy Shormabaev and project monitors Michael Privalov, Ulan Shamshet, Andrei Grishin.

## **1. Project information. Monitoring methodology.**

### **Project objectives**

Main objectives of the project on monitoring of implementation of the right of peaceful assembly are as follows:

- improved implementation of the right of peaceful assembly without any restrictions and discrimination by the judiciary power;
- bringing the judicial practice in cases related to the right of peaceful assembly closer to the compliance with international standards;
- review of the practice of enforcement of law regulating judicial proceedings on administrative cases related to the implementation of the right of peaceful assembly;
- analysis of the current situation and developing recommendations for the Kazakhstan's judicial system;
- support to Kazakhstan's legal and judicial reform;
- training of civil society representatives on methodology of monitoring of implementation of the right of peaceful assembly in administrative court proceedings;
- co-ordination of follow-up and reporting by monitors; and
- preparation of a final report and presentation of project outcomes to the relevant state bodies, discussion and development of recommendations.

### **Monitoring methodology**

Since assemblies in Kazakhstan do not take place often and court proceedings under Article 373 of the Code of Administrative Violations are even rarer (as organisers and participants of

assemblies are not always prosecuted), project monitors tried to attend possibly all assemblies and trials. Information was collected, processed and analysed the following way:

- attending trial in specialized inter-district administrative courts, examining cases of administrative offences under Article 373 of the Code of Administrative Violations and preparation of a report;
- analysis of trial video-reports;
- analysis of caseload under Article 373 of the Code of Administrative Violations by examining texts of court rulings;
- analysis of legislation against its compliance with international human rights standards in the area of peaceful assemblies;
- preparation of a final report with conclusions and recommendations.

### **Project activity directions and pre-requisites for project implementation**

- Monitoring of trials in Kazakhstan’s administrative courts of organizers and participants of peaceful assemblies, who were prosecuted under Article 373 of the Code of Administrative Offences, to analyze how the trials comply with international standards on freedom of peaceful assembly.
- Currently, there is a great need in objective information about the activity of the judicial and law enforcement system that can be used by state bodies responsible for the implementation of the legal reform.
- The project's organizers hope that project outcomes will contribute to the further improvement of the administrative procedure law of the Republic of Kazakhstan and will improve its enforcement.
- The OSCE Centre Astana and the ODIHR supported projects on monitoring of freedom of assembly in the Republic of

Kazakhstan in 2006 and 2010. There were also round-tables on international standards of freedom of peaceful assembly conducted. However, there have so far been no comprehensive projects to examine how Kazakhstan's courts respect the right of peaceful assembly. Participants of peaceful assemblies in Kazakhstan are often detained by the police and delivered to administrative courts, which consider cases subject to administrative liability. Earlier projects on monitoring of freedom of assembly did not cover trial monitoring. Therefore, it is important to examine the situation in administrative courts.

- A monitoring of assemblies by the “Charter for Human Rights” Public Foundation and the Bureau of Human Rights showed that the most assemblies, pickets, rallies and demonstrations, flash mobs took places in the cities of Almaty, Karaganda and Astana. A project monitor/expert will therefore monitor respective trials in these cities. The project geography, however, will not be limited to Almaty and Astana only. We will be receiving information about trials of organizers and participants of assemblies in other regions of Kazakhstan directly from people standing trial under Article 373 of the CAO. Also, we have partners in every region of Kazakhstan, who can provide additional information.
- To get a view of the full picture of how the right of peaceful assembly is fulfilled in the judicial system we analyzed records of trials of participants of peaceful assemblies in 2010-2011.
- As a result of monitoring findings we made this report and put forward recommendations to the Kazakhstan's judicial system for respecting and fulfilling the right of peaceful assembly in Kazakhstan.
- The report and the recommendations will be presented to all stakeholders: state bodies, international organizations, non-governmental organizations at working meetings. In addition, a preliminary version of the project report presented at the OSCE Human Dimension Implementation Meeting on 26 September 2014.

### **Project duration**

Project duration is 22 months.  
Start date: 1 July 2012.  
Completion date: 30 April 2014.

### **Project scope**

Specialized inter-district administrative courts of Astana and Almaty cities and of Karaganda provinces are monitored and possibly those of other provinces.

### **Empirical base of the project**

In the course of project implementation during 22 months we received the following information.

From 1 July 2012 to 30 April 2013:

- 14 trials in administrative courts were attended;
- 33 court judgements of bringing participants and organisers of assemblies to administrative liability under Article 373 of the Code of Administrative Offences.

From 1 May 2013 to 1 May 2014:

- 28 trials in administrative courts attended;
- 43 judgements of bringing participants and organisers of assemblies to administrative liability under Article 373 of the Code of Administrative Offences.

For two years of monitoring from 1 July 2012 to 30 April 2014 project observers attended 42 trials concerned with peaceful assemblies and 76 court judgements of bringing participants and organizers of assemblies to administrative liability under Article 373 of the Code of Administrative Offences. Monitoring focused at Astana, Almaty, Karaganda and Uralsk cities. During the reporting period we received no information from other cities about prosecuting people for organizing and participating in peaceful assemblies.

In the course of project implementation we received eight full video-records of trials related to peaceful assemblies.

The duration of court cases ranged from 15 minutes to 1 month.

## **2. Overview of the legislation of the Republic of Kazakhstan regulating peaceful assemblies. Administrative liability for violation of the legislation on peaceful assemblies and the order of administrative court proceedings**

Freedom of peaceful assembly is guaranteed by Article 32 of the Constitution of Kazakhstan. “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 exercise of this right may be restricted by the law in the interests of state security, public order, the protection of public health and the protection of the rights and freedoms of others.”

The right of peaceful assembly in Kazakhstan is regulated by the Law of 17 March 1995 “On the procedure of organizing and conducting peaceful assemblies, rallies, processions, pickets and demonstrations” (hereinafter referred to as the Law).

Several restrictions on the assemblies are placed by Article 13 of the Law of the Republic of Kazakhstan “On combating extremism” of 18 February 2005 No. 31-III.

The Code of Administrative Offences (Article 373) and the Criminal Code (Article 334) provide for liability for violating the legislation on organizing and conducting peaceful assemblies, rallies, processions, pickets and demonstrations. Penalties range from warning, fine, administrative arrest for up to 15 days (Code of Administrative Offences) to imprisonment for up to one year (Criminal Code).

### **The law sets a permit-based procedure for the exercise of the right of peaceful assembly in Kazakhstan.**

Article 2 of the Law prescribes that only an authorized representative of labour collectives, public associations or other groups of citizens of the Republic of Kazakhstan who reached 18 years of age can submit the request on conducting assemblies, rallies, processions, pickets and demonstrations.

A request is submitted to the local executive body (*akimat*) ten days prior to the assembly (Article 3 of the Law). The request must specify the goal, form and place of an event or a procession route, start and end time, approximate number of participants, full names of organisers and those responsible for keeping public order, place of their residence, work or study and a date of the request.

Articles 5-8 of the Law specify grounds for denial of a permit or prohibition of convening an assembly requested.

**The Law provisions do not comply with international standards of the right of peaceful assembly with regard to a number of criteria, in particular the following:**

- Definitions of peaceful assemblies set by the Law do not conform to definitions accepted in international practice. In other words, the law regulates not only peaceful assemblies understood as public actions in public areas but generally assemblies as such.
- The Law prescribes a **permit-based procedure** for the exercise of the right of peaceful assembly, which makes it practically impossible to spontaneously protest against or react publicly in any other way to events causing public reaction.
- Grounds for restricting the right of convening or participating in a public assembly do not comply with the Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- The Law does not allow for a possibility to submit a request to hold an assembly from an individual.
- The Law provisions contradict a principle of legal certainty and predictability, which leaves broad space for violation of the right of peaceful assembly by the state bodies concerned with regulating peaceful assemblies.
- The Law and resolutions of the local representative bodies allow for discriminatory practice in regulating peaceful assemblies.

- In violation of the Constitution restrictions on the exercise of the right of peaceful assembly can be imposed not only **by the law** but other decisions of the authorities (for example, resolutions of the local representative bodies - *maslikhats*).
- The Law places responsibility for maintaining public order and safety of assembly participants solely on assembly organisers, which contradicts international standards.
- In all big settlement of Kazakhstan there are specific places designated by the local authorities for peaceful assemblies. Generally, such places are located on the outskirts of town centres. Assemblies held in such designated locations remain unnoticed by the public or those whose attention the assembly tries to attract.

### **Liability for violation of the legislation on peaceful assemblies under the Code of Administrative Offences and administrative court proceedings**

**The Code of Administrative Offences of the Republic of Kazakhstan (hereinafter referred to as COA) contains Article 373:**

*1. Violation of the laws of the Republic of Kazakhstan on the procedure of organisation or conduct of assembly, rally, picket, demonstration or any other public event, or hindering of their organization or conduct of, or participation in illegal assemblies, rallies, processions, demonstrations or any other public event, if these actions have no signs of a criminal offence, - entails a warning or a fine for individuals in the amount of up to twenty monthly calculation indices, for officials - a fine in the amount of up to fifty monthly calculation indices.*

*2. Provision by entity managers or other entity officials of premises or any other property (communication means, copying machines, equipment and vehicles) to participants of unauthorized assembly, rally, picket, demonstration or any other public event or creating other conditions for the organisation and conduct of such events, - entails a fine in the amount of up to twenty monthly calculation indices.*

*3. The same actions, if performed repeatedly within a year after administrative punishment is imposed or by an organizer of assembly, rally, procession or demonstration, - entail a fine in the amount of up to fifty monthly calculation indices or administrative arrest for up to fifteen days.*

According to Article 373 of the COA the object of the offense is the established procedure. The article contains several elements of administrative offences:

- a) violation of the laws of the Republic of Kazakhstan on the procedure of organisation or conduct of assembly, rally, picket, demonstration or any other public event;
- b) hindering of organization or conduct of assembly, rally, procession, picket, demonstration or any other public event;
- c) participation in illegal assemblies, rallies, processions, demonstrations or any other public event;
- d) provision by entity managers or other entity officials of premises or any other property (communication means, copying machines, equipment and vehicles) to participants of unauthorized assembly, rally, picket, demonstration or any other public event or creating other conditions for the organisation and conduct of such events.

The Law does not specify what a rally, procession, picket or demonstration is. Moreover, it does not contain a notion of a public event. Therefore the Code of Administrative Offences refers to notions which are not contained in the Law. It should also be noted that the Law specifies an assembly, rally, procession, demonstration as “a form of expressing public, group or personal interests and protest” (Article 1 of the Law). Hunger strike in a public place or erecting yurts, tents or another construction and picket also constitute forms of expressing public, group or personal interests and protest.

According to Article 7 of the CoAO, the purpose of the Kazakhstan’s legislation on administrative offences is to protect the rights, freedoms and legitimate interests of individual and citizen, public health, sanitary and epidemiological safety of the population, environment, morals, property, public order and security, established governance order, legally protected rights and interests of organizations/entities from administrative offences, and to prevent such offences.

To fulfill this task the legislation on administrative offences sets grounds and principles of administrative liability, specifies

administrative offences, penalties carried by administrative offences, state bodies (public officials) to impose penalties and procedure of imposing administrative penalty.

The CoAO contains several provisions, which specify principles of the legislation on administrative offences:

- legality (Art. 9);
- exclusive court jurisdiction (Art. 10);
- equality before the law (Art.11);
- presumption of innocence (Art.12);
- the principle of guilt (Art. 13);
- prohibition of re-prosecution for the same offence (Art. 14);
- the principle of humanity (Art.15);
- security of person (Art. 16);
- respect for the of the human person (Art.17);
- privacy (Art. 18);
- inviolability of property (Art. 19);
- the independence of judges (Art. 20);
- language of proceedings (Art. 21);
- exemption from testifying against himself or close relatives (Art. 22);
- right to quality legal assistance (Art. 23);
- publicity of proceedings (Art. 24);
- safety and security of proceedings (Art. 25);
- right to appeal a decision and a procedure (Art. 26);

- judicial protection of rights, freedoms and person's legal interests (Art. 27).

These principles are important because if violated depending on the nature and extent of the violation it results in nullity of proceedings, judgement overturn or annulment of evidence (Art. 8).

According to Article 649 of the CoAO, when considering a case of an administrative offence a judge must determine whether an offence was committed, whether a person is guilty of having committed an offence, whether he is subject to penalty under the Code of Administrative Offences, whether there are aggravating or mitigating factors, damage caused to property and assess other circumstances relevant to deciding a case.

Article 648 of the CoAO establishes the following procedure for considering an administrative offence case:

A presiding judge who chairs the collegial panel, or an official, when starting the proceedings:

- 1) introduces the name of a judge who will consider the case, case to be examined, who is prosecuted and under what article of the Code of Administrative Offences;
- 2) ascertains that an individual or a representative of a legal entity being prosecuted are present in court as well as other persons concerned;
- 3) establishes the identity of the case participants and verifies the powers of legal representatives of an individual or a legal entity, and of a defense lawyer;
- 4) enquires into reasons of failure to appear in court of participants missing and takes a decision on whether to consider the case in their absence or postpone case examination;
- 5) if necessary, issues a ruling to bring a person whose presence is mandatory before the court and appoints an interpreter;
- 6) explains the persons involved in the proceedings their rights and responsibilities;

- 7) decides on requested recusals and motions;
- 8) reads out the protocol on an administrative offence, and other case materials if necessary;
- 9) takes a decision to postpone examination of the case in connection with the following: self-recusal request or request to recuse a judge or an official who is involved in case consideration or a member of the panel if his recusal impedes consideration of the case on the merits; recusal of a defense lawyer, an authorized representative, an expert or an interpreter if his recusal impedes consideration of the case on the merits; need to have in court people participating in the proceedings; or need for additional materials and also in cases stipulated for by part of Art. 56 of the CoAO. If necessary, the judge (official) decides on expert examination;
- 10) makes a ruling to transfer the case for its consideration on the merits in cases provided for Article 646 of the CoAO.

1-1. In case of direct contempt of court a presiding judge having announced the fact of contempt can impose penalty stipulated for by Art. 513 of the CoAO without compliance with sub-paragraphs 2), 4) 8) and 10) of part one of this Article.

The fact of direct contempt of court is recorded in the proceedings minutes.

After starting considering an administrative offense case a presiding judge or an official hears explanations of an or a representative of a legal entity charged with administrative offense, testimonies of other people involved, specialist's clarifications and expert's conclusions, examines other evidence and prosecutor's statement if he participates.

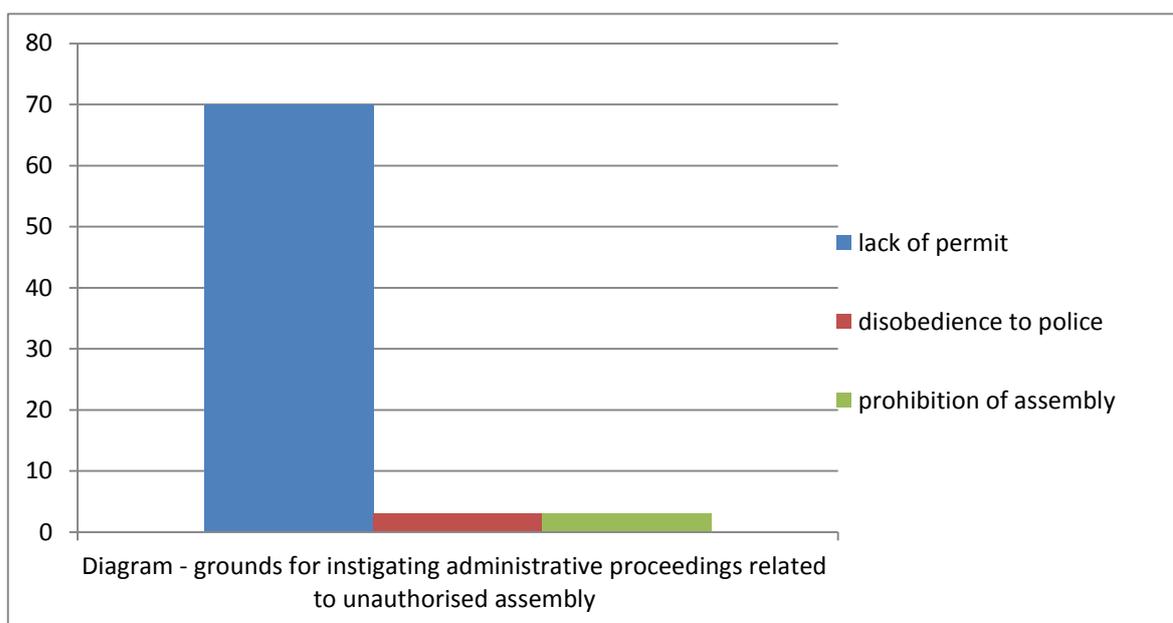
If warranted, the judge undertakes other steps in the proceedings provided for the CoAO.

In accordance with Article 541 of the CoAO, cases under Article 373 are subject to consideration by specialised inter-district **administrative courts.**

### 3. Adherence to standards of the right of peaceful assembly in court proceedings

The majority of proceedings in administrative courts under Article 373 of the CoAO, which the project monitors attended, were initiated due to absence of permission to convene an assembly. In several cases people convicted were detained prior to taking part in the assembly for their intention to convene an unauthorized assembly without permission.

Thus, out of 76 court rulings on administrative proceedings that we received in 70 cases the absence of permit for conducting an assembly was the reason for instigating proceedings. In three instances it was disobedience to police demands and in another three cases prohibition of assembly (see Diagram 1 below).



When making a report of administrative offence the police enquire at the local executive body (*akimat*) whether a defendant submitted a request to convene an assembly and whether the permit was granted. The local executive body responds in writing that the assembly was not permitted. This response is enclosed to a case file and serves as evidence of administrative offence.

During the hearings on the monitoring in any case, the court did not examine whether a permit was required for the holding of the meeting or event?



Photo 1. In most of the cases the police ended assemblies.

### **Background information:**

**Article 2 of the law** - A request to convene an assembly, rally, procession, picketing or demonstration is to be submitted to the local executive body of a city, capital or city district.

Such request is to be submitted by **an authorised representative of labour collectives, public associations or other groups of citizens** of the Republic of Kazakhstan who reached 18 years of age.

As we can see, the Law allows submitting a request only by certain groups. If an individual intends to convene an assembly, a picket for instance, he cannot does not have such a right, according to the Law! In such circumstances courts should have clear legal arguments explaining why individuals are prosecuted for something they were not permitted to do because they do not have such a right in the first place?

In 2006 the report by the “Charter for Human Rights” Public Foundation on monitoring of assemblies raised a concern that the Kazakhstan’s authorities recognize the right of peaceful assemblies as the collective right while individuals are refused exercise of this right<sup>1</sup>.

In the course of the monitoring we registered 3 cases of conviction of individuals under Article 373 of the CoAO based on absence of permit to hold an individual assembly.

### **Court enquiry into procedure of ending unauthorized assemblies**

According to Article 8 of the Law, assemblies, rallies, processions, picketing and demonstrations must be stopped unconditionally upon the demand of a representative a local executive body of a city, capital or town district, if one of the following requirement was not followed:

- *no request was submitted;*
- *assembly was prohibited;*
- *procedure of conducting of an assembly stipulated for by Articles 4, 5 and 7 of the Law was violated;*
- *if there is a threat to people’s lives and health or to public order.*

*In case of refusal to fulfil the demand of the local executive body representative following his instruction the local interior body takes measures to end an assembly, rally, procession, picketing and demonstration.*

The monitoring findings show that in 22 cases assemblies were ended by representatives of local executive bodies, in one case by a prosecutor and by police in 33 instances.

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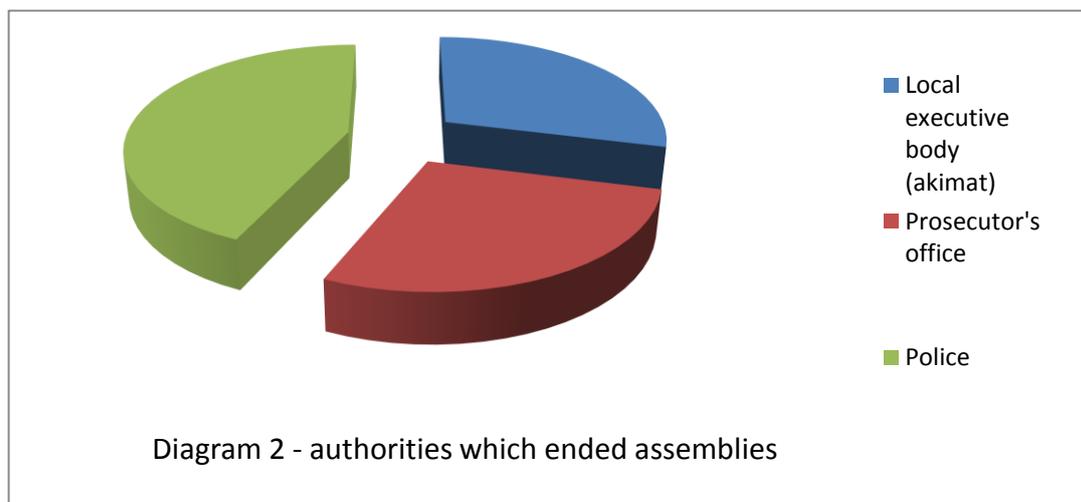
<sup>1</sup> Freedom of assembly in Kazakhstan. Country Monitoring Report/Almaty, 2007, Charter For Human Rights, p.36.



Photo 2. Prosecutor warns people the assembly is illegal

In accordance with the Law the right to end an unauthorized assembly lies with representatives of local executive bodies. However, only in 22 cases out of 76 assemblies were ended by those charged with such responsibility (see Diagram 2). In all other cases assemblies were ended by persons who did not have such a right, i.e. illegally.

In none of the hearings did the judges enquire into the lawfulness of ending assembly.



Another legal consequence of stopping assemblies in violation of the procedure provided for by Article 8 of the Law is that if police detains an individual, then such detention is arbitrary from the point of view of Article 9 of the ICCPR. In the course of the monitoring 54 cases of arbitrary detention of participants or organisers of assemblies were identified.

### **Background information:**

Out of 54 cases of administrative proceedings against participants and organisers of peaceful assemblies:

- in two cases people were not arrested by the police;
- in 21 cases people were arrested after prosecutor's warning;
- in twelve instances assembly organisers or participants were being arrested only by the police without observance to provisions of Article 8 of the Law.

The UN Working Group on Arbitrary Detentions<sup>2</sup> adopted criteria applicable in the consideration of cases submitted to it, drawing on the Universal Declaration of Human Rights (Art. 9) and the ICCPR (Art. 14) as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Consequently, according to the Group, deprivation of liberty is arbitrary if a case falls into one of the following three categories:

A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);

B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

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<sup>2</sup> See «Human Rights. Working Group on Arbitrary Detentions. Fact Sheet No. 26», UN, Geneva, 2000, p. 4-6» <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

In order to evaluate the arbitrary character or otherwise of cases of deprivation of freedom entering into Category III, the Working Group considers, in addition to the general principles set out in the Universal Declaration of Human Rights, several criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and, for the States parties to the International Covenant on Civil and Political Rights, the criteria laid down particularly in articles 9 and 14 thereof.

### **Reference to international human rights documents**

During the monitoring five instances were registered when defendants referred to the International Covenant on Civil and Political Rights (ICCPR) in their defence.

Judges would respond to such arguments as follows:

- Kazakhstan is a sovereign state and Kazakhstan's national legislation operates on its territory. Only those international treaties apply, which Kazakhstan acceded to (a judge was not aware of Kazakhstan's ratification of the ICCPR<sup>3</sup>);
- Article 21 of the ICCPR provides for restrictions that may be imposed on the exercise of the right of peaceful assembly in conformity with the law. Article 32 of the Constitution also provides for restrictions that may be placed by the law. Since Kazakhstan has the law that restricts the exercise of this right, therefore, there are no contradictions between the ICCPR and the Kazakhstan's legislation.

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<sup>3</sup> Republic of Kazakhstan ratified the International Covenant on Civil and Political Rights by passing a ratification law on 28 November 2005.

## Reference:

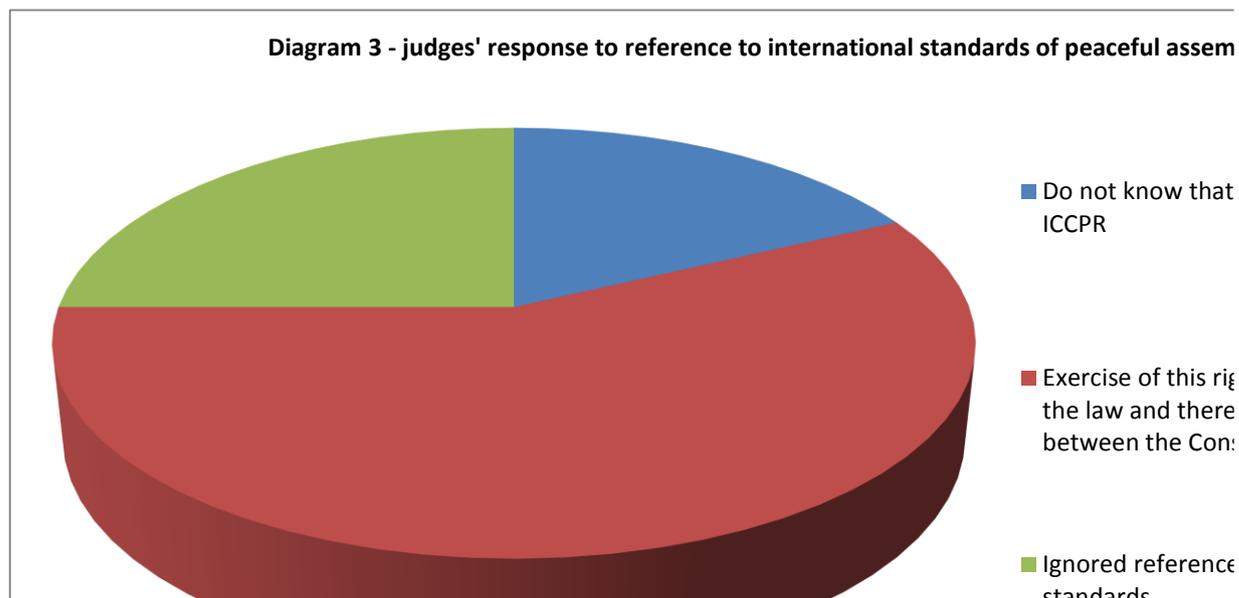
### **International Covenant on Civil and Political Rights (Article 21)**

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

### **Therefore, out of five cases when the ICCPR provisions were enforced or mentioned:**

- in one case a judge did not know Kazakhstan ratified the ICCPR;
- in one case a judge believed there was no contradiction between the Constitution and the ICCPR and restrictions of the right of peaceful assembly provided for by the ICCPR are sufficient;
- in three instances arguments for applying the ICCPR were ignored.

Diagram 3 - judges' response to reference to international standards of peaceful assem



#### **4. Adherence to fair trial standards**

One of the purposes of the monitoring project is to see how the right to be entitled to a fair hearing by a competent, independent and impartial tribunal in accordance with Article 14 of the ICCPR has been adhered to.

In total, our monitors attended 42 trials in administrative courts of Astana, Almaty, Karaganda and Zhezkazgan cities. We also collected and analysed 76 court rulings under Article 373 of the CoAO.

As a result of monitoring and analysis we found out that in many instances Article 14 of the ICCPR and basic principles of independent and impartial trial were violated. Below we look closely at basic fair trial standards and also at how administrative court judges adhered to them.

##### **Public hearing**

Paragraph 1, Article 14 of the International Covenant on Civil and Political Rights and Article 24 of the CoAO provide for public hearing. Since cases heard by administrative courts under Article 373 of the CoAO are far from being associated with any state secrets or personal privacy, then hearings should be open both for the public and journalists. The monitoring showed that in many cases a judge would ignore legal requirements and international standards and would conduct closed hearings.

##### ***Case study***

On 14 January 2014 the Astana city administrative court heard the case of Mr. R. Court bailiffs did not let people inside the court room. As a result, there were only two persons and the defendant in the court room. One of the two was expelled soon after the hearing started. After the hearing the defendant said that the judge explained her prohibition to let the public be present by lack of seats in the court room.

On 4 June 2013 the Almaty city administrative court heard the case of Mr. T. Court bailiffs refused to let people inside the court room without any explanation. Only after the defendant left the court room, they knew the hearing took place.

### **Competent, independent and impartial tribunal**

Bias and lack of impartiality is often seen in judge's gestures, expressions used suggesting the judge believes a defendant is guilty, disapproves or any other way condemns the defendant's actions prematurely.

### ***Case study***

On 11 February 2013 the specialized administrative court of Zhezkazgan city considered the case of Mr. Z. A judge would ask the defendant the following questions:

- Are you aware that convening such an event (rally) requires permission from the local executive body?
- Why didn't you follow the procedure?
- This is however required by the law. We must all act in compliance with the law.

The example of how the judge questions the defendant demonstrates that the judge prejudices the defendant's actions with no intention to enquire into case details in a maximum possible manner showing bias towards prosecution.

In spite of legislatively enforced principle of the independence of the judiciary, the way some judges act in courts clearly indicates that the judiciary is not an independent branch of power.

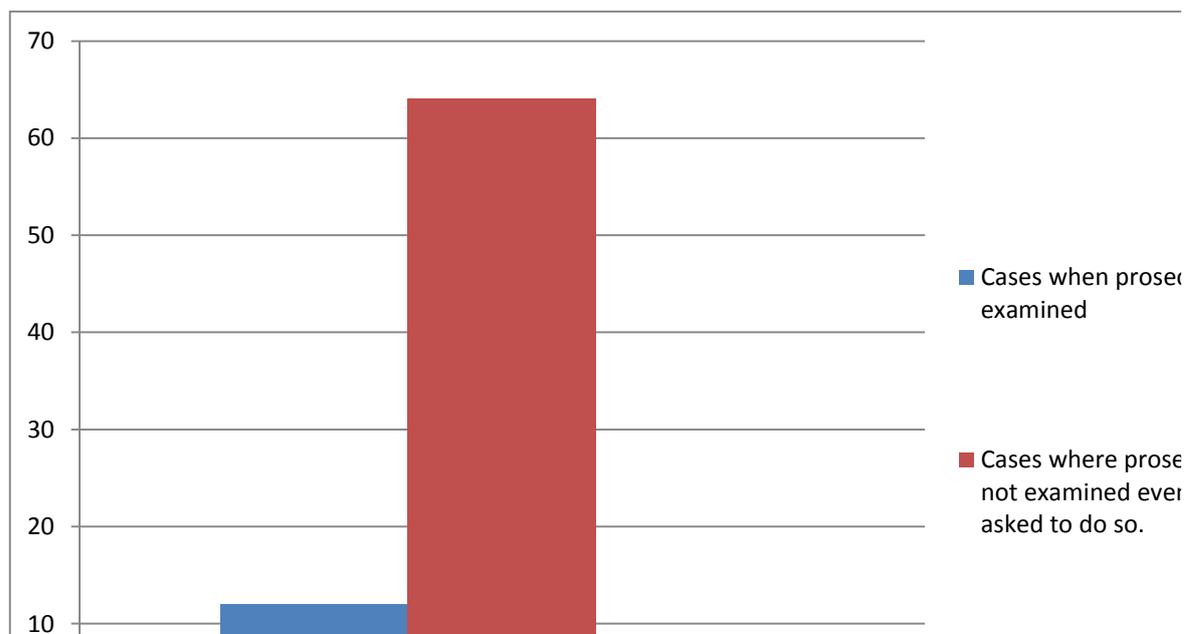
## Case study

On 15 December 2013 the Almaty city administrative court considered the case of Ms. T. Ms. T filed a motion to call and examine a prosecution witness. A judge in a halting voice asked a prosecutor. The prosecutor objected explaining that there was need in examining the witness. The judge in a low voice rejected the motion. The defendant being two metres away from the judge was not able to hear and asked the judge to repeat her decision. In a halting voice the judge said that he rejected calling the prosecution witness due to objection from the prosecutor!

**Right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him**

Monitoring findings showed that in the majority of cases monitored judges did not call the witnesses and did not have them examined even despite motions filed by the defendants.

Written testimonies of such witnesses were usually prepared by police officers and found in case files.



## **Right to quality legal assistance**

### **Reference**

According to paragraph 3, Article 13 of the Constitution, everyone shall have the right to quality legal assistance. In certain cases stipulated for by law, legal assistance shall be provided free of charge.

According to Article 14 of the International Covenant on Civil and Political Rights, everyone shall have the right to:

*- have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

*- be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.*

Monitoring findings demonstrated that only in eight cases out of 76 defendants had defence counsels. In four instances legal assistance was assigned by the state.

Counsels assigned by the state were not able to provide quality legal aid being passive and fulfilling their duties in formal sense.

### **Case study**

Below is an example of the counsel statement at the trial of Ms. T. in the Almaty city administrative court on 15 December 2013, “There are no elements of crime, nor there are grounds for prosecution. Ms. T has stated here that she had a permit for the 16<sup>th</sup> but they could not wait till the 16<sup>th</sup>. She is now being prosecuted for no reason”.

## **5. Conclusions and recommendations**

### **Key findings**

In most of the cases the basis for initiating administrative penalty proceedings in accordance with Article 373 of the Code of Administrative Offences was absence of permission to convene an assembly. Prosecution only on the grounds of lack of permit is disproportionate and incommensurate limitation of right of peaceful assembly.

The law on assemblies does not provide for a possibility to submit an individual request to hold a peaceful assembly. Conviction of pickets therefore contravenes legislation because an individual does not have the right and does not have to submit a request and obtain a permit to convene a peaceful assembly, namely, to picket.

In practice, unauthorized assemblies were not always ended by officials authorized to do so by the law on assemblies. Only one third of unauthorized assemblies were ended in accordance with the procedure set by the law.

Judges did not enquire into the lawfulness of dismissal of unauthorized assembly in any of the hearings. It leads to conclude that prosecution of organisers and participants of unauthorized peaceful assemblies violates the law, hence, detention of organisers and participants of such assemblies is arbitrary.

The monitoring findings also show that judges of administrative courts who hear such cases do not have sufficient knowledge of international human rights documents ratified by Kazakhstan including principles of their enforcement in Kazakhstan.

In most of the cases judges violate the principle of public hearings of such cases without explaining reasons.

Although the independence and impartiality of the judiciary is guaranteed by the Constitution of the Republic of Kazakhstan, when hearing such cases judges show their disapproval of actions of defendants by their words and facial expressions thus prematurely suggesting a defendant is guilty.

In most of the cases the monitoring findings showed violation of the right of defendants to defend themselves, to have examined the witnesses against them and to have quality legal assistance assigned to them guaranteed by the Kazakhstan's Constitution.

## **Recommendations**

1. To establish a task force to bring Kazakhstan's laws and regulations on peaceful assembly in line with international standards.
2. To establish a task force under the Supreme Court to draft a regulatory resolution on trials related to implementation of the right of peaceful assembly. To include experts of human rights organisations into the task force.
3. To increase the professional level of judges and knowledge of international treaties of ratified by the Republic of Kazakhstan and principles of their enforcement through the education and continued training.
4. To the Office of the Prosecutor General: to draw up measures to ensure unauthorised assemblies are dispersed in conformity with Article 8 of the law on peaceful assemblies.
5. To the bar: to increase the professional level of lawyers and strengthen their responsibility for providing quality state guaranteed legal assistance in trials related to peaceful assemblies.

