

PRESENTATION
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AT THE OSCE MEETING ON HUMAN DEVELOPMENT:

Session: Fundamental freedoms, including the freedom of peaceful assembly
(Warsaw, October 10, 2006)

Mr. Chairman,
Ladies and gentlemen!

The right to peaceful assembly is, probably, one of the most frequently violated and ignored rights in Kazakhstan.

Being the leader of DCK, political party closed down by the court decision in Kazakhstan, and a leader of unregistered opposition party “Alga!” (DCK) as well as an ex-President of one of the biggest business academies in Central Asia, a person not inclined to breaching the law however as “an offender” I have been once and again subject to warnings, fines, administrative arrests and I know what I’m talking about out of my own practice, not through hearsay.

Well-known international standards and practice in the area of the right to peaceful assembly run that:

- there is the principle of presumption of holding peaceful assemblies, that is, all have to be oriented at promotion of peaceful assemblies and only in exceptional cases it can be prohibited or stopped;

- peaceful assemblies, meetings, marches, pickets can be held in any public places: squares, streets public gardens, courtyards, except places, adjacent to hospitals, centers of emergency health care and life support institutions or custodial objects. Mention should be made that in the last case a certain reasonable zone around such an object is determined, in which holding meetings and pickets is prohibited;

- references to road traffic and pedestrians are invalid, given the rightly saying of one of the highest judicial bodies of the country: organizers and participants when implementing their right to a meeting or a demonstration interfere with the rights of a driver and pedestrians in the same way as do drivers and pedestrians when implementing their right to driving and walking interfere with the rights of marchers and picketers to hold demonstrations and pickets. Squares, public gardens and streets are not meant exclusively for driving and walking but being public places they provide for the possibility to hold meetings, demonstrations and pickets;

- in the world there is a informative but not a permissive principle of holding peaceful assemblies and as for the venues and routes they are determined by the organizers, but not by the authorities and only in cases of impossibility to hold the activity due to technical reasons coordination should take place;

- the main task of law enforcement bodies – assistance in holding peaceful assemblies, ensuring public order and prevention of provocations against organizers and participants of peaceful assemblies, but not increased «battle readiness» to stop assemblies;

- a key principle from the point of view of a peaceful assembly (meeting, picket, demonstration) goal and meaning is the principle “within the sight and hearing» of those whom the participants of these gathering address. The participants of a meeting, picket, demonstration communicate by means of this event not with each other but with a public body, officials, against whose decisions and actions they protest. Besides that they address public opinion via mass media, pedestrians and etc.

- spontaneous meetings and pickets are quite probable as a reaction of citizens to events calling for immediate peaceful reaction and the powers have to assist citizens in such urgent situations.

I have given a detailed list of elements, which are essential for understanding a peaceful assembly in order to demonstrate how they are not observed in an OSCE member-country, which has certain commitments in the field of human dimension and claims to chairmanship in this organization.

Instead of peaceful assembly presumption the presumption of a peaceful assembly prohibition is applied.

Mention should be made that prohibitions are imposed under all possible and impossible reasons.

Current legislation in Kazakhstan stipulates that local power bodies (Akimats) have to be addressed 10 days prior to the event for the permission to hold not only meetings, marches, demonstrations, pickets, but also hunger-strikes, putting up a tent or a yurt in a public place.

Recently the powers decided to regulate in this way all the public activities, in which public, group or personal interests are expressed.

It is exactly the proposals regarding amendments and additions into the legislation that the Government has submitted to the Parliament quite recently.

And regardless the fact that the Parliament has not passed such a Law yet, Public Prosecutor, law enforcement and judicial bodies already now actively use these norms interpreting the right to peaceful assembly in a very peculiar way.

Students that have performed a sketch in the format of a flesh-mob in the street meant for pedestrians were detained.

A group of young people walking with the flowers to the monument of victims of political repressions and to the monument of Independence of Kazakhstan has been detained.

Buses with the people from the suburbs of Almaty going to the sanctioned by the Almaty authorities meeting dedicated to the protection of the rights of homeless people and people from the so called illegal settlements have been detained.

Tens of members of opposition political party going to the court to be present there during the court procedures related to the issue of this party registration have been detained.

I have been also detained together with them though being the leader of this party I had to be present there as a plaintiff appealing the ruling of the Ministry of Justice refusing our party the registration.

And only when opening the court proceedings in the Supreme Court of the Republic the absence of the plaintiff was discovered that they started looking for me (the plaintiff) and found that I have been detained by the police. Only then they set me free and allowed taking part in the court proceedings.

By the way party registration has been denied, including by the Supreme Court, given that among 62 thousand of applications of party members (and in Kazakhstan there should be as a minimum 50000 members in order to register a political party) they have found about 400 applications with uncertain information. It makes about 0.6% of the total number of applications. 61600 party members have been refused registration and legal political activity. I'm saying this in relation to the right of citizens to an assembly, including within the framework of political parties, which is also considered at the given session.

Meetings, demonstrations and pickets are prohibited under the reason:

- possible dissemination of sexually transmitted diseases;
- presence close to a drug store, given that peaceful assemblies in the vicinity of health facilities are prohibited;
- kindling social discord, given that meeting organizers intended to criticize social and economic policy of the regional powers, which could lead to social discord between regional leadership and its population;
- due to the fact that the issue protesting people would like to raise is at the consideration

by the regional leadership; and etc.

All these reasons are to be found in the refusals made by the local power bodies in Kazakhstan to permit meetings, demonstrations, and pickets.

In the new capital of Kazakhstan – Astana and in its former capital – Almaty local legislative assemblies determined one or two places for holding all types of peaceful meetings. Mention should be made that these places are in the outskirts of the city. In Almaty – one of such places is a square behind the movie theatre. In other words, if you are not pleased with the policy of the President, Government or law enforcement bodies picket this movie theatre.

Moreover, identification of one or two places in the city for a peaceful assembly makes meaningless such its forms as demonstration or a march, given that they imply movement along the streets from one place to another. As a result citizens are actually prohibited to hold demonstrations, marches, manifestations at least in the biggest towns of Kazakhstan, Astana and Almaty.

Out of tens of applications for meetings and pickets submitted to the power bodies in the current year in the best case only 5-6 of them have been satisfied.

Even those meetings and pickets that have been allowed are controlled by the police in such a way as if potential terrorists, extremists are expected regardless the fact that during the entire history of independent Kazakhstan no collisions of meeting participants with the police have been registered. All meetings and pickets are of peaceful nature.

However groups of policemen and individuals in civilian clothes, most probably people from law enforcement bodies and special services get around participants of these meetings and pickets. Individuals in civilian clothes continuously shoot video from several sides and at that they are not journalists. Practically every participant of a meeting or a picket is covered during this video and large-scale video shooting. In the places adjoining the site of the meeting or a picket there are buses with policemen from special sub-units with the shields and clubs.

All these create nervous situation and is a way to intimidate population, instill in the participants the idea that a meeting, a picket, a demonstration is an illegal, antistate activity. People are purposefully cured of their right to peaceful assembly including with the aim to criticize the Government, and this right is fixed in international documents, commitments within the OSCE framework and the Constitution of the Republic of Kazakhstan.

At the example of obstacles created for the citizens on the way of implementation of their right to peaceful assembly it is clear that this is not a democratic but a police state with some decorative signs of democracy. And this police state carries on a targeted fight with meetings, pickets and demonstrations as with a phenomenon. It carries out open fight with any public manifestations of opposition's activity and protesting citizens. Materials of opposition parties and groups are arrested and activists are intimidated. As soon as people get in groups in the streets, in rural area around a legally functioning opposition party there immediately appear representatives of local power, representatives of prosecutor office and policemen and they prohibit such assemblies. Attempts are made to call to responsibility parliamentary deputies that organize meeting with their electorate in the street not having preliminary obtained permission for that from the local government.

In this fight, which is being carried out in a rather aggressive way, representatives of local executive power bodies also participate as well as police and bodies of the national security and prosecutor office bodies.

And even judicial bodies.

During the entire history of independent Kazakhstan I do not know any court case in which the court would rule in favor of holding a meeting, picket, demonstration, when the court would refuse in calling to administrative responsibility the organizers and participants of absolutely peaceful assemblies and pickets.

Each OSCE member-country has made commitments with regard to human dimension including commitments to ensure the right to peaceful assembly. There is an international interpretation of this right and international practice of its implementation.

OSCE, in the status of an organization, and democratic countries, as well as its members must not allow manipulation with these notions and blatantly ignore their commitments.

Otherwise all these commitments become pieces of paper that nobody needs.

Thank you for your attention.