



MISSION PERMANENTE
DE LA RÉPUBLIQUE DU KAZAKHSTAN
AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS
INTERNATIONALES AYANT LEUR
SIÈGE A GENÈVE

Réf. № 30-120

*Enclosed:
Letter and Attachment*

The Permanent Mission of the Republic of Kazakhstan to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in reference to the latter's note verbal OL KAZ 1/2020 dated 21/04/2020 has the honor to transmit the following response of the Government of the Republic of Kazakhstan.

The Permanent Mission avails itself of this opportunity to renew to the OHCHR the assurances of its highest consideration.

Geneva, May «12», 2020



**Office of the High Commissioner for
Human Rights
Geneva**

00987

**United Nations
Special Rapporteur on the rights
to freedom of peaceful assembly
and association
Clement Nyaletsossi Voule**

ATTACHMENT

I. Responses to the comments you provided on the draft law

Regarding persons who have the right to organize and hold peaceful assemblies

According to Article 32 of the Constitution of the Republic of Kazakhstan, citizens of Kazakhstan have the right to gather peacefully and, without weapons, hold meetings, rallies, demonstrations, marches and pickets.

Paragraph 4 of Article 12 of the Constitution of Kazakhstan in relation to the rights of foreigners and stateless persons established that specified category of people enjoy the rights and freedoms in Kazakhstan as well as bear duties established for the citizens, unless otherwise provided by the Constitution, laws and international treaties.

As is the case with the Constitution of a vast majority of countries, the rights afforded to citizens of Kazakhstan are broader than the rights afforded to foreigners. The Constitution of Kazakhstan and the Resolution No. 12 of the Constitutional Council of Kazakhstan dated December 1, 2003 set forth the rights and obligations of foreigners and stateless persons.

The proposed legislation, including the granting of greater rights to citizens of Kazakhstan, is consistent with the Constitution of the Republic Kazakhstan.

Regarding the age limit for peaceful meeting organizers

Article 15 of the UN Convention on the Rights of the Child recognizes the right of children to freedom of association and freedom of peaceful assembly. According to the laws of Kazakhstan, every child has the right to freedom of speech and expression of opinion, freedom of conscience, development of his/her social activity, receipt and dissemination of information appropriate to his/her age, voluntary participation in public associations, as well as right to participate in other forms of non-profit organizations and peaceful meetings permitted by Kazakhstan's laws.

The draft law provides that citizens under 18 years of age may participate in peaceful meetings, protests or demonstrations, but cannot organize them. A child cannot serve as an organizer because such organization requires commissioning procedures, financing, and the ability to maintain public order.

Under the laws of Kazakhstan, it is not possible for a minor to enter into contracts and/or conduct the types of transactions, financial or otherwise, that would be necessary to organize and be responsible for the peaceful supervision of meetings, protests or demonstrations.

In addition, based on our review, it appears that laws of other countries, including those with advanced democracies, similarly require that organizers of protests, demonstrations and peaceful rallies be adults, who are legally capable of assuming the obligations associated with organizing such rallies.

Regarding notification order

The draft law includes a procedure of advance notification to the government. Such notification will protect the right to freedom to organize peaceful meetings while, at the same time, ensuring public safety and order, and minimizing inconvenience and protecting the rights of other persons not participating in peaceful meetings. For example, notification will ensure that the government's medical and fire safety resources are prepared in case of an emergency situation. This is a common practice and requirement applied throughout the world. The notification provisions also give the government time to ensure that the sponsoring organization is not motivated by hate or violence. This approach is consistent with the approach of many other countries.

As a result of the discussions of the draft law in Mazhilis of the Parliament Kazakhstan, the government significantly reduced the amount of time for advance notification that organizers are required to provide. The draft law requires 5 working days prior to the event to file a notification and 3 working days to review the notification.

Securing a permit and/or providing notice of a planned demonstration is a standard requirement in a large number of other countries. Many countries, including those with advanced democracies, also maintain laws that allow authorities to reject permits, or to prohibit demonstrations, if the government determines that the proposed demonstration poses a threat to state security. For example, in some countries, the government has the right to prohibit holding of assemblies in certain locations for up to three months in case of a threat to public order.

As positive changes to the draft law it should be noted that Article 11 provides for the government to inform the organizer of a peaceful assembly only in

cases of refusal to hold a picket, meeting, rally; on holding a picket, meeting, rally with some restrictions (without setting up yurts, tents, other structures, using sound-reinforcing technical means) and on proposing a change in the place and (or) time of the picket, meeting, rally.

The draft law provides that government bodies will assist the organizer in holding a peaceful assembly. So, for example, law enforcement officers will ensure the protection of public order, medical services will be provided, if necessary, and fire services will ensure fire safety.

Regarding specialized places for peaceful assemblies

The draft law uses specialized places for meetings to ensure public safety, although pickets are allowed in any location, except for places prohibited by law.

The draft law does not limit the number of specialized places for peaceful assemblies. Moreover, the draft law includes a presumption in favor of being able to hold peaceful assemblies that should further enhance the rights of individuals/organizations seeking to hold peaceful assemblies.

Furthermore, the exact locations will be part of an ongoing dialogue with the broader public, including representatives of NGOs, social activists, and opinion leaders. The draft law also ensures that the places will be located at the center of towns and other prominent areas. Hence, the intent, and effect of the draft law will be to ensure that protesters are permitted to hold peaceful assemblies in areas that will afford public access, even as it permits the government to safeguard the security and well-being of citizens of Kazakhstan not participating in any such gathering.

The introduction of specialized places will:

- enhance the culture of organizing and conducting peaceful meetings;
- ensure the availability of specialized places for freedom of expression, as these places will be designed for peaceful meetings;
- ensure the public safety of participants and organizers of peaceful meetings; and
- ensure the availability and use of infrastructure facilities by organizers and participants.

Regarding the suspension and termination of peaceful assemblies

The draft legislation provides grounds for suspending a peaceful assembly when there is a threat to life or health and safety. Peaceful assemblies will not be suspended for minor offences.

In addition, if some participants of a peaceful assembly engage in violence against other persons, police officers will take measures to remove these persons from the peaceful assembly. The peaceful assembly will be terminated only in cases when these violent actions involve a threat to the life and health of other citizens. The inclusion of provisions to disband protests or demonstrations that have turned violent are common throughout the world.

With regard to positive changes, it is necessary to note the amendments made to Article 18 concerning the warranties and procedure for termination of peaceful assemblies.

In the previous versions of the draft law, one of the warranties for termination of peaceful assemblies was the excess of the number of participants in peaceful assemblies specified in the notice on holding of peaceful assemblies or in the application for approval.

Regarding the ban on wearing materials that hide the participants` faces

Deliberations in Senate of the Parliament of Kazakhstan focusing on the issue of partial facial coverings are still ongoing.

Regarding numerous references to extremism and "extremist crimes"

According to Article 32 of the Constitution of the Republic of Kazakhstan, citizens of Kazakhstan have the right to assemble peacefully and without weapons, hold meetings, assemblies and demonstrations, marches and picket. The exercise of this right may be restricted by law in the interests of security, public order, health, and the protection of the rights and freedoms of others. Terrorists and extremists pose a significant threat to the public safety and rights of others, and therefore Kazakhstan has the right to prohibit gatherings of such groups.

It should be noted that within the context of the Convention of the Shanghai Cooperation Organization on Combating Extremism, signed June 9, 2017, extremism is defined as an ideology and practices aimed at resolving political, social, racial, national and religious conflicts through violent and other unconstitutional actions.

Many countries, including those with advanced democracies, have bans on peaceful assembly of organizations and citizens that are recognized by law as extremist or whose activities are aimed at overthrowing the constitutional order.

Similarly, as in many other countries, if the purpose of a peaceful assembly is to incite any discord, the state authorities have the right to prohibit such peaceful assemblies.

II. Information regarding steps taken by the Government to ensure that the draft law is in accordance with international standards, especially articles 21 and 22 of the International Covenant on Civil and Political Rights.

First. Adoption of a conceptually new law. The proposed legislation meets this standard because it replaces the currently applied law of 1995. The draft law has been developed taking into account the Articles 21 and 22 of the International Covenant on Civil and Political Rights. The adoption of the new law will establish uniform regulations for holding peaceful assemblies in all regions of the country.

Second. Introduction of the notification procedure for peaceful assemblies.

The draft law introduces the notification procedure for holding of peaceful assemblies. The notification will not require any response from local executive authorities and will be considered agreed upon by default.

Third. The possibility to hold pickets in any places, except for places prohibited by law.

The currently applied law and decrees of Maslikhats limited the possibility of holding peaceful assemblies and pickets only in places determined by Maslikhats.

The draft law has changed this practice. Single pickets are not limited to certain places, except for places prohibited by law, such as strategic and military objects, mass graves, etc.

Thus, single pickets could be held anywhere, including next to buildings of central government bodies and local executive authorities. This will allow citizens to be heard by authorities.

Notably, some countries do not allow picketing near public buildings or other areas where public health or in “zone of silence” created by safety mandates.

Fourth. Inclusion of the conceptual system in the draft law.

One of the shortcomings of the currently applied law is the lack of clear regulation of the forms of peaceful assembly. Additionally, one of the concerns expressed to the Government of Kazakhstan concerning the currently applied law was that when decisions are made to reject an application to hold peaceful assemblies, local authorities use the same requirements for a meeting, picket, demonstration and procession.

The draft law clearly defines each key concept, such as a peaceful assembly, a rally, a picket, a meeting, a demonstration and a procession and distinguishes between them. By defining these terms and distinguishing between them, the new legislation will help to ensure that unreasonable requirements are not applied to prevent most forms of peaceful assembly.

Fifth. Introduction of the basic principles of peaceful assembly in legislation, including:

- 1) non-violent nature;
- 2) legality;
- 3) ensuring state security, public order, protecting health, protecting the rights and freedoms of others;
- 4) voluntary participation;
- 5) the presumption in favor of holding peaceful assemblies; and
- 6) responsibility of the parties.

The crucial matter here is the principle of presumption in favor of holding peaceful assemblies, which means that in the absence of justified reasons for restricting or prohibiting the holding of a peaceful assembly, a peaceful assembly should be held.

Sixth. Reduced period for notification and consideration of notifications

The currently applied law requires submission of applications 10 working days prior to an event and gives local authorities 5 working days from the date of receipt to either approve or refuse an application.

The draft law reduces those timelines significantly, and requires that notifications be submitted 5 working days prior to an event and gives local authorities for consideration of notifications 3 working days.

Seventh. Establishment of comprehensive list of grounds for refusing to hold peaceful assemblies.

The currently applied law contains a vague list of grounds for refusal to hold peaceful assemblies. Moreover, Maslikhats were vested with the right to establish additional requirements and/or hurdles that could be used to justify the refusal of an application to hold a peaceful assembly.

The draft law includes a comprehensive list of grounds for refusing an application to hold a peaceful assembly. In particular, an application for a peaceful

assembly may be refused if the purpose of the demonstration or assembly is to: (a) advocate for change of the constitutional order by force or violence; (b) advocate for the violation of the integrity of the Republic of Kazakhstan; (c) undermine the security of the state or incite social, racial, national, religious, class or tribal hatred; (d) advocate for the violation of other provisions of the Constitution of the Republic of Kazakhstan, laws and other regulatory legal acts of the country; (e) threaten state security; (f) threaten the health and safety of others.

Notably, if central or local authorities decide to refuse an application, they must provide specific reasons for the refusal and these reasons must comply with the legislation. Any refusal of an application by central or local authorities can be appealed.

Eighth. Consolidation in the Law of the status, rights and obligations of organizers, participants in peaceful assemblies.

The currently applied law does not distinguish between participants and organizers, nor does it determine their rights and obligations. The currently applied law merely sets forth prohibitions.

The draft law defines the status, rights, and obligations of organizers and participants.

Ninth. The obligation of government bodies to assist in holding a peaceful assembly.

The draft law provides that government bodies will assist the organizer in holding a peaceful assembly. So, for instance, law enforcement officers will ensure the protection of public order, medical services will be provided, if necessary, and the fire service will ensure fire safety.

Tenth. Maintaining a registry of specialized places on the internet resources.

The draft law stipulates that specialized places for holding peaceful assemblies will be determined within central parts of settlements and will comply with safety requirements. The draft law does not limit the number of specialized places.

Since the decisions of Maslikhats on the approval of specialized places are normative legal acts, the establishment of a list of specialized places will be widely discussed with the public, reviewed by public councils and the results will be published on the web site “Open legal acts and regulations.” The legislation is designed to ensure that the public participates in the process of selecting places for peaceful assemblies and protests.

Eleventh. Maintenance of a register of specialized places by local executive authorities.

One of the shortcomings of the currently applied law is that it often denied citizens from holding peaceful assemblies because local authorities determined that the venue for the demonstration was inappropriate.

In order to avoid such situations and inform citizens of the law, the draft law stipulates that local executive authorities will be required to post information on the Internet to ensure that citizens are informed about the possibility of holding peaceful meetings and are also aware of locations where they can hold such peaceful assembly.

Twelfth. The establishment in the draft Law of the right of citizens to appeal against actions of state bodies.

The currently applied law does not stipulate a procedure for appealing adverse determinations made by state bodies. The draft law provides a mechanism that allows individuals/organizations to appeal any rejection of an application to hold a peaceful assembly.

III. Information on the consultations that took place with civil society organizations and how their comments and recommendations were integrated into the draft law.

The Government of Kazakhstan encouraged comments on the draft law and held public hearings in nine regions of Kazakhstan (Nur-Sultan, Almaty, Karaganda, Kokshetau, Pavlodar, Petropavlovsk, Uralsk, Ust-Kamenogorsk and Shymkent) with the participation of members of the National Council of Public Trust, representatives of civil society, and the media.

Lawyers, experts, political scientists, representatives of the academic community, deputies of the Maslikhats, members of the Parliament and the National Council of Public Trust, and representatives of non-governmental organizations took part in the public discussion of the draft law.

Based on inputs received from the various stakeholders, several amendments have been made to the draft law, including the following:

- Adopting a new conceptual law.
- Establishing a presumption in favor of peaceful assemblies.
- Establishing the right to hold pickets.
- Reducing the deadlines for submitting notifications.

- Establishing responsibilities of state bodies to facilitate holding peaceful assemblies (e.g., law enforcement and medical assistance).
- Excluding rules restricting the number of people at an assembly to 250 people.
- Introducing the basic principle of openness related to providing information regarding specialized places.
- Establishing a comprehensive list of grounds for breaching the law.

In addition, representatives of the following international organizations and diplomatic missions were regularly briefed in the course of development of the draft law: OSCE, USAID, European Union, Regional division of the Office of the United Nations High Commissioner for Human Rights for Central Asia, Embassies of Germany, Great Britain and the Kingdom of the Netherlands. The Government of Kazakhstan extensively studied the laws of other countries, including those with advanced democracies, during its work on the draft law.