



Factors influencing the implementation of International Covenant on Civil and Political Rights: the case of Kazakhstan

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Factors influencing the implementation of International Covenant on Civil and Political Rights: the case of Kazakhstan

Beibit Shangirbayeva

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The working paper is focused on the examination of legal and political factors influencing the implementation of the International Covenant on Civil and Political Rights in Kazakhstan. Ratification of the ICCPR brought to the changes in domestic law, but human rights problems remain the issue of concern. The author discussed the national policy of Kazakhstan through the action plans and strategic documents on protection of human rights, the national institutions on protection of human rights, the issues of separation of powers, democracy and the rule of law.

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Factors influencing the implementation of International Covenant on Civil and Political Rights: the case of Kazakhstan

Beibit Shangirbayeva

Octobre 2017

The author

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The text

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Abstract

The working paper is focused on the examination of legal and political factors influencing the implementation of the International Covenant on Civil and Political Rights in Kazakhstan. Ratification of the ICCPR brought to the changes in domestic law, but human rights problems remain the issue of concern. The author discussed the national policy of Kazakhstan through the action plans and strategic documents on protection of human rights, the national institutions on protection of human rights, the issues of separation of powers, democracy and the rule of law.

Keywords

Human rights, civil and political rights, International Covenant on Civil and Political Rights, Kazakhstan, implementation, factors

Les facteurs influant sur la mise en œuvre de la Convention Internationale relative aux droits civils et politiques : le cas du Kazakhstan

Résumé

Le working paper porte sur l'examen des facteurs juridiques et politiques qui influent sur la mise en œuvre de la Convention Internationale relative aux droits civils et politiques au Kazakhstan. La ratification de cette Convention Internationale a apporté des changements dans le droit interne, mais les problèmes des droits de l'homme restent préoccupants. L'auteur a discuté de la politique nationale au Kazakhstan à partir de plans d'action et de documents stratégiques portant sur la protection des droits de l'homme, les institutions nationales de protection des droits de l'homme, les problèmes de séparation des pouvoirs, la démocratie et la primauté du droit.

Mots-clefs

Droits de l'homme, droits civils et politiques, Convention Internationale relative aux droits civils et politiques, Kazakhstan, mise en œuvre, facteurs

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Introduction

Analysis of the legal and political environment of Kazakhstan would be useful for understanding of the problems of implementation of the International Covenant on Civil and Political Rights in Kazakhstan. This will help to highlight further actions needed for protection of civil and political rights. “The analysis of the environment” implies the study of the implementation of the ICCPR by Kazakhstan through the lens of its state policy, doctrines and the action plans on human rights and commitments taken while its Chairmanship of OSCE in 2010. Their contribution to the implementation of obligations imposed under the ICCPR will be considered. The functionality of the Presidential Commission on Human Rights of Kazakhstan, in ensuring compliance with the ICCPR standards, will be examined. The application of doctrines such as separation of powers, democracy and the rule of law will be explored.

National policy of Kazakhstan through the actions and documents on protection of human rights.

Kazakhstan’s Chairmanship of OSCE in 2010

Kazakhstan was the first ex-Soviet Union and Muslim country which held Chairmanship of OSCE. The Chairmanship of Kazakhstan of OSCE in 2010 and the trust of the members of the organization could be considered as incentives to improve the situation with regard to civil and political rights in Kazakhstan, and the proper implementation of the ICCPR standards in the country.

The experts concluded that the candidacy of Kazakhstan as the Chairman of OSCE was opposed by human rights organizations because of Kazakhstan’s “insufficient progress in implementing democratic reforms in the country” (A report of the U.S. – OSCE task force, 2010, p. 6). The experts also say that the appointment of Kazakhstan as the Chair was due more to the “commercial and strategic” interests of OSCE countries concerning natural resources (e.g. the energy concerns of Germany and Russia) (Kenneth Roth. *Despots masquerading*, 2009). The support of Kazakhstan’s candidacy by the members of the

international organization indirectly indicates the support of the country’s internal and external policies towards human rights and individual freedoms. In addition, the chairmanship could be seen as the desire of the elite of Kazakhstan in power to gain more international recognition and a good image, taking account that the Government of Kazakhstan hosted the OSCE summit and other conferences.

Security problems were announced as Kazakhstan’s priorities during its chairmanship (combating terrorism and other transnational threats, achieving success “in the resolution of region’s protracted conflicts, contributing to the reconstruction of Afghanistan, promoting co-operation on transport and fostering tolerance”) (OSCE Annual Report, 2010, p. 14; OSCE Press release of January 2010). In its program Kazakhstan expressed commitments to human rights and democracy.

Overall, the issues covered by the OSCE’s talks, meetings and conferences in 2010 on human rights matters conformed to ICCPR standards. They concerned freedom of expression and the media, freedom of movement, gender equality, women’s participation in political and public life, freedom of religion or belief, judicial independence, fair-trial standards, free elections, combating trafficking in human beings and domestic violence, the rights of national minorities, non-discrimination, etc.

In relation to *human rights*, Kazakhstan stressed the values of tolerance and non-discrimination, and in August 2010 Kazakhstan organized a conference on this topic. The Government considered that its success in sustaining tolerance within the country could be shared with the other countries of OSCE as a positive experience (The Programme of Kazakhstan’s Chairmanship of OSCE, 2010). I would add that such harmony has been a constant factor throughout the Kazakh history.

The country also promised to pay attention to the issues related to elections, judicial independence and rule of law. Nevertheless, in fact in February 2011 amendments to the Constitution were adopted, empowering the President to take the decision himself to announce preterm presidential elections (art. 41 (3-1)). Following these amendments in April 2011, after the OSCE Chairmanship, early presidential elections were organized

(A report of the U.S.-OSCE task force, 2010, p. 8).

There were positive steps within the national policy of Kazakhstan on human rights. In its OSCE program Kazakhstan mentioned gender equality and the participation of women in public and political life. On 8th December 2009, on the eve of its Chairmanship of OSCE, Kazakhstan had adopted a Law on State guarantees of equal rights and equal opportunities of men and women, which had not existed before. The provisions of the Law could have been less declarative in content.

The National Plan of Action for Human Rights for 2009-2012 and the National Outline of Legal Policy for 2010-2020 were adopted. By signing the Astana Commemorative Declaration "Towards a security community," Kazakhstan with every other member of OSCE expressed adherence to the strengthening of respect for human rights and fundamental freedoms. They declared that human rights and fundamental freedoms are inalienable, and their protection and promotion is the first responsibility of OSCE members (OSCE Annual Report, 2010, p. 16).

The Concept of Legal Policy for 2010-2020

The National Concept of Legal Policy was approved on 24 August 2009 by the Decree of the President No. 858 (The Concept of Legal policy of Kazakhstan for 2010-2020), and outlines further directions in the development of national law. The Concept has general reference to the obligations of Kazakhstan stemming from the international treaties and standards.

The Concept calls for maximum possible guarantees in the exercising of *constitutional rights and freedoms and the unconditional and comprehensive* performance of constitutional obligations by state bodies, officials, citizens and organizations (The Concept of Legal policy of Kazakhstan for 2010-2020, p.5). As can be seen, the Concept limits the rights and obligations to those which stem from the Constitution of the country. The Concept speaks of the maximum of possible guarantees of the constitutional rights and freedoms.

It covers some rights and freedoms which are relevant to the ICCPR standards. It mentions *the principle of non-discrimination*, and the necessity of *gender equality* between men and women. The

Concept guarantees the creation of conditions for equality of rights and freedoms without distinction, in line with the Constitution of the country. So the realization of the principle of non-discrimination and equality is limited by the constitutional framework.

The Concept states that *freedom of religion* is respected and observed in Kazakhstan. It declares that the State does not interfere with the internal affairs of a church, and that the state protects the right of citizens to confess their religion. According to the document, state policy in regard to freedom of religion is concerned with the further regulation of missionary activity and with the registration of religious organizations.

The Concept refers to non-governmental organizations, particularly, to the state financing of NGOs. It also mentions general guarantees of freedom of speech, freedom of access and dissemination of information via means permitted by the law.

The state policy *on the right to access to public service* is directed toward improving the mechanisms for considering individual complaints about state service. It also implies widening the range of services available through "electronic government". According to the Concept, recognition of the existing constitutional rights and freedoms of individuals and citizens should define the meaning, content and application of the law (The Concept of Legal policy of Kazakhstan for 2010-2020, p.8).

The Concept provides *overall directions for penal reform* concerning strengthening the responsibility for crimes committed against minors, extending and developing the application of other penalties than the deprivation of liberty, excluding imprisonment as a punishment for certain crimes, using alternative measures of punishment to penal sanctions, decriminalizing some offences, and abolishing some penalties, penalization others, decreasing the scope of the application of the death penalty, encouraging the observance of a proportionality of punishment to the crimes committed.

The Concept pays considerable attention to *the rights of detainees*. It recognises that the improvement of the penal correction system should continue to comply with recognized international standards. Imprisonment as a punishment for a crime must be aimed at correcting behavior.

Providing training and work programme for people in prison remains an issue of current interest. The development of mechanisms of public control of places of detention would be an additional guarantee of the rights of detainees. Improvement in the quality of health care of detainees is considered an important direction of state legal policy. The document also stresses the importance of measures for the social rehabilitation of released persons. The reason for paying close attention to the rights of detainees within the Concept could be explained as a result of the visit to Kazakhstan from 5 to 13 May 2009 of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

With regards to the right to a *fair trial* the Concept says that penal procedural law should be aimed at protection of human rights and freedoms from arbitrary prosecution and conviction, and unlawful restrictions of freedom. Further developments of the adversarial principle in trials and of legal assistance to victims and witnesses are briefly mentioned in the Concept.

The Concept considers that the requirements for assessment of judges' qualifications must be further improved, and the independence of judges is secured in the Concept mainly by financing the courts and caring for the judges' social welfare. The document admits that improvements in the mechanisms by which people obtain access to qualified legal assistance are necessary to secure their rights to justice. As stated in the Concept, the role of advocate (barrister) at court proceedings and the payment of their free legal assistance need to be more efficient.

The human rights remedies. The Concept stresses that the development of juvenile justice and of specialization of the courts depending on the subject of cases should be continued. The recording of judicial information and the computerization of the judicial system would assist the efficiency of justice as well. The document considers the Institute of the Commissioner for Human Rights as an important mechanism in protecting the rights, and freedoms of individuals.

The National Plan of Actions for Human Rights for 2009-2012

Here I would like to see how far the adoption of the National Plan has contributed to the implementation of the ICCPR in Kazakhstan. The National Plan of Actions (henceforth the National Plan) was approved on 5 May 2009 by Decree of the President (The National Human Rights Action Plan of Kazakhstan for 2009-2012). The adoption of such a document was a first for Kazakhstan and was assessed by international observers as a positive step. That step was taken for the Chairmanship of OSCE in 2010, to show the adherence of the country to human rights values. The content of the Plan mainly analyses documents adopted by the European Union (OSCE, Council of Europe).

The National Plan contains a complex state programme of human rights, with practical measures to develop the national legislation and mechanisms on human rights protection, and to increase people's awareness of human rights. On 175 pages the Plan embraced a set of human rights closely related to the ICCPR standards. They are the rights to life, privacy, and freedom of movement, freedom of association, freedom of thought, conscience and religion, freedom of assembly, the right to vote and participate in Government, rights of the child, equality, protection of minorities, and freedom from torture, fair trial, etc.

With regards to **the right to life**, The National Plan of actions considered two measures. First, the ratification of the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty of 15 December 1989. Secondly, conducting seminars and round tables, conferences on abolishing of the death penalty. The state measures could embrace reducing child mortality, researching the high level of teenage suicide or the low level of life expectancy, and other problems related to the right to life.

The right to freedom of association. The National Plan discussed issues of liberalizing the registration of nongovernmental organizations and associations. The National Plan recognised that demanding registration of public associations and punishing unregistered ones for their activities contradicts international standards. As was mentioned in the Concluding Observations of the Human Rights Committee, the process of registration can be used to "victimise groups" (UN

Human Rights Committee: Concluding Observations on Kazakhstan, 2011, p.7). The National Plan supported a simplified form of procedure for the registration of non-commercial public associations as non-governmental organizations.

The Plan recognised that the Constitution of the country allows freedom of association only to citizens, which contradicts ICCPR provisions. It also recognized the incommensurability of the punishments envisaged by the national legislation for the minor illegal activities of public associations. Article 374 of the Administrative Code was criticized in the National Plan because it contains vague and wide interpretations of offences with severe penalties entailing the prohibition of the activities and closure of the association. Taking into account the increasing problems in Kazakhstan between workers and employers, the National Plan proposed to adopt a new Law on trade unions.

Freedom of expression. The National Plan did propose that national legislation on the mass media should be improved in accordance with international standards on human rights. In July 2009, instead of encouraging freedom of expression, amendments to legislation restricting the using of the internet were adopted. The National Plan proposed a limitation of a period of time for applying for a lawsuit on protection of honor and dignity (KIBHR, The review of the implementation, p. 10). In accordance with the National Plan, in 2011 the adoption of a Law providing citizens' access to information was put forward.

The rights of citizens to participate in public affairs (fair and free elections). The National Plan raised a question on transparency of the voter lists and, especially, putting into the legislation provisions which guarantee comprehensive transparency in the creation of lists of people eligible to vote (KIBHR, The review of the implementation, p. 11). The National Plan pointed out that the national legislation has excessive requirements for creation and registration of the political parties. The Plan criticized the existing defamation law. Measures proposed in the National Plan include the improvement of the national legislation on elections, and they concern the general improvement of the national legislation that deals with the mass media, political parties and public associations, and freedom of assembly.

Freedom from torture and other cruel or degrading treatment and punishment. The National Plan describes the problems and causes of torture and degrading treatment in Kazakhstan (especially the rare invocation before a court of cases on torture; lack of independent and effective investigations into allegations on torture; lack of independent medical expertise on torture; the overcrowding of prisons, etc.).

The Plan suggested that the improvement of the functionality of the Human Rights Commissioner would improve the protection of people from torture and other cruel or degrading treatment and punishment. It recommended bringing national legislation on the status of the Commissioner for Human Rights into compliance with the Paris Principles.

The measures of the National Plan recommended the adoption in 2009 the Decree of the Government on implementation of recommendations of the Committee against torture. This Decree of the Government was adopted in February 2010. Another measure sought by the National Plan was to bring the definition of torture into compliance with that of the Convention against torture. Kazakhstan has made some changes in its Penal Code to fulfill the task.

Other recommendations of the National Plan include amending national legislation to guarantee the observance of all the rights of detained persons from the moment of detention, and ensuring effective legal protection for people under threat of expulsion, deportation, removal or extradition. In January 2011 Kazakhstan amended legislation with a provision prohibiting expulsion if there are grounds that the person may be at risk of being subjected to torture in the state requesting extradition. The provision of the Code of Penal Procedure which permits the authorities to deny the detainee's family information about the detainee's location was removed from the Code in January 2011.

Another six measures proposed by the National Plan concern the national mechanism to prevent torture. Creation of national torture preventive mechanisms, training of law enforcement personnel, increasing awareness and organization of explanatory campaigns about the national torture preventive mechanisms were all proposed as measures to combat torture. A draft law was prepared in March 2012 amending national

legislation on the issue of creating the national torture preventive mechanisms.

The national institutions on protection of human rights

The Commissioner for Human Rights of Kazakhstan

National human rights institutions (henceforth NHRIs) are additional human rights remedies, which observe and monitor respect for human rights and individual freedoms in the country. The United Nations Paris Principles on the Status of National Institutions, which have recommendatory force, are used as the guiding principles for NHRIs (The UN Paris Principles, 1993). They are used for evaluation of the effectiveness of national human rights institutes at country level.

The Commissioner for Human Rights of Kazakhstan is an additional human rights remedy to the courts with administrative functions (Shangirbayeva Beibit, 2015). The report of the Commissioner of Kazakhstan for 2011 shows that complaints on courts decisions and their actions are among the most numerous, and constituted 19.2% of received complaints in 2010. Among 291 complaints, 192 (66%) are related to penal, 91 (31.3%) to civil and 8 (2.7%) to administrative proceedings. The reasons for these complaints were different and concerned the miscarriage of justice, the non-participation of defender and others.

According to the Report on the activities of the Commissioner for 2014 “a significant number of complaints were related to infringements on citizens’ rights by law enforcement bodies – 26.7% of the total number of complaints submitted” (Report of the Human Rights Commissioner of Kazakhstan for 2014). They concern the violation of civil procedural legislation, unreasonable delays in investigation of criminal cases, inappropriate supervision over the process of investigation by prosecutors, omission in objective investigation of criminal cases. All suggestions of international observers suggest Kazakhstan to strengthen the independence of the Commissioner.

The Presidential Commission on Human Rights

The Presidential Commission on Human Rights of Kazakhstan was set up as a consultative

committee (Regulative act on the Human Rights Commission, 2003). The tasks of the Commission are enumerated in clause 3 of the regulating Act establishing the Commission, and include creating conditions for realization by the President of his competence as the guarantor of human rights and freedoms in Kazakhstan. The Commission assists the President of the country in improving mechanisms for the protection of human rights. It also helps central and local state bodies to put state policy on human rights into effect, and promotes international cooperation on these matters.

The Commission analyses national human rights legislation, and participates in the preparation of drafts of laws, and prepares analytical materials and expert advisory opinions on international human rights treaties.

The Commission participates in the work of international and non-governmental organizations on human rights. In the exercise of its power, the Commission interacts with state bodies, including the law enforcement bodies and the Commissioner for Human Rights of Kazakhstan, non-governmental human rights organizations, and the mass media (clause 5 of the Act). The Commission has the right to request and receive from governmental bodies, as well as other organizations and officials necessary information, documents and materials, and to hear at its meetings the response of public officials to relevant information on the issues of human rights.

The Commission has the right to initiate (i.e. making proposals to state bodies) the inspection by the state bodies of information on violations of human rights. The members of the Commission have the right to visit state bodies and state organizations regarding issues within the scope of the Commission’s competence. The Chairman and the members of the Commission work voluntarily and are not paid. The analytical and organizational support of the Commission is provided by the Administration of the President. Head and the members of the Commission are appointed by the President of the country.

According to clause 4 of the Act, to fulfil these tasks the Commission is empowered to consider the complaints of individuals and of organizations on violations of human rights and freedoms. The Commission adopts recommendations and opinions after the consideration of the complaint. The state bodies and officials who receive these

recommendations and opinions are obligated to consider them and to inform the Commission about actions taken. The Commission prepares reports to the attention of President on the observance of human rights and freedoms, and makes proposals on the development of the protection mechanism.

Analysis of the complaints received by the Commission in 2011 shows that they mainly concern the actions of officials and executive bodies of the state. Thus, according to the Report, in 2011 the Commission received in total 1625 complaints. Most of them, i.e. 567 (34.89 %) concerned violations of the freedom of religion. Complaints on the functionality of the judicial system were approximately 281 (17.29 %). This number includes the complaints disagreeing with the judgments in 214 cases (13.17 % of the complaints) and complaints of the actions (omissions) of the judiciary 16 (0.98 %) complaints, on non-execution of the court's decisions 51 (3.14 %). 192 complaints (12%) were received on the actions of executive bodies and officials (including unlawful actions by the law enforcement bodies, cases of torture, disagreements with the criminal charges, unlawful actions by officials of the penitentiary system, etc.). The Commission satisfied (i.e. to assist in restoration of the violated rights and freedoms) 200 complaints (the Report of the Human Rights Commission for 2011, p.5).

The Reports of the Commission cover civil, political, social, economic and cultural rights, including the rights to life, to assembly, freedom of thought, conscience and religion, freedom of trade unions, rights of children and women, right to free and fair elections and social, economic and cultural rights. Regarding the rights to assembly, the Report suggested the need for the simplified registration of noncommercial public associations. This measure and others related to the right to assembly are discussed in the National Plan of Actions. Both documents recommend adoption of the law on trade unions.

With regard to the freedom of expression, the Report recommends the adoption of a Law providing citizens access to information, and establishing a time-limit within which to apply for a lawsuit on the protection of honor and dignity. These measures stem from the National Plan of Actions on human rights. Concerning freedom from torture, the Report seeks the further development of the national preventive mechanism.

Separation of powers

What is the separation of powers and its meaning for protection of civil and political rights?

The author considers that separation of powers is a major factor affecting the proper implementation of the ICCPR at national level. The fair and rational allocation of state power between its executive, legislative and judicial branches provides for its balance and its limitation by law and accountability of the government to the people. These branches of power are "expected to develop models of socially beneficial cooperation" in order to achieve the common good (Rett R. Ludwinski, 2009, p. 410).

Effectiveness of government is an ultimate goal of the separation of powers (George P. Fletcher, 1979, 398). Effective government is able to establish efficient enforcement mechanisms, which implies effective remedies for protection of human rights. Article 2 (3 a) of the ICCPR demands that the State provides *effective remedy* to persons whose rights and freedoms are violated, notwithstanding that the violation has been committed by persons acting in an official capacity. Moreover, the right to remedy shall be determined by *competent judicial, administrative or legislative authorities* (art. 2 (3 b)).

According to the ideas of English philosopher of XVII century John Locke in his classical work *Two treatises of Government* and of Charles-Louis Montesquieu's work on *The spirit of the Laws*, French scientist of the Enlightenment of XVII century, the separation of powers implies the limitation of a ruler's power to avoid his tyranny and abuse for preservation of individual liberty (John Locke, 1823; Charles-Louis Montesquieu, 2001). Individual liberty and freedom is a cornerstone of human rights protection. Full concentration of political power in the hand of one person can make people vulnerable to the unlawful actions of those who have a power.

The implementation of international human rights commitments can be done duly when "the power is solely exercised by general rules adopted by the people or by the its *elected* representatives" (Michel Troper, 2007). The separation of powers seen as "a form of functional division of labour for the democratic state", when state institutions

carry out their duties independently one from another (Christoph Möllers, 2013, p. 42, 43-44). This idea is very important for the judiciary and their independent functionality from other state institutions. For the control of state institutions the separation of powers implies the checking and balancing of the state institutions or “mitigating power through power” as to the idea of Montesquieu (Christoph Möllers, 2013, p. 46).

Practice of Kazakhstan in separation of powers

The Constitution declares that in Kazakhstan the people is the only source of state power (art. 3 (1)), which is a classical idea existing in many contemporary constitutions. According to article 40 (3) of the Constitution, the President ensures the functioning of all branches of power and their responsibility to the people.

The Executive branch of power. The President of the Republic is Head of the state, its highest official, who determines the main directions of domestic and foreign policy (art. 40 of the Constitution). He appoints the Prime Minister of the Republic and the ministers, the Prosecutor General, the Head of the National Bank and the National Security Committee. The President of the Republic is Supreme Commander of the Armed Forces of the Republic.

The local executive bodies are representatives of President and the Government of the country (art. 87 (3)). The heads of the major regions, major cities and the capital are appointed by the President. The President also has the right to dismiss any head of the local executive bodies at his own discretion. The decisions and resolutions of the heads of the local executive bodies may be annulled by the President (art. 88 (4)).

The Legislature. Parliament is the highest representative body of the Republic performing legislative functions (art. 49). The President of the country has the right to initiate legislation and to determine the priority of consideration of drafts of laws. He has also the right to initiate a delegation of legislative competency to himself for a period of one year (art. 53 (3)). The President has the right to propose amendments to the Constitution at the joint session of the Parliament (art. 53 (1)). The President is empowered to dissolve the Parliament any time, after consultation with

the Chairpersons of the Chambers of the Parliament and the Prime Minister (art. 63 (1)).

The judicial branch of power. The Chairperson and judges of the Supreme Court of Kazakhstan are elected by the Senate at the proposal of the President of the country based on the recommendation of the Highest Judicial Council (art. 82 (1)). The Chairperson and the members of the Council are appointed by the President, and the same with the Chairpersons and the judges of the local and other courts (art. 82 (2)).

The Human Rights Committee in its Concluding Observations expressed concern at functionality of judges and urged Kazakhstan to take measures “to eradicate all forms of interference with the judiciary” (Concluding Observations on Kazakhstan, 2011, p.7).

Case of Zhanaozen

The case of *Zhanaozen* was a ‘litmus test’ of Kazakhstan’s policy on protection of human rights. *Zhanaozen* (Mangistau region, Western part of Kazakhstan) is a geographically isolated and far-reaching place of the western part of Kazakhstan rich in oil resources. A half year strike of oil workers demanding better labour conditions and permission to organize independent labour unions was ended with violence. The oil-workers had demanded an improvement of working conditions and an increase of their salaries, the elimination of social inequality between citizens of the country and foreigners. Oil is a hazardous industry, and the ecological conditions of poor and humiliated oil-workers are really harsh. They work in an environment of strong winds and of heat wave; in the summer at + 50°, and at - 50° in winter.

According to the official report a group of people on 16 December destroyed the arrangements for the festivity of the 20th anniversary of Kazakhstan’s independence, fired at a police bus, and destroyed tents. The local government office, a hotel and the “Ozenmunaigaz” company (oil company) building were burned down. As a result of unrest according to governmental information approximately 17 people died in sum, with more than 100 wounded, including police officers. By the Decree of the President on 17 December 2011 for 20 days, which was extended later till January 31 by another Decree, in *Zhanaozen* a time of emergency was proclaimed.

Activists and Human Rights Watch claim that the abuse of power was continued with detention of more than 400 people, and torture and ill-treatment of detainees, even the death of some of them. The activists among oil-workers and members of civil society were accused in “inciting social discord” (Human Rights Watch Letter to the Prosecutor General, 2012).

People interviewed by Human Rights Watch complained about being kicked and beaten with truncheons, being stripped naked and walked on, kept in freezing temperatures and suffering other kinds of humiliations done by officials (Human Rights Watch Letter to the Prosecutor General, 2012). Resolution of the European Parliament on *Zhanaozen* case confirmed that “detainees have been subjected to torture and ill-treatment” (European Parliament Resolution on Kazakhstan, 2012).

During the trials on 37 oil-workers in *Zhanaozen* case the victims of torture faced the problems of the inaction and indifference of officials towards their torture allegations (Video interview of Ghalym Ageleuov, 2012; *Vlast* video issue, 2012). The statements of the accused and of witnesses that evidence had been obtained by investigators using torture were not taken into consideration by the judges.

As urged in the European Parliament resolution, Kazakhstan authorities should rapidly improve and implement the freedom of expression in line with the recommendations of the OSCE and should pay “close attention to the international commitments” (European Parliament Resolution on Kazakhstan, 2012).

The rule of law

The author considers that the rule of law creates conditions proper implementation of the ICCPR. As stated in the preamble of the Universal Declaration “human rights should be protected by the rule of law”. With regards to the ICCPR, the rule of law is a precondition for implementation of the ICCPR and above all safeguards people from arbitrariness on the part of the government. The rule of law concept and the ICCPR provisions are interrelated with each other.

The rule of law is a concept originated in the western liberal democratic countries. It says about a set of values and describes the condition of social relations when “all individuals and all groups

recognize *an obligation to comply with law, and act accordingly*” (Geoffrey de Q. Walker, 1988, p. 3). The rule of law implies a state of law and order, which prevents coercion and arbitrariness, and puts restraints on the behaviour of individuals and on the government (Geoffrey de Q. Walker, 1988, p. 3).

The state of the rule of law puts ‘*government under law*’. This means that “the organs of government must themselves operate not only *through* the law, but also *under* the law, in the sense that the legality of their Actions may be tested by independent courts of law, and that the law therefore operates as a limitation or constraint upon the actions of government itself” (Geoffrey de Q. Walker, 1988, p. 4). Such conditions imply the *independence of judges*, safeguarding their freedom from the executive in passing judgment. The judges must be bound by law, their independence is guaranteed by the *separation of judiciary and executive*, which is “an inevitable corollary” of the rule of law (W. Friedman, 1967, p. 422).

The rule of law depends “on the existence of effective government capable of maintaining law and order” (International Commission of Jurists, 1959, p.6). The rule of law doctrine includes the principle of the accessibility of courts (Geoffrey de Q. Walker, 1988, p. 40). Article 2 (3) of the ICCPR requires the State parties to ensure that individuals have accessible and effective remedies to vindicate their rights.

Law should be impartial, expressing the general will and common interests, and working for the benefits of all people. Therefore the rule of law implies the principle of *equality before the law*. Law should be certain, clear and not vague to exclude the arbitrariness of its execution.

Such human rights principles as the right to legal representation and to a fair, speedy and public trial stem from the doctrine of the rule of law (Geoffrey de Q. Walker, 1988, p. 5). The ICCPR standards lie at the very root of the rule of law. They are the presumption of innocence, the right to fair, public and prompt hearing (art. 14), prohibition against retroactive criminal laws (art. 15), and equality before the law (art. 26). By implementing the ICCPR standards the State parties contribute to the condition of the rule of law.

The rule of law as the principle of governance has been actively used in political speeches, documents of Kazakhstan and academic writings

since the collapse of the Soviet Union. The Constitution of Kazakhstan of 1995 declared that the Republic proclaims itself as a state based on law, whose highest values are an individual, his life, rights and freedoms (art. 1 (1)). Regrettably, the doctrine of the rule of law remains mainly as an academic concept.

Democracy

The ICCPR contains human rights standards including the right to self-determination, political rights, freedom of thought and religion, non-discrimination and as well as many other rights which stem from the idea of democracy and its values. The values of democracy are already part of the ICCPR, and the Covenant serves as their juridical framework. Many of the ICCPR rights “are practically synonymous with democracy” (Beth A. Simmons. *Mobilizing*, p. 160). The realization of the ICCPR depends on the attributes of democracy in governance.

Democracy as the “rule of the people” implies representative and electoral government and guarantees the citizen’s participation in the political process (Paul Horwitz, 2009, p.6). The rights to participate in public affairs, to vote and to be elected and the right to have access to public affairs are contained in article 25 of the ICCPR. These rights, as the Committee has expressed, “lie at the core of democratic government based on the consent of people” (General Comment No. 25, 1996, p. 167).

The enjoyment of political rights and freedoms stipulated in article 25 of the ICCPR constitute “the heart of democratic society” (Alex Conte and Richard Burchill, 2009, p. 97). Article 25 guarantees direct or representative participation in public affairs and requires the State party to hold fair, free and periodic elections.

Democracy protects the rights of an individual for development, recognizing individual personality, physical integrity of life and body, and the liberty of the person (W. Friedman, 1967, p. 398, 429).

Another postulate of democracy is the establishment of equal opportunities for all individuals (of whatever sex, race, nationality, etc.). “Legal protection for equal opportunity of development, regardless of personal, racial or national distinctions” characterise democracy (W. Friedman, 1967, p. 429). These values became the basic

human rights standards covered by the ICCPR. The ICCPR is based on the ideas of democracy.

Some articles of the ICCPR refer to democracy, for example articles 14 (1), 21, 22 (1). Any restrictions on the enjoyment of the above enumerated articles and on article 12 (3) as well must be those necessary in a democratic society and consistent with the values of democracy (General comment No. 27, 1999, p. 175).

Democracy establishes the environment of political liberty and the grounds for pluralistic discussions between different groups of civil society. In this sense, it contributes to the implementation of freedom of thought, opinion and expression, freedom of assembly and association covered by the ICCPR. The violation of the ICCPR human rights standards is in conflict with the values of democracy.

Kazakhstan at the constitutional level recognizes the idea of democracy and proclaimed itself as a democratic country (art. 1 (1)). The text of the Constitution of Kazakhstan contains other terms related to democracy. According to the Constitution, the Republic *uses the democratic methods* in resolution of the most important issues of state affairs, including voting at a referendum or in the Parliament (art. 1). The Constitution of the country in article 44 (16) says about *the democratic institutions*, and the President has the right to take measures to protect *the democratic institutions* in the case of serious threats to them.

The democratic regime in Kazakhstan would support broader representation in public life, would have a significant impact on the equal participation of women in public affairs, would contribute to the creation of independent trade unions of oil-workers, would make judicial trials open and fair, and would increase the efficiency of human rights institutions, etc. A democratic regime in the country would contribute to the protection of human rights and overall implementation of the ICCPR.

Conclusions

As experts evaluated, Kazakhstan Chairmanship of OSCE in 2010 did not make significant contribution to the improvement of human rights in the country and consequently to the implementation of ICCPR commitments.

The Concept of Legal Policy for 2010–2020 outlines the general and overall directions of national law and guarantees the rights and freedoms established by the Constitution. Despite the absence of a direct reference to the ICCPR in the Concept, nevertheless it partially covers some standards coincident with the Covenant. These are the principle of non-discrimination and equality, freedom of religion, freedom of association, the right of access to public service, the rights of detainees, right to a fair trial and respect of liberty of person and other related issues. The Concept also grasps the importance of penal reforms and the remedies of human rights protection. Where the rights of detainees are concerned, the effects of international measures (such as the visit of the Special Rapporteur) on internal national policy on protection of human rights can be seen. The Concept could be valuable if there were time delimitations and responsible state bodies.

The National Plan of Actions for Human Rights for 2009-2012 contained very crucial ideas and measures for the improvement of human rights. The adoption of the National Plan had some influence on the legislative framework on prevention of torture.

The competence of the Commission for human rights overlaps the competence of the Commissioner for human rights (reporting system, complaints procedures, requesting information from state bodies and officials, visiting the state bodies). Nevertheless, the work of the Commission does influence the protection of human rights in Kazakhstan, and implementation of the ICCPR through its consideration of complaints on human rights violations, and its proposals for the improvement of state policy on human rights. To raise awareness among the people about the activity of the Commission would be beneficial to have an official website to get access to necessary information.

The practical application of the concepts of separation of powers, democracy and the rule of law could improve the protection of human rights at any country, including Kazakhstan. The main issue remains in recognition of judiciary as a branch of power and its independence from the executive. The application in practice of democratic values and the rule of law would contribute to the adoption of impartial law expressing the general will of the people and its observance by all, bringing

to responsibility of perpetrators of human rights abuses.

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