

ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS BY THE KYRGYZ REPUBLIC

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The report is submitted by Public Foundation, Human Rights Defense Center “Kylym Shamy”, Kyrgyz Republic, prepared by Gulshayir Abdirasulova. The report covers information on the violations of the rights to peaceful assembly in the Kyrgyz Republic. Monitoring and analysis data carried out in 2015-2019 were used during the preparation of the report.

The right to peaceful assembly (Article 21).

Article 34 of the Constitution of the Kyrgyz Republic is fundamental on freedom of assembly, which guarantees everyone the right to freedom of peaceful assembly, including the right to be protected from compulsory participation in an assembly. The notification on holding an assembly as a right is defined by the constitution, the lack of notification, non-compliance of its form, content and terms of the submission of the notification, are not the reasons for prohibition and restriction of holding a peaceful assembly, and refusal to hold a peaceful assembly.

The current Law of the Kyrgyz Republic on Peaceful Assembly 2012 generally complies with the provisions of the Constitution and reflects the principle of presumption for holding an assembly. In the Kyrgyz Republic, everyone is ensured the right to hold a peaceful assembly without any permission, participate in an assembly, no matter what kind of issue or problem the participants are trying to address. The act also establishes clearly the obligations of public and local authorities, provides for the activities to ensure the right to freedom of peaceful assembly; enshrines the rights and obligations of organizers and participants, determines the reasons and procedure for the restriction of an assembly in the place, route, time, reasons and terms of suspending an assembly, and the terms and procedure for the use of force.

However, despite the established guarantees of the right to peaceful assembly, there has been a growing tendency of restrictions and prohibition on holding a peaceful assembly for reasons that are not consistent with human rights obligations and standards for the last 5 years.

1) The automatic bans on peaceful assemblies in the territory for several days or several months:

On 17 March 2017, the decision of the Lenin District Interior Department of Bishkek to ban peaceful assemblies in the territory of the Lenin District for the period of 20 March and 8 April 2017, was found legal and justified by the Lenin District Court of Bishkek¹. The reasons for prohibition were that peaceful assemblies would cause the resentment of the guests and the residents of the capital city, destabilize the community and prevent the traffic.

On 28 July 2017, the decision of the Pervomay District Administration of Bishkek to ban peaceful assemblies (except formal cultural events) in Ala-Too square and near administrative buildings:

¹ Case #GD-1646/17. B1, a judge J.K. Jumabaeva

the Jogorku Kenesh (parliament), the Government House, the Central Elections and Referendums Commission, the Pervomay District Court of Bishkek, was found legal and justified by the Pervomay District Court of Bishkek². As a result, peaceful assemblies were banned in these territories for the period of 27 July and 20 October 2017.

This decision was the reason for detention of the citizens. On 9 August 2017, a civil activist O. Toktonasyrov was detained in a single picket in front of the Central Election Commission building.

On 26 September 2017, the decision of the Municipal Administration of the mayor's office of Bishkek to ban assemblies in the territory of the Oktyabr district of Bishkek for the period of presidential elections of the Kyrgyz Republic was considered by the Oktyabr District Court of Bishkek³. The reason for such decision was the notification of holding a peaceful demonstration "Civil march for fair elections" on 30 September 2017. The statement of the Municipal Administration of the mayor's office of Bishkek to ban peaceful assemblies for the period of 26 September-20 October 2017 was satisfied by the court.

On 8 November 2017, the decision of the Pervomay District Interior Department of Bishkek to ban peaceful actions (except formal cultural events) was found legal and justified by the Pervomay District Court of Bishkek⁴. As a result, peaceful assemblies in front of the Jogorku Kenesh (parliament), the Government House, the Central Election and Referendum Commission, in the central Ala-Too square, behind buildings of the Bishkek City Court, the Supreme Court for the period of 8 November-1 December 2017, were banned by the court.

On 29 March 2018, the decision of the Lenin District Interior Department of Bishkek to ban peaceful assemblies in Lenin district of Bishkek for the period of 1-2 April 2018, was considered by the Lenin District Court of Bishkek⁵. This decision was found legal and justified by the court.

The decisions of the territorial internal affairs bodies and local administrations were found legal and justified by all the above-mentioned courts. The objective threats to the security of participants or other citizens of peaceful assemblies, justification of the reasons for prohibition or restriction, were not mentioned in the court decisions, as required by the Law of the Kyrgyz Republic on Peaceful Assemblies.

The prior prohibition of peaceful assembly, which has not taken place yet, automatically deprives citizens of their rights to appeal against such decision, as the decisions of local authorities and interior departments are filed with the court without the participation of other interested party. The organizers and participants of peaceful assemblies learn about the court decisions to ban peaceful assemblies only during the assemblies. In the meantime, the period of appeal expires and the citizens are deprived of their opportunities to appeal against such decisions.

In 2019, there was an increased practice of automatic bans on peaceful assemblies. 9 decisions of the district administration and the Pervomay District Interior Department of Bishkek to ban peaceful assemblies were found legal and justified by the courts in the Pervomay district of

² Case #GD-3327/17.B3, a judge № ГД-3327/17.Б3, judge Kalybaev A.J. Kalybaev

³ Case Дело № ГД-3425/17.Б2, a judge A. T. Jogoshtiev

⁴ Case № ГД-3932/17Б3, a judge U.A.T., the abbreviation was given in the court decision.

⁵ Case № ГД-1216/18Б1, a judge E.B. Baryktabasova.

Bishkek for 6 months (181 days). As a result of the court decisions, peaceful assemblies were banned in the territory of the Pervomay district of Bishkek for 70 days, that means 38,7% of the total number of (181 days). That period peaceful assemblies were prohibited for the whole month of May 2019.

- a) 17 January 2019, the decision of the judge of the Pervomay District Court of Bishkek D. T. Orozova, to ban peaceful assemblies in the following territories: the central Ala-Too square, the government houses, the Jogorku Kenesh (parliament) and the central part of the Pervomay district, for the period of 17 January 2019;
- b) 22 January 2019, the decision of the judge of the Pervomay District Court of Bishkek K.K. Isaeva, to ban peaceful assemblies in the following territories: the central Ala-Too square, the Government House and the Jogorku Kenesh (parliament), for the period of 22 January-1 February 2019;
- c) 25 February 2019, the decision of the judge of the Pervomay District Court of Bishkek A.T. Umetova, to ban peaceful assemblies in the following territories: the central Ala-Too square, the government houses, the Jogorku Kenesh (parliament) and the House of Trade Unions, for the period of 26 February-8 March 2019;
- d) 27 February 2019, the decision of the judge of the Pervomay District Court of Bishkek D.T.Orozova, to ban peaceful assemblies in the following territories: the central Ala-Too square, the government houses, the Jogorku Kenesh (parliament) and the central part of the Pervomay district, for the period of 27-28 February 2019;
- e) 26 March 2019, the decision of the judge of the Pervomay District Court O.M.A., to ban peaceful assemblies in the following territories: the whole territory of the Pervomay district, for the period of 26-30 March 2019;
- f) 26 March 2019, the decision of the judge of the Pervomay District Court of Bishkek D.T. Orozova, to ban peaceful assemblies in the following territories: the central Ala-Too square, the government houses and the Jogorku Kenesh (parliament), for the period of 25 March-6 April 2019;
- g) 26 April 2019, the decision of the judge of the Pervomay District Court of Bishkek K.K.Isaeva, to ban peaceful assemblies in the following territories: the whole territory of the Pervomay district, for the period of 29 April-11 May 2019;
- h) 8 May 2019, the decision of the judge of the Pervomay District Court D.T.Orozova, to ban peaceful assemblies in the following territories:the whole territory of the Pervomay district, for the period of 12-13 May 2019;
- i) 24 June 2019, the decision of the judge of the Pervomay District Court of Bishkek O.M.A., to ban peaceful assemblies in the following territories: the whole territory of the Pervomay district, for the period of 25-28 June 2019.

On 26 March 2019, two decisions on banning peaceful assemblies in different territories and in different periods of time were passed by two judges of the same court. Such practice of automatic (in absence) bans on peaceful assemblies for several days, weeks and months has been widely used. In addition, sometimes such prohibition has been used in several administrative districts of the capital city, including any meetings which could happen in this district. According to monitoring results, ten peaceful assemblies and the single pickets were automatically banned.

Thus, on 3 May 2019, the residents of Voенno-Antonovka village participated in a peaceful assembly in front of the Jogorku Kenesh (parliament) in Bishkek, requiring to resolve the land issue they have been addressing for several months. The police officers read out the decision of the Pervomay District Court in which all the peaceful assemblies were banned in front of parliament for the period of 29 April- 11 May 2019. As a result, 35 participants of an assembly were detained for preventive conversation. Later they were released, however, the protocol regarding the violation for disobeying the lawful order of police officers was prepared against the organizer of a peaceful assembly.

2) Relocating peaceful assemblies to places, where the citizens' messages and requirements cannot be heard and seen.

In the court decisions on banning peaceful assemblies the definite places are sometimes determined for holding assemblies. Sometimes the definite places are determined for holding peaceful assemblies. M. Gorkyi park is allowed for holding peaceful assemblies by the judges of the Pervomay District Court of Bishkek. However, in fact, no participants of peaceful assemblies were not heard and seen in this park.

3) The selective approach to allowing peaceful assemblies:

The court decisions on banning peaceful assemblies have selective approach. According to the court decision, all public events are banned even if they are peaceful, except the official cultural events held by public authorities, such as Nooruz, the anniversary of the April national revolution 2010, an Independence Day, the Day of the City, Victory Day, presidential elections and the events dedicated to the presidential inauguration, etc.

Due to the preparation for the SCO summit, all the peaceful assemblies, for the period of 26 February 2019-8 May 2019, were banned by the court decisions. The SCO Council of Heads of States was held in Bishkek on 13-14 June 2019. Therefore, during the preparation for the SCO summit all the peaceful assemblies have been banned and restricted since 26 February for 4 months.

4) The substantiations for banning the alleged threats:

Most court decisions note the following justifications and reasons for banning peaceful assemblies:

- more frequent facts of religious extremist manifestations in the world;
- threat to destabilize the social and political situation;
- anxiety and trouble of citizens who don't participate in assemblies;
- possible consequences of discontent among the guests and residents of Bishkek.

In no case the court clarified the real threat, what the real threat was, how it was reflected, whom (what kind of group) it was referred to, if there was any previous practice of the existence of a real threat, its consequences, measures for prevention of threats, including what public authorities were responsible for preventing reasons or ensuring the law and order and other issues. It is difficult to estimate if the reasons stated in decisions of regional administrations and internal bodies were justified or just assumed.

The highest legal authority of the Constitution of the Kyrgyz Republic and international human rights treaties of the Kyrgyz Republic, in which every person is ensured the right to freedom of peaceful assemblies were cancelled by the decisions on banning all the peaceful assemblies in the administrative territory. The unlimited number of persons were deprived of their constitutional rights and freedom by the decisions to ban all the peaceful assemblies (in absense) in a certain area.

The responsibility of public authorities for assemblies was abdicated by the decisions on banning peaceful assemblies. The courts didn't require the applicants (internal affairs bodies and district administrations) to state the existence of objective, not hypothetic threats claimed in statements banning peaceful assemblies. The prohibition or restrictions of peaceful assemblies on hypothetic threats stated the failure of public authorities to maintain safety and law and order.

The holiday and formal events became the reasons for depriving the unlimited number of persons of the right to freedom of assemblies which states that the officials don't apply the appropriate procedures which guarantee holding simultaneous (parallel and contra-meetings) assemblies and their support provided by public authorities.

The described conclusions identify the lack of the due implementation of the requirements to ensure holding of peaceful assemblies by the internal affairs body and local authorities, including the fair justice able to ensure respect for human rights and freedom and require the authorities and their officials to perform their duties.

5) Banning peaceful assemblies during the pandemic:

In May 2020, the amendments establishing the restrictions on a number of events with the threat of the emergence and spread of infectious diseases were made to article 21 of the Law of the Kyrgyz Republic on "Public Health Care". Such massive events as meetings and peaceful assemblies were banned. Though the law states that banning was imposed on the massive character of assemblies, the concept "massive" was not interpreted by the lawmaker. For this reason after the amendments holding peaceful assemblies was banned for this reason. Such banning is passed orally by the internal affairs bodies where peaceful assemblies are held. The participants of peaceful assemblies can be dispersed and detained for disobeying the requests to stop holding assemblies. Therefore the peaceful assemblies of more than ten people, including single actions are banned.

The recommendations to the state party- the Kyrgyz Republic to fulfill the commitments under article 21 of the Covenant:

1. To ensure the legal justice and inevitability of punishment for the officials who prevent the holding of peaceful assemblies;
2. To exclude any forms of an unwarranted interference, unlawful restriction or banning peaceful assemblies in activities of internal affairs bodies;

3. To react and consider on time applications of citizens for unjustified obstruction of the officers of internal affairs bodies to hold peaceful assemblies, use of physical force and other circumstances;
4. To improve the skills of judges, prosecutors, officers of internal affairs bodies on the standards of human rights to peaceful assemblies;
5. To provide effective oversight and justice to ensure rights to peaceful assemblies.