

*Research Article***Problems of Equality in the Realisation of the Right to Association in Kazakhstan**Elena Mitskaya^{1*}, Kurmangaly Sarykulov², Kholis Roisah³^{1,2} Faculty of Law, Mukhtar Auevov South Kazakhstan University, Kazakhstan³ Faculty of Law, Universitas Diponegoro, Indonesia

*elenamits@inbox.ru

ABSTRACT

The legal regulation of the constitutional right to freedom of association in Kazakhstan does not fully align with international standards. According to the European Convention on Human Rights, everyone has the right to freedom of association with others, and this right is not necessarily confined to public associations. While the Constitution of Kazakhstan recognizes the right of citizens to freedom of association, it limits this understanding to public associations. Additionally, the right to hold meetings, rallies, and demonstrations is stipulated separately. This study aims to provide a theoretical and legal analysis of Kazakhstan's legal provisions that restrict the right to freedom of association, assess whether the practical implementation of this right in Kazakhstan complies with international human rights standards, and propose measures to eliminate unlawful restrictions. The research employs both normative-legal methods and empirical analysis. The findings indicate that priority changes include amending the Constitution and laws of Kazakhstan to remove the ban on unregistered public associations and explicitly guaranteeing the constitutional right to freedom of association for all individuals, excluding political associations. In conclusion, the study proposes the elimination of unjustified legal barriers to the exercise of the right to freedom of association, which would ensure genuine adherence to this fundamental right.

Keywords: Equality; Right to Association; Restriction of The Right to Association**A. INTRODUCTION**

In Kazakhstan, the realization of the right to association presents a significant challenge. The legal framework for ensuring this right should be grounded in international legal instruments. By acceding to and ratifying international treaties that include provisions on the right to association, Kazakhstan assumes the obligation to implement them. These treaties include the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations (UN) General Assembly on 10 December 1948; the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966; the International Covenant on

Economic, Social and Cultural Rights (ICESCR) of 16 December 1966; International Labour Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organize of 9 July 1948; and ILO Convention No. 98 on the Application of the Principles of the Right to Organize and Collective Bargaining of 1 July 1949.

The international concept of the right to association is generally grounded in several fundamental principles: (a) The right to form and join associations (Article 23(4) of the Universal Declaration of Human Rights, Article 22(1) of the International Covenant on Civil and Political Rights,

and Article 2 of ILO Convention No. 87); (b) Freedom of association (Article 3 of ILO Convention No. 87, Article 2 of ILO Convention No. 98), which includes the right to freely draft statutes and administrative regulations, choose representatives, organize operations and activities, and formulate action programs, as well as prohibiting interference that restricts or hinders the exercise of the right to association. This also encompasses bans on administrative dissolution or temporary suspension of associations and actions to impose umbrella associations for employees; (c) The right to form federations and confederations (Article 8 of the International Covenant on Economic, Social and Cultural Rights, Article 4 of ILO Convention No. 87), including the right to join such organizations and the right of these associations to participate in international organizations of workers and employers; (d) The right to acquire legal personality without restricting other relevant rights (Article 7 of ILO Convention No. 87); (e) Pluralism of employee associations (Part 1, Article 22 of the International Covenant on Civil and Political Rights, Article 2 of ILO Convention No. 87), which ensures equal rights to establish both trade union and non-union associations; (f) The right to protection against discrimination based on trade union membership (Article 1 of ILO Convention No. 98), particularly concerning employment, retention in the workplace, dismissal, or other employer actions that may prejudice the employee's interests; (g) The right to state support for the promotion of the right to association (Article 4 of ILO Convention No. 98),

which includes fostering institutions for collective bargaining and agreements.

It is essential to highlight the importance of the *Guidelines on Freedom of Association*, jointly developed by ODIHR and the Venice Commission, in aligning national legislation with international legal norms on the right to association. These guidelines draw upon the extensive expertise accumulated by these organizations through years of advising specific states on their national legislation. Of particular relevance to Kazakhstan is the de facto ban on spontaneous peaceful assemblies (Tazhmagambet & Kopbaev, 2016; Kabzhanov & Tapakova, 2020). Assemblies, defined as the intentional and temporary presence of a group of individuals in a public place to express shared interests, are recognized as a fundamental right (OSCE, 2010). This right is closely linked to other freedoms, including the right to freedom of association.

The right to peaceful assembly serves as a crucial avenue for those who lack access to legislative bodies, are underrepresented in elections, or have limited opportunities to express their views through the media, enabling them to voice their opinions publicly (OSCE, 2010). The prevention of assemblies is often tied to violations of other fundamental rights, such as the right to life, freedom from torture, and the right to a fair trial. Accordingly, the guidelines emphasize the inadmissibility of bureaucratizing this right. States should always facilitate and protect peaceful assemblies in locations chosen by the organizers and ensure that information about such events is

not obstructed from public dissemination (OSCE, 2010).

State obligations in this context can be categorized as positive and negative. Positive obligations require the state to guarantee and facilitate the right to freedom of association by creating an enabling environment that allows individuals and groups to form and join associations freely without undue interference (Duhaime & Thibault, 2020). This includes establishing a legal framework that supports the formation, operation, and sustainability of associations, enacting laws that protect this right, and ensuring that these laws adhere to international human rights standards (Tann, 2020). Furthermore, states must protect associations from third-party interference, ensuring they operate without fear of harassment, intimidation, or violence (Sakharuk, 2021).

Negative obligations require states to refrain from actions that unnecessarily restrict or interfere with the right to freedom of association. This includes avoiding excessive regulation or control that may hinder the exercise of this freedom (Golubovic, 2013). Any restrictions imposed must be legitimate, necessary, and proportionate. States must ensure that such restrictions align with democratic principles and do not undermine the essence of human rights (Hamilton, 2020).

The *Guidelines on Freedom of Association*, in line with international treaties, emphasize the unacceptability of unnecessary restrictions on the right to freedom of association. According to Article 8 of the International Covenant on Economic, Social and Cultural Rights, restrictions on the right to

association are permissible only if established by law and solely for the purposes of ensuring national security, maintaining public order, or protecting the rights and freedoms of others. These restrictions may also apply to members of the armed forces, police, or state administration. Article 22 of the International Covenant on Civil and Political Rights (1966) further broadens the grounds for restricting the right of association. Recognizing the right to associate as part of the broader right to "freedom of association with others," it allows for restrictions aimed at protecting public health and morals.

It must be acknowledged that the legal norms established in international treaties have begun to influence domestic legal relations in Kazakhstan. However, there is still no comprehensive implementation of the ratified international legal instruments regarding the right to freedom of association within Kazakhstani law. Numerous restrictions on the right to association continue to violate human rights, hindering Kazakhstan's progress toward establishing a state governed by the rule of law. These limitations prevent the country from fully achieving the status of a true rule-of-law state. This situation raises concerns about the well-being of the people, which is closely tied to the state's regulation and protection of human rights (Pylypenko, 2020).

The right to association has been examined from various perspectives. Numerous researchers have explored the general characteristics of the legal framework for regulating the right to association, particularly in the context of the development of civil legislation (Mukasheva, 2015),

the forms of public associations (Satylganov, 2017), and the specific legal regulation of religious and other types of associations (Tarasevich, 2013; Mitskaya, 2007a; Zhakupov, 2019; Klimkin & Kazbayeva, 2020; Bachmid & Rachmitasari, 2022; Moreno, 2008). Additionally, the right to association has been analyzed from the ideological perspective (Bell, 1965).

The theoretical foundation for our study draws on the work of scholars who have approached the right to association as a manifestation of personal freedom and the desire to connect with others (Alexander, 2008; Lomasky, 2008; Pylypenko, 2020), as a means for individuals to protect their legitimate interests (Brownlee, 2015), and as a constitutional and political right enabling individuals to participate in governance (Amber, 2002) and promote democratic development (Aswandi & Roisah, 2019). Notably, the restrictions on the right to association have been studied extensively, particularly by foreign researchers (Epstein, 2008; Munir & Ilham, 2022).

While Kazakhstani scholars have studied the right to association as a constitutional right, its limitations have not been extensively researched, particularly in the context of violations of equality before the law. In this regard, our study presents a distinct approach. We focus on the restrictions on the right to association as enshrined in the Constitution of the Republic of Kazakhstan and how these constitutional provisions are reflected in the current legislation. Notably, we argue that both the Constitution and the laws regulating the right to association in Kazakhstan impose restrictions that

contradict international standards, which, in our view, represents a significant oversight.

The issues we address are highly relevant in the context of expanding democratic reforms within the country. This study seeks to identify the restrictions in Kazakhstani legislation on the right to association that fail to comply with international standards and to propose measures for eliminating these inconsistencies. Additionally, the Kazakhstani approach to regulating the right to association and its practical implementation may serve as a valuable reference for others facing similar challenges, providing a basis for comparing solutions and strategies to address these issues.

B. RESEARCH METHODS

To conduct this research, we utilized key international legal instruments that enshrine the right to association, along with analytical materials, recommendations, and reports on the implementation of this right in Kazakhstan. Additionally, we examined current Kazakhstani legislation in the relevant field and consulted specialized legal literature to deepen our understanding of the essence of the right to public associations and the theoretical and legal perspectives of foreign lawyers and scholars.

The empirical method was employed to analyze the normative framework of the right to association and to develop practical recommendations for improving Kazakhstani legislation that unjustifiably restricts this right. Descriptive analysis (Rofingi, Rozah, & Asga, 2022) was used to explain the findings regarding the gap

between the constitutional enshrinement of the right to association and international standards. This method enabled us to identify problems in Kazakhstani legislation concerning the implementation of equality before the law and to propose solutions to address the current issues related to the right to association.

C. RESULTS AND DISCUSSION

1. Discussion of the explanation and analysis of the current conditions regarding the regulation and implementation of the right to freedom of association in Kazakhstan

The theoretical and legal understanding of the right to association is crucial for its effective legislative regulation. Scholars have examined the right to association from various perspectives, including its defining characteristics, legal nature, and position within the system of rights as a constitutional right (P. R. F., 1960; Mitskaya, 2007b; Inazu, 2010). It has also been analyzed as a legal safeguard for the exercise of other constitutional rights, such as freedom of speech and freedom of assembly (Mitskaya, 2008; Sianipar & Isharyanto, 2020), as well as in terms of the limits of its restriction (Julian & Herawati, 2021).

Further studies have explored the implementation of this right in specific public associations (Strauss, 1992), the challenges and violations related to its exercise (Amber, 2002; Frantziou, 2014; Munir & Ilham, 2022), and its role in fostering the development of civil society (Shukhov, 2019). The works of scholars from countries with a Western legal tradition—where the

doctrine of human rights originated—hold particular significance. These studies enhance the understanding of the nature of the right to association and illuminate the evolution of views on its limitations, offering a more progressive, consistent, and flexible response to the challenges of modern times.

The right to association is a legal prerequisite for the development of various non-governmental associations, which, in turn, allow society to be organized in accordance with its needs. Through the exercise of this right and the activities of the associations they create, citizens gain the ability to exert targeted influence on public life and policy, thereby contributing to the democratization of power. Additionally, civil society organizations (CSOs) play a crucial role in advocating for human rights and maintaining civic space. They help shape public responses to new laws and ensure that human rights values remain at the forefront of political discourse. Despite growing challenges, CSOs continue to be essential in defending human rights and promoting democratic values (Arahamneh, 2024).

Despite various definitions of the concept of "public association," all of them unequivocally regard it as a voluntary, non-formal membership affiliation of citizens, organized through democratic centralism, self-government, and independent action. It has the specific task of implementing activities aimed at achieving the objectives of the association in line with the legitimate interests and rights of its members. A public association is an independent, self-governing group of citizens that

exists separately from the state, formed to satisfy the common interests and needs of its members (Cohen & Arato, 1994). It works to achieve its goals in the external environment using methods and means consistent with the nature of the association and in accordance with the law (Strauss, 1992).

The separation of public associations from the state should not be understood as complete detachment. It is also important to acknowledge that if public associations become tools for the ideological and mobilization objectives of the state, as was the case during the Soviet era (Bell, 1965), their independence would be significantly diminished. However, the nature of political public associations prevents one from claiming complete neutrality of all public organizations toward political processes, or complete freedom and independence from state policies (Queiroz, 2018). These definitions highlight key characteristics of non-governmental associations, such as their independence from the state, freedom of action—including in the management of the association—compliance with the law, voluntariness in their establishment, and the presence of shared goals and interests among the citizens united in such associations (Levy, 2015).

Through the exercise of the right to association, an individual's self-realization is ensured, both individually and collectively. The right to establish an association represents a legitimate opportunity for a legal subject to act in accordance with statutory regulations. One cannot disagree with Brownlee's view that associational claims-rights

simultaneously protect our fundamental social needs (Brownlee, 2015).

An association can consist of both individuals and legal entities. The rights to establish an association and to remain in it are subjective rights that fall under the broader concept of the right to association. This includes the opportunity to act in a certain manner or abstain, the right to assert one's rules of behavior toward others, the right to seek protection of one's rights, and the opportunity to access social goods. The right to association represents the ability of citizens to engage in political actions (Tarrow, 1988), enabling their active participation in the governance of society and the state when addressing political, economic, social, and cultural issues. It encompasses several rights: the right to form associations, the right to join associations, the right to participate in the activities of associations, and the right to protect one's own rights and the legitimate interests of associations.

In everyday life, people are not limited in their choice of ways to communicate or in the circle of their communication (Sampson, 2011). From a legal perspective, however, this right is more of a natural right to communicate than a right to associate. People's interaction occurs within the sphere of interpersonal relations. The forms of solidarity necessary for ensuring social protection are of particular importance (Vandyck, 2017). At the same time, attention should be given not only to the right to association but also to the right to exit from an association without hindrance. The right to exit freely from an association is not only an indication of the voluntary nature of the association but also a

guarantee of that voluntariness. The right to association cannot be made into an obligation. A trend observed by many researchers regarding the obvious challenges citizens face in participating in democratic processes in many liberal states (Fung, 2015) cannot be overlooked by other states that position themselves as democratic and rule-of-law states. Therefore, we emphasize that this right is a fundamental one, encompassing more specific rights to establish particular types of associations, such as political parties, trade unions, creative unions, youth/women's organizations, associations for people with disabilities, pensioners, labor veterans, war veterans, and others. Associations, as institutions of civil society, play a crucial role in producing and maintaining values independent of state influence (Shiffrin, 2005). Litvinova notes that "the ability of citizens and other individuals to form associations without state restrictions is freedom of association" (Litvinova, 2006). In her view, this freedom can be defined by three components: first, the right of everyone to associate regardless of personal characteristics; second, the freedom of association should be guaranteed by the state; and third, "no one can be forced to join or remain in any association" (Litvinova, 2006). The first component means ensuring that individuals have the freedom to form and join groups or organizations for legitimate purposes (Smith, 2017). This right is fundamental as it enables people to collectively pursue common interests and goals. The European Court of Human Rights, interpreting Article 11 of the European Convention on Human Rights, has highlighted this right as essential for the proper

functioning of democracy. The second component pertains to organizational autonomy, which refers to the right of associations to organize themselves without undue external interference, including from the state. This autonomy is crucial for the effective functioning and independence of associations, allowing them to set their own rules, manage their affairs, and freely pursue their objectives. The third component ensures that freedom of association includes the freedom not to associate. The negative dimension of this right is vital in preserving individual autonomy and preventing coercion (McIntyre & Cahill, 2024).

A restriction is an exception to the right of association that is permissible (Epstein, 2008), meaning it is imposed when there are valid grounds for limiting the right of association as specified by the Constitution, and without exceeding the limits set by it. An exemption that does not meet these criteria would constitute a derogation of the right to association, and the derogation of human rights is prohibited. The concern about excessive restrictions on the right to association arises from the fact that they hinder the free exercise of this right, which is essential for involving individuals in the process of managing state affairs. Moreover, it enables the fulfillment of individual and group needs, promotes the self-organization of civil society institutions, serves as an "information channel" of communication between citizens and state bodies and officials, and functions as a mechanism for protecting human and civil rights.

The Constitution of the Republic of Kazakhstan (1995) prohibits the establishment and

activities of non-governmental associations whose goals or actions aim at the violent overthrow of the constitutional order, the violation of the integrity of the Republic, the undermining of state security, the incitement of social, racial, national, religious, class, or tribal hatred, as well as the establishment of illegal paramilitary formations. The Constitution thus prevents the "marginalization of fanaticism and other forms of harm" (Tarko & Gangotena, 2018). It also prohibits the activities of political parties from other states, as well as trade unions and religious parties, and forbids the funding of political parties and trade unions by foreign legal entities, citizens, foreign states, and international organizations.

The Constitution of Kazakhstan establishes a ban on association for certain categories of citizens, not only in trade unions but also in political parties. This restriction applies to military personnel, national security officers, law enforcement agencies, and judges. Additionally, they are prohibited from supporting any political party. This type of restriction is acceptable in international practice and does not contradict Article 22 of the International Covenant on Civil and Political Rights. The prohibition is justified by the specific nature of the work performed by these citizens and is recognized by international organizations as reasonable.

Kazakhstan's legislation permits the restriction of the right to association during a state of emergency or martial law, as its exercise may lead to increased social tension. Such a restriction is implemented as a preventive measure. The restriction of the right to association during a state

of emergency or martial law is temporary and automatically ceases when the regime is lifted.

All the aforementioned restrictions can be considered basic restrictions. They comply with international human rights standards and are necessary in a democratic society. However, in Kazakhstan, there are restrictions on the right to association that are disproportionate to the stated constitutional goals of building a democratic state. For example, under the Constitution of the Republic of Kazakhstan (Article 23, Paragraph 1), the law regulates the activities of public associations, requiring their compulsory registration. The Law of the Republic of Kazakhstan "On Public Associations" (1996) cannot contradict the Constitution and prohibits the activities of unregistered public associations. A public association must be registered with judicial authorities in order to carry out its activities. But how can this be reconciled with the principle of freedom of association? Freedom of association should allow citizens to unite according to their interests, including informal associations of citizens who do not wish to establish a legal entity, for example. The state should not interfere in the exercise of this right. While the state, in its duty to protect the rights and freedoms of citizens, can set limits on rights and freedoms, these limits should reflect the state's duty to determine the directions, forms, and procedures for securing citizens' rights. The prohibition of unregistered public associations does not comply with Article 22 of the International Covenant on Civil and Political Rights (1996). It is evident that by imposing such a restriction, the

state, on the one hand, protects its citizens from prohibited activities, but on the other hand, unreasonably legalizes these relationships (Habermas, 1987). The law establishes a territorial division of public associations into republican, regional, and local categories, with the activity of a public association being confined to the territory where it is registered (Borgelli, 2019). Furthermore, the activities of a public association are restricted to the territory of its registration. Non-profit organizations, however, are not limited to their registration territory. The law requires that at least 10 citizens be involved to establish a non-governmental association, which is a restrictive requirement. To ensure actual freedom of association, Kazakhstan's legislation could allow associations to be formed with fewer people and not require membership in the association.

State registration signifies the acquisition of civil legal capacity by an association, but its absence does not imply that the association lacks constitutional legal capacity. As we can see, the establishment of limits and restrictions on the state's obligation to protect the constitutional right to freedom of association takes various forms. One such form is the concretization of constitutional norms that allow the state to intervene, within certain limits, in the individual freedom of non-governmental associations. If non-governmental associations, on the one hand, engage in non-prohibited activities, freedom of association is expressed in the right to participate in any non-prohibited types of public activity without needing state permission. According to the Constitution of

Kazakhstan (Clause 1 of Article 23), the law regulates the activities of public associations, which includes mandatory registration. This implies that a non-state association does not have the right to choose its status or acquire legal capacity freely. As a result, the activities of an unregistered non-state association are contrary to the law and can lead to liability, which is inconsistent with international standards, particularly Article 22 of the International Covenant on Civil and Political Rights. It is essential to amend Kazakhstani law by removing the mandatory registration requirement for public associations, thereby ensuring the freedom of activity for unregistered informal public associations.

Thus, the legislation features two types of restrictions on the right to association. Some restrictions are established to protect other constitutionally significant goals, as freedom of association cannot be absolute or unlimited, especially when used for anti-social purposes in a democratic society. These restrictions are constitutionally enshrined and align with international practices. Such restrictions include: (a) limitations on the purposes of the association's activities; (b) restrictions on the categories of subjects eligible for the right to association; (c) restrictions on the spheres of association activities; and (d) restrictions during states of emergency or martial law.

All other restrictions are supplementary. Although current legislation should only specify constitutional prohibitions and not introduce new restrictions, unfortunately, such restrictions in

Kazakhstan are unreasonably expanded compared to the Constitution and international standards. Additional restrictions cannot be considered necessary; on the contrary, it is difficult to recognize them as compliant with international standards. Such restrictions in Kazakh legislation include: mandatory registration of public associations, excessive requirements regarding the number of members in a public association, and territorial restrictions.

Excessive restrictions on the right to association cannot positively influence the formation of civil society, where public associations serve as a means of expressing individual social activity. Such restrictions do not contribute to the structuring of society or the effective communication between civil society institutions and state authorities. Moreover, excessive limitations on the right to associate can undermine democratic processes, hinder the effectiveness of civil society organizations, and violate international human rights standards. It is crucial to balance the need for accountability and security with the protection of fundamental freedoms to ensure a vibrant and functioning civil society (Yeshanew, 2016). Unfortunately, Kazakh legislation, which is intended to promote the realization of the right to association, is flawed in these areas. This, in turn, complicates the implementation of this right, adversely affecting the realization of the entire set of rights and freedoms.

Particular attention should be given to the discriminatory restrictions on the right of non-citizens to associate under Kazakhstani law. This

situation cannot remain unchanged. Restrictions on the right of non-citizens to associate must be addressed. It is essential to discuss the legal regulation and protection of non-citizens' right to association, as their participation in the development of civil society and the formation of a sense of community through involvement in public organizations is of great importance. The issue of how to make the participation of non-citizens more equal under the law in relation to broader issues of community living arrangements should not be overlooked.

The Constitution of the Republic of Kazakhstan does not provide a clear understanding of whether non-citizens have the right to freedom of association. Article 23 of the Constitution states: "Citizens of the Republic of Kazakhstan have the right to freedom to form associations. The activity of public associations is regulated by law." This implies that foreigners and stateless persons legally residing in Kazakhstan, under Article 13 of the Constitution, have the right to join public associations. However, Article 23, by specifying "Citizens of the Republic of Kazakhstan," excludes this possibility for non-citizens. This ambiguity should not exist, as the constitutional recognition of the right to freedom of association is of great significance. This is reflected in the fact that this right: (a) holds the highest legal force, meaning it has the greatest binding authority compared to other legal provisions; (b) is characterized by the highest degree of stability, as the amendment or revocation of constitutional rights is possible only through constitutional amendments; (c) has a

constitutive nature, meaning that constitutional recognition determines the meaning, content, and application of all other laws that concretize the implementation of the right to association, as well as the activities of not only executive but also legislative bodies and local authorities; (d) has direct effect, meaning it applies directly to individuals from the Constitution and does not require additional legal acts for its existence.

The constitutional enshrinement of the right to association implies that constitutional norms should not contradict one another in regulating the freedom of association, and domestic legislation should align with these principles. Article 13 of the Constitution does not directly address the right of non-citizens to associate, but only does so indirectly. While Article 23 of the Constitution explicitly enshrines the right of association only for citizens, non-citizens are excluded from this right. As a result, this provision contradicts several international agreements: (a) The Universal Declaration of Human Rights, which in Article 20 affirms the right of everyone to freedom of association; (b) The International Covenant on Civil and Political Rights, which in Article 22 declares that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests"; (c) The International Covenant on Economic, Social, and Cultural Rights (1966), Article 8, which guarantees the right of everyone to form and join trade unions of their choice for the promotion and protection of their economic and social interests, subject only to the rules of the

organization concerned; (d) The International Convention on the Elimination of All Forms of Racial Discrimination, which in Article 5 guarantees the right to freedom of peaceful assembly and association, including the right to form and join trade unions; (e) The International Convention on the Elimination of All Forms of Discrimination Against Women (1979), which guarantees women the right "to participate in non-governmental organizations and associations concerned with the public and political life of the country."

Kazakhstan's Law on Public Associations grants the right to association exclusively to citizens. However, it does not prohibit public organizations, except for political parties, from allowing foreigners and stateless persons to be members or participate, as stipulated in their statutes. Therefore, the question of non-citizens' right to association is largely left to the discretion of the organizations themselves. If an organization wishes to allow non-citizens to join, it can include this provision in its statutes. If a public organization does not wish to include non-citizens, then they have no legal protection for their rights in this regard. The Kazakh law on public associations enshrines the right to association only for citizens but permits the statutes of any public organization, except for political parties, to provide for the membership or participation of foreigners and stateless persons.

It should be noted that Kazakhstani law stipulates that foreign nationals and stateless persons residing and working in the country have the right to join trade unions (Law of the Republic of

Kazakhstan "On Trade Unions," 2014). The right of foreigners to associate is generally recognized and protected in many countries, often as part of broader human rights commitments.

The Mexican Constitution explicitly recognizes the right to associate, including for foreigners, under Article 9. This right includes the ability to associate peacefully and for legitimate purposes without interference. However, the autonomy of associations can vary depending on their type, with political parties and trade unions facing more restrictions due to their public and social relevance (Gurría, 2017). In Italy, the Constitutional Court has played a key role in addressing the social rights of non-EU citizens, including their right to associate. The Court's decisions aim to balance the egalitarian spirit of the constitution with legal criteria of citizenship and long-term residence, thus reshaping the boundaries of Italian communities to be more inclusive of migrants (Pannia, 2022). In France, the right of citizens to form associations freely, without the need for government authorization or prior declaration, is a cornerstone of the 1901 Law (Article 2). Foreign nationals were granted freedom of association in 1981, and since then, associative activity has represented a significant form of civic participation and engagement for both French citizens and foreign nationals living in France (Gibb, 2008).

Unification into political parties is expressly prohibited for foreigners under the "On Political Parties" law in Kazakhstan (2002).

Attention should be drawn to the fact that several researchers consider it possible to grant foreign citizens the right to freely elect representatives to local governments. In particular, Mukhamedzhanov (2001) proposed granting long-term foreign and stateless residents the right to participate in the elections of local representative bodies. Zhanuzakova (2003) believes this proposal could be accepted if the law-abiding behavior of stateless persons is established and if they have resided in the Republic of Kazakhstan for at least three years, thus allowing the State to recognize them as potential citizens. Zhumadilova (2005) provides convincing arguments in favor of granting foreign citizens and stateless persons living in a specific administrative-territorial unit the right to participate in local government elections. In her view, "the right to participate in resolving local issues should arise not from a political and legal connection with the state, but from a person's interest in solving these issues due to their close connection with the territory and social community." We believe the authors' arguments regarding the expansion of the electorate to include foreign citizens and stateless persons are valid. However, the electoral rights of these individuals should not be fully equivalent to those of Kazakhstani citizens.

First, active suffrage may be granted to foreigners, among others, but without the right to seek elective office. Second, this right should be implemented only during elections for local self-government bodies, as local self-government is an institution of civil society. It is separate from the State by its own competence, as well as its own

material and financial base, although drawing a clear line between them is difficult. The participation of foreigners in the elections of local representative bodies would therefore be admissible only if these bodies are part of the local self-government system. Current legislation prohibits non-nationals from participating in the social and political life of a city, district, or region in Kazakhstan. The Law of the Republic of Kazakhstan "On Public Councils" (2015) prohibits foreigners from participating in such councils, as they are exclusively formed by citizens. However, the opportunity for foreigners to participate in local government at a minimal level could also be provided. Third, only foreigners residing in the relevant territory should be granted this right; furthermore, an appropriate period of residence should be legally established, possibly within 3 to 5 years.

2. Resolution of The First Discussion

If the Constitution of the Republic of Kazakhstan enshrines the absolute recognition of human rights and freedoms, meaning that rights are extended to everyone present on the territory of Kazakhstan, regardless of their citizenship, an exception is made for political rights. Article 23 of the Constitution guarantees the right to association only for citizens, and it should be amended to extend the right to freedom of association to all individuals, with the exception of political associations.

In general, it is important to address the logical sequence of limitations placed on non-citizens' right to freedom of association in Kazakhstani legislation. Since the Constitution does

not grant non-citizens the right to freedom of association, domestic legislation—except for the law on trade unions—continues to discriminate against non-citizens. According to the Kazakh law "On the Procedure for Organizing and Holding Peaceful Assemblies in the Republic of Kazakhstan," adopted on May 25, 2020, the right to organize and participate in peaceful assemblies is only recognized for citizens of Kazakhstan. This violates the principle of non-discrimination outlined in the ICCPR (Article 2, Clause 1).

Thus, Kazakhstan, which has assumed international obligations to implement the norms of international conventions on human rights and freedoms, should review and align its legislation with these standards, as international norms do not distinguish between citizens and non-citizens in the right to association. Since public association is a form of legal recognition of collective human existence, the development of free interpersonal communication among equal legal subjects (individuals) forms the volitional basis for public association as a cohesive system. This is why it is important for any democratic state to focus on the development of legal regulations that protect the right of association not only for citizens but also for non-citizens, in other words, for individuals as a whole. The right to associate has historically been linked to democratic self-government. Associations, whether formed by citizens or non-citizens, enhance the ability of individuals to participate in public discourse and democratic processes. Legal policies that allow non-citizens to form associations can protect them from marginalization and ensure

they have a platform to voice their concerns and needs (Bessant & Watts, 2021). This can lead to more stable and cohesive societies. It should not be forgotten that the accomplishment of sustainable development requires changes that could affect the interests of various groups (Bran, Radulescu, & Ioan, 2016).

Unfortunately, the current situation regarding the implementation of the right to association in Kazakhstan presents significant problems. The unlawful restriction of the freedom of association has remained unchanged for several years and is characterized by obstacles that hinder the realization of this right. An analysis of the 2019 Reports from the Commissioner for Human Rights under the President of the Republic of Kazakhstan indicates that the trend has not shifted in recent years. Public organizations continue to face both justified and unjustified refusals to hold public events, a lack of response from authorities to event requests, suppression of public events, and the groundless detention of participants. This demonstrates that the right of citizens to assemble peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches, and pickets is not based on notification but, in practice, is permission-based due to the broad discretionary powers of officials who are responsible for coordinating the place and time of such events. Meanwhile, the legislation requires organizers to notify the relevant authority in writing about the event and coordinate its place and time if the event takes place outside designated areas. Public organizations such as the Public Foundation "Ar.Rukh.Hak", the "Kazakhstan

Bureau for Human Rights and Rule of Law", and "We Are Against Torture" openly state that Article 32 of the Constitution of the Republic of Kazakhstan and the International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005, concerning the right to peaceful assembly, are essentially of a declarative nature (Kazakhstan International Bureau for Human Rights and Rule of Law, 2019). The shift from a notification-based system for public events to a permission-based one actually encourages people to hold unsanctioned public events. The largest number of protests and public outcries against the results of the early presidential election in Kazakhstan occurred on June 9, 2019. According to official statements from the authorities, around 4,000 people were detained during this period (Aitzhanova, 2019). Unjustified refusals to citizens to gather peacefully, without arms, and hold meetings, rallies, demonstrations, marches, and picketing violate not only the right to this freedom but also the right to freedom of speech and freedom of association. Therefore, it is not surprising that citizens respond by changing public sentiment, often showing negative attitudes toward the authorities and a loss of faith in justice and legitimacy. For example, Kazakh activist A. Ilyashev was denied permission to hold a rally 35 times (Alieva, 2021). Moreover, in Kazakhstan, preventive detention of activists before rallies is practiced through forced detention (Kazakhstan International Bureau for Human Rights and Rule of Law, 2020). In this regard, it is no coincidence that in July 2019, the international human rights organization Human Rights Watch appealed to the President of

Kazakhstan (2019) to address the existing restrictions on the freedom of peaceful assembly and freedom of speech, which undoubtedly limit the exercise of the right to freedom of association. Amnesty International also found violations of freedom of association in 2019, 2022, and 2023.

The Kazakhstan International Bureau for Human Rights and Rule of Law (2020) highlights that Kazakhstani activists from the socio-political associations "Oyan, Kazakhstan," "Respublica," and "Kakharman," whose goals and objectives differ from the rhetoric of the authorities, are subjected to political persecution by law enforcement agencies. This, of course, infringes upon their right to association. The political movement "Democratic Choice of Kazakhstan" was judicially recognized as extremist in Kazakhstan on March 13, 2018. As a result, criminal cases were initiated against its activists, and 21 individuals were convicted. Any statements, forwarded posts, or comments in support of the ideas of this extremist organization are considered support for extremist activity and carry criminal liability under Article 405 of the Criminal Code of Kazakhstan, which prohibits "organization and participation in the activities of a public or religious association or other organization after a court decision to ban their activities or liquidation in connection with their implementation of extremism or terrorism." However, the European Parliament has recognized Democratic Choice of Kazakhstan as a peaceful organization. For this reason, the European Parliament has recommended that the Kazakhstani authorities cease persecuting members of this

organization (European Parliament, Human Rights Situation in Kazakhstan, 2019). It must be noted that international organizations have repeatedly called for improvements in the human rights situation in Kazakhstan and the removal of violations in its domestic legislation that do not align with international standards and the commitments Kazakhstan has undertaken through ratified international treaties. In this regard, one cannot help but agree that

"Democratic regimes still may offer challenging conditions for civil society, while some authoritarian regimes may facilitate NGO capacity as part of a broader co-optation strategy" (Henry et al., 2019).

NGOs in Kazakhstan are experiencing increased control and oversight by the state in order to suppress their potential for protest (Gusarova, 2016). This situation is similar to that in Russia. According to international relations and security expert Gusarova (2016), state support for NGOs is focused more on controlling or limiting their activities than on meaningfully developing the third sector and building an equal dialogue with it. By receiving state funding, NGOs effectively lose their independence. Additionally, the procedure for receiving grants is not transparent, which poses a threat of marginalizing undesirable NGOs from the social sphere. Furthermore, important areas of NGO activity, such as human rights, politics, and legislation, are not included in the state's list of eligible grant categories. In Kazakhstan, there are restrictions on the ability of international organizations, foreign governments, and international NGOs to provide grants directly to

Kazakhstani NGOs; this can only be done through the Center for Civic Initiatives, a non-profit organization acting as an intermediary. Thus, Kazakhstan's legislation includes provisions that limit the freedom of association (Amnesty International, Kazakhstan, 2019) and contribute to the emergence of GONGOs (Government-organized Non-Governmental Organizations) (NGO representatives criticize amendments to the law, 2016). Changes in Kazakhstan's legislation are aimed at increasing the state's influence over the activities of NGOs, administering their functions, and turning them into entities that are highly managed and controlled by the state, while monopolizing NGO funding. Moreover, the legislative restrictions on the spheres of NGO activities contradict Article 5(2) of the Constitution of the Republic of Kazakhstan.

It should be acknowledged that although Kazakhstan's legislation guarantees its citizens the right to freedom of association at the constitutional level, it also prohibits the creation and operation of unregistered public associations and imposes administrative liability for leadership, participation, and financing of such activities. Spontaneous protests, however peaceful, are deemed "illegal" in Kazakhstan. Participation in an unauthorized peaceful assembly is punishable by a fine or up to 10 days of administrative arrest (up to 25 days for repeat offenses within a year). Thus, exercising the right to freedom of peaceful assembly may result in short-term imprisonment. Several provisions of the legislation impose additional reporting requirements on NGOs, which are not imposed on commercial

organizations. For example, NGOs are required to submit extensive information to the NGO database administered by the Ministry of Information and Public Development of the Republic of Kazakhstan. Public associations are also restricted in their activities by their territorial status, which is determined upon registration as legal entities. For instance, a local public association may only operate within the region where it is established. Such requirements do not apply to commercial organizations or other forms of NGOs. Moreover, certain provisions of the Tax Code mandate that NGOs notify state authorities of any funds they receive from foreign sources and submit reports on the receipt and expenditure of these funds (Sarpekov & Kulzhabaeva, 2019). Significant administrative fines are imposed for failure to comply with reporting requirements. These additional reporting obligations are burdensome for NGOs and are contrary to international standards on freedom of association. The Criminal Code of Kazakhstan defines the concept of a "leader of a public association," which is used as an aggravating factor in a number of crimes. A "leader" may refer not only to the immediate leader but also to any member or participant of a public association who, through their influence and authority, can exert controlling influence over the activities of the association. The imposition of special penalties for the "leaders" of public associations contradicts international law norms that guarantee the right to freedom of association. It is becoming evident that Kazakhstan's legislation needs to be aligned with international human rights standards and the

Guidelines on Freedom of Association to foster the development of a genuine civil society that ensures everyone's right to associate.

D. CONCLUSION

Analysis of Kazakh legislation reveals that the right to freedom of association in Kazakhstan should be supported by greater state freedom. The laws of the Republic of Kazakhstan contain restrictions that do not meet the requirements for such limitations from the perspective of international law theory and practice. The effectiveness of guarantees for human and civil rights can be assessed not only by the inadmissibility of their violation or infringement but also by the limitations that undermine the essence of the right. In fulfilling its responsibility to protect human rights, the state must create and employ various mechanisms and procedures for such protection. At the same time, the state has the discretion to decide whether or not to develop specific bodies to ensure the protection of rights and freedoms. If Kazakhstan is moving toward deeper democratic transformations, the right to association for non-citizens legally residing in the country should not raise concerns. A starting point for aligning Kazakhstan's legislation on the right to association with international law should be to amend the Constitution to enshrine the right to associate for all individuals, not just citizens. The right to associate, including freedom of assembly, will only become a true right once artificially imposed restrictions are removed.

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