

WHY ISN'T THE OMBUDSMAN POPULAR?

Comparative analysis of the work of Ombudsman E. Azimova and the currently acting Ombudsman A. Lastayev in the restoration of violated human and civil rights and freedoms and observance of the rule of law in the Republic of Kazakhstan.

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1. Introduction

On September 19, 2002, the institution of the Human Rights Commissioner was established in Kazakhstan. This institute aims at protecting human rights from encroachments from state officials, ensuring the development of legislation, elaborating and introducing educational programs. The entire activity of Ombudsman is fulfilled in conformity with the international commitments of Kazakhstan under the ratified Conventions of the UN and with reference to the practice of the similar institutions. Besides that, Ombudsman closely cooperates with NGOs, mass media and international organizations¹. Principles of Ombudsman's activities are publicity, objectivity and impartiality.

2. Aims, objectives, principles, legal basis of the activity of the Ombudsman of the RK

In accordance with the Law of the Republic of Kazakhstan "On the Human Rights Commissioner of the Republic of Kazakhstan" (hereinafter referred to as the Law), the Ombudsman shall be independent in the exercise of his powers and shall not be accountable to any authorities or officials, and his rights shall not be subject to any restrictions. The Human Rights Commissioner shall have the right to freely visit institutions, TDFs, pre-trial detention facilities and other institutions on the territory of the Republic of Kazakhstan. The Ombudsman has the right to submit proposals to the President of the Republic of Kazakhstan, the Government, the Parliament, to appeal to the Supreme Court and the Constitutional Court, etc.

¹ <https://www.gov.kz/memleket/entities/ombudsman/about?lang=ru>

The Ombudsman examines complaints about violations of human and civil rights and freedoms. He shall consider any violation, regardless of the nature of the violated right. The language of the complaint, the manner of its submission and other formal requirements shall not serve as a basis for refusing to consider the complaint or application. Also, the ombudsman's annual report should detail how the ombudsman has coped with calls received and assisted citizens by posting information on the website. A hotline should be available at the ombudsman's office. One of the strongest capabilities of the Ombudsman is the development and distribution of special reports on current socially significant issues of observance of human and civil rights and freedoms. The RK Ombudsman, as the main defender of human rights in the country, should play a key role at the national level in protecting the rights and freedoms of citizens.

But in real practice the situation is different. We can see that the Ombudsman is more of an official than a human rights defender. He is not trusted by the citizens and the whole work of the National Center for Human Rights (NCHR) headed by the Ombudsman raises many questions: whether they understand their mission as human rights defenders, what they do and whether they really defend the observance of human rights and freedoms?

In this analysis, we sought to answer these questions by comparing the activities of 2 recent ombudsmen: Elvira Azimova and Artur Lastayev. Our recommendations are presented at the end of the analysis. In this analysis we will not refer to mass bureaucratic formal replies of the ombudsman (they seem to be systemic), but we will give selected and the most vivid examples.

3. Real situation of realization of legal possibilities by the Ombudsman of the RK (on the example of E. Azimova and A. Lastayev)

The performance of the functions and duties of the Ombudsman is intended to improve the legal protection of citizens and the development of civil society in Kazakhstan.

At the national level, Ombudsman E. Azimova (2019-2022) has made some contribution to the protection of human rights. She has implemented the following:

- E. Azimov has established cooperation with a number of NGOs to identify and address human rights issues;
- She drafted the constitutional law “On the Human Rights Commissioner of the Republic of Kazakhstan”, which she helped to adopt on November 5, 2022;

- Proposed amendments to legislation aimed at improving the protection of human rights (the Constitution of the Republic of Kazakhstan, the Law "On Amnesty", the draft Social Code of the Republic of Kazakhstan, etc.).
- During the events of January 2022, E. Azimova participated and had her own position on the restoration of the rights of detainees and persons under investigation and arrest. She addressed to the Chairman of the Supreme Court of the Republic of Kazakhstan the request to consider the possibility of participation of representatives of human rights organizations in court proceedings on criminal cases concerning the January events.
- As a result of this work, in November 2022, the rights of **24** victims were restored during the court hearing in the Taldykorgan City Court of cases of torture during the January events. Human rights defenders, observers and media representatives were granted access to the trial of police officers in the Taldykorgan City Court.

At the national level, the Ombudsman A. Lastayev (2022 - present) has carried out the following activities:

- He reported that from 2025, a pilot is expected to be launched to introduce jurors to hear applications from prisoners for parole and commutation of sentences, as well as to hear criminal cases of torture and other ill-treatment in places of detention;
- A. Lastayev proposed to the Government of the Republic of Kazakhstan to make it possible for convicted persons to receive higher education;
- Based on the recommendation of the Ombudsman's representatives to the Prosecutor's Office authorities, the court issued a probation order for the disabled person. From the answer of Mr. Lastayev "For example, a convict who has a disability and is positively characterized at the place of serving his sentence has informed about the court's refusal to satisfy his application for parole. The recommendation of the ombudsman's representative to the prosecutor's office was supported, and later the court made a decision to grant the request for parole";
- Ombudsman A. Lastayev has not expressed his position regarding the restoration of the rights of the victims of the January 2022 events. He has not made any public statements;
- In response to proposals from human rights defenders and lawyers to analyze and make suggestions for improving the legislation, the Ombudsman writes formal replies and does not go into the substance of the proposals;
- The law provides for the possibility of conducting independent investigations into complaints by citizens and violations of human rights in order to facilitate the restoration of violated rights, including through appeals to the judiciary and other bodies. However, A. Lastayev does not do this;

- The independence of the Human Rights Commissioner is guaranteed by law. He also has the right to file a lawsuit in court on behalf of an unspecified number of persons, as well as the right to appeal to the Constitutional Court. This is something that the Ombudsman does not do.

Example

Thus, in response to the appeal of the lawyer Adam M.A. and the activist Bokaev S.O. to A. Lastayev with the request to meet with them personally and provide assistance in the appeal to the Constitutional Court on the issue of incompatibility of certain provisions of the Election Code with the Constitution of the Republic of Kazakhstan, the following reply was received: “You have the right to appeal to the authorized body and we assume that it would be expedient to consider the stated issues taking into account the results of the resolution of the appeal by the Constitutional Court”. At the same time, the appeal contained a request of Mr. Bokaev that the Ombudsman should do it himself!

Unfortunately, the letters of the Ombudsman in response to citizens' complaints are characterized by the fact that they do not consider the complaints on their merits, but mainly quote laws. Thus, they resemble the replies of the prosecutor's office with explanations of the law.

Example

Complaint from 06.02.2023 from Suleimenov Zhaslan on the fact that Kazpost JSC violates his rights to receive social allowance for the disabled by means of a statement on paper or through EDS. Ombudsman Lastayev did not see the violation of the rights of the disabled person of group 1 and sent him a formal long letter with a refusal of his representative Galiev M.T. Later, Suleimenov Zh. himself with the help of human rights defenders filed a lawsuit in court and his rights were restored.

In his activity, the Human Rights Commissioner in the Republic of Kazakhstan (Article 7 of the Law): coordinates the activities of the participants of the National Preventive Mechanism (NPM), visits without hindrance organizations and institutions that provide temporary isolation from society or those intended for the execution of punishment and are subject to preventive visits..

Unfortunately, our repeated appeals to Ombudsman Lastayev to personally visit the political prisoners Marat Zhylyanbaev, Duman Muhammedkarim, Aigerim Tleuzhanova and Timur Danebaev in their places of detention have been ignored. It seems that our ombudsman is very “busy”.

Examples:

- The world-famous marathon runner Marat Zhylyanbaev went on hunger strike several times in protest against the closed court, his disagreement with

the judicial acts and inappropriate conditions of detention in Stepnogorsk Institution No. 4.;

- Journalist Duman Muhammedkarim has repeatedly gone on hunger strike in institution No.71 of Taldykorgan due to the decision to hold the trial in camera, as well as due to deteriorating of physical health;
- Journalist Aigerim Tleuzhanova complained about the conditions of detention in facility No. 10 in the settlement of Zhaugashty and about the fact that there is no warm toilet in the winter;
- Activist Timur Danebaev in Atbasar facility No. 1 complained about the use of unauthorized methods, torture and ill-treatment by the staff of the facility.

3.1 Handling of Citizen Complaints: Legal Possibility and Practice

The Ombudsman deals with citizens' complaints and considers issues of violation of human and civil rights and freedoms in accordance with the law within 15 working days. We can note that the response to our letters takes longer and often there is no response for 1-1.5 months and this situation is chronically stable. There was a time when NCHR under the leadership of E. Azimova completely stopped responding to our letters and we were forced to file a pre-trial complaint with them. It was only after this lawsuit that they began to respond to our letters within the legally required time frame.

Unfortunately, the NCHR does not verify and record the facts of the human rights violations reported in the complaint and, accordingly, does not take any efforts to restore the violated rights. It forwards the complaints to the state authorities without asking them to take measures to restore the violated human rights and freedoms. That is why we receive only formal replies from the state authorities. It is worth noting that human rights defenders themselves apply to these state bodies and do not need the NCHR to forward complaints to state bodies. Here we are talking about the fact that the ombudsman does not understand his possibilities: if the ombudsman, after examining the facts, is convinced of a violation of human rights, the law provides him with the possibility to hold the persons who violated human rights and freedoms to disciplinary or administrative responsibility. However, both ombudsmen practiced and still practice, as a rule, only forwarding letters to the state authorities.

The ombudsman can also file a complaint with the court. In practice, however, neither E. Azimova nor A. Lastayev ever did so.

The Ombudsman has a legal possibility to send his comments and proposals on ensuring human rights and freedoms to state bodies. However, Ms. E. Azimova did not use this possibility when police officers started to practice “kettling” against participants of peaceful rallies.

Example

- Law enforcement officers kept supporters of the unregistered Democratic Party in a tight cordon for 10.5 hours as they gathered for a peaceful rally in Almaty (2/28/2021). Elvira Azimova called the police's confinement of activists in a tight cordon (kettling) a “security measure” and was criticized by human rights defenders for doing so.
- It would be a strong step of the ombudsman A. Lastayev to express a public position on the dispersal of peacefully protesting oil workers from Zhanaozen in the city of Astana (11.04.2023). They were gathering in front of the Ministry of Energy and KMG, when suddenly people in black without identifying signs detained more than 100 former employees of “BerAli Mangistau Company” LLP. But this was not done by A. Lastayev.

Since we are making a comparative analysis, let us look at the statistics of the work of the ombudsmen E. Azimova and A. Lastayev.

Table 1

	Number of appeals per year		
	2022	2023	5 months 2024
E. Azimova	3 948	-	-
A. Lastayev	-	5 773	2 123
Public Foundation “Ar.Rukh.Khak”	24	15	15

The data in the figures are taken from the Annual Report on the Activities of the Commissioner for Human Rights in the Republic of Kazakhstan for 2022 and 2023.

In terms of transparency of work, the office of E. Azimova provided an answer attached to the specifically received answer directly to the applicant. In 2022, the number of appeals from the Public Foundation “Ar.Ruh.Hak” was 24. The main appeals to E. Azimova were connected with the January events.

2 of them related to detention in the penal system, where there were human rights violations regarding access to medical services.

In the sphere of harsh treatment of convicted persons, suspects - 1 appeal. The response to this complaint on violations of human rights was the redirection of the complaint to the Departments of the National Security Committee of the RK of the cities indicated in the complaint. Further consideration of appeals was simply stopped. The Ombudsman Azimova E. did not react to this in any way.

According to the 2022 report by E. Azimova, the penitentiary medical service has become a part of the civil medical system. An electronic clinical protocol was created for civilian doctors to record primary evidence of violence against a person. We filed 9 complaints regarding the provision of medical care in pre-trial detention facilities and penal institutions. Concrete solutions have been received, namely: the Ombudsman sends personal appeals to the Ministry of Internal Affairs, the Ministry of Health of the Republic of Kazakhstan, the Prosecutor's Office and the regional police departments, asking them to provide her with answers about the actions taken by these authorities.

Example

- As a result of one of the appeals the convict was transferred and hospitalized. According to the answer of the public defender of rights Azimova E. on October 04, 2022, the convict Ismailov N. Zh. was hospitalized in the inpatient department of the Zhambyl Regional Consultative and Diagnostic Medical Center “Sadykhan” (Polyclinic No.3).
- E. Azimova responded to the appeals for protection of the rights of mothers of many children regarding the fact of changes in the detention of K. Khaidarbekova (January events) as follows: “The Human Rights Defender in the RK has no mandate to assist in the administration of justice by the courts and is not allowed to intervene in the procedural order of appeals against judicial acts”. The answer was based on the action of the lawyer. He filed a private complaint against the decision of the Investigative Court to authorize his detention. However, later the charge against K. Khaidarbekova was withdrawn and the case was dismissed.
- E. Azimova gave the following answer to the appeal for assistance in solving the problem of proper medical examination and hospitalization of L. Dosmambetova, a participant of the January events: “At the time of L. Dosmambetova's detention in the institution, her general state of health was satisfactory, she did not need in-patient treatment (hospitalization), she was provided with the necessary observation by medical personnel”.

Therefore, the figures provided by the Ombudswoman E. Azimova more or less correspond to the reality, as the mentioned reported results are actually based on the concrete fates of people, as well as on the correct factual relationship of the Ombudswoman with non-governmental human rights organizations.

We can confirm that the Commissioner for Human Rights E. Azimova has sent her replies to our appeals, attaching the replies of the authorized bodies, where she has made her inquiries on the basis of our appeals.

On the basis of the reports of Ms. E. Azimova for the year 2022 it can be concluded that the public defender of rights visited 133 closed institutions of the penitentiary system.

Among the most socially significant meetings we can mention the following:

- The facts about the people who were shot during the January tragedy. For example, together with S. Imasheva, a deputy of the Parliament, meetings (25 meetings) were organized with mothers, relatives of the victims and their lawyers. As a result of these meetings, the Prosecutor General's Office took control over the course of criminal cases on the facts of abuse of power by servicemen, which caused grave consequences (there was no response from E. Azimova, but we received responses from the Prosecutor General's Office on each case).

Example

Lawyer G. Nurpeisova handled 4 criminal cases of citizens who were arrested and investigated on suspicion of participation in mass riots in January 2022. After the lawyer's meeting at the Prosecutor's Office, these cases were taken under control and the evidence was double-checked. As a result, the criminal case against all 4 suspects was dropped for lack of corpus delicti.

For 2023 A.Lastayev (according to the annual report) received 5773 appeals, of which 15 appeals were sent by the PF “Ar.Rukh.Khak”. In 2024 till now A.Lastayev has received 15 appeals. From them on violations of access to medical services - 6.

Ombudsman A. Lastayev entrusted our appeals to his subordinates. He instructed them to have the 4 political prisoners mentioned in the appeals visited by representatives of the NPM. A.Lastayev refused to give answers to the other appeals, referring to the fact that the PF “Ar.Rukh.Khak” did not have a power of attorney to represent the interests of the persons mentioned in the appeals or the absence of a request from the person currently in prison.

The assessment of the work of the institution of the ombudsman in dealing with citizens' complaints is extremely negative, which is caused by the fact that the institution of the ombudsman is closed to representatives of the civil society.

Based on the reports of NPM participants on the results of preventive visits made by the Human Rights Commissioner in the Republic of Kazakhstan, the Ombudsman has the right to address the authorized state agencies or officials with a motion to open disciplinary or administrative proceedings or criminal proceedings against an official who violated the rights and freedoms of a human

being and citizen of the Republic of Kazakhstan. Ombudsman A. Lastayev does not do this.

In this way, Ombudsman A. Lastayev does not work well with our letters, in which we inform him about violations of human rights and observance of the rule of law, and in response to our letters he advises us to “read his report carefully”. According to the report of the Human Rights Ombudsman for the year 2023, the following percentages can be derived. Out of 5773 complaints, 23% of complaints concerning ill-treatment were satisfied. According to our estimates, this corresponds to 1,328 criminal cases initiated. However, we question this number of criminal cases because A. Lastayev does not mention specific cases and does not disclose which complaints, by whom, and where pre-trial investigations are being conducted.

Ombudsman A. Lastayev states in the report that 902 complaints were satisfied, 4057 explanations were given and about 814 complaints were redirected. However, in the presented figures there are no concrete facts with specific persons. Therefore, we also question these figures and below we present concrete examples of real people who had direct contact with the ombudsman.

Examples

- In response to our appeal of May 17, 2024 with the request to inform us how many and to which citizens the violated political rights and freedoms have been restored: the right to freedom of speech, the right to expression, the right to peaceful assembly, the right to a fair trial, the right to vote and to be elected, we received a reply from A. Lastayev in which he points out that "in 2023 and the first quarter of 2024 there were 8 complaints of violation of the right to peaceful assembly, 4 complaints of violation of the right to freedom of speech, 2 complaints of violation of the right to freedom of expression, 2 complaints of violation of the right to vote and be elected.
- In addition, Ombudsman A. Lastayev informs that within the framework of consideration of a complaint about violation of rights by employees of the local executive body, the Secretary of the Department of Internal Policy was given disciplinary responsibility in the form of “serious reprimand” for unethical behavior (the city and full name are not specified).
- A. Lastayev in his report documents described his international contacts with colleagues from other states, as well as round tables. However, he did not present any conclusions and recommendations, which he obtained at the end of these events. Therefore, we have practically no grounds to consider the work of Ombudsman A. Lastayev as productive.

In response to the human rights defenders' request to provide information about the specific citizens whose violated political rights and freedoms have been restored, as well as what kind of assistance has been provided to them, Ombudsman A. Lastayev, citing an article of the Constitutional Law “On the Human Rights Commissioner in the Republic of Kazakhstan”, informs that he is obliged not to disclose information about the private life of the applicants and other persons, which became known in the course of considering the complaint, without their written consent.

During the period of work of Ombudsman A. Lastayev, it is possible to refer to the fact of his inaction in the case of violation of the right to a public trial against the world-famous marathon runner Marat Zhylanbaev. During this trial Marat Zhylanbaev was found guilty, on the basis of unfounded data, of participation in “DCK” (an organization banned by the Yesil court of Astana) and of financing extremist activities. Despite the procedural right to a fair trial with open consideration of the case, the court unreasonably deprived M. Zhylanbaev of the right to defense by all available legal means, namely the principle of presumption of innocence. The trial was conducted in an accusatory manner, violating the principle of publicity and openness of court proceedings. The court sentenced M. Zhylanbaev to 7 years' imprisonment. The ombudsman A. Lastayev did not respond to the appeals and complaints sent to his address about the violation of human rights in the criminal case, which were expressed in the following ways 1) the closed nature of the trial, 2) the violation of the principle of the presumption of innocence. At the same time, M. Zhylanbaev was the leader of the initiative group for the registration of the political party “Alga, Kazakhstan!”.

The criminal cases of political prisoners - journalist Makhambet Abzhan and the leader of the unregistered party “El Tiregi”, former member of the Parliament of the Republic of Kazakhstan Nurzhan Altayev - were also held in camera. In response to our complaint about the violation of the journalist M. Abzhan's right to a fair and public trial, Ombudsman A. Lastayev, citing the Constitution of the Republic of Kazakhstan, replied that “any interference in the activities of the court in administering justice is inadmissible”. The trials of journalist Duman Muhammedkarim and activist Asylbek Zhamuratov in the city of Konaev were also held in camera.

Ombudsman A.Lastayev openly and demonstratively takes the position of the authorities, turning a blind eye to the most serious violations of human rights. A.Lastayev creates an image of a person who can draw tables and graphs of his work in a beautiful way, but at the same time he has no actual results on protection and restoration of human rights.

3.2 Monitoring of the observance of human rights and the statements of the Ombudsman on human rights violations

Monitoring the observance of human rights is one of the core functions of the Ombudsman of the Republic of Kazakhstan. Ombudsmen play an important role in ensuring respect for human rights, detecting and highlighting violations.

Allegations of human rights violations may include:

- Description of specific cases of human rights violations.
- Statistics and analysis of complaints received.
- Recommendations for improving the situation.
- Calls to government authorities for action

Ombudsmen may also make public statements to draw national attention to significant problems and to encourage changes in law or practice. This may be done through press conferences, publications in the mass media, or official reports.

Our appeals to the ombudswoman E. Azimova to state her point of view:

Examples

- E. Azimova appealed to the Ombudsman of the Kyrgyz Republic (Akyikatchy) regarding political activists Askhat Zheksebaev and Diana Baimagambetova, who were being held in the Bishkek Pretrial Detention Center and were expected to be extradited to Kazakhstan. Also Ombudsman submitted a similar appeal to the Director of the National Center for the Prevention of Torture of the Kyrgyz Republic, requesting that the conditions of A. Zheksebaev's and D. Baimagambetova's detention in Bishkek Pretrial Detention Center be reviewed, and that they be provided with the services of a defense lawyer. The activists were released and left for a European country.
- Statement on political activist Asiya Tulesova. The trial was held in public. A.Tulesova was sentenced to “restriction of freedom” and released from the remand center of Almaty 12.08.2020.

Our appeals to the ombudsman A. Lastayev to state his point of view:

Examples

- A. Lastayev ignored our appeal on the need to make a statement on the observance of the right to an open trial of the journalist Duman Muhammedkarim.
- A. Lastayev ignores our appeal to participate in the monitoring of trials. Referring to the large number of cases being considered by the courts, A.

Lastayev replies as follows: “Theoretically, my participation and the participation of my representatives in court hearings become impossible”.

- Appeal with a request to send an appeal to the Supreme Court of the Republic of Kazakhstan to restore the rights of the relatives of the victims to receive compensation (There is no response yet).
- Appeal with a request regarding the January events: to initiate changes in the legislation of the Republic of Kazakhstan in the field of observance of the rights of victims of criminal abuse of power.
- Appeal asking the NCHR to express its position regarding the persecution by the investigator and the pressure exerted on the lawyer M. Doskaraev defending the political prisoners M. Zhylanbaev and A. Sembai. In its response, the NCHR cites Article 201 of the Criminal Procedure Code and replies: “...a lawyer, as well as other participants in criminal proceedings, has the obligation to comply with the requirements of the CPC. The lawyer is obliged to observe the Constitution of the Republic of Kazakhstan, the legislation of the Republic of Kazakhstan, Article 33 of the Law ‘ On Advocacy and Legal Aid’. As for your allegations that the investigator put pressure on lawyer M. Doskaraev, we inform you that a copy of your complaint has been sent to the General Prosecutor's Office for consideration on the merits. You will be informed about the results of the examination by the Prosecutor General's Office” (there was no response from the Prosecutor General's Office).

According to statistics, the population of the RK is about 20 million people.

Political parties represented in the Parliament - 7. Opposition parties that were recognized by the court as “extremist” - 3 (“Alga!”, “DCK”, “Koshe partiyasy”).

We consider the decision of the court to recognize the movements “DCK” and “Koshe Partiyasy” in 2018-2020 as extremist, because the courts were held in closed mode and the court did not reveal an open intention to overthrow the power. The initiators of the political movement “Koshe Partiyasy” were not admitted to the appellate court, where they appealed against the decision of the Yesil district court. However, a year after the entry into force of the legal acts explicitly stating that the appellants were not involved in the political movement “Koshe Partiyasy”, the convictions were handed down. The courts found that the appellants were the organizers of the movement. Moreover, the direct participation or actions of an extremist nature of the persons convicted under the aforementioned articles were not proven by the verdicts.

Example

- In response to the appeal of December 13, 2021 to E. Azimova with a request to publish the decisions of the Yesil District Court to ban "DCK" and “Koshe Partiyasy”, the Commissioner for Human Rights submitted a request to the Chairman of the Supreme Court to review the appeal and

provide assistance in resolving this issue. The Supreme Court replied that access to the requested court decisions is limited, as it is not allowed to publish on the courts' Internet resources and to make available to the public judicial acts and records of court hearings in cases where organizations are recognized as extremist. In addition, a copy of the court decisions cannot be provided to Sabitov A., as Sabitov A. is not a party to civil cases.

Obviously, when we can see and compare the work of ombudsmen, we have a question for ombudsman A. Lastayev. Why he:

- does not make a statement about the need to hold the open trial of the journalist Duman Mohammedkarim, and thus does not contribute to the observance and restoration of Duman's right to an open trial?
- does not make an appeal to the Supreme Court of the Russian Federation to restore the rights of the relatives of the people who were killed during the tragic events of January 2022, in order to receive compensation for the moral damage

All of the above raises a lot of questions and that is why the society and the human rights activists do not trust the work of the ombudsman A. Lastayev and his reports in general.

3.3 Participation in the drafting of legislation

The participation of the Ombudsman in legislative activities is an important part of his work, since it contributes to the enhancement of the rights and freedoms of citizens. The Ombudsman may participate in the development of legislative initiatives that relate to human rights and freedoms, as well as make proposals to improve existing legislation.

The main aspects of the ombudsman's participation in legislative activities may include: analysis and evaluation of existing legislation in terms of its compliance with international human rights standards, drafting proposals and participating in discussions on amendments and additions to laws aimed at protecting the rights and freedoms of citizens, cooperation with government bodies, NGOs and the expert community, and monitoring the implementation of adopted laws and their impact on the human rights situation.

Therefore, the Ombudsman is not only a defender of citizens' rights, but also an active participant in the legislative process, contributing to the creation of a fairer and more effective legal framework.

Analyzing the work of the ombudsmen E. Azimova and A. Lastayev, we observe a lack of activities aimed at eliminating conflicts of laws and proposing amendments

to legislation in order to improve the protection of human rights. On several occasions, human rights defenders have raised the issue of so-called additional punishment in the form of restrictions on social and public activities, which is often part of the sentences handed down to political activists. In particular, we raised the issue of the legal conflict regarding the victims of the January events and their filing of civil lawsuits for compensation of moral damages by the state. Our claims were denied on the grounds that in the case of victims of law enforcement actions who were seriously injured or died as a result of those actions, the harm should be compensated by the perpetrator of the harm. Due to the absence of perpetrators, the court dismissed our claims. The provision of the Constitution of the RK remained declarative, and the civilians who were shot turned out to be unprotected.

The General Prosecutor's Office of the Republic of Kazakhstan officially stated that 238 people were killed. According to the results of the documentation of the January events, human rights defenders have been asking A.Lastayev since 2023 to initiate the law “On rehabilitation of peaceful participants of the January events of 2022”, but A.Lastayev ignores this request and does not even discuss it.

3.4 Interaction of the Ombudsman with NGOs

Interaction of the Ombudsman of the Republic of Kazakhstan with NGOs plays an important role in protection of rights and restoration of violated rights of citizens of the Republic of Croatia.

The Ombudsman of the RK has a number of legal possibilities in interaction with NGOs aimed at protecting the rights and freedoms of citizens.

The Ombudsman may request consultations with NGOs on the protection of human rights use public speeches to draw attention to the problems raised by NGOs and discuss their solution, etc.

Our organization has repeatedly reported to the Ombudsman about violations of the right of citizens and convicts, including political prisoners. These were violations of the right to protection of health, open trial, conditions of detention in institutions and ensuring proper nourishment norms, facts of human rights violations during detention with the use of physical force by law enforcement officers, holding in pre-trial detention centers and special detention facilities of persons detained and charged under administrative and criminal articles. The Ombudsman responded to this by simply redirecting our appeals.

Examples

- In response to our appeal to Ombudswoman E. Azimova to intervene in the violation of the rights of lawyer G. Nurpeisov and human rights lawyer Sh. Bekkulova (search of their house, interrogation of the lawyer, search of her phone), the main human rights defender of the country did not react, but engaged in bureaucratic red tape and redirected our appeal to the Shymkent Prosecutor's Office.
- On January 12, 2022, we asked Ombudsman E. Azimova to urgently visit Raigul Sadyrbaeva in Semey in order to provide her with urgent medical assistance. We asked the ombudsman to take special control over the conduct of investigative actions and the observance of Sadyrbaeva's right to life. We were informed that the NCHR had forwarded the requests to the Prosecutor's Office and the Department of Internal Affairs of the East Kazakhstan region. According to their answers, R. Sadyrbaeva did not seek medical care; there were no complaints and appeals about the regime of detention and refusal of food. However, on January 27, 2022, an employee of the regional prosecutor's office personally received R. Sadyrbaeva. Sadyrbaeva was taken to the Ust-Kamenogorsk City Hospital No. 1 and underwent a medical examination. According to R. Sadyrbaeva's oral report, Sadyrbaeva's own complaints were registered in the Crime Record Book ("CRB") of the Semey City Prosecutor's Office and the materials were forwarded to the Internal Security Directorate of the East Kazakhstan Region Police Department.
- In response to our inquiry about the violation of the right to health care of the political prisoner E. Amirov (who was detained during the investigation in the Detention Center of the NSC Department in Shymkent and tried to commit suicide), as well as the request to organize his urgent hospitalization in a civil hospital, we received a reply signed by the Head of the NCHR Z. Utebaeva. We received a reply signed by the head of the NCHR Z. Utebaeva that "it follows from the letter of the department of the NSC in Shymkent that since 25.12.2021 the criminal case against Amirov E.A. is under consideration in the Al-Farabi district court of the city of Shymkent. In this regard, your appeal has been sent to the above court for consideration. Moreover, the Commissioner has no mandate to provide assistance in the administration of justice by the courts".
- On 03.03.2023 by the decision of the Court №2 of Petropavlovsk city on the civil case on the complaint of Nistoliy M.A. (Head of NPM of the South-Kazakhstan region) against the participants of NPM Danchev A.K., Izmailov S.A., Agapov D.S, Nikolaenko N.S. "on the recognition of the information published on the Internet as false, on the necessity to oblige them to remove the false information, to oblige them to publish refutations and to recover from them compensation for moral damage", the complaint was dismissed. On 11.11.2022, when the court accepted the claim of Mrs.

Nistoliy, the participants of the NPM applied for voluntary dismissal. Ms. Nistoliy went through the appeal and cassation courts, which rejected her claim. In spite of appeals to the public defender of rights with a request to deal with this situation, the public defender of rights did not react either at the beginning of the court proceedings or after their conclusion.

- A. Lastayev redirected to the General Prosecutor's Office of the Republic of Kazakhstan a complaint about unlawful methods of inquiry against a citizen of Kyrgyzstan Erkinbaev F., sent to the Ombudsman. The General Prosecutor's Office, in turn, sent the complaint to the subordinate body in the form of instructions, without accompanying them with any specific directives. No response from the NCHR itself was ever provided.

Ombudsman A. Lastayev ignored numerous requests to personally visit Mr. Zhylanbaev on an urgent basis in connection with his hunger strike and deteriorating health in protest against the closed court (“Remand Prison No. 12 of the Department of Criminal Executive System of Astana”). M. Zhylanbaev also went on hunger strike against the court decisions and the conditions of detention in the institution No. 4 of Stepnogorsk. Ombudsman A. Lastayev closed one of the applications as a duplicate, but planned to visit Mr. Zhylanbaev in person. Later, Mr. Lastayev informed that he had received a statement from Mr. Zhylanbaev refusing to meet with the Ombudsman or his regional representative. Later it turned out that this refusal was made under the coercion of Mr. Zhylanbaev. Even after that, Mr. Lastayev saw no need to visit Marat Zhylanbaev.

As such, the Ombudsman of the RK:

- Fails to respond to acute problems of human rights violations when a person is criminalized for his or her political views;
- Does not participate in research on human rights violations and does not personally visit penitentiary institutions, leaving this work to regional NPM representatives;
- Does not make use of the legal and legitimate means at its disposal, which can be an important factor in the protection of activists whose rights are being violated.

Examples

- In connection with the human rights defender Zh. Aitmagambetov (Karaganda), who was held administratively liable for allegedly violating the conditions for campaigning as a candidate for deputy in the Parliament of the Republic of Kazakhstan. Aitmagambetov Zh. was questioned as a witness in the criminal case. At the same time, his home and office were searched. Aitmagambetov Zh. appealed to the Human Rights Commissioner A. Lastayev, who forwarded the complaint to the supervisory body. After Aitmagambetov Zh. appealed again about the necessity of a personal visit, A. Lastayev redirected the appeal to the representative of the Human Rights

Commissioner in Karaganda region. Aitmagambetov Zh. again appealed to A. Lastayev personally at the ZOOM conference with the participation of Ombudsman A. Lastayev. Aitmagambetov Zh. said about the necessity of personal meeting in connection with the facts of gross violation of human rights. Only then did the Ombudsman finally agree to meet Aitmagambetov Zh. the next day. As a result of the meeting, Aitmagambetov Zh.'s complaint was again forwarded to the General Prosecutor's Office of the Republic of Kazakhstan.

- In response to our request to hold a Zoom meeting with us, Ombudsman A. Lastayev sent his two department heads. We had to discuss with them urgent issues, which are exclusively within the competence of the Ombudsman, because in one of the replies to our appeals A.Lastayev expressed his wish to meet personally with the President of the PF “Ar.Rukh.Khak” B.Toregozhina.

As a result of the analysis of the activities of the Ombudsman A. Lastayev, we found out that, taking into account the position of the Prosecutor's Office, he completely lacks contact with NGOs. The Ombudsman should cooperate with human rights organizations and civil society.

3.5 The interaction of the Ombudsman with civil society

The Commissioner for Human Rights of the Republic of Kazakhstan participates in public dialogue on settlement of disputes between state bodies, local government and self-government bodies, other organizations and citizens, and makes recommendations.

Based on the analysis of the work of the Human Rights Commissioners E. Azimova and A. Lastayev with civil society institutions, we can assess the quality of the work and the relationship of the ombudsmen with civil society institutions.

Independent human rights organizations, as an institution of civil society, respond to violations of human rights, especially of persons in the orbit of criminal proceedings, including persons in the penitentiary system. Independent human rights organizations also monitor human rights violations in the area of political rights and the reaction of the authorities to politically active opposition views and actions of the active part of society.

Human rights organizations, in particular the Public Foundation “Ar.Rukh.Khak”, in their work on human rights activities use methods of direct monitoring of social networks, direct contacts with persons having independent opinions, participation in court proceedings and their monitoring, sending appeals and complaints to authorized, supervisory and competent bodies, including appeals directly to the

Ombudsman. Also, human rights lawyers and advocates contribute to the representation of interests in the courts of the Republic of Kazakhstan on the facts of human rights protection, restoring the rights violated by the system of power. Human rights organizations monitor the very moods of protest, starting with the expression of opinions and attitudes to certain decisions and actions of the authorities, when the authorities begin to actively block the expression of opinions of protesters, openly preventing the realization of political rights and the right to freely express political positions and opinions, which is stipulated in the Constitution of the Republic of Kazakhstan, as well as the obligations assumed by the state under international agreements in the field of human rights. Human rights organizations monitor the forms and methods of repression by law enforcement authorities of persons who openly express their political positions, including the work of the courts in considering cases related to expression of opinion. In particular, methods of repression are observed in the form of preventive detention of citizens, who are taken to police stations where they are held for twenty-four hours on the grounds of their alleged intention to participate in unauthorized rallies announced by opposition politician M. Ablyazov, and in the form of conducting administrative trials at night with administrative punishment in the form of arrests and fines. In addition, some trials are conducted online in the police building and in the absence of lawyers, which violates the right to defense. Ombudsman A. Lastayev does not react to violations of the human rights to peaceful assembly, association, expression of opinion, freedom of speech, use of the Internet, etc.

Examples

- After E. Azimova personally met with the parents of the murdered and asked to familiarize them with the materials of criminal cases on the tragedy of January 2022, the Ombudsman personally contacted law enforcement bodies to find out the status of criminal cases. Due to the secrecy of criminal cases, E. Azimova refused to familiarize the parents of the murdered with the materials of criminal cases, referring to Article 201 of the Criminal Procedural Code of the Republic of Kazakhstan and citing in her reply the refusals previously received from the Prosecutor's Office of the Republic of Kazakhstan.
- Indefinite picketing in front of the Consulate General of the People's Republic of China in Almaty since 2020 has ended with administrative fines for picketers demanding the release of their relatives imprisoned in Xinjiang penal institutions. According to Baibolat Kunbolatuly, to date, the amount of fines for picketing has reached 7 million tenge. The former Ombudswoman E. Azimova and the acting Ombudsman A. Lastayev have shown complete indifference and aloofness in matters related to the facts of gross violations of the rights of relatives against whom the police used physical force, including elderly women, when they were taken to the police station and kept there for more than 3 hours. As a result, the number of people speaking out about ethnic persecution in the PRC has decreased. The annual reports

of the Human Rights Commissioner do not contain any reports on these violations of civil rights. The decrease in the number of people who publicly protest in the form of rallies is not the result of addressing the problem of protesters, which could have been expressed through an appeal by the Human Rights Commissioner and the submission of a protest note to the Chinese government by the Ministry of Foreign Affairs of the Republic of Kazakhstan, but the result of people's insecurity in expressing their opinions and systematic persecution for their actions. This kind of persecution has had a significant impact on the financial situation of the demonstrators because of the administrative fines imposed by the court. The reports submitted by E. Azimova and A. Lastayev do not contain any information on these cases. We believe that this fact deserves a negative evaluation.

- Special attention and support from society and government authorities are needed for tragedies involving families affected by natural disasters, such as the 2024 floods. Journalists covering these events have been fined by the authorities for allegedly spreading false information. For example, Maricheva Dzhamilya, a journalist from Almaty: On 13.05.2024, the Specialized Interdistrict Administrative Court of Almaty issued a decision finding her guilty under Part 2 of Article 456-2 of the Code of Administrative Offences of the RK and fining her 73,840 tenge. Uporov Raul, journalist from Uralsk: On 30.04.2024 he was held administratively liable and fined 73,840 tenge under Article 434 of the Code of Administrative Offences of the RK. Ombudsman A. Lastayev did not react to these facts of violation of journalists' rights.
- According to Article 23 of the Constitution of the Republic of Kazakhstan, "Citizens of the Republic of Kazakhstan have the right to freedom of association". The initiative group of the party "Alga, Kazakhstan!" submitted a number of documents for registration to the Ministry of Justice of the Republic of Kazakhstan and were rejected more than 24 times. The information concerning these violations of the human right to associate was made publicly known in social networks. However, Ombudsman A. Lastayev did not react to this direct violation of constitutional human rights. At the same time, members of the initiative group were held administratively liable under the articles "unlawful rally" (Article 488 of the Code of Administrative Offences of the RK), participation in unregistered associations (Article 489 of the Code of Administrative Offences of the RK) and disobedience to the lawful demands of an official (Article 667 of the Code of Administrative Offences of the RK). Dzhahin Amangeldy, a civic activist and member of the Initiative Group, was twice held administratively liable under Articles 667 and 488 for 15 and 20 days, respectively, for his attempts to submit documents to register the party "Alga, Kazakhstan!". For supporting Marat Zhylanbaev's right to an open trial in court and for participating in the 2023 Run action, civic activists Marat Musabekov, Amangeldy Dzhakhin, Aidar Syzdykov, Marat Temirbekov, Seilkhan

Tusbekov and others were placed under administrative detention for 15 days each.

Therefore, we can conclude that the Commissioner for Human Rights of the Republic of Kazakhstan is trying to distance himself from the fulfillment of his duties provided by Article 7 of the Constitutional Law of the Republic of Kazakhstan “On the Human Rights Commissioner in the Republic of Kazakhstan”.

At the next meeting with the Ombudsman at international events and platforms on October 9-10, 2023 in Warsaw, Ombudsman A. Lastayev himself offered cooperation, in this regard we asked him to answer the questions taking into account the recommendation of the report “Shoot to kill without warning”:

1. When will the report of the RK Ombudsman on the violation of human rights and freedoms during the events of January 2022 be published?
2. To analyze the proposed recommendations and to find out which recommendations are acceptable for you and which ones are not acceptable for the discussion. And based on acceptable recommendations create an effective platform to discuss a work plan for implementing these recommendations.
3. the Office of the Ombudsman to analyze the implementation of all the promises made by President K. Tokaev during 4 years (from 2019 to date) in the field of respect for human rights and freedoms.
4. To initiate the bill “On rehabilitation of peaceful participants of the January 2022 events”.

In its reply, the National Center for Human Rights quotes E. Azimova's report: “Information on the January events is presented in the Report on the Activities of the Commissioner for Human Rights on the Results of 2022, which was published on the official website on April 25, 2023”, and in the Consolidated Report of the Participants of NPM RK on the Results of Preventive Visits in 2022 (the report was posted on our website on November 30, 2023).

We are also informed that “in 2022 the President of the country has taken measures of conceptual nature by introducing amendments to the legislation: the Constitutional Court was established, the constitutional laws “On the Constitutional Court of the Republic of Kazakhstan”, “On the Prosecutor's Office”, “On the Human Rights Commissioner in the Republic of Kazakhstan”, the Law of the Republic of Kazakhstan “On Amnesty” were adopted, other normative legal acts aimed at improving the protection of human rights and human rights institutions were amended. On December 8, 2023, the Action Plan on Human Rights and the Rule of Law was adopted to further develop the system of rights protection (Presidential Decree No. 409 of December 8, 2023), which includes an action to develop proposals to improve the mechanism of compensation for damages caused to victims of torture and ill-treatment. The document also

provides for measures to rehabilitate victims of torture and ill-treatment in accordance with the recommendations of the updated Istanbul Protocol and UN bodies”.

As such, our “recommendations in the reports have been taken into account and will be considered by the NCHR as it works to further improve the legislation”.

However, a brief overview of the court cases made by lawyers and advocates on the violation of the rights of civilians during the events of January 2022 was sent by the Ombudsman A. Lastayev to the representative of the Human Rights Commissioner in Almaty, and the analytical memorandum prepared by E.A. Zhovtis is allegedly being “studied” by the Ombudsman Institute of the Republic of Kazakhstan, instead of making conclusions and recommendations. Today, unfortunately, all the words and nice speeches of the Ombudsman and the NCHR are not supported by real actions and effective work.

We point out the fact that in a number of regional offices of the NCHR, employees who previously worked in the Public Prosecutor's Office have been appointed. They, as well as the main human rights defender of the country himself, do not get involved in the work of protecting human rights and freedoms, emphasizing that they are civil servants and that is why they are not popular and do not inspire confidence.

4. Conclusions and Recommendations

Although the Ombudsman has the legal capacity and principles that are the basis for his effective work to implement the protection and respect of human rights at the national level, he does not present the results of his investigations as concretely as possible in his activity reports. The Ombudsman should be concerned not only with responding to incidents, but also with preventing human rights violations.

The public defender of rights, as a person acting to protect human rights and legitimate interests in situations when state authorities violate human rights established by the Constitution and international human rights documents, was obliged to submit a recommendation on violations of human rights in the context of illegal detention of persons detained preventively in connection with allegedly organized or planned rallies in the Republic of Kazakhstan. However, Ombudsman A. Lastayev has not reacted in any way to these human rights violations. However, Ombudsman A. Lastayev did not react in any way to these human rights violations. This assertion is supported by the fact that law enforcement agencies continue to carry out preventive arbitrary detentions, information about which is periodically posted on social networks.

During the January events, particularly serious human rights violations occurred, including violations of the right to life, the right not to be subjected to unlawful arbitrary detention, the right to be treated with respect, and the right to be free from ill-treatment and torture. Ombudsman A. Lastayev was not directly involved in promoting the restoration of human rights by filing lawsuits against special bodies. Moreover, he distanced himself from filing lawsuits with the state bodies of the RK to protect the rights of those who lost their breadwinners in the shooting of civilians during the events of January 2022. In the course of this work, organized by PF “Ar.Rukh. Khak”, conflicts of laws in civil proceedings were detected, in which case the Ombudsman was obliged to initiate the process of revision of legal norms, implementing part 2 of Article 40 of the Constitution of the Republic of Kazakhstan. However, the Human Rights Defender did not take into account the legal conflict of the lack of a mechanism to ensure the protection of human rights, which was the reason for the massive rejection in the courts of the Republic of Kazakhstan of claims for compensation of moral damages for violation of the human right to life.

During the Zoom meeting with the Ombudsman of the RK B.Toregozhina reported on the above mentioned problems and also stressed that the Ombudsman does not give answers to the inquiries of the human rights organization, does not visit political prisoners in the penitentiary system, whose rights are violated and expressed by human rights defenders by sending appeals to the Ombudsman A.Lastayev.

The analysis of the work of the Ombudsmen E. Azimova and A. Lastayev also allows drawing the following conclusions regarding the evaluation of their activities in protecting and restoring the rights and freedoms of citizens:

- The Ombudsman does not respond to complaints and appeals of citizens in a timely and qualitative manner (often extending the deadlines for consideration of complaints and appeals);
- The Ombudsman does not influence the decisions and actions of state structures in the interests of citizens, especially in the field of observing the rights of defendants and lawyers;
- The Ombudsman does not try to inform the public about the mechanisms of protection of citizens' rights;
- The activities of the Ombudsman are not sufficiently transparent and open to public control.

On the basis of all the above, it is established that Ombudsman A. Lastayev does not fully fulfill his duties. He has completely isolated himself from contacts with society and NGOs and has taken the position of a state official who implements the policy of “closed doors”.

Based on an analysis of the Ombudsman's work, our recommendations are as follows

Reforms are needed to restore confidence and improve the effectiveness of the work of Ombudsman A. Lastayev. These include:

- Increase transparency by publishing investigation reports and findings with concrete facts;
- Issuing public statements outlining the Ombudsman's position on the most socially and politically significant and systemic human rights violations;
- Making recommendations and proposals to public officials on measures to restore human and civil rights and freedoms and to hold officials accountable for human rights violations;
- Respect the main principle of human rights defenders: to respond to human rights violations regardless of the type of right violated;
- Consider all complaints from citizens and human rights defenders, regardless of the language of the complaint, the method of submission, and other formal requirements (power of attorney), with the aim of responding promptly to complaints;
- Establish mechanisms and criteria for evaluating the work of the Ombudsman and his regional representatives in order to increase their accountability.

Such measures have the potential to help restore confidence in the ombudsman institution and improve the protection and observance of human rights in Kazakhstan.

P.S. If Ombudsman A. Lastayev disagrees with the assessment of his work and considers that we are wrong, we are ready to listen to his answers and arguments on a public platform. We would also like to confirm that we are always open for communication and effective cooperation in the field of protection of human rights and freedoms and observance of the rule of law..

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