

Creation of Civil Society in the Transition Countries: The Experience of Kazakhstan

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Although there is an apparent progress in the field of human rights reached in the course of Kazakhstan's sovereignty, the situation may not be estimated as satisfactory. Up to now, the problem of comprehensive realization of basic rights and freedoms recognized by international community and prescribed in the RK Constitution is not resolved.

The existing problems are related to a number of factors including inadequate legislation on human rights and lack of access to some important international mechanisms in this field as well as insufficient system of national institutions for protection and promotion of human rights[1]. Kazakhstan is a party to international treaties in the field of human rights: UN Conventions and Covenants, Geneva Conventions and ILO Conventions

To date, Kazakhstan has ratified the major international treaties in the field of human rights including:

- Convention on the Rights of the Child of 1989 and two Optional Protocols to the Convention;
 - Convention on Elimination of All Forms of Racial Discrimination of 1965;
 - Convention on Elimination of All Forms of Discrimination Against Women of 1979 and the Optional Protocol to the Convention;
 - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of 1984;
 - Convention on Prevention of the Crime of Genocide and Punishment for Genocide of 1948;
 - Convention Relating to the Status of Refugee of 1951 and a number of other treaties.
- Kazakhstan has also ratified four Geneva Conventions in the field of humanitarian law (1949) and a number of important Conventions of International Labour Organization[2].

The political decision has been taken to access the International Covenants of 1966. But the capacity to meet its obligations is still limited.

In addition, as of now the culture of human rights has not yet become an important component of behavior and mentality of state agencies and officials, civil institutions and citizenry at large.

In this respect the specific character of the non-governmental sector in Kazakhstan results from the particular path taken in the formation of civil society after 70 years of command economy.

The formation of the non-governmental sector in Kazakhstan was preceded by two stages, during which prototypes of NGO's existed in the Former Soviet Union:

- Soviet stage (before 1985)
- Period of reconstruction (1989-1991)
- Independent Stage: The development of real civil society started after the independence.

As a result of analysis related to the activities of right protecting organizations in Kazakhstan, CIS and other countries, it was identified that the general right protecting organizations include those right protecting NGO's, which can accomplish four basic functions:

- Monitoring situation related to the entire sphere of human right, and informing the local and international public on the trends of development and individual cases of human rights violations;
- Analysis of the existing legislation and draft laws submitted to Parliament to confirm its compliance with international norms and standards in the field of human rights;
- Education of the general public related to awareness raising in international human rights instruments, norms and standards, institutional mechanisms of rights protection used on international level and in well developed countries;
- Protecting the rights and freedoms of individuals who claim violations of their rights abused by national legislation and legal practice, which reflect the general trends.

From this standpoint, the number of general right protecting organizations is quite limited in all CIS countries. Usually those organizations are strongly criticized by official structures and by part of the society with post soviet sponging mentality, which prefer the existence of specialized right protecting organizations to resolve individual cases.

Capacities, tools and methods for observance of human rights available for rights-protecting NGO's:

1. Direct Impact

- Development of alternative laws, which contribute to the improvement of human rights practice and lobbying for them in Parliament;
- Appealing to state institutions, including courts, Prosecutors' offices, law-enforcement agencies various administrative bodies, etc.
- Public statements, petitions, collecting of signatures so as to draw the attentions of authorities to human rights violations, organizing peaceful meetings, demonstrations, rallies, etc.;
- Counseling and training of citizens in methods and skills of public and individual self-protection, with a purpose to strengthen respect of authorities to basic human rights and freedoms.

2. Indirect Impact

The methods, tools and procedures of indirect impact include the following:

- Monitoring the current human rights situation;
- Contacts with international institutions of human rights, international right-protecting organizations and right-protecting organizations in other countries;
- Promotion of human rights education and information.

The analysis of these methods and procedure has demonstrated that there were both objective and subjective reasons for low effectiveness of right-protecting organizations.

Let us illustrate some of the above-mentioned methods and suggest some recommendations to improve the situation.

Possibilities of right-protecting organizations in elaborating of alternative draft laws and lobbying for them in Parliament are very limited.

Causes

- Difficult financial position of right-protecting organizations in post-Soviet states, majority of them rely upon grants from international organizations and foreign foundations.

However, there is some progress in this sphere during the last years. In January 2000, Kazakhstan instituted one of the most progressive changes in NGO taxation in Central Asia. The country's tax code was amended so that NGO's receiving grant money from international organizations are no longer obliged to pay the "social tax" (The amendment also applies to donor organizations themselves). Previously, NGO's that engaged in business activities to supplement their incomes ran the risk of being defined as businesses and, therefore, of being taxed accordingly.

- Shortage of qualified lawyers dealing with legislative drafting related to human rights due to the fact that the existing juridical school is based on the old " Soviet system" of law and changing very slowly.
- Certain legal illiteracy of some rights protecting NGO's.
- Obvious resistance of executive power in post totalitarian states to create legislation meeting international standards and norms, particularly in the sphere of civil and political rights.
- Non-professional composition of the Parliament, which was elected as result of procedures far from the criteria of free and fair elections.
- Refrain of some countries like Kazakhstan from joining and ratification of major international Covenants of 1966

Recommendations

- Provision of assistance with creation of model draft laws related to freedom of speech, mass media, and associations; peaceful meetings, right to participate in managing country and change of government through free and fair elections, etc.

This requires taking into account the problems of transitional period from totalitarian via authoritarian regime to democracy.

- Initiate accession and ratification of major international conventions in the field of human rights and to ensure the adjustment of national legislations with those agreements.
- Ensure wide exchange of experience between right protecting organizations of CIS countries and well established democratic countries

Appeal of right-protecting NGO's to state institutions designed for the controlling over the observance and protection of human rights – courts, Prosecutor's offices, law-enforcement bodies, administration of deferent levels, etc. are not effective.

Causes

- Conservatism of state institutions, which still did not change their orientation to the priority to protect public interests and human rights and freedoms in opposition to protect state interests accepted as an executive branch of power;
- Lack of effective mechanism of feedback between right-protecting NGO's and related state;
- Limited authorities of newly created state institutions of non-judicial human rights protection like Ombudsman in some countries of transition and lack of such kind institutions in others.
- Presence of a certain negative attitude and distrust to the motivation of activities of non-governmental right-protecting organizations from the side of state institutions and bodies.

Recommendations

- Ensure a dialogue between right-protecting organizations and state institutions in the field of observance of human rights;
- Promote human rights education among civil servants and NGO's and general public.

Opportunities to influence the power via appealing, petitions, collecting of signatures, conducting a peaceful meetings, pickets and demonstrations, etc. are quite limited in all transitional countries, including Kazakhstan.

Causes

- Lack of real mechanism to determine responsibility of power before the society;
- Strict regulations by the government and limitation of citizens rights and rights of public organizations, including right-protecting ones for peaceful meetings, pickets and demonstrations, including criticizing of the government;

- Lack of traditions of collective civilized protests in the society and collective protection of human rights.

Recommendations

1. Education in principles and mechanisms of development of civil society and rule of law state has to be taken.
2. Ensure the compliance with international norms, standards and practice of legislative procedures for realization of rights of citizens to peaceful meetings.

Methods of indirect impact

Monitoring of the human rights situation in Central Asian countries is ineffective because of the lack of information sharing.

Recommendations

- To change focus of various funds and grant giving organizations from provision of literature in the field of human rights to assistance in publication of common printed newsletter on human rights issues in Central Asian countries, with the publication of local bulletins on human rights problems in each of them.

Establishment of close contacts with international human rights organizations and rights protecting organizations in other countries have a small impact on improving the human rights situation in particular countries.

- Official circles of developed democratic countries often use a “double standard” in evaluating human rights situation in countries of the former Soviet Union that directly depends on the level of economic interest and involvement of large foreign capital as the investments into the economy of those countries.

Recommendations

1. To deliver sufficient information to public opinion on the sincerity and seriousness of efforts done by the governments of developed democratic countries and transitional governments to implement democratic principles and human rights. This allows influencing the proper policies in order to avoid “double standards” applied with related to economic and geopolitical considerations.

Part II

The importance of National human rights institutions for further democratic development in Kazakhstan.

From the point of view of gradual maintenance of basic institutions of civil society it is important to create, enhance and further develop national human rights institutions in Kazakhstan. The specific feature of the human rights promotion in Kazakhstan is rather a problem of overcoming social neglect and insufficient reluctance created by the former paternalist state, a problem of realization by a citizen of the need to protect his rights on his own.

The state institutions in many of CIS countries, like courts, prosecutors' offices, law-enforcement bodies, administrations of different levels, Human Rights Commissions or Committees under the President's or Parliaments are still not very effective in terms of human rights protection. From our point of view the main reason for that is the conservatism of state institutions, which still did not change their orientation to the priority to protect public interests, human rights with respect to citizen's rights and freedoms in regard of state interests.

Among the main constrains of effectiveness of such institutions is lack of a social dialogue and effective mechanism of feedback between human rights NGO's and relevant state institutions. Among the constraints, for example in Kazakhstan, is lack of specialized state institutions dealing with complains of citizen's with respect to violations of their rights from the side of powerful structures. The existing Human Rights Commission under the President of Kazakhstan with its limited functions as advisory and consultative body and lack of budget and human resources could not solve the problem. An important event in developing democracy and human rights in Kazakhstan was establishment (September 2002) of the institution of National Ombudsman-Human Rights Commissioner, with the authority to react timely to any gross violations of human rights from the side of powerful structures.

On the whole, the national legal institutional system, legislation and enforcement practices in the field of human rights in Kazakhstan need further development and support.

In accordance with its Statute, the Ombudsman is independent and any interference in his activities is forbidden. The Ombudsman implements the activities with assistance from the National Center on Human Rights, which is the working staff body of the Ombudsman. The Ombudsman appoints the Director of the Center and the staff and elaborates the Statute of the Center. This demonstrates very well the broad spectrum of the Ombudsman's administrative authority and confirms his high public status.

The funding for the Ombudsman's activities is provided, according to the legislation, from the state budget, which is also a guarantee for his independence. The Ombudsman is vested with a broad spectrum of authority for the protection and promotion of human rights and freedoms. This is not only about the rights and freedoms of the RK citizens but also about the rights and freedoms of the foreign citizens and stateless persons under the jurisdiction of Kazakhstan. Within the framework of his activities, the Ombudsman has the right to

- Start investigation of any human rights violation committed by state officials. Investigation may be initiated regardless of whether a complaint is submitted or the Commissioner has learned himself of this violation. Thus, the Commissioner is authorized to start investigation based on his own initiative.

- Take measures necessary for proper investigation of human rights violations, for example, to meet urgently with state officials of all levels, to request and receive all necessary information, to enter freely any state institution including military units and detention places.
- Forward his recommendations for restoration of the violated rights to the state officials who are obliged to respond within a month on measures taken as a follow-up.
- Officially publish his conclusions in the mass media.
- When the Commissioner deems necessary, to address directly the RK President, RK Parliament and RK Government.
- Assist in developing the RK legislation and providing for its conformity to international standards.
- Assist in developing international cooperation.
- Promote and develop the human rights education and awareness through elaboration of educational Programmes, awareness and information campaigns and other forms of activity.

Thus, the Ombudsman is authorized to consider freely any question under his jurisdiction, to hear and take the testimony of any person and request and obtain any necessary information, to appeal to the public opinion. Within the framework of his activities, the Ombudsman may establish expert councils and involve experts, specialists as well as organizations (international organizations, NGOs and others).

UNDP project on Ombuds-man

UNDP places a very high importance on the promotion of human rights work in Kazakhstan.

UNDP activities in Kazakhstan were designed to assist, in cooperation with OHCHR and OSCE, in establishment of an Ombudsman institution in line with international standards. As a result of UNDP efforts Ombudsman Institution in Kazakhstan was recently created by the Decree of the President. However, now it is of no less important to ensure development of its operational capacities as well as further consolidation of its status in the national legislation with a view of enhanced authority to be vested in the office through adoption of a comprehensive Ombudsman Law. Taking into account the absence of an effective national enforcement system for human rights protection, the task of building the operational capacity of this new institution is very important. At the same time it is a logical continuation of the previous UNDP project directed at creation of this institution.

Therefore, the intended outcome of the project is Ombudsman Institution to be in full operation and statutory functions of the office to be effectively fulfilled.

Intended project outputs

- Recommendations on effective complaints handling mechanism and procedures are developed and staff trained;
- Recommendations and advice for the improvement of national legislation and human rights education provided;
- Partnership and resource mobilization strategy with civil society and donor community developed and implemented, and
- Awareness raising and outreach work on the role and functions of Ombudsman Institution.

Assistance within the Project will be provided for the Government of Kazakhstan using a wide range of international collaboration tools applied by UNDP: policy advocacy, expert services, encouragement of sharing experience and best practices in other countries etc.[3]

Partnership building will be increased by UNDP Kazakhstan to mobilize resources of donors including EU TACIS in order to enhance project activities in two main strategic directions: Further institutional development of the office: a) creation of several units within the structure of the central Astana office, responsible for the protection of the rights of vulnerable groups: women, children, minorities, elderly and disabled, convicted persons; b) to ensure the population's access to the Ombudsman services throughout the Kazakhstan's vast territory, establishment of the sub-regional offices of the Ombudsman institution in the major cities of Kazakhstan: Almaty, Atyray, Shimkent, Ust-Kamenogorsk and Petropavlovsk. 2). Reinforcement of the Ombudsman status in the national legislation with a view of enhanced authority to be vested in the office through adoption of a comprehensive Ombudsman Law. The Project will maintain links and share the information with similar programs and projects on human rights in the region and the country.

Concluding observations

The analysis of the constraints and progress in creation of system of human rights protection and promotion in the transitional countries, based on the experience of Kazakhstan given in this paper is a result of practical work and academic research of author. The proposed measures and lessons learnt could help with identification of effective ways in operation of right-protecting organizations in post-totalitarian states. It is clear that Kazakhstan society as a whole and Kazakhstan right-protectors, in particular will be for a long time overcoming the consequences of a 70-year totalitarian regime. These consequences appear in psychological principles, the mentality of a prevalent portion of the population in the established stereotype manner of interrelations of the society and power. This is also seen in preservation of "communist party" ideology of management among the majority of ruling elite, and in the lack of traditions of the dissident movement in Kazakhstan, as well as skills of civilized struggle for own rights.

In this regard it is very important to assist transitional countries, such as Kazakhstan to develop strong civil society and non-judicial democratic institutions to move further on its way to democracy.

Endnotes

1. Kazakhstan took certain measures for creation of such national institution particularly by establishment of the Human Rights Commission under the President of the Republic of Kazakhstan. However, Commission is not in conformity with international standards for such institutions and may not be considered as an independent national institution for protection and promotion of human rights.
2. ILO Convention (No. 148) on protection of employees from adverse labor conditions due to air contamination, noise and vibration; ILO Convention (No. 155) on safe labor and health; ILO Convention (No. 100) on the equal remuneration of men and women; ILO Convention (No. 138) on minimal working age; ILO Convention (No. 105) on elimination of forced labor and other ILO Conventions.
3. UNDP Project Document KAZ 03/005, 'Development of Operational Capacities of the National Ombudsman Institution in Kazakhstan' -<http://www.undp.kz>.

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