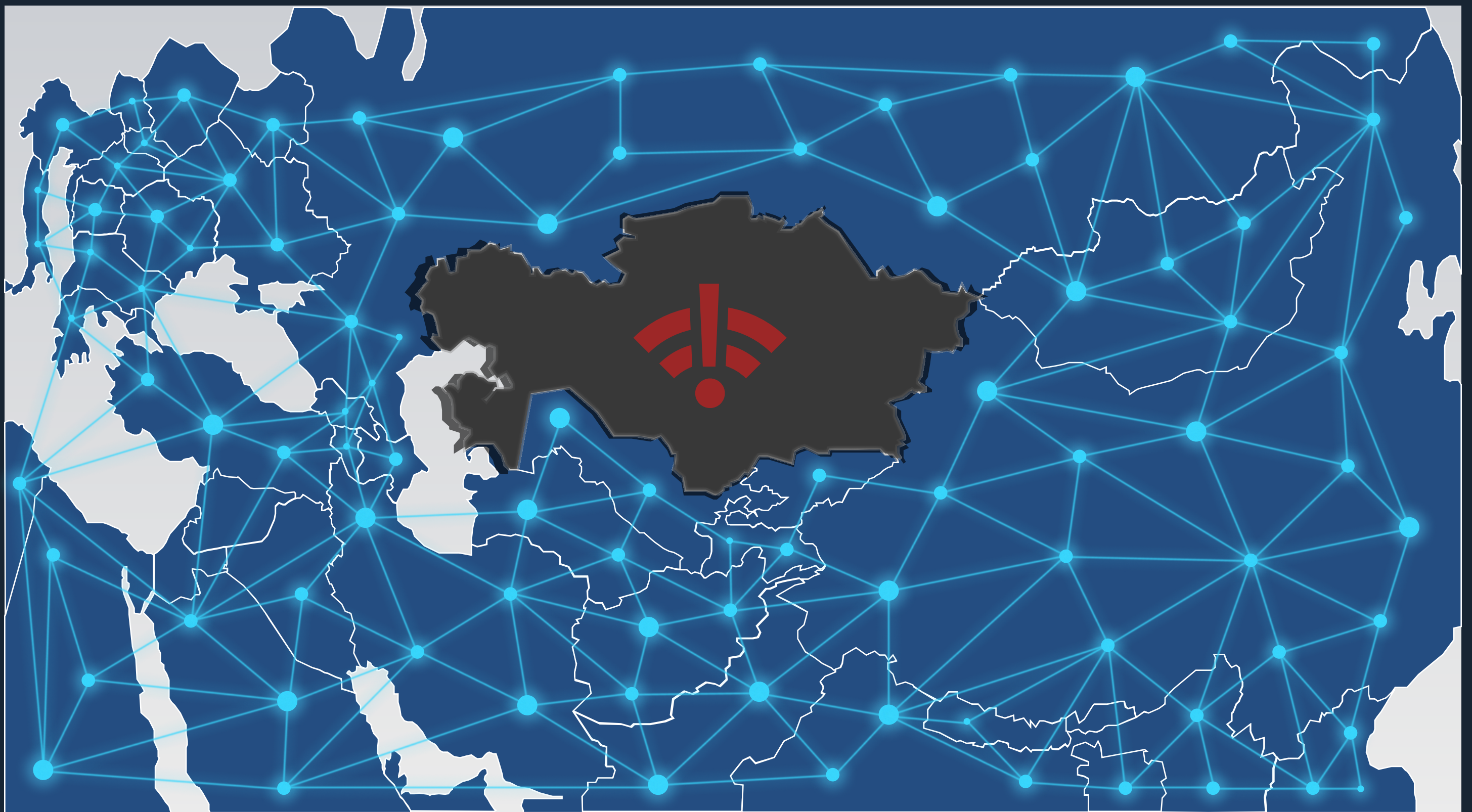


Special Report

“Qazaqstan Shutdown 2022”

Restrictions on Digital Rights During
and After January Events



This document prepared as part of the "Digital Rights and
Freedoms Landscape of Kazakhstan" project

Special Report

“Qazaqstan Shutdown 2022”

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The dawn of 2022 turned out to be quite troubled in Kazakhstan. Significant rise in prices of liquified gas in the western region of Kazakhstan resulted in protests that swept the entire country. A short time later Almaty and other cities faced riots, looting, and even murders, followed by rapidly forming battle zones. All this, in turn, caused the decision to block access to the Internet.

Cutting down of web resources had a strong impact on Kazakhstani people, their rights and liberties, since the Internet is employed in virtually each and every life sphere. It should be mentioned that the state has taken a tack to the digitization of all branches of its economy and activities of governmental bodies, as stated in the national program named [‘Digital Kazakhstan’](#).

This document offers our analysis of how such disconnection from the Internet and attendant events influenced digital human rights. The document contains nine relevant topics as presented below.

This document is authored by Kazakhstani experts in the field of **human rights**:



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Internet Shutdown

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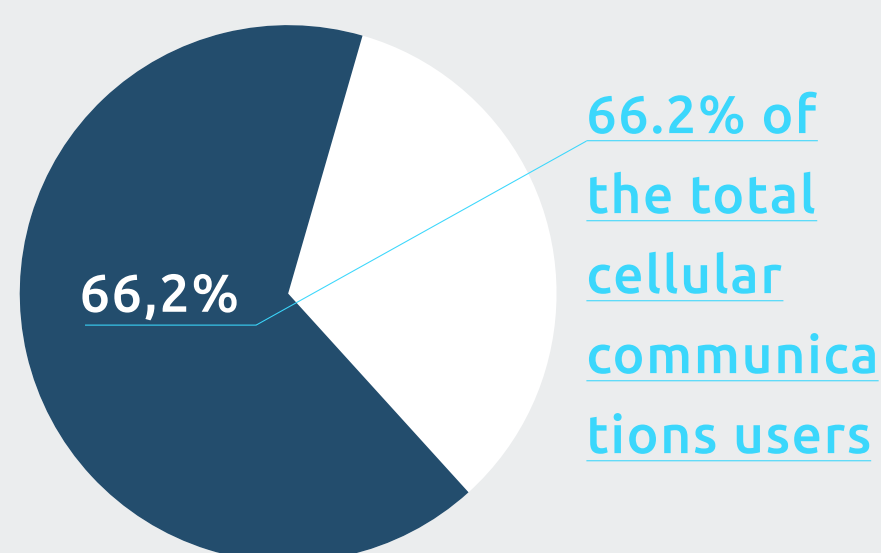
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It is noteworthy that access to mobile Internet prevails in Kazakhstan.

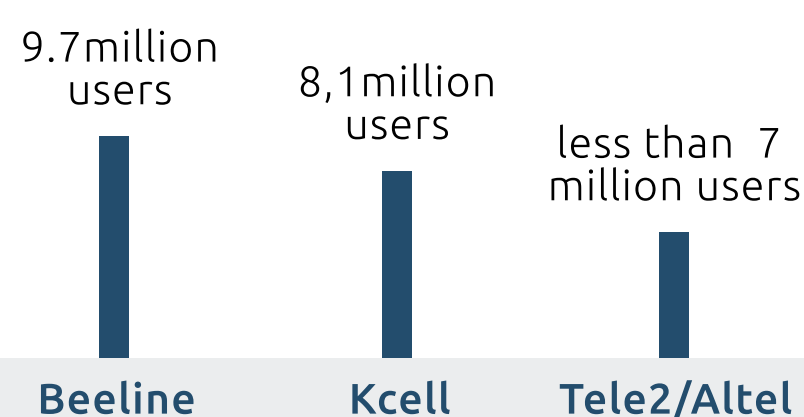
130% cellular communications penetration rate exceeds in the country According to [Halyk Global Markets](#)

the 'number of mobile broadband subscribers' equaled 14.9 million at the end of 2019



2 To date, two mobile operators in the country:

Beeline and Kazakhtelecom Corporate Group, presented by Kcell and Tele2/Altel.



Access to messenger platforms WhatsApp, Telegram and Signal was [restricted](#) from January 4 throughout Kazakhstan, followed by the total [blocking](#) of web resources on the next day.

On January 5th, Kazakhtelecom and Beeline [shut down](#) access of their users to both to mobile and wired Internet. Since Internet in Kazakhstan is centralized, meaning that any international traffic goes only through the networks of international telecommunications operators, it won't be an exaggeration to say that the population of the entire country was cut off from web resources.

The access to Internet [was restored](#) on the night of January 6th, but it didn't last for long. News on Internet blocking in Kazakhstan was published in Telegram channels by [GlobalCheck](#) and [NetBlocks](#).

On the same day Beeline [announced](#) that Internet restrictions had been out of the company's control. Kcell [stated](#) that 'According to clauses 1-2 of article 41-1 of ["On Communications" Law](#), competent authorities of the Republic of Kazakhstan have been taking steps to suspend network activities and provision of communications services for the benefit of anti-terroristic operations and establishment of public safety. No information available on when the issue will be settled'.

According to [clause 3 of article 41-1](#) of the Law "On Communications", communications operators and (or) State Technical Service JSC (STS) must follow the order of the governmental authority (National Security Committee), which decided to suspend communications, within the maximum of two hours.

Pursuant to [article 9.2](#) of the Law, STS has a governmental monopoly in the field of information security and performs such functions as providing technical support to the system of centralized management of telecommunications networks, arranging organization and maintenance of Internet exchange points of operators, and keeping track of international junction points.

Internet shutdown restricted a whole host of human rights, including, inter alia, freedom of opinion and expression, and right to participate in public affairs, and also influenced economic and social rights, in particular diminishing rights of people with disabilities, as well as the right to a fair trial in courts (since due to quarantine restrictions most cases are considered online via messengers), and other rights.

Matters of restricting human rights are covered by the [Siracusa Principles on the Limitation and Derogations Provisions in the International Covenant on Civil and Political Rights](#), and Kazakhstan, being a member country to the Covenant, must adhere to those principles. The Siracusa Principles provide detailed instructions of when such restrictions are allowable (see more in clauses iv, v, vi, vii).

[Report A/HRC/17/27](#) of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, dated May 16, 2011, indicates that 'unlike any other medium of communication, such as radio, television and printed publications based on one-way transmission of information, the Internet represents a

significant leap forward as an interactive medium’ and that ‘individuals are no longer passive recipients, but also active publishers of information’.

In clause 59 the Special Rapporteur notes that the right to privacy can be subject to restrictions or limitations under certain exceptional circumstances. This may include State surveillance measures for the purposes of administration of criminal justice, prevention of crime or combating terrorism. However, such interference is permissible only if the criteria for permissible limitations under international human rights law are met.

Let us note that internet shutdown may be contradicting to the UN [Sustainable Development Goals](#) (SDG), and specifically to Goal 9: “Build resilient infrastructure, promote sustainable industrialization and foster innovation”.

In light of the [decision](#) of the President of the Republic of Kazakhstan, Kassym-Jomart Tokayev, taken on January 5, 2022, to establish a state of emergency (SoE), first in Mangistau oblast and Almaty, and later in other regions of the country, Kazakhstan, as the ICCPR member, taking into consideration the said Siracusa Principles on the Limitation and Derogations Provisions in the Covenant to avoid human rights violation, had to take the following actions:

- Make an official announcement of imposing a state of emergency, which threatens the life of the nation;
- Notify member states through the Secretary-General of the United Nations (UN).

Though the government of the Republic of Kazakhstan made an official announcement on imposing a state of emergency, publicly available sources do not inform if the respective notice was sent to the member states. It is only known that on the 6th of January the Collective Security Treaty Organization (CSTO) [notified](#) the UN on bringing military forces to Kazakhstan.

Imposition of a state of emergency in Kazakhstan is regulated by the Special [“On State of Emergency” Law](#). “A state of emergency is a temporary measure, applied only to ensure the safety of citizens and protection of the constitutional order of the Republic of Kazakhstan, and represents a special legal regime of state bodies and organizations, that allows establishing certain restrictions on the rights and

freedoms of citizens, foreigners, and stateless persons, as well as the rights of legal entities, and imposing additional responsibilities on them” ([clause 1 of article 1](#) of the Law “On State of Emergency”).

Pursuant to that law, if a state of emergency is imposed, the government, which applies restrictions in respect of such human rights as freedom of movement, peaceful meetings, and others, may suspend access of natural persons and legal entities to internet and connection services as one of the basic restrictive measures ([article 14-1 and subclause 10 of clause 1 of article 15](#) of the Law). Indeed, internet access was restricted within the territory of Kazakhstan during the currently discussed events, and yet calls and SMS-exchange were available, through with certain interruptions. At the same time, most of callers from abroad [could not reach out](#) to addressees in Kazakhstan.

Residents of Almaty stayed in the longest information vacuum caused by several days of the total web blocking in the city. Connection to internet through bypassing solutions, such as VPN, proxy-servers and TOR, was also unavailable.

\$429million

the damage inflicted to
the economy of

Kazakhstan by the internet shutdown [According to Top10VPN](#)

by 3405%

the demand on VPN-
services in Kazakhstan

as of January 5th, when the protests had uprisen, increased
compared to the average level for the previous 30 days

It should be mentioned that according to [clauses 1-3 of article 41-1 of “On Communications” Law](#), operation of bypassing communications means, which can help in getting access to prohibited contents, is not allowable. In fact, those software products include all foreign VPN-services as their server equipment, proxy servers and suchlike, are located abroad. In case of the use of such program software is spreading, the resource must be restricted.

Speaking of the information vacuum, there was a remarkable case of one Kazakhstani citizen, Narikbi Maksut, who together with his associates, managed to pass proxy server data to persons located in Kazakhstan by text messages. [As he says](#), blocking of the internet was not total, there were a certain port that had not been shut to external web resources (for

more details about the types of websites access restrictions and the impact on human rights, please follow the link (<https://www.soros.kz/wp-content/uploads/2018/09/KABYSHEV.pdf>)).

By pressing the proxy server data contained in such SMS, a user automatically received access to the Telegram messenger with the pre-filled IP-address, port, login, password, etc. Further on, Telegram automatically transmitted and received traffic through the proxy server provided by Narikbi Maksut. Thanks to Telegram, Kazakhstani people were given an access to alternative sources of information, and could also connect with their family, friends, and colleagues, both in Kazakhstan and abroad, learn about what was happening in the country and their home city, as well as read information publications of international organizations and foreign states on the situation in Kazakhstan.

Internet shutdown affected not only Kazakhstani users, but the global network as well, since websites with .kz and .kaz domains were almost totally inaccessible to the rest of the world. This was explained by [Order](#) No. 38/NK of the Minister of Defense and Aerospace Industry of the Republic of Kazakhstan “On Approval of the Rules for Registration, Use, and Allotment of Domain Space in the Kazakhstan Segment of the Internet” as of March 13, 2018. According to these Rules, when using a Kazakhstani domain, the server must be located within the territory of the Republic of Kazakhstan. Non-adherence to this requirement means violation of the Rules and, consequently, the use of the domain is suspended.

Since neither population, nor business could use the internet, the question of purchasing and selling necessary commodities became quite challenging as all transactions could be performed only by cash. Having been cut from the access to information systems, businesses could not issue required documents to support their sales. In parallel, people faced a problem of [retrieving](#) money from their bank cards, which led to the shortage of cash funds.

On January 6th, when no communications worked, the State Income Committee of the Ministry of Finances (SIC of the MoF) granted a permission to [give](#) sale receipts instead of fiscal ones, and also announced the right to [issue](#) tax invoices on paper, confirming that no punitive penalties would be imposed. To legalize such transfer to hard copies, the SIC of the MoF, being guided by [subclause 2 of clause 2 of article 412](#) of the Code of the Republic of

Kazakhstan “On Taxes and Other Obligatory Payments to the Budget” (the Tax Code) dated December 25, 2017, signed a protocol on recognizing the technical error to cover the period from January 5 to January 19, 2022.

On January 7th, the President [addressed](#) the people of Kazakhstan and announced as follows:

- Almaty, alone, was attacked by 20 000 bandits;
- Attacks were supported by professionals who specialize in spreading wrong disinformation, fake news, and manipulations;
- Access to the internet will be resumed in certain regions of the country and within certain intervals;
- Free access to the internet does not mean ‘unfettered placement of speculations, aspersions, insults, or inflammatory messages’, and such publications will be appropriately addressed by the State by identifying and punishing their authors.

On January 8th, the Minister for Digital Development, Innovation and Aerospace Industry, Bagdat Musin [published](#) a post on Facebook that internet restrictions are ‘related to the fact that terroristic groups use communications means to coordinate and plan their actions’. On the same day, an access was [granted](#) to the limited list of mass media sources, namely inform.kz, qazaqstan.kz, tengrinews.kz, 24.kz, baq.kz, baigenews.kz, and stopfake.kz, as well as to bank applications, such as Kaspi and Halyk, and to the President’s website akorda.kz.

Pursuant to the President’s [directive](#), on the 8th of January mobile operators started crediting to their subscribers

200 **300**
sms **minutes**

Besides, Akorda (Presidential Administration) was sending out short messages to inform the population on important events in the country.

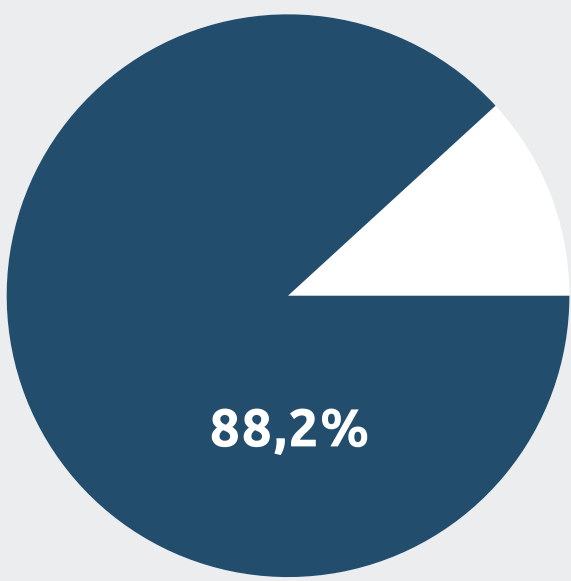
On the same day, Almaty [received](#) access to web resources from 9 a.m. to approximately 2 p.m., and then the internet was blocked again

On January 10th, access to internet was [_](#) and no more shutdowns followed.

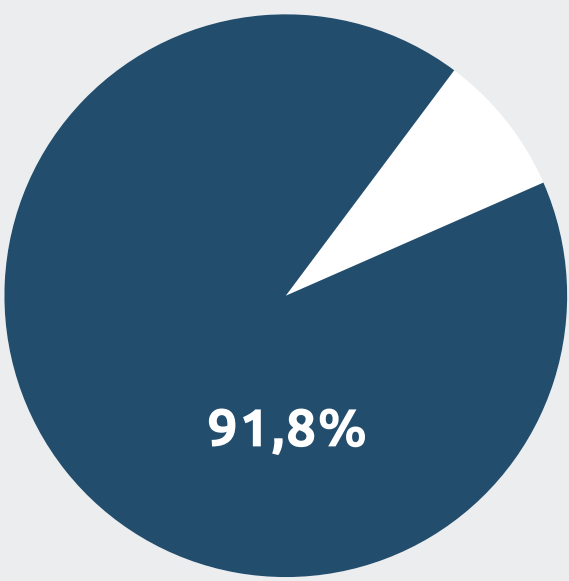
Summing up all above-said:

Internet shutdown is one of the key legal measures to maintain safety and security under a state of emergency. The question is if such internet shutdown was justified and if such measures met international standards.

Truly, the major task of any state is to ensure safety for the protection of life and health of its population, and yet citizens could not use their common means of communications when cut from the internet. Taking into consideration the solid growth of the popularity of the internet technologies



the entire population of
Kazakhstan



the entire population of
Almaty

many Kazakhstani citizens were left unaware of the events in their country, having been totally blocked from the access to information.

International standards and [Resolution](#) No. A/HRC/47/L.22 issued by the UN Human Rights Council on July 7th, 2021, state that the total internet shutdown in a country may constitute a violation of human rights. Details on how the internet shutdown and, speaking in general, consequences of the January events influenced other digital human rights are given below.

Recommendations

- The State should take into consideration [Resolution](#) No. A/HRC/47/L.22 issued by the UN Human Rights Council on July 7th, 2021, as well as other international standards in the field of human rights, which are mentioned in this section, to prevent the same violations of human rights related to the total internet shutdown in future.
- All parties, supportive of the implementation of clause 17 of Resolution No. A/HRC/47/L.22 dated July 7th, 2021, are recommended to contact the Officer of the UN High Commissioner of Human Rights to request his reviewing and evaluating the case of Kazakhstan at the upcoming 50th session of the UN Human Rights Council.
- The State is recommended to think over possibilities to maintain safety for protecting life and health of its population without internet shutdown and make relevant amendments into its legislation, in particular, to exclude certain provisions of the Law "On State of Emergency" (article 14-1 and subclause 10 of clause 1 of article 15), because otherwise human rights on opinion and expression as well as rights to information and other online rights and freedoms might be disproportionately restricted, especially in crisis or under a state of emergency or quarantine, when the lack or shortage of important information could become critical.

Freedom of Online Opinion and Expression

Article author



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The events that took place on January 4-8, 2022, resulted in certain restrictions, including in respect of the freedom of online opinion and expression. Many representatives of the civil society, who fulfilled their social and professional duties to expose and document ongoing events, came under pressure by the limbs of law. Detainments, mass-scale summons to questioning in law enforcement authorities, arrests of journalists and bloggers, administrative penalties for publishing posts, physical attacks, and blockage of information websites – all this, without doubt, reflects violations of the right to the freedom of opinion and expression.

Chronicles of Violations of Rights of Mass Media Representatives and Bloggers

On January 4th

the chief of the capital radio bureau 'Azattyk', Darkhan Omirbek, who had been [detained](#) during his coverage of the protests, spent more than four hours in the police department. After his attorney interfered, he was released without any explanation of the reasons of such detainment.

On January 5th

Serik Yessenov, the reporter of The Uralsk Week, was filming military-style vehicles, when he was [detained](#) by the police. He was taken to the district police department, and law enforcement representatives tried to delete all the footage. Serik managed to send a notice about detaining to the chief editor of The Uralsk Week, Tamara Yeslyamova, who without a moment's delay contacted the press-secretary of the city Department of Internal Affairs. As a result, all footage materials were saved, and the journalist was set free.

Makhambet Abzhan, the regular author and part-time correspondent of Ulysmedia.kz, [was out of reach](#) for two weeks, starting from the 5th of January. As earlier communicated, police made an attempt to arrest him after his coverage of protests in the capital. On January 20th Makhambet revealed himself. It turned out that he had been [hiding](#) from the law enforcement authorities in another city.

On January 7th

Lukpan Akhmedjarov, an independent journalist from Uralsk, [was sentenced](#) to 10 days of arrest according to [part 6 of article 488](#) of the Code of Administrative Offences of the Republic of Kazakhstan (CAO of the RK) for organizing an unlawful meeting, demonstration, or public gathering. He was released on January 17th.

Daryn Nursapar, the editor of altaynews.kz, was also [detained](#). He was filming the protest in Ust-Kamenogorsk and published those videos on his Facebook page. He was brought to liability in accordance with [part 6 of article 488 of the CAO of the RK](#). On the 9th of January the journalist was sentenced by court to 15 days of arrest.

On January 9th

blogger Alexandra Osipova from East Kazakhstan oblast was imposed with a [penalty](#) in the amount of KZT 154,000 for her live broadcasts from the public rally. Her smartphone was seized.

On January 10th

Ardak Yerubayeva, who is a staff correspondent of Orda.kz, was [detained](#) and questioned by the police.

On January 12th

the court, referring to article [478 of the CAO of the RK](#) (actions which provoke violations of law and order under a state of emergency), sanctioned 10 days of the administrative arrest of Nurzhan Baimullin, the chief news editor of the information agency ‘Kokshetau Asia’. The reason was his Facebook posts, in which he put questions before President Tokayev. [It is noteworthy](#) that his posts neither contained any extremist or other unlawful contents, nor gave rise to violations of law and order. On the 17th of January, after his case had been considered by the Appeals Board, Nurzhan was released. He [intends](#) to challenge his arrest and then apply to the UN Human Rights Committee.

An ecological activist from Stepnogorsk, Artyom Sochnev, has been brought to responsibility under [article 174 of the Criminal Code of the Republic of Kazakhstan \(CC of the RK\)](#) after the action to support protesters from Zhana Ozen. His apartment was searched, and at the moment he has a status of a ‘witness with the right to protection’ under a criminal case on the ‘incitement to social hatred’. The activist was repeatedly [summoned](#) to questioning by police. Artyom’s relatives expressed their concerns about the situation. They [believe](#) that police actions indicate that Sochnev’s status may be soon changed to the accused.

This list of journalists and bloggers, whose digital rights were violated during their coverage of the events, is very far from exhaustive.

([*More detailed cases can be found at the website of the Legal Media Center. ».](#))

Moreover, recently mass media have been publishing information on the detentions of citizens in various regions in Kazakhstan for spreading knowingly false statements during the state of emergency.

- A resident of Akmola oblast was [detained](#) for spreading false information about policemen.
- In North Kazakhstan oblast, an Instagram public administrator was sentenced to 30 days of [arrest](#) for the web publication.
- A girl in Kostanay was [detained](#) for having photos and videos from the protests.

Censuring is directly prohibited by the [Constitution of the Republic of Kazakhstan](#) in the normal course of events. Yet, under a state of emergency, imposition of such a measure is possible and justifiable, provided that certain terms of the [Siracusa Principles](#) are met.

Thus, restrictions are considered permissible, if they:

- Correspond to the burning necessity of the State or society;
- Aim at lawful goals;
- Seems adequate to such goals.

In doing so, any evaluation of the necessity of imposing this or that restriction must be based on objective factors. Plus, when imposing restrictions, it is of the utmost importance that the state does not apply measures leading to the

larger restriction of rights than it is necessary to achieve the goal that serves as the ground for such restriction.

In respect to the situation in Kazakhstan, in all above-mentioned cases related to the restriction of the rights of journalists and bloggers, those principles were violated. Since the said journalists attempted to inform citizens on the most important events, their activities were aimed to preserve democratic values, and not to destabilize the situation during the protests.

At that time, international organizations made their statements on the violations of the right to the freedom of opinion and expression that occurred during the state of emergency in Kazakhstan.

The UN High Commissioner for Human Rights, Michelle Bachelet, expressed her concerns on the developments in the situation in Kazakhstan and encouraged everyone, including security forces and protesters, to refrain from using violence. She strongly [advised](#) to release all those arrested for the implementation of their right to participate in peaceful protests and of their freedom of opinion and expression.

The Committee to Protect Journalists [called upon](#) the authorities of Kazakhstan to allow journalists their free coverage of ongoing events in the country and ensure their security from officials and protesters.

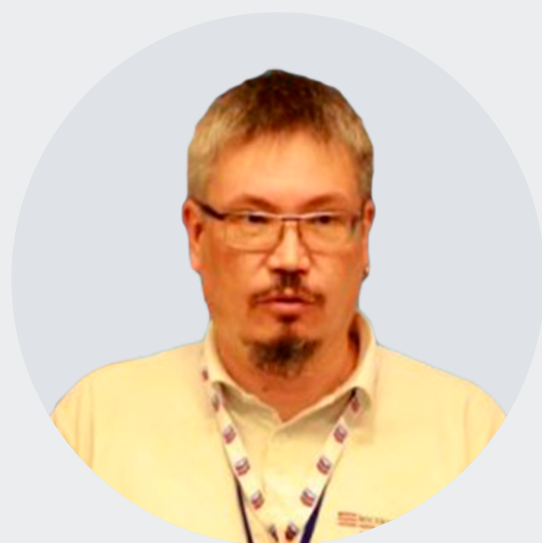
Amnesty International, a global human rights advocacy movement, [appealed](#) to the authorities to release journalists and activists, who had been detained for speaking about mass protests, and to honor their rights.

Recommendations

- The State must be liable for ensuring safety and security of journalists and must not prohibit journalists to cover national protests by threatening their freedom.
- The State may apply lawful restrictions during the state of emergency, but must refrain from ‘overusing’ its authorities; any restrictions are allowable only to the extent they are needed due to the urgency of the situation.
- The State must contend against spreading fake, unreliable, or calling to violence information, but at the same time it should honor rights to the freedom of opinion and expression as set forth by the Siracusa Principles.
- It is important to bring the laws and practices of Kazakhstan associated with the freedom of opinion and expression, and also in the field of digital rights, to the full compliance with the international commitments

E-Participation

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Petitions

No access to governmental services was available during the period of the total internet shutdown. There was no access to the electronic government website as well as to any other governmental databases.

After the internet connection had been restored, e-government services were made accessible, for some exceptions. The [information message](#) published by eGov contained a statement on the possibility of interruptions in the provision of certain services, rendered by local governmental authorities.

By the time when gas protests outburst on the 2nd of January 2022, the instrument of electronic petitions had not been put into operation. Let us remind that the draft [law “On Introduction of Amendments and Supplements to the Legislative Acts of the Republic of Kazakhstan on the Matters of Public Control”](#), which regulates the process of submitting

petitions, had been brought for the consideration of the Mazhilis (the lower house of the Parliament) of the Republic of Kazakhstan on November 12, 2021. On the 21st of December 2021, the Mazhilis held an online session, where they formed a working group for further elaboration of the draft law. No specific deadlines were fixed at the session. Unfortunately, online broadcasting files are not saved at the web-resource of the Mazhilis, and there is no access to the materials of the said discussion.

After the internet had been restored, a number of petitions were published online in respect of important matters brought up after the end of the active phase of confrontation. In the absence of the legislative framework, it is difficult to estimate the efficiency of such format of submitting petitions on those matters. Anyway, the existence of these petitions and the number of signatories send an important signal to the government on the matters of the social concern after the tragic events of January 2022.

The website named Otinish (The Application), run by the Center for Applied Research “Talap”, published a petition [“Dismiss the Akim of Almaty”](#). In this petition, addressed to the President of Kazakhstan, the demand to dismiss the akim is reasoned by the fact that Bakytzhan Sagintayev failed to control the situation in the city during the difficult times and had not appeared before the public until January 8th. The petition is authored by the user under the nickname ‘Almaty Residents’, meaning that, in fact, the author is unknown. As at 12.00 a.m. of January 24, 2022, the petition has been supported by 26478 people.

Besides, the same website hosts the petition [“We demand to make cars more affordable for citizens”](#). This application addressed to the President of Kazakhstan is based on the [public speech](#) of Kassym-Jomart Tokayev

made on the 11th of January in the Mazhilis of the Parliament of the Republic of Kazakhstan, in which he, inter alia, spoke about the organization named ROP Operator. The petition contains specific demands: to revise the size of the recycling fee; to make new cars more affordable to the citizens of the country; to nationalize ROP Operator; and to get rid of junk cars. The author of the petition is the user with the nickname ‘Auto Enthusiasts of Kazakhstan’, meaning it is also anonymous. As at 12.00 a.m. of January 24, 2022, the petition has been supported by 5593 citizens.

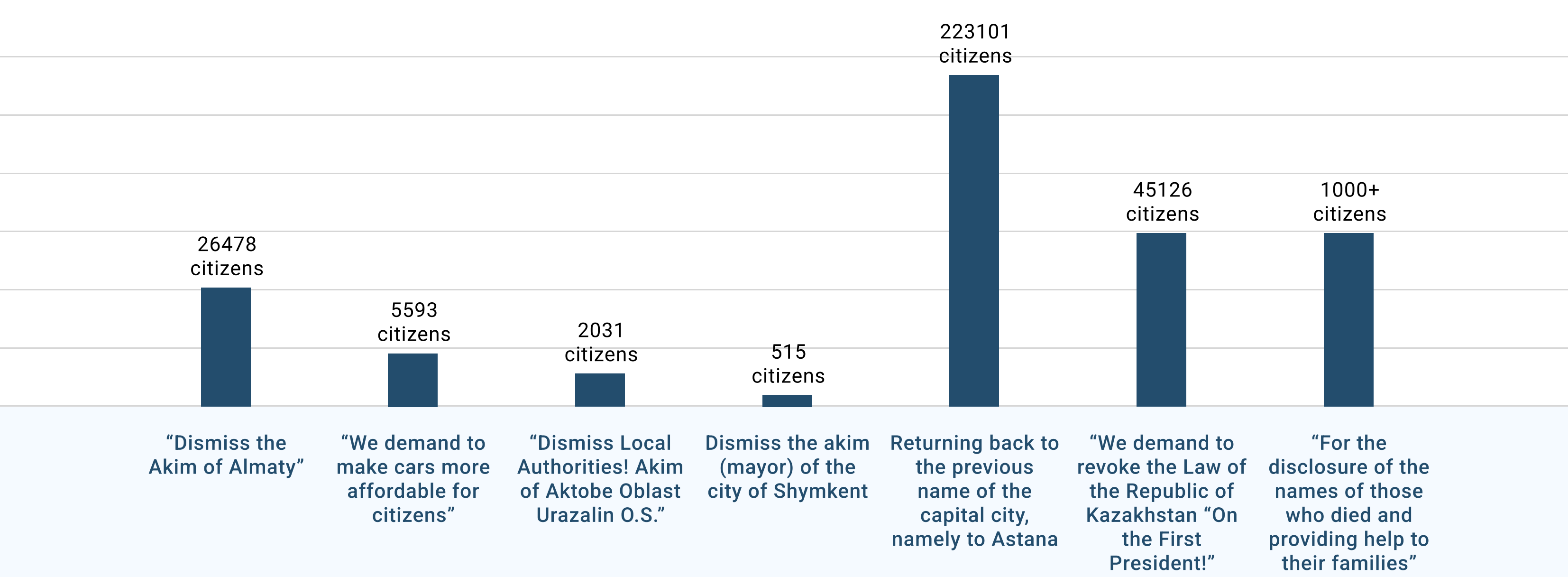
Web resources www.change.org (blocked in Kazakhstan) and www.avaaz.org have published petitions to dismiss the Akim of Aktobe oblast, Ondasyn Urazalin. The publication at avaaz.org was posted as long as on the 1st of August 2021, and it is called [“Dismiss Local Authorities! Akim of Aktobe Oblast Urazalin O.S.”](#). As at 12.00 a.m. of January 24, 2022, the petition has been signed by 2004 persons. According to the site, the author of the petition is Bibigul Zh. Another petition, published at change.org on the 17th of January 2022, is named [“Dismiss Ondasyn Orazalin, Adopt the law on the elections of akims!”](#). It is authored by Ainura Kogai. As at 12.00 a.m. of January 24, 2022, the petition has been supported by 27 persons. The reason of the low number of signatories might reside in the above-mentioned fact that change.org is blocked at the territory of the Republic of Kazakhstan. Both petitions are addressed to the President of Kazakhstan.

On January 13th, 2022, www.onlinepetition.kz published a [petition](#) that demands to dismiss the akim (mayor) of the city of Shymkent. It states that “the akim of the city of Shymkent, Mr. Aitenov, failed this test offered by the time of troubles and disorders” and contains a request to replace him with “a real economic person and a wise statesman, who will work to win the trust and support of the citizens of Shymkent”. It indicates that the authors are the “residents of the city of Shymkent”, and as at 12.00 a.m. of January 24, 2022, 515 persons have signed the petition. The addressee of the petition, as in all above-said cases, is Kassym-Jomart Tokayev.

The maximum number of supportive signatures (223,101 as at 12.00 a.m. of January 24) has been given to the [petition](#) dated January 11, 2022, published at egov.press (this web-resource is no way related to the ‘government for citizens’ web-site) on returning back to the previous name of the capital city, namely to Astana. “Taking into consideration the mood of the public, we request the President of the Republic of Kazakhstan, the Government, and the Parliament to restore the previous name of the capital city of our Motherland – the city of Astana”, the petition states. The author is Daniyar Burkutbayev.

On January 18, 2022, the same website published another petition [“We demand to revoke the Law of the Republic of Kazakhstan “On the First President!”](#). The author of the petition, Asylkhan Kenesovich Alibekov, says that a row of privileges, including his immunity, life-long security and maintenance of his financial remuneration, granted to the first president by that law are “not allowable in the free democratic society, which new Kazakhstan aims to achieve”. “Besides, sources of income of the family and other relatives of the first president cast serious concerns. All this should be subject to the lawful and fair investigation, and yet it contradicts the said law. We demand to annul that law!”, the author writes. A day later, more than 600 people supported the petition, and as at 12.00 a.m. of January 24, 2022, the petition has been signed by 45126 persons. It is addressed to the President and the Parliament of Kazakhstan.

A very interesting example of creating online-petitions is the application of public activists Asem Zhapisheva and Bella Orynbet. It is named [“For the disclosure of the names of those who died and providing help to their families”](#) and has been launched since January 16, 2022, being spread as a direct link to the Google form. Unfortunately, the functionality of the form does not allow tracking how many signatures it obtained. According to PROTENGE Telegram channel, in the afternoon of January 17, 2022, more than 1000 people signed it. The petition does not indicate any specific addressee.



Conclusions

It becomes obvious that in the absence of the legislative framework such petitions published at various portals will not be taken into consideration. However, their existence and the number of their signatories should be recognized when taking decisions, including those related to staff management.

Such websites as Otinish and onlinepetition.kz offer a possibility to post petitions without an indication of the specific author. Yet, according to [article 63](#) of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (APPC of the RK), nameless petitions, as well as any other anonymous applications, cannot be considered even if the text of the petition is very relevant and produces a wide public response. As the laws of Kazakhstan state, any collective application (and petitions are referred to collective applications), must contain information on its author.

Through the prism of human rights to privacy and freedom of opinion and expression, such demand to reveal authors or participants of electronic petitions is quite disputable. However, no consensus of opinion has been achieved in the world regarding the settlement of this issue. In Kazakhstan, in light of its

history of chasing social network users for ‘spreading knowingly false information’ or ‘defamation’, and alsoin the presence of the still existing criminal liability for ‘any form of impact inflicted against the First President of the Republic of Kazakhstan – Elbasy – or his co-residing family members with the aim to deter his lawful activities”, it is not surprising that, despite the legal requirement on the disclosure of the personal data when publishing collective petitions online, users prefer to stay nameless.

The absence of the effective instrument of online petitions, which would enable citizens to submit applications on any burning issues without contrived restrictions, might have its negative role in the January crisis. Developers of the draft law “On Introduction of Amendments and Supplements to the Legislative Acts of the Republic of Kazakhstan on the Matters of Public Control” should remember that the mechanism of submitting petitions must be as simple as possible, be considered within the shortest possible time, and be decided in the very prompt manner. Should these conditions be ignored, electronic petitions will not be able to become an instrument of rapid response to crisis situations, which may result in new unpredictable social excessive acts.

Recommendations

To the draft law developers, Parliament, and Government of the Republic of Kazakhstan:

- Revise the number of start-on signatures for its reduction to ease the submission of an electronic petition by the initiator.
- Revise the quantitative criteria for the registration of electronic petitions, considering the size of the population.
- Establish differentiated timeframes for the collection of signatures based on the level of the governmental authority, to which the electronic petition is addressed. Such timeframe should be less for local governmental authorities as the subject of the petition may lose its relevance.
- Reconsider the list of the topics, which cannot be the theme of electronic petitions, for its reduction.
- Reconsider reducing the time given for the consideration of registered electronic petitions, and also introduce a differentiated approach to determining the time period for the consideration of petitions, depending on the level of the governmental authority, to which such electronic petition is addressed.

To the owners and operators of independent platforms of online petitions:

- Until the legislative requirements are changed, avoid submitting online petitions without the indication of the specific author or nameless petitions.
- Pages of web aggregators of petitions should contain information on the use of personal data, both of the initiators of petitions and citizens who support the demands indicated therein. Besides, web aggregators should indicate a specific person, responsible for the storage of personal data.

To the civil society organizations (CSOs) of the Republic of Kazakhstan:

- Initiate a wide advocacy campaign on the information of the citizens of Kazakhstan on the draft project regarding electronic petitions and on the required changes, which would enable citizens to use the instrument of electronic petitions without any contrived restrictions.
- Create guiding documents and information resources for CSOs and activists, dedicated to electronic petitions and e-participation.
- Make efforts to increase expert resources of CSOs and activists in the field of e-participation and its instruments, including, inter alia, electronic petitions.

Access to Information

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In the time of the total shutdown, which all Kazakhstani residents had to deal with, the access to public information was quite difficult. However, the government understood that keeping people in the information vacuum is not a good idea as it could produce more problems. That is why, in the midst of the events (on January 5-6), when internet was blocked throughout the entire country, citizens of Kazakhstan received actual information through TV (channels Khabar 24, Qazaqstan, and Atameken Business were operating). Mainly, they showed news on what was happening in Almaty and other regions, President's addresses, and warnings on the possible administrative and criminal liability for incitements to extremism and terrorism as well as for spreading knowingly false information and staying outside during the night-time curfew.

On January 7th, Kazakhstanis received an SMS-notification from Akorda that news would be delivered via text messages. The following messages contained information that the Head of the State would make a speech, and also that all entrepreneurs who had suffered from riots would receive support from the State.

On the 8th of January Akorda informed that people could now read fresh news at [inform.kz](#), [qazaqstan.kz](#), [tengrinews.kz](#), [24.kz](#), [baq.kz](#), [baigenews.kz](#), and [stopfake.kz](#) without an internet connection. On the same day, they made it possible to use bank services of Kaspi and Halyk even if no internet was available. The rescue authorities continued to send regular text messages on the imposition of the night time curfew.

As to the official web resources, they regularly updated their contents. Thus, on the 5th of January, the website of the Ministry of Information and Social Development published the material dedicated to the [liability of mass media under a state of emergency](#). Later on, the website provided immediate information on air flights, imposition of the state of emergency, situation in various regions of Kazakhstan, internet connection restrictions, and many other topics.

Akorda.kz continuously posted official statements, starting from the 3rd of January. For the convenience of Kazakhstanis, they arranged [hotlines](#) to answer questions on air flights, search of missing persons, prices on food and fuel products, and also to provide psychological and legal assistance.

Access to information was promptly [arranged](#) for the benefit of businesses that incurred losses during the events of January, including a special hotline and a permanent contact with the specialists of the Atameken Chamber.

Since mass media resources were blocked, many people were restricted in their access to political information. It led to the situation when [some citizens of Kazakhstan had no idea](#) that the CSTO forces had arrived in the country.

As to the access to information in the regions, their situations were different under the state of emergency. Thus, Zhenis Kassymbek, the akim of Karaganda oblast, held a meeting on the 7th of January, where he tasked his department heads to provide prompt and precise information on the ongoing events and himself [answered](#) all questions of the journalists. However, it was not like that in all regions

The situation also showed that not all governmental authorities were ready to work in a well-timed and well-orchestrated manner under the state of emergency. For instance, up to now police has not

provided clear and specific data on the number of victims, offenders, or reasons of why law enforcement agencies were on the losing side on January 5-8. Journalists and citizens keep asking for this information, but it seems contradictory and carries little credibility. Civil activists Asem Zhapisheva and Bella Orynbet organized petitioning [“For the disclosure of the names of those who died or got injured”](#).

Besides, one of the hottest topics remains the location of the first president of Kazakhstan, Nursultan Nazarbayev. Official messages of his press-secretary state that the first president stayed in the capital, and yet starting from the dawn of the tragic events and until his 4-minute TV [speech](#) as of January 18th, Nazarbayev never showed in public and made no appeal to the nation. That is why the majority of the population thought him to leave the country or be dead.

In general, it may be concluded that the access to information under the state of emergency was restricted on various levels and in various spheres. Such restrictions were mainly focused on the information regarding the grounds and authors of the tragic events, as well as the number of those dead and injured. That said, [article 6 of the Law “On Access to Information”](#) contains a provision that prohibits any restrictions of information on emergency situations that threaten the safety and security of people, on the facts of terroristic activities, on the state of fire safety, and so on.

So, the right of the citizens to access to information was partially restricted and violated.

International provisions that regulate access to information also envisage the maximum access, except for the absolutely extraordinary circumstances. Thus, the [Johannesburg Principles](#) indicate the limits of restrictions deemed allowable for the interests of the national security and under a state of emergency.

Taking into consideration all above said, one can say that Kazakhstanis did not have an objective possibility to evaluate the degree of the “extraordinary necessity”, and the government provided no clearly-stated grounds to that extent. The assessment of the degree of the “extraordinary necessity” was performed by the governmental authorities only, who later used this justification to decide on which information might be published, and which not.

During the state of emergency, international organizations made their statements on the freedom of information in Kazakhstan.

The UN High Commissioner for Human Rights, Michelle Bachelet [urged](#) the authorities of Kazakhstan “to ensure that Internet services are immediately and completely restored”, reminding on their vitality “for emergency health services during the COVID-19 pandemic”.

The OSCE Representative on Freedom of the Media, Teresa Ribeiro, [stated](#) that “unrestricted access to information, offline and online, represents important elements of public security and should always be respected. I call on the authorities of Kazakhstan to preserve, protect and advance media freedom in the country for the benefit and comprehensive security of the country and the OSCE region at large”.

“By manipulating internet access — shutting it off one day, allowing limited access the next — the government of Kazakhstan is exerting its authority over the country,” Access Now [noted](#). “That’s not how things are allowed to

work. Governments should empower people through access to information and communication, not threaten to ‘shoot to kill,’ then disconnect a population exercising its right to protest.”.

Recommendations

The Government of Kazakhstan should:

- Strictly adhere to the provisions of the international and national legislation in the field of access to information;
- Conduct transparent and objective assessments of the degree of necessity to restrict access to information during a state of emergency, providing a very detailed information in each case;
- Contribute to the maximum disclosure of the information, especially if it is of a high public concern.

Digital Inclusion

Article author



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The [Convention on the Rights of Persons with Disabilities](#) three times mentions that member states should take all appropriate measures to provide persons with disabilities with access to the internet.

As to the Ministry of Labor and Social Protection, as of October 8, 2021, [more than 702, 000 persons](#) with permanent disabilities live in Kazakhstan. ‘Nothing about Us without Us’ is the slogan of the public associations of people with disabilities. These organizations should be involved in the development of respective policies and programs. Internet technologies enable physically challenged persons to live a more productive life in modern society as never before. They can play a full-fledged role in social life and make a significant contribution into the economy, provided they have adequate internet tools. However, persons with disabilities, as well as the rest of the country's population, were cut off from the internet during the state of emergency.

Lack of access to web resources restricted information flows, usually provided in the format convenient for people with disabilities, and reduced their possibility to take an active part in the social life to zero. Everyone, without exception, were affected: those who work or study at home, and those who use software products that require a permanent internet connection.

Problems of Specific Categories of Citizens with Permanent Disabilities

1. Hearing-impaired and acoustically challenged citizens

- In the normal course of events, hearing-impaired and acoustically challenged persons have accustomed themselves to using WhatsApp and other messengers with the video call functions to maintain dialogues through the hand language. Internet shutdown totally blocked that channel of communications. Speaking-impaired persons were affected to a greater degree.
- Exchange of short text messages, which remained as the only communications channel, was suitable only to citizens who are able to read and write.
- The situation worsened due to the fact that hearing-impaired and acoustically challenged people faced certain problems in interpersonal relations because of the necessity to wear facial masks caused by the pandemic.

2. Visually-impaired and visually challenged citizens

- Visually-impaired citizens use smartphones as an assistive technical device. The State provide smartphones to people with the permanent disability of sight under Group 1 on. For the convenience of visually-impaired people, Android phones have an option to activate a number of settings, including Talk Back and Explore By Touch, as well as Vlingo — voice-controlled software, same to the virtual personal assistant Siri, available at the iOS platform; while Apple devices offer the function of VoiceOver. All of them have a common operating principle – voicing of commands implemented by a touch to allow the user selecting the proper application, menu item, text field, or whatever he/she might need. Moreover, there are other applications, such as [LookTel Money Reader](#) and [Color Identifier](#), developed by GreenGar Studio and built on the use of the camera that can identify and voice names of the colors and all currencies of the world. Other applications, such as [Ray App](#) by Project Ray, make interface of Android phones easier and help users in navigating around options of the phone functions, depending on the place of the first touch of its screen. All these assistive programs require access to the internet for their successful operation. Thus, visually-impaired citizens also found themselves in a kind of information vacuum and could not do without the aid of other persons.

3. Users of wheelchairs and other categories of mobility impaired citizens

No possibility to pay for purchases online or with a bank card left people with disabilities without food. It especially affected those who could not go outside on their own and use ATMs.

4. Persons with special needs

Due to the absence of internet, people with special needs and elderly people could not use trackers embedded in their phones or smart watches that allow tracing their location.

5. People with diabetes mellitus

- No possibility for parents of children with diabetes mellitus, who use continuous glucose monitoring systems, to monitor and response to changes in the blood sugar level in a real time mode.
- Failures in the performance of the coaching program of equal support provided by experienced parents to the families with children with recently identified diabetes mellitus (the Mentors project).
- No possibility to obtain information from medical applications on the carbohydrate content and other nutritive components in food products.
- Disruption of the training program for children and adolescents with diabetes mellitus and their parents.

Conclusion

It is noteworthy that access to the internet has become a vital necessity for people with disabilities. All software products fulfill compensatory functions necessary for the normal and manageable living activities. Lack of the internet, undoubtedly, created problems in ensuring access to information, which, in its turn, caused additional anxiety. Communications methods available at that moment, namely phone calls and short text messages exchange, were not sufficient for the maintenance of normal life of certain categories of citizens with permanent disabilities.

Recommendation

In case of imposing a state of emergency for a longer period, it is necessary to think over an alternative method to arrange compensatory functions, including, inter alia, additional personal assistance by individual care-givers.

Right to a Fair Trial

Автор статьи



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Starting from January 5, 2022, the President issued respective Decrees to impose the state of emergency over the entire territory of Kazakhstan. The [Law "On State of Emergency"](#) establishes that the ground for imposing a state of emergency resides in ensuring safety and security, protection of human and citizen rights and freedoms, and also protection of the constitutional system of the Republic of Kazakhstan.

When analyzing those President's Decrees on the imposition of the state of emergency, we do not find any clauses that limit activities of the courts of Kazakhstan. It relates to the fact that the access to a fair court proceeding is one of the key constitutional rights of any human.

More than that, [article 23](#) of the Law "On State of Emergency" states that "Justice in areas of the state of emergency shall be exercised by the courts in accordance with the legislative acts of the Republic of Kazakhstan". Those legislative acts include, above all, the [Constitutional Law "On Judicial System and Status of Judges"](#) dated December 25, 2000.

[Clause 1 of article 3](#) of the Constitutional Law establishes that "the judicial system of the Republic of Kazakhstan shall consist of the Supreme Court of the Republic of Kazakhstan, local and other courts...". In doing so, "no establishment of special and emergency courts under any name shall be permitted".

It should be specially noted that neither the Law "On State of Emergency", nor the Constitutional Law contain provisions on any possible limitations of the right to access to the judicial system and, consequently, on restrictions of the process-related rights of the involved parties.

Starting from March 2020, Kazakhstan judicial proceedings [shifted](#) to the online format due to the imposed quarantine measures. The ultimate majority of all civil, administrative, and criminal processes are considered through various available messengers (mostly WhatsApp), though with a various degree of success. Thus, the physical possibility to get the access to justice directly depends on the stability and quality of the internet connection.

However, the total internet shutdown throughout the entire territory of the country made it impossible to deliver justice in the online mode, which, putting it mildly, produced an adverse effect on the consideration of thousands of court proceedings during the period.

At the same time, process-related laws contain provisions that regulate the right of the court to suspend case procedures. In particular, [subclause 1.1 of clause 1 of article 273](#) of the Civil Procedural Code of the Republic of Kazakhstan (CPC of the RK) establishes the right of the court to initiate the suspension of case proceedings. The above-said becomes possible upon the occurrence of force-majeure circumstances, which include, inter alia, imposition of a state of emergency ([article 273](#) of the CPC of the RK).

The similar provision is also presented in [subclause 4 of clause 1 of article 45](#) of the Criminal Procedural Code of the Republic of Kazakhstan (CrPC of the RK). When the court exercises its right to suspend the case proceedings, it issues a relevant ruling. After force-majeure circumstances cease to exist, all earlier suspended case proceedings are resumed with the prolongation of respective procedural timelines.

Thus, theoretically, the state of emergency and attendant internet shutdown should not adversely affect most of the cases being considered by courts. The point at issue is about those cases, which do not refer to case proceedings initiated during the state of emergency and internet shutdown.

At present, there are numerous judicial processes in national courts commenced under administrative offenses related to organizing, running, and/or participating in 'unlawful' peaceful gatherings. At that, court proceedings are carried out with the violation of the principle of equality of arms, vividly having an accusatory nature.

A bright example is the case of blogger Alexandra Osipova from Ust-Kamenogorsk. Alexandra Osipova was brought to the administrative liability according to [part 7 of article 488 of the Code of Administrative Offences of the Republic of Kazakhstan](#). Due to the lack of the internet connection, neither her attorney, nor observers, nor mass media representatives could participate in the process. That said, such court session took place in the police department building and was named an 'extramural session'.

'Extramural' court sessions are no way regulated by the national legislation, which means that, in fact, such 'extramural' sessions are unlawful.

Moreover, international standards, namely article 14 of the [ICCPR](#) and [General Comments No. 32](#) to the said article, do not contain any provisions that court be interpreted as a possibility to conduct court sessions outside court buildings.

Therethrough, we suppose that 'extramural' court sessions, including those under the state of emergency, are illegal due to the following arguments:

- 'extramural' court sessions are not regulated by any national legislative act or any international standard, voluntarily ratified by Kazakhstan, in the field of the right to a fair trial;
- Conducting 'extramural' court sessions in police department buildings violates the principle of the separation of powers as court sessions take place within the territory of executive authorities;
- 'extramural' court sessions infringe the principle of publicity, because police departments are secured institutions and, consequently, their territory is closed to visits of observers and mass media representatives;
- 'extramural' court sessions violate the principle of equality of arms, since court sessions take place in the premises of police bodies that bring detained citizens to the administrative liability.

All above-said is a direct violation of both the national legislation and international standards of fair court proceedings, especially in light of the fact that total internet shutdown makes it impossible to ensure the principle of justice delivery publicity.

Thus, the State, represented by the 'extramural' court session restricted procedural rights of Alexandra Osipova.

Surely, being guided by the [Siracusa Principles](#), the State has a right to limit certain human rights and freedoms in cases of the strictest necessity, when such measure corresponds to the actual need of the State or society, provided that it pursues legal goals and is proportionate to those goals.

In this very case, the State does not give clear explanations on why such 'extramural' court sessions are practiced. The State has not proved its vital need to discriminate by violating procedural rights of its citizens and infringing the principles of the independent judiciary proceedings when we speak of introducing 'extramural' court sessions.

In that vein, we can state that such restriction of citizen rights had a free-hand nature. It should be mentioned that the case of Alexandra Osipova is not a solitary instance; mass-scale information on the 'extramural' court sessions is received from almost all regions of the country.

Summarizing what has been said, we can make the following conclusions regarding the operating principles and practical administration of law in the online format.

- The judicial system of Kazakhstan has made a steady shift to the online format for the period of the state of emergency and continuing quarantine. When considering the ultimate majority of cases online, the judicial system exerts efforts to ensure the maximum possible implementation of the justice delivery principles, such as publicity, equality of arms, and others.
- When force-majeure circumstances occur, such as imposition of the state of emergency and consequent total internet shutdown, the courts have their procedural right to suspend court proceedings to prevent, in the first instance, violations of the basic principles of legal processes.
- Yet, when considering cases initiated under administrative offenses, related to organizing, conducting, and/or participating in 'illegal' peaceful gatherings, the State, in fact, violates the rights of its citizens to a fair trial when allows 'extramural' court sessions that take place in police departments.

Recommendations

To the Supreme Court of the Republic of Kazakhstan:

- Clarify the unlawfulness and groundlessness of ‘extramural’ court sessions, which contradict both the national legislation and international standards in the field of the right to a fair trial, to subordinate courts.

To the Ministry of Internal Affairs of the Republic of Kazakhstan:

- Prohibit conducting ‘extramural’ court sessions in police departments and other buildings under the

jurisdiction of the Ministry as being unlawful and violating the principles of the right to a fair trial and principle of the separation of powers.

To the General Prosecutor’s Office:

- Consider activities of ‘extramural courts’ with regard to the compliance with law and observance of citizen rights and interests within the framework of judicial processes.

Privacy and Personal Data

The below section focuses on two major subjects: special legal aspects of personal data processing during the state of emergency in Kazakhstan and practice of inspecting phones, which citizens had to deal with.

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Special Legal Aspects of Processing Personal Data of Citizens during the State of Emergency in Kazakhstan

With regard to the serious and immediate hazard to the safety of citizens and with the aim of ensuring social security, on January 5th, 2022, the President of the Republic of Kazakhstan issued respective Decrees on imposing the state of emergency until January 19th, 2022, in certain regions of the country.

After public disorder in Kazakhstan, 388 criminal proceedings have been initiated due to the facts of attacks on the buildings of governmental authorities and law enforcement agencies. This was [announced](#) on the 11th of January by the press relations office of the President of the Republic of Kazakhstan, Kassym-Jomart Tokayev. According to the statement of the press relations office, “The representative of the Ministry of Internal Affairs of the Republic reported to the President that appropriate operations were being currently taken on collecting and registering evidentiary records and restoring the event history”, the press relations office informed.

Without question, the above said ‘evidentiary records’ contain materials (video footage) collected with the use of the national video monitoring system.

It is worth recalling that according to [clause 1 of article 30-1](#) of the Law of the Republic of Kazakhstan “On Informatization”, it is presumed that the national video monitoring system is an information system consisting of a package of software products and hardware devices designed to collect, process, and store video materials to resolve matters of ensuring national security and public order.

As to [clause 3 of article 30-1](#) of the Law of the Republic of Kazakhstan “On Informatization”, categories of objects, which must be connected to the national video monitoring system, include:

1. Video surveillance systems of the central and local governmental authorities;
2. Video surveillance systems of the facilities, considered to be vulnerable in terms of terroristic activities;
3. Video surveillance systems that relate to the public and road safety and security.

As stated in clauses 12 and 13 of the [National Video Monitoring System Operating Rules adopted by Order No.69-KE of the Chairman of the National Security Committee of the Republic of Kazakhstan dated October 27,](#)

[2020](#), collection, processing, and storage of video materials in the national video monitoring system are conducted with the use of software and hardware packages and technological platforms of the data processing centers within video monitoring system. The period for keeping materials in the system equals 30 days, except for video materials on the events (incidents) that relate to implementing national security goals and ensuring public law and order, whose storage period shall not be less than 7 years.

As of now, personal biometrical data processing in Kazakhstan is regulated by the general provisions of the [Law “On Personal Data and Their Protection”](#). In terms of the legal aspect of processing photo- and video materials, there is a standpoint that unless they are transferred to establish the identity of the person captured thereon, such materials should not be considered as personal biometrical data, because the operator does not use them for the purpose of personal identification. However, video images, employed by the authorities, which perform criminal intelligence activities, legal inquiry, or investigation under the framework of their operations, are deemed to be personal biometrical data as their processing is aimed at the identification of the specific natural person based on his/her physiological and biological features. It is noteworthy that the laws in Kazakhstan allow collecting and processing personal biometrical data, obtained from the materials of the national video monitoring system for the purposes of the investigation of cases associated with the public disorders of January 2022, without consent of the personal data owner, because such circumstances refer to the performance of the ‘activities of the law enforcement agencies and courts of enforcement proceedings’.

The use of biometrical technologies in the criminalistics and investigations conducted by law enforcement agencies is allowable in the democratic society, and yet the State should pay attention to the effects produced by the employment of such technologies on human rights so to protect persons identified by those systems against possible misapplications. The State must also guarantee that all such activities are taken in compliance with the commitments envisaged by the international law and fixed in the international and regional conventions on human rights.

It is worth mentioning that a state of emergency does not override the validity of the provisions of the Criminal Procedural Code of the Republic of Kazakhstan in terms of ensuring the right to privacy

(including personal privacy and marital privacy). [Clause 3 of article 16](#) of the Criminal Procedural Code of the Republic of Kazakhstan states that “No one has the right to collect, store, use, and disseminate information about the private life of a person without his (her) consent, except as required by law”. In addition, a state of emergency does not undo the norms of [article 15 of the Law “On Law Enforcement Intelligence Operations”](#) that prohibit “using illegal actions, which restrict rights, freedoms, and lawful interests of citizens” and “disclosing data, which relate to the right to privacy, including personal and marital privacy”.

That said, in a state of emergency, evidence fixation as well as identification of potential committers may be conducted only within the framework of a criminal process and only in relation to the persons involved therein. No information on the person’s private life may be pursued, except for the implementation of the criminal process objectives in line with the effective procedures set forth by the legislation that guarantee ensuring the right to privacy, personal secret, and correspondence privacy.

According to the international practice, no interference into private life is allowed, unless in line with the procedures that guarantee that all surveillance measures are compliant with the conditions established by law. In this regard, the Law of the Republic of Kazakhstan “On State of Emergency” allows restricting certain citizen rights and freedoms, including the right to privacy. However, these restrictions, as stipulated by [clause 17](#) of the said Law, must be implemented to the extent necessitated by the circumstances that serve as the ground for imposing the state of emergency, and must not contradict international agreements in the field of human rights ratified by the Republic of Kazakhstan.

Laws of Kazakhstan in the sphere of criminal intelligence operations do not give a quite clear definition of permissible procedures and conditions of conducting surveillance activities – there are no guarantees that information collection is ceased immediately upon revealing objective data that traverse the supposition on someone’s criminal deeds. Struggle against crimes, for all its noble causes, must not lead to neglecting protection of human rights and freedoms. Any ongoing and proposed policies to combat crimes must make provisions for the assessment of their consequences to the sanctity of private life. It provides a possibility to consider and present information on how policies

and technologies contribute to the mitigation of risks associated with the right to privacy. An internal legal framework on how law enforcement agencies store and use such data should be developed, providing that it should be predictable in terms of possible consequences and be subject to the thorough inspection of its compliance with public interests.

Under international law, the right to privacy is not ultimate, but it is recognized that any interference into the implementation of this right must meet the principles of lawfulness, proportionality, and necessity. Besides, any interference allowed by the State must be conducted on legal grounds only, which must, in their turn, correspond to the ICCPR provisions, goals, and objectives, and be justified under specific circumstances. No such interference may discriminate on the ground of race, language, religion, ethnic or social origin, political and other opinion, and any other motives stipulated under international law (ICCPR, articles 2 (1) and 26). [According to](#) the UN Special Rapporteur on the Right to Privacy, several countries around the world have identified an overarching fundamental right to dignity and the free, unhindered development of one’s personality, and violation of the sanctity of private life may produce an adverse effect on that right. The preambles to the [Universal Declaration of Human Rights](#) and ICCPR establish that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Any improper use of biometrical data can pose a threat to such rights. Misuse of such data can also

cause serious risks in respect of the rights to appropriate legal process, including the right to presumption of innocence and other rights related to criminal trials (articles 9 and 14 of the ICCPR). Besides, mass-scale collection of such data with no adherence to the principles of necessity and proportionality may in itself constitute a violation of the right to privacy (article 2 (3) of the ICCPR).

Where there are lawful goals and adequate process-related guarantees, the State is allowed to perform quite intrusive tracking; however, the State still is obliged to prove that such interference is both necessary and proportionate to the specific risk. Mass-scale or so-called ‘blanket’ tracking programs, thuswise, may be considered ‘unmotivated’, even if they serve a legal purpose and have been adopted under the legal regime of publicly accessible personal data.

In the decisions handed down on the case of [Klaas & others v Germany](#) as of September 6, 1978, and of [Schenk v Switzerland](#) as of July 12, 1988, it was stated that when resolving the issue of the permissible interference into the private life, one must match up conflicting interests – the public interest in finding out the truth under the case and the personal interest in preserving confidentiality of private matters. Such standpoint has been confirmed by the recent decisions of the European Court of Human Rights: “Powers of secret surveillance of citizens are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions”; “whatever system of surveillance is adopted, there must exist adequate and effective guarantees against abuse”.

Recommendations

- Upon the end of the state of emergency, all data related to the private life as well as to the personal honor and dignity, obtained as a result of criminal intelligence operations, must be deleted, unless they contain information on the commitment of actions prohibited by law, and it must be also ensured that such data will not be used for any other purposes, except for those compliant with the effective legislative provisions in the field of criminal intelligence operations.
- It is recommended to inspect the national video monitoring system for the presence of the adequate guarantees aimed at protecting the right to privacy and also to assess risks associated with data processing (in particular, by evaluating the impact on the data protection before any software products or hardware devices of the national video monitoring system, which conduct collection, processing, and storage of the video surveillance footage, are used).
- It is recommended to take additional measures to protect data pertaining to vulnerable groups.
- It is recommended to encourage inclusive approaches by engaging civil society organizations, national human rights advocacy institutions, and data protection bodies.

Inspection of Phones under a State of Emergency: Invasion of Privacy or Reasonable Measures

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According to the current [Law of the Republic of Kazakhstan "On Personal Data and Their Protection"](#), personal data matters in Kazakhstan refer to regulated activities. This law defines basic provisions on the processes related to personal data and their protection.

Under the state of emergency, Kazakhstan imposed a number of temporary restrictive measures. Some of those restrictions focused on strengthening public order and security of the crucial governmental objects and facilities that support vital functions of the population and transport operations. The freedom of movement was also restricted. [Article 15 of the Law "On State of Emergency"](#) allows checking personal identification documents as well as inspecting personal items and transport vehicles. In an attempt to analyze if the actions of officials who conducted such inspections were lawful, we should consult the effective laws of Kazakhstan,

[Article 219 of the Criminal Procedural Code. Inspection.](#)

For the purpose of detecting and identifying traces of a criminal offense and other material objects, clarifying the incident scene, and establishing the circumstances relevant to the case, the person conducting the pre-trial investigation conducts an inspection of the territory, buildings, items, documents, survivors, corpses, and animals. Instructions of the person conducting the inspection shall be binding for all participants in this investigative action.

We should also consider some parts that concern the [general rules of conducting an inspection](#):

- The examination shall be carried out with the use of scientific and technical means to fix the course of the inspection and its results, and in cases under Parts 13 and 14 hereof, with the participation of witnesses.

According to [article 6 of the Law of the Republic of Kazakhstan "On Internal Affairs Bodies of the Republic of Kazakhstan"](#):

- Acting within their competence, internal affairs bodies shall inspect persons as well as their personal belongings and transport vehicles when implementing relevant access control procedures applied at the facilities guarded by the State.

According to [article 254 "Procedures of Search and Seizure"](#) of the Criminal Procedural Code of the Republic of Kazakhstan:

- Searches and seizures are carried out by the person conducting the pre-trial investigation on the basis of the respective motivated ruling. An order for conducting search and seizure of documents, items and data contained therein, which refer to the [state secrets](#) or other [legally protected secrets](#) must be authorized by an investigating judge.

The Criminal Procedural Code of the Republic of Kazakhstan does not specify such term as "personal inspection", but applies another definition, namely "personal search".

According to [article 255 "Personal Search"](#) of the Criminal Procedural Code of the Republic of Kazakhstan:

- Personal search may be carried out without issuing a special resolution or a sanction of the investigating judge in the presence of any of the following circumstances:
 - 1) if there are reasonable grounds to suppose that a person, being present in the room or in some other place, which is being searched in compliance with the requirements of [Article 254](#) of this Code, hides documents or items that may be relevant to the case;
 - 2) if it is performed during the detainment of a person or his/her taking in custody. Should it be the case, a personal search can be carried out in the absence of attesting witnesses.

With regard to the international standards in the field of human rights, if we speak about the state of emergency in general terms, temporary derogations from the rights and freedoms fixed in the international documents may be allowed, and yet such practice may be [‘justified in extraordinary and most serious situations only’](#).

In Kazakhstan, as from the 6th of January, [social networks](#) started publishing numerous complaints of the citizens who had faced personal search and inspection of the contents of their phones conducted by police officers. For instance, one of such cases was described in the Instagram account named [“Almaty Complaints”](#).

On January 12, Yerbol Izbasarov, a citizen of Kazakhstan, addressed the President of the Republic of Kazakhstan through Facebook on the fact of the inspection of the documents of some citizen ‘M’ and search of the latter’s car by police officers. Yerbol Izbasarov told the story of ‘M’, who had been very detailed on how his personal property had been inspected, and that he had been required to show the contents of his mobile phone. The phone of ‘M’ contained video materials of the protests obtained from the open internet sources. Besides, in his plea, the citizen spoke about the extortion and threats to his life from the representatives of law enforcement agencies. The fact of extortion was supported by the attached screenshot of the money transfer through the Kaspi Bank application. Having consulted the attorney and specialists of the human rights advocacy, the person, who had suffered from extortion, complained to the police department. As judged by the comments of Kazakhstanis under Izbasarov’s post, that case of extortion was not unique.

As mentioned above, under [clause 3 of article 15 of the Law “On State of Emergency”](#), checking identification documents of natural persons, as well as conducting personal search and inspecting their belongings and transport vehicles, is allowed. However, police bodies may not inspect the contents of the mobile phone as there can be certain data that refer to personal privacy. In addition, personal correspondence, images, and video clips can contain information on the marital or commercial secrecy.

Journalist [Olga Chechulina](#), who works in the field of PR and SMM, was also detained by the police for having photo- and video materials from the protests on January 4th and 5th in her mobile phone and for publishing stories in her personal Instagram account. [The Village Kazakhstan](#) states that police officers conducted a search and listened to audio messages as well as made photos of all references to the protests, which they managed to find in shared and personal chats.

Public disorders that accompanied January events made it absolutely justifiable that the State had to impose certain restrictions to ensure national security and stabilize the situation in the country. And yet, can it serve as a springboard for exceeding official powers by authorized persons charged with conducting inspections and searches?

On January 15, 2022, the President held [a meeting](#), during which a demand to develop a new legislative framework on coordinating activities of law enforcement agencies under critical situations was voiced. After the meeting, in pursuit of arranging measures to restore trust to police bodies, Yerlan Turgumbayev, the Minister of Internal Affairs, published a directive to the Internal Security Department to carry out a thorough [investigation of all incoming complaints](#) of citizens in relation to the actions of police officers. The Minister made an official announcement that no mobile phone may be checked or inspected without its owner’s consent or a relevant court sanction. Monitoring of incoming complaints of citizens caused by the facts of unmotivated inspections of mobile phones by police officers has been implemented by sending out confidential hotline numbers and instructions for submitting an application.

A good example of the protection against arbitrary interference can be found in the practice of the European Court of Human Rights (ECHR). When considering the case of [Catt v. The United Kingdom](#), the court established that retention of the data of the peaceful movement activist, who had never been convicted for any offense, was neither compulsory for all, nor necessary for the purposes of the specific investigation, and, therefore, was recognized to be a violation of his right to privacy,

In Kazakhstan, the state of emergency lasted from January 5th to January 19, 2022. Yet, in practice there were examples of the long-lasting imposition of such regime and derogations from human rights, which also existed for an unreasonably extensive period of time.

Major Conclusions Based on the Current Situation

- Monitoring of social networks must be regulated by stricter supervision. The use of technical control means must be more transparent, including a continuous dialogue between law enforcement agencies and concerned community.

- The observance of civil rights must undergo a public evaluation. Governmental bodies must be liable for the cases of illegal actions of authorized officials who under the state of emergency have access and levers of influence. It is required to apply effective tools and remedies to protect victims of any free-hand inspections of mobile phone contents or personal searches.

- Online-tracking technologies must not be used for the preventive monitoring in respect of those who plan and organize peaceful protest actions or those who participate in nonviolent political groups.

Recommendations

- It is necessary to exclude situations that pose a risk of arbitrary interference in private life under the state of emergency.
- Rules for conducting searches and inspections when prescribed by the law must be observed, providing that such measures are applied only when they are indeed necessary, proportionate and non-discriminating.

- To conduct systematic monitoring of how procedures of ensuring adequate guarantees on the protection of the right to privacy are implemented.
- It is strongly advised to delete all data collected during inspections, and make sure immediately upon the end of the state of emergency that none of such data can be misused.

Business, Internet, and Human Rights

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Speaking of the legal standpoint, decisions, by which mobile operators, being business entities, introduced internet restrictions, blocked web resources, and later shut down the internet completely, are substantiated by the imposition of the state of emergency – at first, in certain regions, and then throughout the entire country, by the announcement of the conduction of anti-terroristic operations, and also by the provisions of the [Law “On Communications”](#). In such a way, in light of the country-wide digitization, the sphere of telecommunications technologies suffered along with many other sectors of economy and end consumers of goods and services. Currently, it is nearly impossible to estimate the size of losses, for example, according to the insider [information of Forbes](#), the losses incurred by Kcell are about KZT 1 billion. Based on the [methodology](#) used by NetBlocks, the total damage can achieve up to [USD 500 million](#).

The Minister of Digital Development, Innovations and Aerospace Industry (MDDIAI), represented by Bagdat Musin, provided explanations on the internet shutdown, [saying](#) that “restrictions of internet access were

related to the fact that terroristic groups were using communications means for planning and coordinating their actions”. It is noteworthy that mobile operators neither notified their users, nor made any official statements on the reasons of blocking web resources and cutting down the internet.

Behavior of Businesses and Cooperation with the State

Mobile operators and other businesses engaged in the provision of online services focused on the implementation of respective directives and demonstrated a broad-scale cooperation with governmental authorities. In doing so, users of their services did not receive any adequate information and learnt official news on the steps taken, mostly, from President Tokayev and MDDIAI in the person of Minister Musin.

On January 8, 2022, the Minister [announced](#) a row of measures aimed at making the life of common citizens easier in the absence of internet connection.

- They worked out a mechanism to maintain an access to certain resource 24 hours a day, despite the total internet shutdown. They also considered ‘the matter of providing an access to other vitally important services’.
- Pursuant to the President’s task, mobile operators promised to a free package of 200 text messages and 300 minutes of calls to all users.
- ‘Thanks to a close cooperation with the mobile operators’, citizens started receiving notifications and news from the State, namely from Akorda (Presidential Administration), and also from the mobile operators, through text messages.

On January 10th, Bagdat Musin [announced](#) other proposed measures to be implemented in conjunction with the mobile operators and banks to support the population under the state of emergency as follows:

- Kazakhtelecom JSC cancelled accruing penalties for overdue payments for telecommunications services rendered to natural persons in January 2022, and also ‘provided 1000 minutes of calls from landline phones to mobile phones with no additional charges’;
- All users of the fixed internet by Kazakhtelecom JSC and Beeline received a free access to TV and entertainment options;
- Mobile applications of Beeline, Kaspi, Halyk, and Homebank introduced the Governmental News section, where messages on the state of emergency, overnight curfew, and other official announcements were published, which actually turned those businesses into mass media sources.

Besides, several banks [informed](#) that they would not accrue overdue payment penalties for credits and

other loans for the period from January 5 to January 19, 2022.

On January 13th, MDDIAI of the RK, together with the General Prosecutor’s Office of the Republic of Kazakhstan, [announced](#) the launch of the [website](#) to collect digital materials (photo-, audio-, and video materials) from the scenes of events in Almaty and other cities, taken by smartphones, automobile dash cams, and outdoor surveillance cameras.

As to the collection of data from outdoor surveillance cameras (i.e., from private systems), it can be suggested that the national video monitoring system of the National Security Committee of the Republic of Kazakhstan does not operate to the full extent yet, and the reasons can be both technical and organizational. For example, connection private video surveillance systems, as set forth by the Rules [adopted](#) in 2020, is being implemented behind time.

At the same time, Telegram was used to spread hundreds of proxy-servers for the users from Kazakhstan (an example can be found [here](#)). It should be mentioned that, in parallel with adequate solutions, this may pose a threat to the privacy of personal correspondence of users as such unsourced distribution can be used to spread out doubtful proxy-servers intended to collect personal data.

Private companies started to develop, specifically for Kazakhstan, ways for bypassing blocking mechanisms, both of general application and particularly for Telegram. For instance, free private browser TOR allocated special channels for Kazakhstan.

According to Technodom representative Yermek Zhakipzhanov, soon the country will be availed to a new [service](#) of verifying the legitimacy of home appliances, which are now offered in large numbers for sale at such marketplaces as olx.kz. This information is important for the population, because when buying stuff online, people can get involved in acquiring goods stolen during January events, which, in turn, can lead to certain legal consequences. The said solution should be expanded to cover network access devices, since such type of goods turned out to be first for stealing and are in high demand. This, above all, can prove to be quite effective in relation to mobile devices with the internet access as their blocking is implemented by their IMEI numbers.

Conclusion

In light of January events, local businesses acted in compliance with the national laws and fully performed all directives of the governmental authorities. As an independent body of ensuring human rights in the digital environment, business sector did not show transparency in its cooperation with the State and also demonstrated no initiative of its own, except for some technical solutions based on the outcomes of non-public communications with the MDDIAI of the RK as well as compensations to the users of their services.

At the same time, businesses that operate outside the country turned out to be more socially oriented, mobile, and rapidly adapting as they offered their own solutions to common users, both through international NGOs and directly, in particular for the preservation of access to information (bypassing of blockages), and for the protection of privacy (technical restrictions of tracking devices). Still, a question of the safety of data, which went through unverified channels for bypassing blocking mechanisms, remains open, along with the corresponding possibility of new large-scale data leakages in future.

Recommendations

- The State, represented by the President’s Office, General Prosecutor’s Office, National Security Committee, Ministry of Internal Affairs, and the Government of the Republic of Kazakhstan, should provide a publicly available conclusion on the effectiveness of the use of internet blocking mechanisms and communications shutdown through the prism of the events of January 2022.
- The State, represented by the MDDIAI, National Security Committee, and mobile operators, should define and specify communications procedures, and

also make official publications of all documented liaison (letters, inquires, notifications, and meeting minutes) between themselves that took place on the background of the events from early January 2022.

- Leave behind those provisions of the national legislation that envisage restrictions of access to the internet and practice of blocking web-resources and cutting down the internet. In case the user has no traffic or in case of technical failures, the State, represented by the MDDIAI of the RK and mobile operators, should define the list of the socially significant resources and services, whether governmental, private, and public, which should be available even in the absence of internet so to ensure the entire spectrum of the rights and interests of its population.
- Mobile operators should strengthen their transparency and improve the mechanism of informing their subscribers on any possible and actual blockages and disconnections, accompanied by the most detailed clarifications and justifications, through their own communications channels (push notification services, news, short messages), placement of announcements at the official pages in social networks – preferably in the form of publications, and not as comments/quickly disappearing stories or other less vivid methods – and also through mass media sources.
- All stakeholders should expand information coverage campaigns on the protection of the right to access to the internet, and also on the implementation of the right to privacy in light of possible leakages of personal data, correspondence and other private information from the devices, when trusting unverified technical solutions in the form of widely spread programs and applications with various spheres of their intended usage.
- Telegram users are recommended to clean up the list of proxy-servers and keep only mostly trustworthy and recommended by cyber security specialists and relevant organizations.