**PF «Kazakhstan Parliamentary Development Fund»**

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**Laws or regulations prohibiting begging, food, sleep or personal hygiene in all or certain public places, including their texts, and whether they are still in force and enforced.**

National legislation contains provisions criminalizing homelessness:

**Code of Criminal Procedure:[[1]](#footnote-1)**

1. Article 128 «Grounds for detention», paragraph 4:

*4. If there are other grounds for suspecting that a person has committed a criminal offence, he or she may be detained only if he or she has tried to escape or if he or she has no permanent residence or the identity of the suspect has not been established, or when the court has been asked to authorize a preventive measure in the form of remand in custody».*

1. Article 147 «Detention», paragraph 1, subparagraph 1:

*Remand in custody as a preventive measure shall be applied only with the authorization of a judge and only against a suspect, accused person or defendant for a crime for which the law prescribes a penalty of deprivation of liberty for more than five years, If it is not possible to apply other, less severe security measures. In exceptional cases, this preventive measure may be applied to persons suspected, accused or on trial for an offence punishable by deprivation of liberty for up to five years if:*

*1) He has no permanent residence in the territory of the Republic of Kazakhstan».*

**The Law of the Republic of Kazakhstan «On Prevention of Offences»: [[2]](#footnote-2)**

1. Article 29 «Preventive restriction of freedom of movement», paragraphs 1 and 2:

*1. Preventive restriction of freedom of movement is an individual preventive measure for: persons without a fixed place of residence and (or) identity documents, if there is no evidence of criminal or administrative offences in their acts and if it is not possible to identify such persons by other means».*

*2. Preventive restriction of freedom of movement is applied by the internal affairs agencies with the approval of the court and consists in temporary isolation of the persons referred to in paragraph 1 of this article in a special facility of the internal affairs agencies for a period of up to thirty days».*

The United Nations Human Rights Committee has already expressed concern about the existence of this article in national legislation and has recommended that the practice of administrative detention be brought fully into line with articles 9 and 14 of the Covenant and that the rights to due process be fully respected procedural guarantees including the effective right to appeal and the strict observance of the principles of legality and proportionality in all decisions restricting the right to liberty and security of person.[[3]](#footnote-3)[[4]](#footnote-4)[[5]](#footnote-5)

Also, at present, the Ministry of Internal Affairs throughout the territory of the Republic of Kazakhstan conducts operative-preventive measures «Vagrant». They involve members of the Criminal Police, the Administrative Police, the Immigration Police, the Local Police Force, the Criminal Investigation Service and other units. Homeless persons are detained in basements, sewer hatches, abandoned buildings, farm and peasant farms, areas reserved for domestic waste (landfills), forest plantations, etc. Places and places them in reception and distribution centres and places them on the records of internal affairs agencies. It is not possible to analyse the full description, instruction or regulation of this measure, etc. these are internal documents of the public authority, which are not published in the public domain and are not available on request.[[6]](#footnote-6)

The State does not conceal what it considers to be homeless persons who are wanted in connection with the commission of crimes and who are hiding from the bodies of inquiry, investigation and trial.[[7]](#footnote-7)

On the basis of all the above, articles 128 and 147 of the Criminal Procedure Code and article 29 of the Law «On the Prevention of Offences» constitute discriminatory norms. The State without any sufficient grounds, and solely on the visual establishment of the «way of life» detains the homeless and takes them to reception-distributing centres, and also only on the basis of the social group obligatorily keeps them in custody.

**Comments on whether any of these laws and regulations may violate international human rights law.**

The legislation of the Republic of Kazakhstan contains discriminatory norms against homeless persons.

Homelessness is the only category that the State criminalizes. They are preventively restricted in their freedom of movement by laws and some by-laws regulate their retention. Homeless persons are identified only by their appearance and location.

The requirement of «residence» in obtaining services is not compatible with the homeless, because of these conditions it is impossible to realize the right to participate in the administration of state affairs or to respect the freedom of peaceful assembly. In this analysis, only part of the discriminatory norms that most acutely elicit questions from the homeless themselves during the interview are given.

The discrimination described above is based on legislation, but discrimination, stigmatization and segregation against the homeless are even more pronounced in practice. They are forcibly moved outside the city to «cleanse» the streets or make the districts more attractive to investors. The author repeatedly attempted to obtain documents from the State authorities on the basis of which the acts were committed, but in all cases he was refused.

The State should completely eliminate all legal acts criminalizing the homeless, repeal the Order «On the Approval of the Internal Regulations of Reception and Distribution Bodies of Internal Affairs» and also delete from the legislative acts Article 46 of the Law «On procedure and conditions of detention of persons in special institutions, special premises providing temporary isolation from society», delete article 128 and 147 (paragraph 1, subparagraph 1) of the Criminal Procedure Code, delete article 29 of the Law «On Prevention of Offences».

All documents require the removal of residency requirements or conditions. Study international experience and provide, for example, for voting on a special form in the absence of a fixed or permanent place of residence.

The homeless should not be perceived as a group of offenders, but rather as a group whose rights have been and continue to be systematically violated. It was time for Kazakhstan to heed the recommendations of the treaty bodies, the international community and national experts for the realization, protection and respect of human rights.

1. See Code of Criminal Procedure of 4 July 2014. 231-V, as amended and supplemented on 4 September 2021. [↑](#footnote-ref-1)
2. See Law of the Republic of Kazakhstan «On Prevention of Offences» of November 29, 2010. 271-IV with amendments and supplements of December 19, 2020. [↑](#footnote-ref-2)
3. See Concluding Observations of the UN Human Rights Committee on the second periodic report of Kazakhstan, para. 29. [↑](#footnote-ref-3)
4. See Concluding Observations of the UN Human Rights Committee on the second periodic report of Kazakhstan, para. 30. [↑](#footnote-ref-4)
5. See. International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966, articles 9 and 15. Ratified by Law of the Republic of Kazakhstan of 28 November 2005. [↑](#footnote-ref-5)
6. Cf. Replies of the Ministry of Internal Affairs of the Republic of Kazakhstan 3-3-1-4/ZT-B-16308 dated 28 10 2020. [↑](#footnote-ref-6)
7. See Third periodic report of Kazakhstan on the implementation of the International Covenant on Civil and Political Rights, paras. 152-160. [↑](#footnote-ref-7)