

**MONITORING THE RIGHT TO FREEDOM
OF PEACEFUL ASSEMBLY
IN THE KYRGYZ REPUBLIC**

RESULTS. CONCLUSIONS. RECOMMENDATIONS

BISHKEK-2011

This Report is a result of the “Monitoring the right to freedom of peaceful assembly
in the Kyrgyz Republic. Results. Conclusions. Recommendations. ”
Project implemented with the support from OSCE.

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This report is intended for government authorities, nongovernmental organizations,
human rights defenders and other persons interested in issues of respecting
human rights to freedom of peaceful assembly.
The views expressed in this report are strictly those of the author
And cannot be taken to reflect the official position of the OSCE.

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GLOSSARY OF KEY TERMS:

AoIA– Administration of Internal Affairs

CoAA – the Code on Administrative Amenity¹

DIA – Department of Internal Affairs

Guidelines on Freedom for Peaceful Assemblies – the OSCE/ODIHR and European Commission for Democracy through Law (the Venice Commission) Guidelines on Freedom for Peaceful Assemblies

ICCPR – the International Covenant on Civil and Political Rights²

KR – the Kyrgyz Republic

LSA – Local state administration

LSG – Local self-government

MIA – the Ministry of Internal Affairs

NGO – Non-governmental organization

ODIHR – The OSCE Office for Democratic Institutions and Human Rights

OSCE – the Organization for Security and Co-operation in Europe

RDIA – Regional Department of Internal Affairs

The Law on the Rights of Citizens for Peaceful Assemblies – the law of the Kyrgyz republic “On the Right of Citizens for assemble peacefully without guns, to conduct demonstrations and meetings”³

Universal Declaration – the Universal Declaration of Human Rights

¹ The CoAA of the KR of 4 August August 1998. № 144. Was implemented by the Law of the KR of 4 August August 1998. № 115. In edition of law of 27 November 1999. № 131, 10 March 2002. № 33, 20 March 2002. № 42, 22 June 2002. № 109, 17 February 2003. № 36, 19 February 2003. № 42, 11 June 2003. № 98, 11 June 2003. № 100, 28 June 2003. № 121, 5 August 2003. № 191, 5 August 2003. № 192, 9 August 2003. № 193, 14 November 2003. № 221, 15 February 2004. № 13, 9 March 2004. № 18, 11 March 2004. № 20, 11 June 2004. № 71, 26 July 2004. № 98, 27 July 2004. № 100, 2 August 2004. № 102, 23 December 2004. № 194, 25 February 2005. № 39, 5 March 2005. № 43, 18 July 2005. № 107, 18 July 2005. № 109, 5 August 2005. № 121, 5 August 2005. № 122, 27 January 2006. № 16, 6 February 2006. № 35, 13 February 2006. № 52, 13 February 2006. № 53, 25 July 2006. № 127, 26 July 2006. № 130, 8 August 2006. № 159, 21 August 2006. № 174, 6 December 2006. № 198, 28 December 2006. № 212, 1 March 2007. № 29, 5 March 2007. № 31, 5 March 2007. № 32, 9 March 2007. № 33, 28 April 2007. № 65, 25 June 2007. № 91, 31 July 2007. № 130, 9 November 2007. № 162, 24 April 2008. № 64, 25 April 2008. № 67, 25 April 2008. № 68, 2 June 2008. № 102, 2 June 2008. № 104, 11 June 2008. № 115, 23 June 2008. № 136, 28 July 2008. № 179, 4 August 2008. № 185, 5 August 2008. № 199, 17 October 2008. № 214, 17 October 2008. № 231, 20 November 2008. № 239, 17 December 2008. № 264, 19 January 2009. № 9, 23 January 2009. № 20, 24 February 2009. № 65, 30 March 2009. № 117, 30 April 2009. № 140, 26 June 2009. № 194, 3 July 2009. № 202, 17 July 2009. № 234, 24 July 2009. № 250, 13 October 2009. № 272, 17 December 2009. № 308, 25 December 2009 to № 315, 10 February 2010. № 27, 25 February 2010. № 35, 30 May 2011. № 33, 22 July 2011. № 123, 26 July 2011. № 141, 8 August 2011. № 151, 5 October 2011. № 158, 18 October 2011. № 177, 18 November 2011. № 217.

² Was adopted by the Resolution 2200 A of XXI of the General Assembly of 16 December 1966.

³ he Law № 120 of 23 July 2002. In edition of the Law of the KR of 5 August August 2008. № 192.

1. INTRODUCTION

The Freedom for Peaceful Assembly is a fundamental human right and inalienable condition for the realization of other rights, including Freedom of Expression, which is an important component of any democratic state.

The sociopolitical and socioeconomic situation in the country being characterized by extreme poverty and social vulnerability, corruption, prosperity of organized crime and a mass outflow of human and financial resources abroad does not allow committed people to remain passive observers. In such a situation, public action is left as the only practical means of expressing public opinion and freedom of speech.

In comparison to the previous year, in 2011 the number of public actions has grown exponentially both in the capital city of the country and in the regions. In 2010 the MoIA registered 685 assemblies⁴, and by the ninth month of 2011 it registered 1013 assemblies⁵.

International treaties which secure the right to peacefully assemble with universally recognized principles and norms of international law are part of the legal system of the KR and have priority over the norms of other international treaties⁶.

The guiding principles of free assembly is outlined in the Constitution of the KR which sets the right of everybody to peacefully assemble. According to the Constitution, organizers and participants of peaceful assemblies have the right to notify authorities about a planned assembly, and the banning and restriction of peaceful assemblies is not allowed, even in the absence of notification or failure to comply with forms, content and time constraints for notification.⁷

While the Constitution provides legal grounds to organize and hold public actions in the country and sets an order of their regulation, rights and commitments of state bodies, organizers and participants, the actual enforcement of the law does not fully meet these guiding principles of peaceful assembly.

When a requirement of the law is violated, ISA or LSG have right to demand to end public action, and in case of non-compliance with these demands representatives of these bodies or DoIA must take measures to end mass action and to ensure the proper documentation of the violation of the law of the KR.⁸

Violation of an order to cease conducting meetings, demonstrations, street processions, or gatherings, which was set in the Law on the Right of Citizens for Freedom of Assembly, is a breach of administrative law provided in the article 392 of the CoAA of the KR, and may be fined approximately \$21 up to \$43.

The Constitution has the highest judicial power and priority over norms of the law.⁹ However, this fact has been ignored in past events, and a lack of professionalism or misuse of power by state officials may become a threat to participants of peaceful assemblies.

The Government of the KR initiated a draft Law “On Peaceful Assemblies”, which in general will close existing gaps in the law and establish necessary legal grounds to regulate relationships in the field of realization of the right of citizens for peaceful assemblies, which would meet minimal world standards in the field of human rights. Opinions of representatives of competent international organizations, such

⁴ Bishkek – IA “24.kg”: the MoIA of the KR: in 2010 685 meetings and protest action were registered. 26/01/11. 08:24.

⁵ Bishkek - AKIpress: in Kyrgyzstan by ninth month of 2011 1013 meetings and protest actions were registered.03/10/2011.16:50.

⁶ The Constitution of the KR, art.6, p.3.

⁷ The Constitution of the KR, art.34, p.1,2.

⁸ The Law on the Rights of Citizens to assemble peacefully, art.11, p.p.1,2.

⁹ The Law on Normative Legal Acts of the KR, art.art.1, 6.

as the OSCE and the European Commission for Democracy through Law (the Venice Commission) and national human rights community were considered while developing the law. However examination of the draft law in Jogorku Kenesh has been unreasonably delayed, and it is impossible to designate even approximate dates of its adoption.

Thus, risk of violations of the right for peaceful assemblies and negative consequences of such violations still exist. That is why human rights defenders and human rights organizations of the KR consider issues related to realization of freedom for peaceful assembly a priority and in need of immediate attention from the national and international community.

The need to monitor peaceful assemblies stems from an absence of generalized data on situations in which human rights activists and citizens take action, without which these events can be seen as artificial or without motive.

Observance of the process of peaceful assembly ensures an impartial and official account of what is going on, including a record of the actions of participants of assemblies and of officials and law enforcement officers. Concrete proposals and recommendations developed based on the results of monitoring a change of the law and law enforcement practices as well as an active implementation of recommendations of the project will contribute to an improvement of the situation with respect to human rights in Kyrgyzstan.

The present report is a summary of results of monitoring peaceful assemblies conducted in the period from June 1st to November 30th 2011 in the framework of the project “Monitoring of Freedom of Peaceful Assemblies in the Kyrgyz Republic” with financial support from the OSCE Centre in Bishkek and Freedom House Office in Bishkek.

The report is meant for state bodies, non-governmental organization, human rights activists and other individuals interested in the issues of Freedom of Peaceful Assemblies. Conclusions and recommendations aimed at improving the order of organizing and conducting peaceful assemblies, the order of their regulation, establishment of rights and responsibilities of organizers, state bodies and participants of those assemblies with full compliance with Guidelines on Freedom of Peaceful Assembly are formulated in the report.¹⁰

The first part of the report contains the list of recommendations to the parliament, government and civil society. Those recommendations were formulated based on a summary of data gathered during the monitoring.

A description of the methodology of the project including general information about goals, objectives, and its main components and activities held in the framework of the project is included in the second part of the project.

The third part of the report contains a description of the results of the monitoring of peaceful assemblies including statistical data, also in the form of tables and charts, and also condition of law enforcement practice in regard to guiding principles on peaceful assemblies. Additional clarification, references to national law and brief conclusions analyzing statistical data are presented under tables or charts. This part of the report is also supplemented by samples taken from reports of observers.

The monitoring team expresses its gratitude to:

- The OSCE Centre in Bishkek for financial support and support in conducting monitoring and publication of this report.

¹⁰ The OSCE Guidelines on Freedom of Peaceful Assembly (www.osce.org/odihr).

- The Freedom House project “Strengthening Human Rights in Kyrgyzstan” for financial support and support in conducting monitoring.
- The members of the Panel of Experts of the ODIHR/OSCE on the Freedom of Peaceful Assemblies Neil Jarman and Serghei Ostaf for expert support in the process of training of observers and development of united toolkit on monitoring of peaceful assemblies.

We express special gratitude to Heads of local State Administrations, self-governments and law enforcement agencies of the Kyrgyz Republic for assistance in conducting monitoring.

2. CONCLUSIONS AND RECOMMENDATIONS

Results of the monitoring of peaceful assemblies allow making the following conclusions:

- Absence of stability in social and political and social and economic aspects of life of the country creates problems which raise protest moods. People in Kyrgyzstan understand that even small problems can be solved through meetings. The heat of so called “meeting democracy” is growing which is confirmed by official statistics of the MoIA of the KR. With that the number of assemblies with “aggressive elements” also grows.
- State bodies including law enforcement agencies have a clear understanding that unconditioned restrictions of the freedom of peaceful assemblies can lead to tough confrontation between authorities and civil sectors, which can in its turn lead to significant worsening of the social and political situation in the country with unpredictable consequences. With that passiveness of law enforcement agencies in cases when it is necessary to take actions in order to prevent violation of the law is observed. Law enforcement officers usually do not know about the order of ending or curbing public actions and act in their common regime of patrol work of militia of public security.
- Adoption of the new Constitution setting legal guarantees for the Freedom of peaceful assemblies give a start to preventive measures to the risk of confrontation between authorities and civil sectors. At the same time there is an acute need for a new law which will prescribe constitutional norms and also will set the order of organizing and conducting public actions in the KR, the rights and responsibilities of state bodies, organizers and participants of peaceful assemblies in full compliance with Guidelines on Freedom of Peaceful Assembly.
- Public monitoring of assemblies is left the only mechanism to track coherence of state bodies and officials to the freedom of assembly, provision of objective information about the real situation in this sphere. It also helps to describe existing problems, to mobilize and involve of civil society activists in advocacy ad lobby campaigns on improvement of situation.

Based on the above mentioned conclusions, recommendations to state bodies and civil society were developed.

These recommendations are aimed to assist in improving the order of organizing and holding peaceful assembly in the KR, of order its regulation, determining the rights and responsibilities of state bodies, organizers and participants of peaceful assemblies in full compliance with guiding principles on peaceful assemblies and are aimed at improving situation of human rights in these institutions.

Guidelines regulating the freedom of peaceful assembly, concrete recommendations of international treaty bodies on human rights, particularly of the UN Committee on Human Rights, and also the final recommendations given to Kyrgyzstan on the freedom of peaceful assembly under Universal Periodic Review in June of 2010 lay in the base of all recommendations.

**Jogorku Kenesh of the
Kyrgyz Republic**

Recommendations:

1. To examine and adopt in the shortest time constraints the draft law of the Kyrgyz Republic “On Peaceful Assembly” initiated by the Government of the KR in edition which includes recommendations of international expert organizations and national experts and considering position of the civil society.
2. To ensure regular parliamentary control over fulfillment by the KR its commitments under international treaties in the field of ensuring freedom of peaceful assembly.

**Government of the
Kyrgyz Republic**

Recommendations:

1. To conduct regular monitoring of human rights and freedoms including the Freedom of peaceful Assembly.
2. To ensure timely and qualified submission of periodic reports on fulfilling commitments under international treaties to international bodies on human rights and implementation of activities to execute their recommendations.
3. To ensure wide spread information in society about rights and freedoms, to take measures on regular education of the staff of state bodies on the human rights and freedoms with involvement of experts in this field.

**The MIA of the
Kyrgyz Republic**

Recommendations:

1. To ensure strict adherence to the law and other by law acts of the KR establishing guarantees of respect of the Freedom of Peaceful Assembly by the officers in DoIA. To conduct careful investigation of all facts of violations and ensure inevitability of punishment without regard to position and merits.
2. To organize regular training of police officers in DoIA on human rights and freedoms, specificity of behavior, interaction with organizers and participants of peaceful assemblies in order to ensure efficient securing of peaceful assemblies with involvement of experts in this field.
3. To review and constantly improve the system of legal upbringing of the staff of DoIA. Special attention should be paid to their moral and professional quality.

**Civil Society of the
Kyrgyz Republic**

Recommendations:

1. To conduct regular monitoring in order to track coherence of state bodies and officials to the freedom of assembly, provision of objective information about real situation in this sphere. It also helps to describe existing problems, to mobilize and involve of civil society activists in advocacy ad lobby campaigns on improvement of situation.
2. To ensure effective support of lobbying in Jogorku Kenesh the draft Law “On Peaceful Assembly” through complex of advocacy and lobby activities.

3. METHODOLOGY OF THE PROJECT

The project “Monitoring of the Freedom of Peaceful Assembly in the Kyrgyz Republic” was implemented in the period from June 1 till November 30 2011.

Goal of the project:

To contribute to realization of the Freedom for Peaceful Assembly in the Kyrgyz Republic.

Objectives of the project:

1. Providing support to human rights activists and NGOs in increasing their knowledge on standards in the field of the freedom for peaceful assemblies, and also to develop their skills in conducting monitoring and reporting on freedom of peaceful assembly in the KR in compliance with Guidelines on Peaceful Assembly.
2. Establishment and ensuring effective functioning of small network of observers over constitutional right for peaceful assemblies in all oblasts and in Bishkek, coordination of its activities and information exchange.
3. Objective monitoring of assemblies with such fixing of coherence to/violations of norms of national law and the Guidelines on Peaceful Assembly by ISA, ISG, organizers and participants of peaceful assemblies.
4. Collection of reliable information documenting cases of violation of freedom of peaceful assembly if such cases will take place.
5. Analysis and processing results of monitoring to develop recommendations.
6. Provision of result of the monitoring and developed recommendations to interested state bodies and ISG, their further discussion with aim to improve the order of organizing and holding assemblies, regulation of peaceful assemblies in the KR in full compliance with Guidelines on Peaceful Assembly.
7. Raising awareness among population, international human rights organizations about situations with freedom of peaceful assemblies and manifested violations of this freedom.

When conducting monitoring special attention was paid to adherence to the following guiding principles on peaceful assemblies:

- Presumption in favor of holding assemblies
- State's duty to protect peaceful assemblies
- Legality and proportionality of imposing restrictions on peaceful assemblies
- Proper practice of good administrative regulations
- Non-discrimination

Object of the monitoring

Objects of the monitoring were peaceful assemblies. Monitoring covered 287 assemblies in all oblasts of the country and in Bishkek.

Observers

21 persons with regard to their experience in monitoring of assemblies were selected as observers from NGOs, which activities are directly related to promoting human rights and freedoms including the freedom of peaceful assembly. All observers passed specialized training on human rights in light of Guidelines on Freedom of Peaceful Assembly.

Activities in the framework of the project and the order of their realization

The plan of the project included the following activities:

- a. *Raising awareness of human rights activists about standards in the field of freedom of peaceful assembly, development of skills to conduct monitoring of assemblies and reporting on freedom of assemblies in the KR, spreading knowledge among them on principles of behavior of observer during monitoring.*

From May30 to June 1 2011 the training “Monitoring of Peaceful Assembly in the KR” was conducted. Interested human rights activists, NGO members from all regions of the country and representatives of the Office of the Ombudsman (Akyikatchy) of the KR participated.

The training was conducted by members of the Panel of experts of the ODIHR/OSCE on Freedom of Assembly Neil Jarman and Serghei Ostaf, and senior coordinator of the programmes of the Freedom House in Bishkek Almaz Esengeldiev, who is one of the co-authors of the draft law of the KR “On Peaceful Assemblies”.

In order to comply with principles of objectivity, impartiality and confidentiality the “Instruction for observer on monitoring peaceful assembly” was developed and approved by all participants.

- b. *Development of the united toolkit for information collection.*

To systematize different methods and toolkits used during monitoring of peaceful assemblies by human rights organizations of the KR and their compilation, it was decided to develop a united toolkit for its possible use both in activities of state bodies and when doing public control.

The following recommendations of international experts under preliminary agreement with observers the trial monitoring was conducted with use of a control list of questions, which observers should take into consideration when visiting assemblies and writing reports.

In the framework of the trial monitoring reports were provided according the Form of reporting, which was used by observers during similar monitoring in Kazakhstan, Armenia and Moldova.

The most important goal of introducing the trial stage of the monitoring was that observers, many of whom have experience in monitoring of peaceful assemblies, could examine the recommended toolkit and Reporting Form and could give their recommendation for the toolkit’s improvement and adaptation in the country.

All proposals from observers regarding the toolkit were considered by the project coordinator. With regard to these recommendations a detailed questionnaire, in compliance with the main requirements of the OSCE Guidelines on Monitoring Peaceful Assembly was developed.

- c. *Collection, analysis and generalization of results of the monitoring. Development of recommendations on improving situation of the Freedom of Peaceful Assembly.*

In order to collect reliable information observers used the following types of activities:

- observation
- records and documenting
- reporting

During monitoring observers strictly followed the principles and standards of monitoring, detail described in the Guidelines on Monitoring of Freedom of Peaceful Assembly, including the requirement

about having knowledge on law on freedom of assembly, remaining impartial for the duration of monitoring, etc.

One of the important principles of observers in monitoring is “visibility” of the work of observers. Each observer was given a badge with name of the project, in the framework of which this monitoring was conducted, contact information of an observer and his photo. Badges were used by observers in unforeseen situations.

To follow this principle, an official letter with information that monitoring is being conducted by local human rights organizations on territory of that administrative-territorial unit with support of the OSCE Centre in Bishkek. Those letters also contained information about goals and objectives of the monitoring and were sent to all DoIA, to the ISF and ISA.

Actions of observers in this monitoring were regulated by the Code of Behavior, determining main principles of work of an observer.

Monitoring covered almost every second assembly in the country. A significant volume of proceed materials covering assemblies in all regions of the country allows a high level of credibility in the results of the monitoring, which was conducted with full compliance with widely recognized standards and principles of conducting monitoring.

4. MAIN STATISTICAL DATA

Legal regulation of freedom to peaceful assembly

For the period from June 1st till November 30th 2011 in the framework of the project the monitoring covered 239 assemblies.

Table 1.

Assemblies covered by the monitoring in the scope of Osh and Bishek

Oblast/City	MONTHS						
	Total number of assemblies	June	July	August	September	October	November
Naryn oblast	29	1	1	7	8	12	0
Jalal-Abad oblast	41	2	3	1	2	30	3
Chui oblast	13	0	5	2	4	2	0
Issyk-Kul oblast	8	1	1	1	1	4	0
Talas oblast	27	3	2	7	4	8	3
Batken oblast	10	5	0	5	0	0	0
Bishkek	101	5	2	25	31	24	14
Osh	10	0	0	1	2	4	3
TOTAL:	239	17	14	49	52	84	23

Diagram 1. Quantity correlation of assemblies covered by the monitoring in oblasts and cities such as Bishkek and Osh

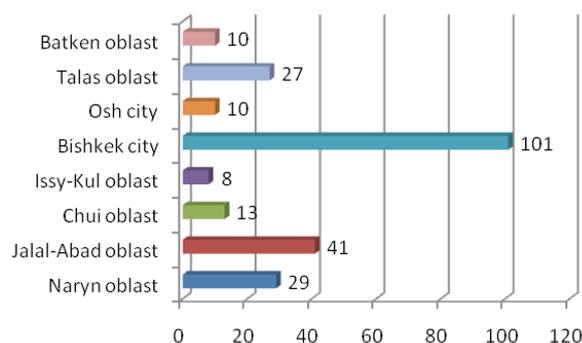
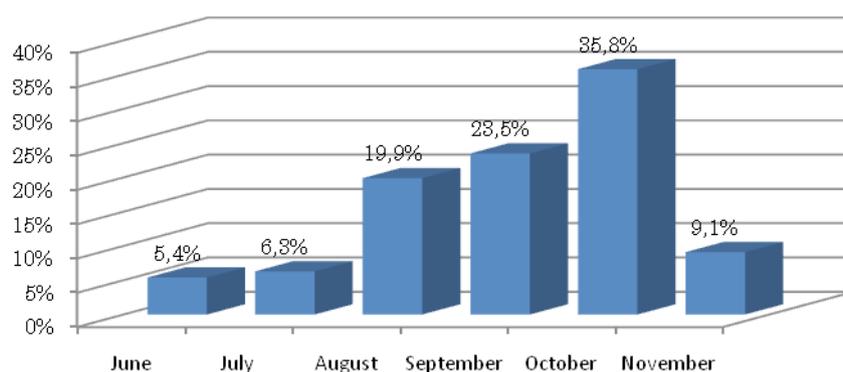


Diagram 2. Quantity correlation of assemblies covered by the monitoring by months



5. RESULTS OF THE PROJECT

5.1. FREEDOM FOR PEACEFUL ASSEMBLIES

5.1.1. Types of assemblies

In accordance with the Law on The Rights of Citizens for Peaceful Assemblies, public events could be conducted in forms of gatherings, meetings, demonstrations, manifestations, street processions, picketing, hunger strikes, or in various combinations of these actions¹¹.

During the process of monitoring, observers have noted, that for the purpose of expressing one's opinion people use various types of public events. Cases, when one kind of events gradually transformed into another kind under various circumstances have been noted.

Diagram 3. Types of gatherings

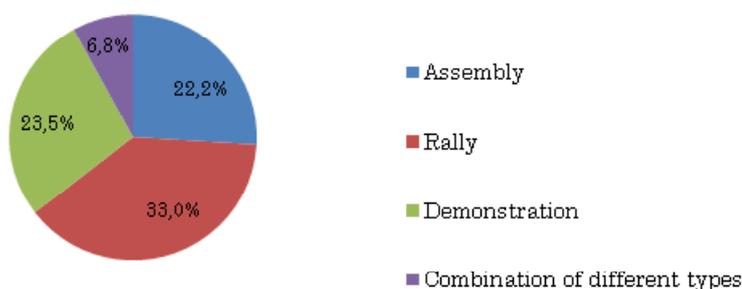


Diagram 4. Types of demonstrations



Example: June 3rd, 2011. Two residents of the Batken oblast announced hunger strike until their demands on the resignation of the ayil okmotu¹² would be satisfied.

Example: On the 27th of August, 2011, an initiative group of students conducted an action “Let’s light the stars over Bishkek”, dedicated to 20 years of independence of the Kyrgyz Republic, in which 700 people were part of it¹³.



Many lawyers, among which are the authors of the “Peaceful assemblies” bill, suggest calling all public events organized by the citizens to express their opinion by a single concept “assembly”. Such initiative seems to be reasonable, as in contemporary conditions it is impossible to foresee all the possible forms of public opinion expressions and describe them in details in the law. For example, in the specification of the types of public assemblies, provided in the Law on The rights of Citizens for Peaceful Assemblies, such actions as flashmobs and

¹¹ The law on the rights of citizens for peaceful assemblies, article 2.

¹² Monitoring report #17/7/1

¹³ Monitoring report #1/8/14

demonstrations which are highly popular among the young generation were not included, as well as the construction of the yurt, which has also become a popular and usual form of expressing group interests and protests.

In this sense, the bill “On the peaceful assemblies” is closer to the Guidelines on freedom of peaceful assemblies, which state that a national legislation requires a very broad definition for the assemblies that are positioned under protection¹⁴.

5.1.2. Goals of the assembly

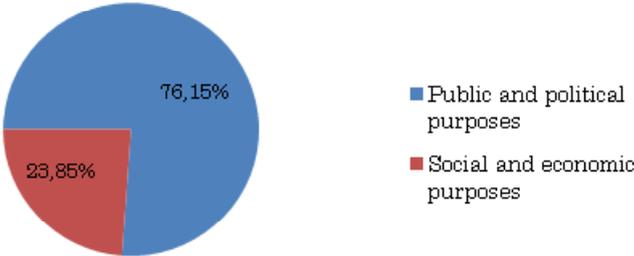
Guidelines on freedom for peaceful assemblies note, that peaceful assemblies may serve various goals, including, but not limited to expression of opinions and protection of common interests, celebrations, remembrance days, picketing and expressions of protests.

For the purpose of making an analysis of the goals of conducted public events, all of the events included in the monitoring have been divided into two types: socio-political and socio-economic.

The first type of socio-political assemblies includes political actions, speeches of citizens or organizations against the political actions of the governmental body. The socio-economic type unites all the assemblies, whose major goals were focused around the questions related to the growth of the level and quality of life, improvement of working conditions, improvement of qualification and educational potential of the population, reinforcement of the health protection and other parameters, oriented on the strong social and economic policy.

165 (74,7%) of the assemblies covered by the monitoring were dedicated to the socio-political theme and demands, 56 (25,3%) – to the questions of socio-economic nature.

Diagram 5. Goals covered by the monitoring of the assemblies



¹⁴ Guidelines on Freedom for Peaceful Assemblies (www.osce.org/odihr).

Table 2

Goals of the covered by the monitoring assemblies
in the section of oblasts and cities Bishkek and Osh

	Socio-political goals	Socio-economic goals
Naryn oblast	18	11
Djalal-Abad oblast	37	4
Chui oblast	7	6
Issyk-Kul oblast	4	4
Bishkek city	71	30
Osh city	9	1
Talass oblast	27	0
Batken oblast	9	1
TOTAL:	182	57

According to the monitoring the role and meaning of the assemblies increases during the period of elections, when the political parties, candidates and other groups and organization are trying to acquaint people with their views and directions and attract the support of electorate. The period covered by the monitoring has concurred with the period of pre-election campaigns of the candidates for the Presidency in Kyrgyz Republic, in connection with this, a certain part of the total amount of the assemblies covered by the monitoring 8,7% were the assemblies, conducted in the framework of the pre-election agitation.

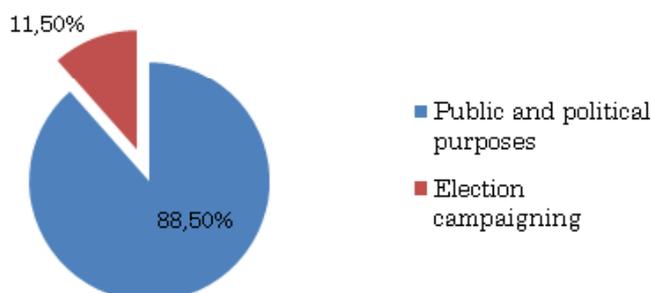


Diagram 6. The correlation of the meetings according to their goals

Results of the monitoring allow designating the amount of assemblies, dedicated to various themes in the section of oblasts in Kyrgyz Republic and cities of Bishkek and Osh.

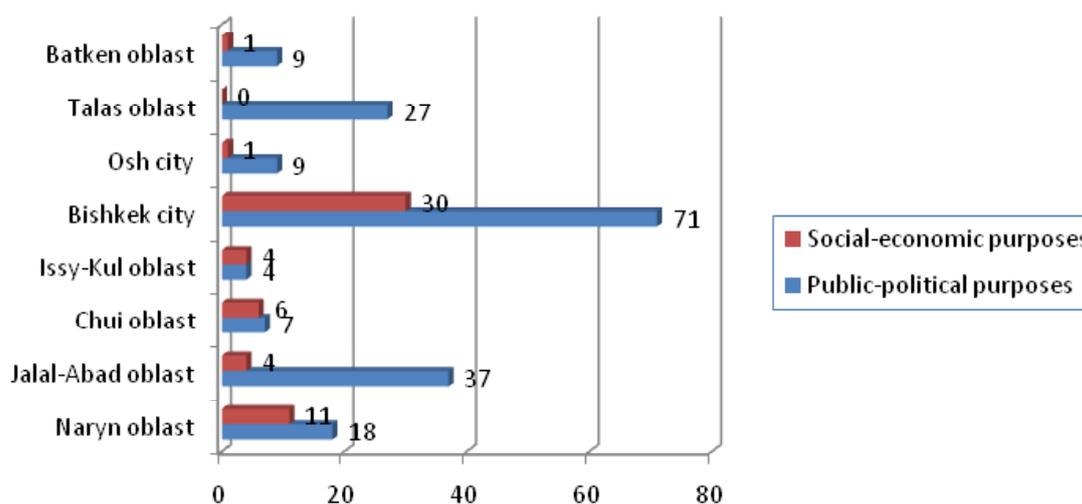


Diagram 7. The correlation of the goals of the assemblies in the section of oblasts and cities Bishkek and Osh

Example: On the 9th of September, 2011, the initiative group from among the workers of the Bishkek meat processing and packing factory have organized a picket in front of the building of Jogorku Kenesh demanding the inspection of the activity of the new director, and transferring the ownership over the factory to being the state¹⁵.

Example: On the 13th of October, 2011 the representative of the three nongovernmental organizations, in the total amount of about 100 people have organized a picket in front of the building of Jogorku Kenesh demanding to dissolving the Council of selecting judges of the Kyrgyz Republic¹⁶.

All countries with a pronounced authoritarian form of government have a typical feature of displaying a special “surveillance” over public events, pursuing political goals on the part of the governmental body. Smaller amounts of attention are attracting the assemblies, which raise the socio-economic set of questions. It was interesting for the team of the project to trace this distinctive pattern in the framework of the conducted monitoring. Based on its results it is appropriate to conclude that both types of the assemblies similarly do not provoke a proper amount of interest on the side of the governmental body (public officers), and display of attention from their side, until the moment when the situation gets more complicated under the influence of any incident, which later will be on the verge of delinquency of crime.

The observers have not recorded a single fact of limitation or the cessation of the assembly from the side of the governmental body based on the content of the assembly, or based on the topic to which the organizers and the participants of the assembly tried to attract attention. In this regard, the assemblies where the participants openly critiqued the government or demanded the resignation of the high officials are not exceptions. Such practice meets the international standards of abidance of rights and freedom of a person, instituting, that the critique of the government or the civil servants in itself should never serve as a sufficient basis for the institution of limitations on the freedom of assemblies¹⁷.

5.1.3. The organizers and participants of the assembly

In accordance with the Law on the rights of citizens to gather peacefully, the organizers of the assemblies are therefore considered the individuals who speak in the name of the political parties, public, labour and other unions, citizens, and who are performing the actions aimed at preparation of the mentioned events, and also individuals who are implementing direct guidance over the actions of their participants¹⁸.

In 64 (26,8%) cases the initiator of the assemblies, covered by the monitoring were the workers of the enterprises and institutions, in 59 (27,8%) cases – private individuals. The representatives of the political parties were organizing assemblies in 62 (25,9%) cases.

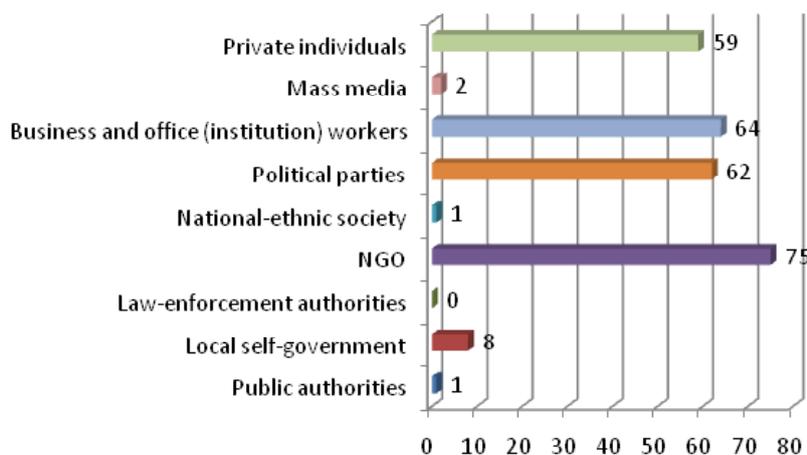


Diagram 8. The organizers of the assembly

¹⁵ Report on the monitoring № 1/8/27.

¹⁶ Report on the monitoring № 1/8/44.

¹⁷ Explanatory note for the Guidelines on Freedom for peaceful assemblies, paragraph 94.

¹⁸ The law on the rights of citizens for peaceful assemblies, article 2.



Article 2 of the Law on the rights of citizens for peaceful assemblies state, that participants of the assemblies and other public events could be the representatives of various organizations and institution independently from their organizational-legal form, and form of ownership, or the unions of citizens, and also citizens present on public event with the intention of participating in it, or implementing actions on preparation and conduct of the mentioned events.

Less capacious on the side of the text, but clearly defined by the content is the notion of participants of the assembly suggest a bill “On the peaceful assemblies» - it is one or more individuals, organizing an assembly and (or) participating in it¹⁹.

The monitoring has revealed that often assemblies are conducted by rather small groups of individuals in the amount of 2 to 50 persons (41,2%). Less frequently are gathering the groups of individuals in the amount of 100 (20,4%) to 300 (19,0%). A single case of a solitary picketing has been recorded.

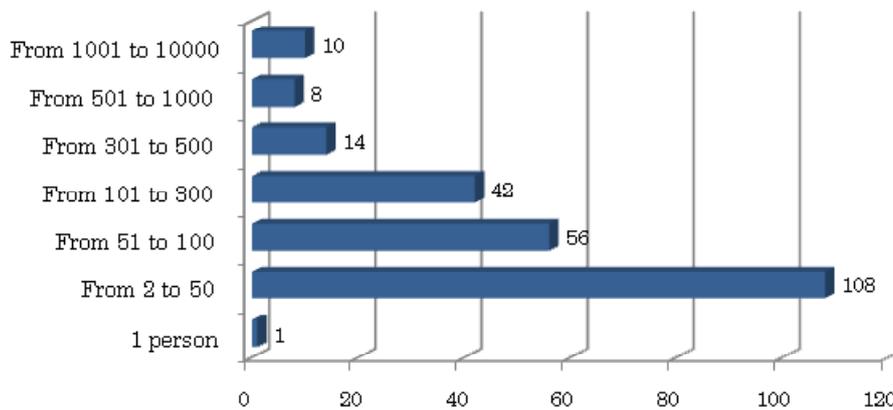


Diagram 9. The amount of participants in the assemblies

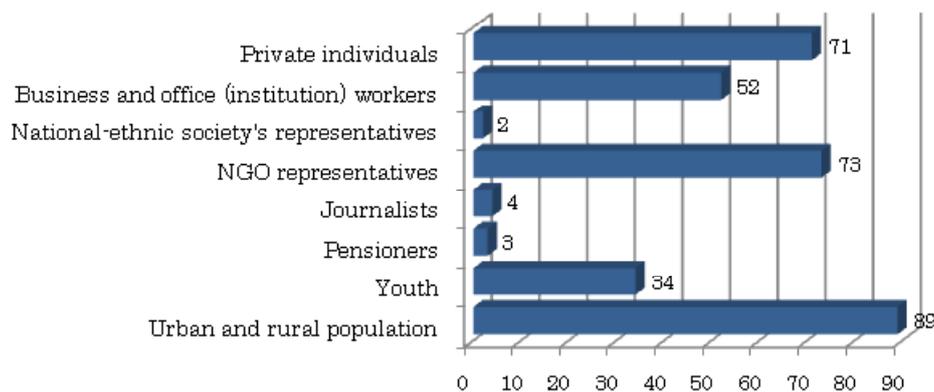


Diagram 10. Participants of the assembly

Example: On the 20th of June, 2011 on the central square of Djalal-Abad city has been held a meeting with about 3000 people participating in it to support the depute of the Jokorku Kenesh of Kyrgyz Republic Tashiev K., who has been issued a summon to the public prosecutor’s office for the prosecution examination on the petition of the depute Sulaimanov B. for assault and battery²⁰.

¹⁹ The bill on the law of KR “On peaceful assemblies” article 3.

²⁰ Report on the monitoring № 11/6/1.

Example: On the 9th of September, 2011 the Mr. O.T. arranged a picket in front of the building of Jogorku Kenesh of Kyrgyz Republic, remonstrating against the adoption of a new statute on UTRK²¹.

One of the most important principles on the freedom for peaceful assemblies is the principle of non-discrimination. The freedom to organize public assemblies and participation in them should be guaranteed to physical bodies, groups, non-registered unions, juridical bodies and other types of organizations, representatives of the minority groups – ethnic, national, religious, and sexual, citizens and non-citizens of the country (including individuals without citizenships, refugees, foreign citizens, individuals seeking for asylum migrants and tourists); children, women and men, law machinery employers, and also individuals not possessing full legal capacity (including individuals with psychic disorders)²².

The Law in force on the rights of citizens for peaceful assemblies does not contain anti-discrimination norm. This gap is suggested to be filled in the bill “On the peaceful assemblies” securing the norm that the governmental bodies and ISG should respect and secure the rights for the peaceful assemblies, without making any distinctions on the basis of sex, race, language, ethnic identity, religious views, age, political or any other view, origin, property status, as well as any other conditions²³.

In accordance with the Guidelines on the freedom for peaceful assemblies children should be allotted with the possibilities of expressing their opinions and paying up of contributions to the social life. In pursuance of commitment in the framework of the UN Convention on the rights of a child, member countries should recognize the right of children for organizing peaceful assemblies²⁴.

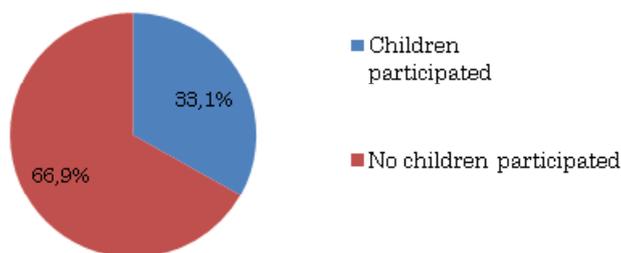


Diagram 11. The participation of children

Example: On the 14th of September, 2011, Mr. A.S. along with his three juvenile children, the youngest of which was 8 months has arranged a picket near the building of Jogorku Kenesh of Kyrgyz Republic with the demand of explaining the reason of selecting restraint in the form of custodial placement in relations to the mother of his children. In six hours, A.S. has left the place of his picketing as his children got tired. The situation was described on the posters, which has stirred up indignation on the side of the passerby's, who tried to nourish children²⁵.

The UN Declaration on the rights of individuals, belonging to national or ethnic, religious and linguistic minorities declares, that “individuals, belonging to minorities, may implement their rights...individually, as well as along with the other members of their group, without any kind of discrimination”²⁶.

The UN Declaration on the rights of individuals, belonging to national or ethnic, religious and linguistic minorities declares, that “individuals, belonging to minorities, may implement their rights...individually, as well as along with the other members of their group, without any kind of discrimination”²⁷.

²¹ Report on the monitoring № 1/8/28.

²² Руководящие принципы по свободе мирных собраний, принцип 2.5.

²³ Legislation of KR “On peaceful assemblies”, article 4, part 1.

²⁴ UN Convention on the rights of a child, article 15.

²⁵ Report on monitoring № 8/1/6.

²⁶ UN Declaration on the rights of individuals belonging to national or ethnic, religious and linguistic minorities. Passed by the Resolution of the UN General: GA Res 47/135, 18 December 1992., article 3 (1).

²⁷ UN Declaration on the rights of individuals belonging to national or ethnic, religious and linguistic minorities. Passed by the Resolution of the UN General: GA Res 47/135, 18 December 1992., article. 3 (1).

Example: On the 7th of June, 2011 the European Diaspora of Talas has organized an assembly with the aim of discussing the problems of national minorities.²⁸

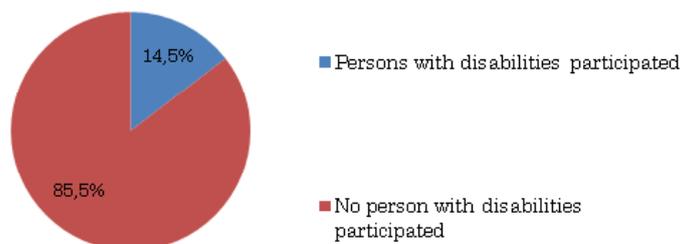


Diagram 12. The participation of individuals with limited capacities

As it has been noted, the minimal standards in the range of non-discrimination, flowing out of the Guidelines on the freedom for peaceful assemblies, UN Conventions on the rights of a child, UN Declaration on the rights of individuals belonging to national, or ethnic, religious and linguistic minorities found consolidation in the part 1 of the article 4 of the bill “On peaceful assemblies”.

During the whole period of monitoring observes have not recorded a single case of preventing of the realization of the right on the freedom for peaceful assemblies on the above mentioned discriminatory principles.

The Guidelines on the freedom for peaceful assemblies ascertain that laws should correspond with the international standards in the sphere of human rights and should be adequately concrete, in order to allow any individual to determine whether his or her behaviour is considered as the abuse of law, and what are the most likely consequences of such violations²⁹.

The regulations of the working statute on the rights of citizens to assemble peacefully do not correspond with these minimal standards. It is suggested to fill in the gap by accepting the bill “On peaceful assemblies”.

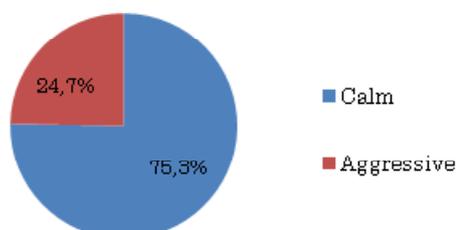


Diagram 13. Behaviour of participants

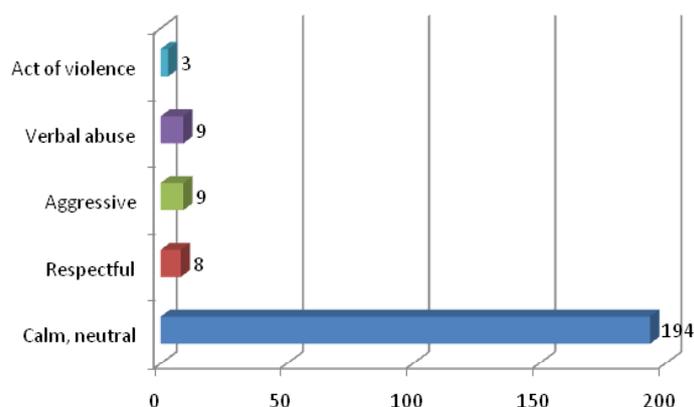


Diagram 14. The attitude of the participants of the assembly towards the law machinery representatives

²⁸ Report on monitoring № 6/4/3.

²⁹ Guidelines on freedom for peaceful assemblies, principle 2.3.

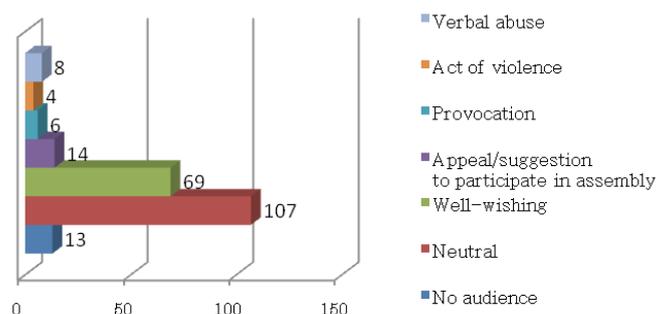


Diagram 15. The attitude towards the audience and opponents

Example: On August 8th 2011 residents of so called “Novostroika” Ak-Jar of the Chui oblast in the number of 250 people stopped up the traffic area of the road to that “novostroika” by cars and stones and burnt tires demanding to get electricity, to built a school in their area and resolve the issue of “propiska”. Participants of the rally, many of whom were drunk behaved aggressively, swearing to authorities. On the attempt to make photographs they responded by threats to destroy the camera³⁰.

Example: On September 17th 2011 the activists of the People’s Movement for Protection of Nature and Natural Resources in the number of around 50 people held a rally on the central square of Naryn with demands to stop selling of lands Sandyk and Jelim-Too, to enter moratorium for extraction of mineral products and to not to agree with building a train way on the territory of the KR, which would connect China and Uzbekistan. Participants readily talked to passerby inviting to join them³¹.

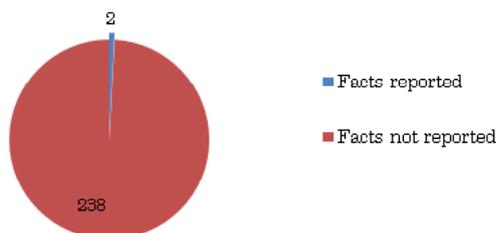


Diagram 16. Facts of the forcing to participate in the assemblies

Example: On September 8th 2011 the teachers of the secondary school in Kochkor-Ata together with parents of students had assembly during which they expressed their discontent with low salary, big workload and absence of textbooks, etc. Some parents explained that they were forced to participate in the assembly by teachers who notified in advanced that if parents won’t come, they children will replace them³².

5.1.4. Time and place of the assembly

On the basis of the Guidelines on freedom for peaceful assemblies, the government should always aspire to assisting of conducting peaceful assemblies at the preferable for its organizers places, and should not fix a different time and place of the assembly to remote districts of the city. Assemblies appear to reveal the same legal use of the public space, as do trading, traffic or pedestrians. Public assemblies are conducted with the aim of bringing ideas and messages to a concrete



³⁰ Report on the monitoring № 1/8/5.

³¹ Report on the monitoring № 3/9/1

³² Report on the monitoring № 12/6/8.

individual, group or organization. According to this principle the general rule states that, it is necessary to assist in conducting assemblies in the range of “visibility and audibility” of their focus group³³.

Form of the working statute on the rights of citizens for peaceful assemblies constitutes a prohibition on conducting public events on the adjacent territories closer than 30 meters to expressways of international and state matter, to the residencies of the President and Prime-minister of Kyrgyz Republic, Jogorku Kenesh, buildings occupied by the court of law of Kyrgyz Republic, territories and buildings of various institutions executing penitentiary punishment, to the places of dislocation of military units and institutions of the Armed Forces of Kyrgyz Republic, other military sub-units of Kyrgyz Republic and their bodies, on the territories of the border zones, if there is no a special permission from the authorized borderline authorities³⁴.

These limitations are justified by the “purposes for securing rights and freedom of other individuals, public security, and defense of the constitutional order”³⁵. From the position of the human rights advocates, such limitations of freedom for assemblies does not correspond to the principles 3.2 (“Public space”) and 3.5 (“Visibility and audibility”) of the Guidelines on freedom for peaceful assemblies.



A special attention in this issue is required for the position of the authors of the bill “On peaceful assemblies”, which suggest to include a general rule into the legislation stating that peaceful assemblies could be conducted on the whole territory of Kyrgyz Republic, which corresponds with the minimal standards. A special rule is suggested to stipulate the places, where the assemblies could not be conducted for security purposes of the participants of peaceful assemblies: close to (50 meters) the objects with dangerous and hazardous production, power stations, rail roads, oil pipelines and under the lines of high-voltage electricity transmission, state and municipal organiza-

tions of public health, child preschool institutions, preschool educational and comprehensive education organizations³⁶.

However not all representatives of the state authority have expressed approval for this initiative suggested by the authors of the bill. For example, the chairman of one of the Comities of Jogorku Kenesh stated: “It is difficult to call a blocking of all the entrances to the “White House” a peaceful assembly. According to the Criminal code, such behaviour could be considered as a seizure of an administrative building. According to the rules of the peaceful assemblies, it is prohibited to approach the building of the White House closer than 30 meters. This building is fenced, which serves as a conditional barrier. People should know, that they cannot cross this line and stand right on the way”³⁷.

The European court on human rights on the matter of Mahmudov against the Russian Federation has indicated that nor the hypothetical danger of public disturbances or the presence of the hostile inclined public should not be considered as a legal reason for prohibition of peaceful assemblies³⁸. The case of Stankov and United Macedonian organization “Ilinden” against Bulgariya, the European court on human rights noted, that preliminary prohibitions on conducting of the assembly applied considering the probability of insignificant cases of violence, which happened to be disproportionate³⁹.

Monitoring has revealed that the majority of the meetings are conducted in an immediate proximity of the state authority buildings, or near the central squares of villages and towns in a close proximity of

³³ Guidelines on freedom for peaceful assemblies, principles, 2.2., 3.2., 3.5.

³⁴ The Bill on the rights of citizens for peaceful assemblies, article 4, part 1, paragraphs 2-5.

³⁵ The Bill on the rights of citizens for peaceful assemblies, article 1 part 2.

³⁶ The project of the law of KR “On peaceful assemblies”, article 12, part 1,2.

³⁷ Bishkek –IA “24.kg”, Anastasia Benhard: What it means to hold a peaceful meeting in Kyrgyzstan and not cross a forbidden border? () 30/10/11.07:16.

³⁸ Mahmudov v.Russia, 2007.

³⁹ Stankov and the United Macedonian Organization Ilinden v. Bulgaria, 2001 г., п.94.

those buildings. The geographic representation of the participants of the assemblies in Bishkek allows making a conclusion that the majority sees the means for solving their problem with the parliamentarians and the central executive branch. They display their protest, direct their appeals, and ask them for help. All of the above mentioned takes place at the “fence” in front of the building of the “White House” in the centre of Bishkek. This “fence” allows complying with the “30 meters” norm of the Law on the rights of citizens for peaceful assemblies and stands as an obstacle on the way to delinquency of the organizers and the participants of the assemblies.

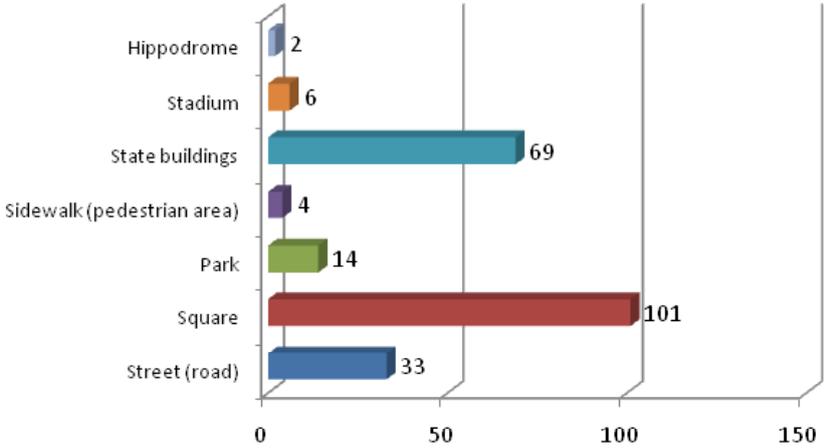


Diagram 17. The place of conducting the assembly

The working statute on the rights of citizens for peaceful assemblies and the bill “On the peaceful assemblies” do not contain principles, instituting time frames for the conduct of the peaceful assemblies, which correspond with the international standards. The authors of the bill suggested a principle, in accordance with which the realization of the events securing the conduct of peaceful assemblies, the governmental bodies, LSG and their civil servants are not in the possession of the right to prohibit or imposing limitations on these categories, except for the cases, when unacceptance of such arrangements leads to violation of the rights of the citizens not participating in the assembly, and also in the purpose of guaranteeing national security, public order, public health and morality of the population.

Observers noticed that in most of cases assemblies were shorter than three hours.

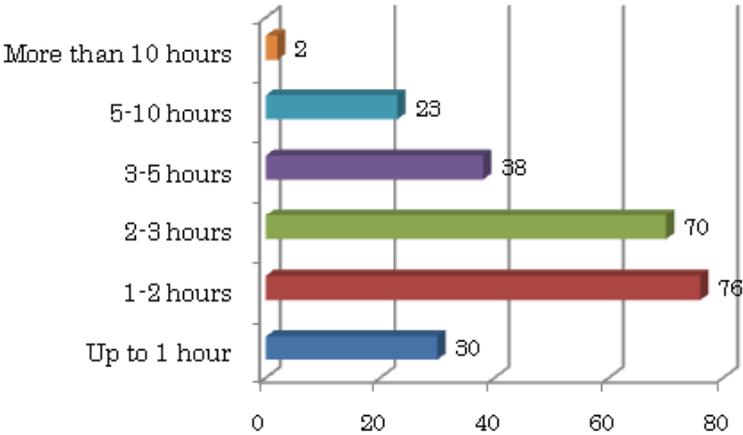


Diagram 18. Duration of the assembly

The monitoring showed that in absolutely majority of cases assemblies took place in work days, e.g. in work days of state bodies and LSG, to representatives of which protests and appeals of participants were addresses.

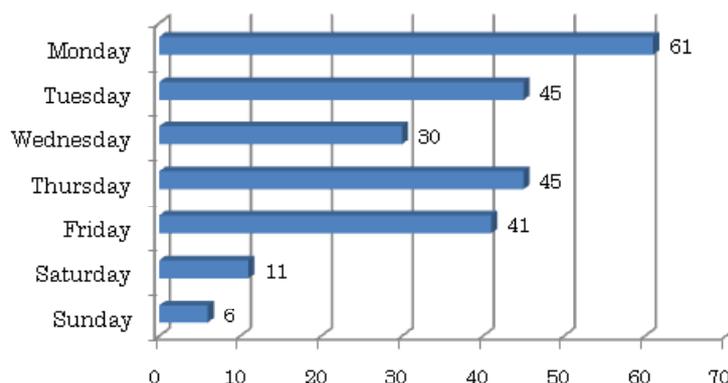


Diagram 19. Days of conducting the assemblies

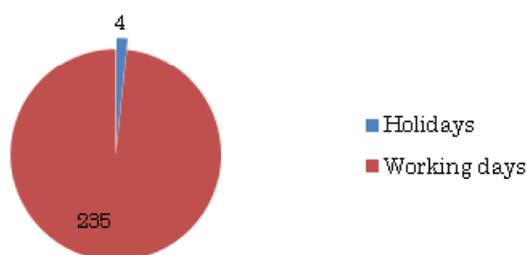


Diagram 20. The conduct of the assemblies on holidays

Following the results of the diagram it is reasonable to make a conclusion that weather conditions did not play a significant role while making a decision on organization or participation in the assembly.

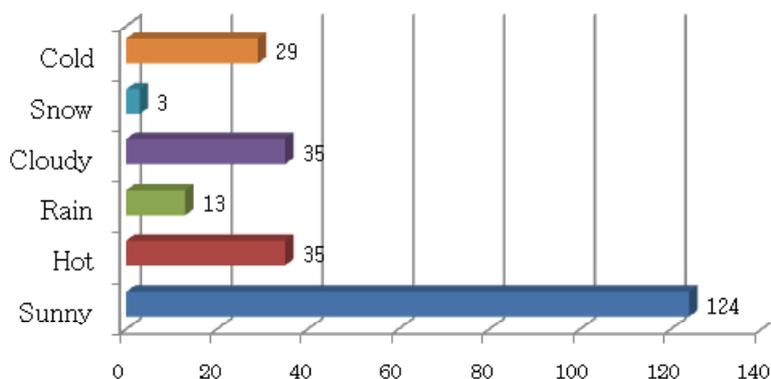


Diagram 21. Weather conditions on the day of conducting the assembly

5.1.5. The nature of meetings

The Guidelines on Freedom of Peaceful Assembly note that if the law requires submission of a prior notice, its provisions should expressly provide for waiver of this requirement in cases where the filing of such notice is impossible from a practical point of view. This exception applies only in circumstances where it is impossible to keep within the statutory period. Authorities should always be able to protect any act of assembly and to facilitate its implementation while maintaining its peaceful nature.⁴⁰

And if an assembly meets the requirement of a peaceful character of assemblies, then it leads to establishment of the positive obligation of the state related to the freedom of peaceful assemblies⁴¹.

⁴⁰ Guidelines on Freedom of Peaceful Assembly, principle 4.2.

⁴¹ Explanation note to the Guidelines on Freedom of Peaceful Assemblies, p.164

Acting Law on the Right of Citizens to Assemble Peacefully sets legal norms of organizing and holding assemblies, which participants gather peacefully and without gun. Still, this law has not norms which would clearly define obligations of the state bodies and LSGs to ensure respect to human right of organizers and participants of a peaceful assembly.

Proposals on filling this gap are presented in the draft law “On peaceful Assemblies” which defines what is a peaceful assembly and sets mechanisms aimed to ensure the right of an individual for freedom of peaceful assemblies. The Law also sets the rules for actions of authorities participating in regulation of such actions, putting restrictions and stopping assemblies which are not peaceful or lost peaceful character.

91,3% of assemblies covered by the monitoring were characterized by observers as peaceful, and rest cases 8,7 % were recognized as “un peaceful”.

Example: On August 15th 2011 a rally of opposition to the former Minister of Defense Kalyev B. took place. On her way to the place of the rally the observer met a journalist who warned her that it is better to keep away from participants due to presence of overaggressive men who had beaten the deputy. Worrying for her safety the observer watched what is going on from distance⁴².

Example: On September 14th 2011 infuriated crowd in a number of 50 people of owners of illegally built trade kiosks on the street named after Shuller which were destroyed according to the court decision protested before the mayor’s office in Naryn and later tried to burn the house of one local resident who was suspected to be organizer of the protest action⁴³.

According to the Guidelines on Freedom of Peaceful Assemblies any assembly which is transforming from the peaceful to violent loses its right to protection written in the law on human rights. thus, such assembly can be stopped. But the use of force of few part of participants of an assembly (and their provokes) does not transfer peaceful assembly into violent, so any interruption must be concentrated on neutralization of concrete participants, but not on stopping whole assembly⁴⁴.

More detailed this issue is discussed in appropriate chapter of this report.

5.1.6. Format of assemblies

Freedom of Peaceful Assemblies foresees protection of not only stationary assemblies, but also those assemblies when people march. Thus, in decision on the case of Christians Against Racism and Fascism (CARAF) vs the United Kingdom, the European Commission recognized that “Freedom of Peaceful Assemblies stands for not only static assemblies, but also for public marches”⁴⁵. Court decisions confirm the fact that Freedom of Expression includes the right to choose the form of spreading one’s ideas without the arbitrary intervention of authorities.

⁴² Monitoring report № 1/8/9.

⁴³ Monitoring report № 3/10/4.

⁴⁴ Explanation note to the Guidelines on Freedom of Peaceful Assemblies, p.164

⁴⁵ Christians Against Racism and Fascism v/ UK, 1980 r.

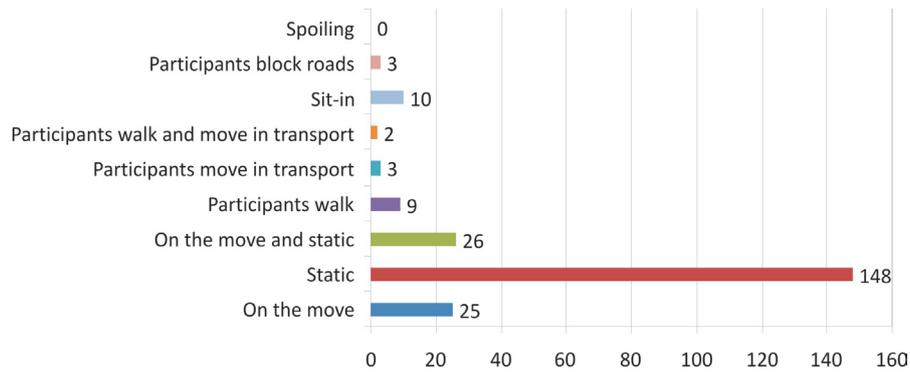


Diagram 22. The format of assemblies

An important component of any assembly is the physical attributes, such as symbols, uniforms, emblems, posters and banners being demonstrated or used. Neither acting legislation nor offered draft law on peaceful assemblies clearly sets limitations in using external attributes in an assembly.

In this regard, Guidelines on the Freedom of Assemblies clarify that if some symbols used during the assembly are associated exceptionally with acts of violence, legal actions can be taken against that assembly. Wearing masks or uniforms at a peaceful assembly as a means of expressing a message should not be restricted unless wearing a mask or a suit is used to prevent the possibility of identification of an individual who commits an illegal act, and unless a mask causes an obvious and direct threat of unavoidable illegal behavior ⁴⁶.

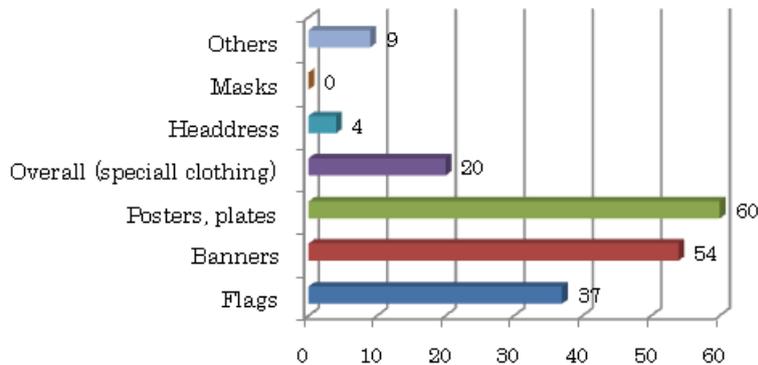


Diagram 23. Visual aids

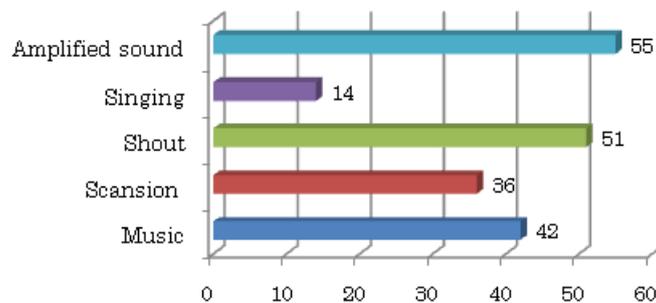


Diagram 24. Sound accompaniment

⁴⁶ Explanation note to the Guidelines on Freedom of Peaceful Assemblies, p. 97,98.

5.2. PROCEDURAL ISSUES

5.2.1. Notification

Guidelines on the freedom for peaceful assemblies pay attention to the fact that the international law in the range of human rights does not require the national legislation to contain specifications on exhibition of the preliminary notification about conducting the assembly. In an open society a number of assemblies do not require any kind of state regulation. In accordance with this preliminary notification should be demanded in cases when the purpose is to give the opportunity to the governmental bodies to prepare them in order to guarantee the assistance to the peaceful assembly, and organize the security of the public order, public security, rights and freedoms of other individuals. Any regulations of the legislation on this matter should require the organizers of the assembly to exhibition of the notification on the purport beyond permission⁴⁷.



This principle is reflected in the Constitution, which states that the notice of the authorities about a planned meeting is a right of the organizers and participants of the peaceful assembly, that prohibition and restriction of peaceful assembly, failure to properly provide it due to lack of notification or non-compliance of the notification form or its content and notice periods shall not be permitted. The organizers and participants of peaceful assemblies are not responsible for the lack of notice of a peaceful meeting, breach of notification form, its content and filing deadlines⁴⁸

The monitoring showed that the organizers and participants of meetings are often guided by the provisions of the Constitution than the norms of the Law on the right of citizens to assemble peacefully, which establishes the requirement for notice of LSA or LSG about a meetings or other public event at the place of organization not later than 12 calendar days prior to the public the event⁴⁹.

Most of the meetings 54,8% were carried out without notice of authorities by the organizers.

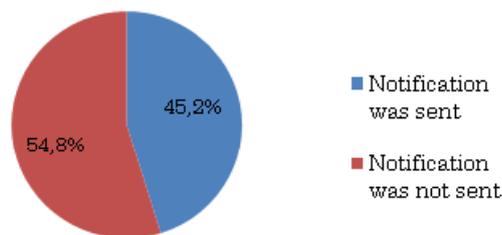


Diagram 25. Notification of LSA or LSG about conduction of an assembly

From the provisions of the Law on the rights of citizens for peaceful assemblies, it follows that a breach of notification requirements is grounds for termination of a public event and constitutes an administrative offense, entailing an administrative fine.⁵⁰

But with the new Constitution of KR, the provisions of which have the highest validity, priority over the norms of law and direct action, all assemblies held without notification became lawful and, therefore, lack of a preliminary notice about an assembly cannot be grounds for termination of this assembly.

⁴⁷ Guidelines on freedom for peaceful assemblies, principle 4.1

⁴⁸ Constitution of KR, article 34, 1.2.

⁴⁹ Bill on the rights of citizens to assemble peacefully, article 5, part 1.

⁵⁰ Bill on the rights of citizens to assemble peacefully, article 11, part 1.2.

Some of the organizers of assemblies explained that the reason for not issuing a prior notice was that it was their right under the new Constitution, and it is up to them to decide whether to exercise this right or not.

In 25% the organizers explained that they were not aware that they had to notify about the meeting, and in 23,2% they did not have time to notify, as the assembly arose spontaneously.

There were other explanations of non-issuance of notices to LSA or LSG about an upcoming assembly;

Example: The organizers of the rally, held on 11 and August 15, 2011 near the building of the Jogorku Kenesh, demanding the dissolution of the Judicial Council explained that they did not notify the authorities, as “the meeting was not the first of its kind, and that past meetings went with no violations on the part of participants. Most of media outlets were notified via an email list.”⁵¹

Example: The inhabitants of the town of Kara-Balta did not consider it necessary to notify the authorities of a meeting on August 15, 2011, as “they did not expect any help or support from government agencies.”⁵²



Observers have not recorded a single case of refusal to hold a meeting, when the organizers notified the authorities. With the abolition of the mandatory notification requirements and the complete absence of refusals in the organization of meetings, observers did not record a single case of a legal conflict over them.

The observers came to the conclusion that there are still cases when considering the notice on conduction of a meeting, the LSG were guided by the requirements of Article 3 of the Law on the right of citizens to assemble peacefully, which by the decision of the Constitutional Court of the KR dated March 2, 2010 was declared unconstitutional and contrary to articles 18 and 25 of the Constitution of the Kyrgyz Republic.

Thus, in response to notification of the “Free Generation” Alliance of Liberal Youth about a public campaign to attract young people to free elections in the civil campaign “I think, I vote. There is future.” dated October 14, 2011, the vice-mayor of a town noted that the municipality was not against holding the event, but only in a place that, in accordance with Article 3 of the Law on the right of citizens to assemble peacefully, was specially set aside near the movie theater on the northern outskirts of the city.

In accordance with the Guiding Principles on Freedom of peaceful assembly, the process of notification should not be burdensome and bureaucratic.

This principle was enshrined in the Bill “On peaceful assembly,” which establishes the right of notification of a planned meeting in the form of letters, telegrams, telephone messages, by mail, facsimile, electronic or other communications or other manner or form. It is proposed to include in the notification a minimum set of information. This information is about the organizer and contact details of the venue and (or) traffic route, date and time of start and end, goal, the approximate number of participants, the use of sound amplifying equipment or other items during a peaceful assembly.⁵³

The diagram shows the types of the notification of the planned meeting used by the organizers.

⁵¹ Monitoring report #1/8/6

⁵² Monitoring report #8/1/5

⁵³ Draft of Law of Kyrgyz Republic “On peaceful assemblies”, Article 11, part 1,2.

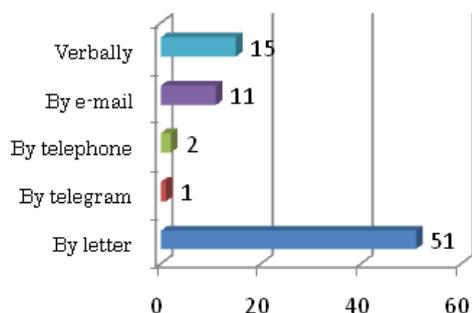


Diagram 26. Methods of notifying the LSA and LSG about a rally

When talking to organizers and participants of assemblies, observers determined that in 44,4% of cases LSA and LSG voiced their offer to provide assistance in holding a peaceful assembly. Information about these offers is provided in the diagram below.

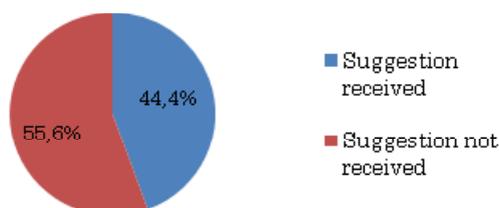


Diagram 27. Submission of suggestions on conducting a meeting

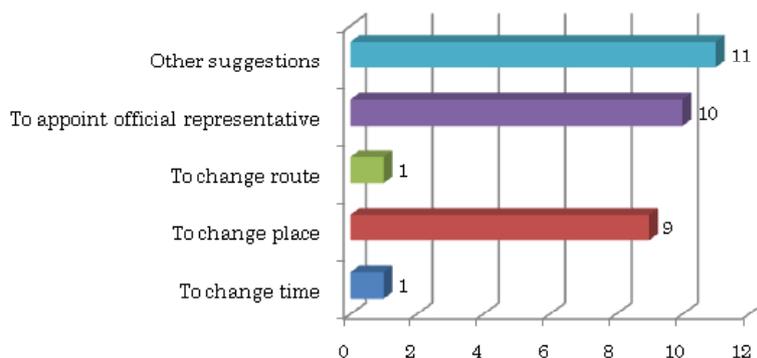


Diagram 28. Suggestions submitted by LSA and LSG on conducting rally

5.2.2. Spontaneous assemblies

The Guidelines on Freedom of Peaceful Assemblies mention that if a law requires the submission of advanced notification, it should have the provision for the removal of such a requirement in cases when the submission of a notification is impossible in practice. Such an exception occurs only in cases when it is impossible to notify the authorities within the time constraints set by the law. Authorities always have to ensure the security of any spontaneous assembly and to assist its holding under the conditions of keeping its peaceful character⁵⁴.

The provisions of the existing Law on the right of citizens to assemble peacefully, as already noted, do not contradict the Constitution, and do not meet these standards.

The authors of the Bill “On peaceful assembly” define spontaneous assembly as an assembly conducted without prior notice. However, spontaneous meetings are mentioned only in the glossary. The require-

⁵⁴ Guidelines on Freedom of Peaceful Assemblies, principle 4.2.

ments of Article 34 of the Constitution of the Kyrgyz Republic have not been fully and clearly integrated in the Bill “On peaceful assembly”.

However, as the monitoring has shown, 54 (23,6%) of the meetings covered by observation were spontaneous.

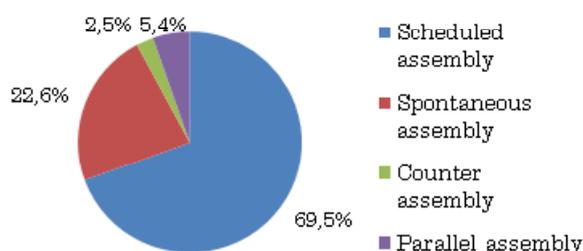


Diagram 29. The character of assembly

5.2.3. Simultaneous assemblies

The Guidelines on Freedom of Peaceful Assemblies define that in the case of receiving notification that two or more unrelated assemblies will be held in one place at the same time, authorities should make maximum efforts to ensure their holding in the best way. Denying the holding of a demonstration based only on the fact that it will take place at the same time as another public action will likely be an unjust decision when they both could take place⁵⁵.



Adoption of the new Constitution of the KR guaranteeing that failure to send notification cannot be grounds for its restriction and limitation has made a large impact. Until recently, organizers and participants of any spontaneous assembly could be administratively punished for a violation of the requirement of notification or for holding an assembly in an “inappropriate” place, and it served as a serious detriment to initiators of an assembly. Now the situation has rapidly changed. This is confirmed by statistical data of the MoIA of the KR, which says that 4 assemblies occur each day in the country.

Considering the statistical data provided earlier on the fact that organizers and participants of assembly often choose places near the buildings of state bodies or LSG to express their opinion, there are frequently situations where two or more assemblies are being held in one place.

Observers recorded 13 cases of simultaneous assemblies. With that, 9 cases were about holding two assemblies near the building of Jogorku Kenesh. In two cases, the monitoring team observed two simultaneous assemblies, one case about holding 5 simultaneous assemblies, and one more case about six assemblies.

Example: On September 9, 2011 in front of Jogorku Kenesh six simultaneous assemblies took place:

- 1) Members and allies of the Movement “For Lustration of Judges of Kyrgyzstan” 1 000 people assembled with demands to change the whole judicial system⁵⁶;
- 2) The candidate to the President of the KR D.T. and her allies in amount of 50 people held a protest against requirement of the norm of the Law obliging a candidate for the President of the KR to gather and provide 30 000 signatures to CEC⁵⁷;

⁵⁵ Guidelines on Freedom of Peaceful Assemblies, principle 4.3.

⁵⁶ Report on the Monitoring 1/8/23.

⁵⁷ Report on the Monitoring № 1/8/26.

- 3) A group of 50 persons led by the Head of one human rights organization B.D. organized a protest demanding authorities to resolve the issue of unemployment⁵⁸;
- 4) A group of women in amount of 50 persons including representatives from various regions held a protest demanding to solve housing problems⁵⁹;
- 5) An initiative group from a meat processing and packing factory in amount of 50 persons demanded authorities to stop the lawlessness of the new director of the factory⁶⁰;
- 6) The Leader of Movement “7 April” T. Had protested against new law on PTRC⁶¹.

Participants of simultaneous assemblies were situated some distance from each other along the building of Jogorku Kenesh, so no problems related to having simultaneous assemblies happened.

5.2.4. Counter assemblies

Guiding principles on the freedom of the peaceful assemblies define counter assemblies as one of the form of simultaneous (parallel) meetings, participant of which want to express their disagreement with the views of another one. For this matter, it is important to pay attention to the responsibilities of state agencies in ensuring implementation and protection of each events in case of organization or emergence of the assembly countering another one⁶².



During the whole period of the monitoring, observers have documented 6 counter assemblies.

Example: On the 30th May 2011 the group of 500 people armed with staffs and metal bars, have blocked the high way Osh-Bishkek in the area of Kochkor-Ata city and demanded restore former general director of the Joint-Stock-Company “Kyrgyzneftgaz” in his position. Another group of 200 people, also armed with staffs and metal bars and represented allies of the present JSC director, have approached the blocked part of the high way. Assembly and counter assembly were expressing themselves in screams and verbal insults directed at each other. Police officers were between participants of two assemblies, and used mediation through explanations and persuasion in attempt to prevent collision of the two armed groups⁶³.

Example: On the 28th of July 2011 at the central square of the Bishkek city, group of young people have planned a flashmob in order to express their disagreement with the dismantlement of the Freedom statue. Participants of the counter flashmob have resisted them by rudely ripping off their hands the posters, which participants of first flashmob were trying to open, however they were taken away, ripped apart and stamped on their with their feet. One of the participants was pushed into his chest and was told to immediately leave. The www.k-news.kg reporter was threatened to have her camera broken. Police officers, who were standing near by the location of the flashmob and counter flashmob, have not reacted to the happening in any way. Fearing for the own safety, participants of the flashmob have left the square without implementing the planned event⁶⁴.

⁵⁸ Report on the Monitoring № 1/8/24.

⁵⁹ Report on the Monitoring № 1/8/25.

⁶⁰ Report on the Monitoring № 1/8/27.

⁶¹ Report on the Monitoring № 1/8/28.

⁶² Guidelines on Freedom of Peaceful Assemblies, principle 4.4.

⁶³ Report on the Monitoring № 12/6/1.

⁶⁴ Report on the Monitoring #12/6/1

5.3. PROVISION OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY



Positive duty of the state to assist the peaceful assemblies and their security is one of the most important principles on the freedom of peaceful assembly⁶⁵.

Essential conditions for the effective implementation of such assistance is establishment of the mechanisms and procedures that allow for provision of the actual realization of the freedom of peaceful assemblies without exceeding bureaucratic regulation.

As noted earlier, this most important principle on the freedom of peaceful assembly is not well enough implemented in the existing national law. The law on citizens' right to assemble peacefully does not include norms, that regulate the provision of this right to peaceful assembly.

Authors of the draft law project "On the peaceful assemblies" have attempted to eradicate these incompatibilities within the national legislation according to the international standards.

The draft law clearly states the responsibilities of the state agencies as aimed within the framework of defining the mechanism, directed at the provision of everyone's right to peaceful assembly by the state agencies and LSG. According to these responsibilities, state agencies and LSG are obliged to:

- to respect and provide the right to peaceful assemblies with regard to non-discrimination principles;
- to immediately inform all the respective implementing agencies of LSG and DIA if received information about assembly being planned and conducted at the moment;
- to provide submission and review of the appropriate appeals, and also report back on the decision according to the law⁶⁶.

5.3.1. Responsibilities of the state agencies and local State Government (LSG) in providing the right to freedom of peaceful assembly

Existing legislation does not include the responsibilities of LSG to provide the right to peaceful legislation. However, they are obliged to assist the safety of the public order in the context of the issues of local significance under their mandate⁶⁷.



It is supposed that the range of these responsibilities must be wider, which is agreed by the authors of the draft law "On peaceful assemblies". Therefore, authors of the draft law propose require LSG a responsibility to immediately inform DoIA of the territory, where assembly is being held, and other respective state agencies on the reported information about the assembly that has been planned or conducted at the time. LSG should engage with the organizers and participants of assemblies on the issues of provisions to the peaceful assemblies and if necessary, to organize the response of the municipality and other services to assist DoIA in prevention and interventions of the use of alcohol, drugs, psychotic and other substances at the assemblies⁶⁸.

⁶⁵ Guidelines on Freedom of Peaceful Assemblies, principle 2.2.

⁶⁶ Law on the right of citizens for peaceful assembly, art. 4.

⁶⁷ Law on Local self-government, accepted by Jogorku Kenesh on June 16, 2011, art. 8 p.1 p.17

⁶⁸ Draft of Law of Kyrgyz Republic "On peaceful assemblies", Article 5

During the period of monitoring, observers have documented the results of the actual work of LSA and LSG and their potential capacity in provision to the peaceful assemblies. Observation was done from two main positions, results of which are presented in the diagrams below.

LSA and LSG attempt to build rapport with the participants of assemblies in the absolute majority of the incidents. Head administration of these agencies usually organize personal reception of the delegates from the group of assembly participants, or directly meet the participants, hear their claims, requests and wishes.

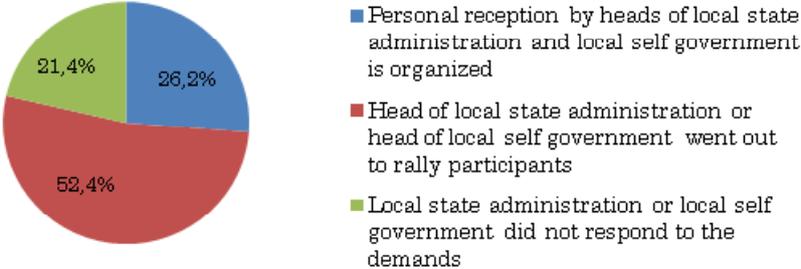


Diagram 30. Review of the claims of assembly participants

It is necessary to note that in some incidents that meeting of assembly participants with the head administration or representatives of LSA and LSG was key in assisting decrease of the aggression, which could otherwise lead to the sad consequences.

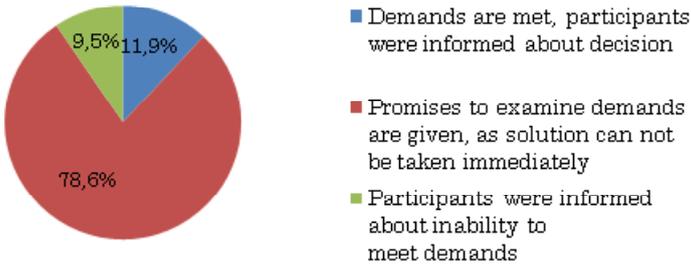


Diagram 31. Adopting the decision on the precise requests of the assembly participants.

Observers noted certain cases of the negative perception of the head administration (representatives) of the state agencies by the participants, and their attempts towards the latter.

Example: After the revolution, the akim of Talas rayon, who said of the rally which took place on August 16th 2011 that he works only within the legal framework, was attacked by the participants of the rally. With the help of militia, he avoided being beaten. During talks to participants of the rally, the staff of the state administration twice ran into the building of the administration to fend off the aggression of people, but later came out again to speak according to the demands of participants of the rally⁶⁹.

5.3.2. Responsibilities of law enforcement agencies to keep order during assemblies

Increasing the diversity of tactics to express protest and the appearance of new means of connection undoubtedly causes new problems in keeping order during assemblies. With that, the role of law enforcement agencies is not simply limited to the recognition of human rights, but also includes the protection of these rights⁷⁰. This is due to the general responsibility of a state to ensure each person within its jurisdiction obtains the rights and freedoms written in international treaties.

⁶⁹ Monitoring report № 6/4/9.
⁷⁰ Explanation note to the Guidelines on Freedom of Peaceful Assemblies, p. 31-34, 144.



The Acting Law on the Right of Citizens to Assemble Peacefully doesn't contain norms regulating activities of DIA on assisting peaceful assemblies, implementing activities aimed at restriction, and stopping non-peaceful assemblies.

In a certain part these issues are being regulated by the Law of the KR "On law enforcement agencies of the KR" and departmental acts of the MIA of the KR.

One of the most important objectives of law enforcement agencies is ensuring public order and the security of individuals and society⁷¹. Art.3 of this law states that in their activities law enforcement agencies are guided by the principle of respecting human rights.

The results of observations inform us how the activities of law enforcement agencies which ensure order during assemblies are being organized and implemented.

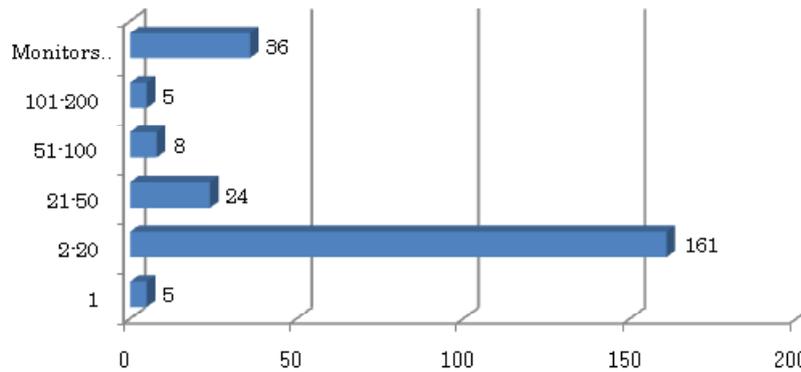


Diagram 32. The number of law enforcement officers participating in ensuring order during assemblies

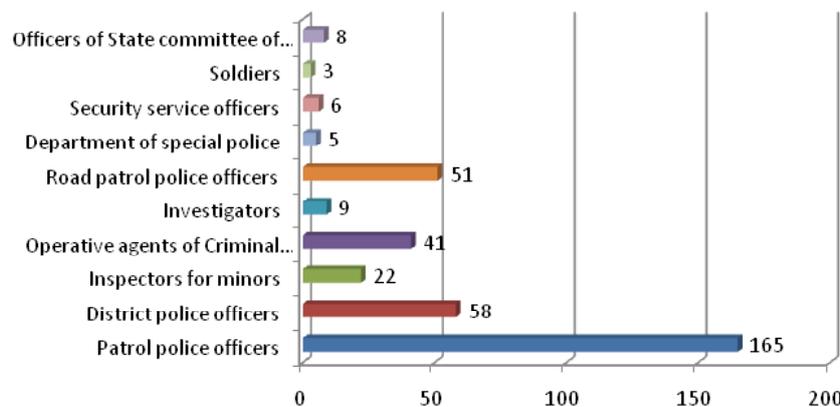


Diagram 33. Law enforcement agencies participating in ensuring order during assemblies



According to the Principal Guidelines on Freedom of Peaceful Assemblies, ensuring order during assemblies must be done with respect to human rights, and authorities must first and foremost consider their obligation to assist in the realization of peaceful assemblies⁷².

With that, special attention should be paid to the requirement that law enforcement agencies effectively communicate with organizers of assemblies in order to let the organizers and par-

⁷¹ The Law of the KR "On Law Enforcement Agencies of the Kyrgyz Republic", art. 2.

⁷² Explanation note to the Guidelines on Freedom of Peaceful Assemblies, p.145.

Participants know that the demonstration will not be dispersed and that people can continue their peaceful assembly.

In 35 cases, which is 14,6% of the total, observers could see interactions between law enforcement officers and assembly organizers that avoided the use of force against participants of that assembly.

The Guidelines on Freedom of Peaceful Assemblies mention the importance of the visibility of law enforcement officers among participants of an assembly, so they can easily be recognized.

Observers noted that law enforcement officers, when fulfilling their duty to keep order, usually dress in militia uniform (93,6% of cases); in 3% of cases they wore special ammunition, and in 3,4% of cases (despite the fact that police officers dressed in civil clothes) observers recognized them as police officers.

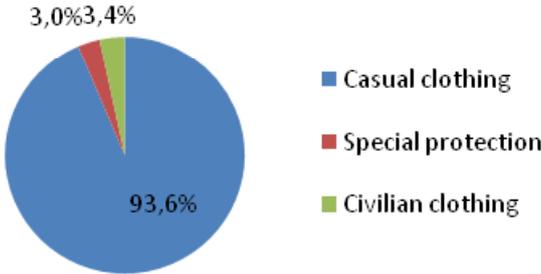


Diagram 34. The form of law enforcement officers

The Law “On Law Enforcement Agencies of the Kyrgyz Republic” and departmental acts of the MIA of the KR set the basis and order of the use of force, special means and fire guns by police officers.

Monitoring showed that law enforcement officers usually ensure order during assemblies without any special equipment. Depending on the character of the assembly, an officer can be equipped with a gun or baton.

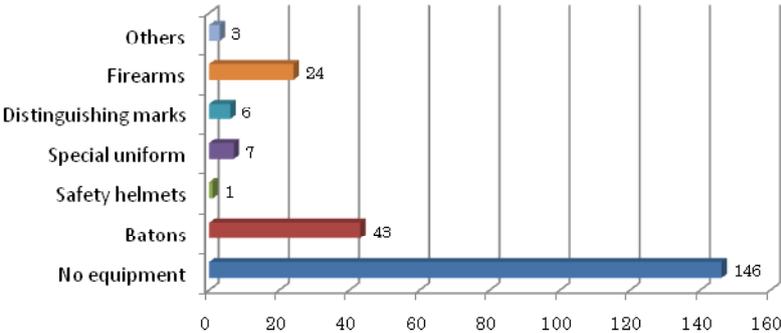


Diagram 35. Equipment of the law enforcement officers

The Guidelines on Freedom of Peaceful Assemblies draws attention to the fact that, in the case of a peaceful assembly organized against the law, nonintervention or active assistance to the assembly may be the best way to ensure its peaceful end. Too fervent and authoritative action in establishing order may create more problems, from the point of ensuring order, than simply giving permission to the assembly and assistance to its holding. It will also cause conflict in relations between police and participants of an assembly.

Certain factors influence the process of assembly, such as the situation of law enforcement officers and their attitude towards the participants and organizers of an assembly.

Table 3

SITUATION OF LAW ENFORCEMENT OFFICIERS DURING ASSEMBLIES

Situation of officers	
Kept distance	62
Were in a close proximity	112
Were among participants	49
Were absent	16

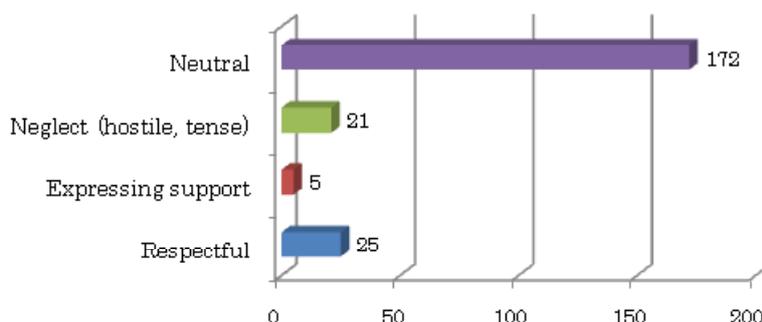


Diagram 36. Attitude of law enforcement officers to organizers and participants of an assembly

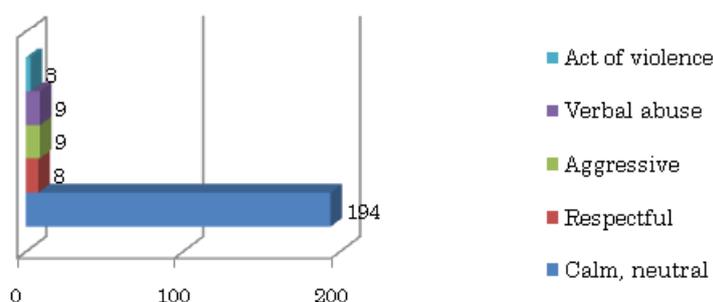


Diagram 37. Attitude of organizers and participants of an assembly to law enforcement officers

A comparison of collected data shows that the attitude of organizers and participants of assemblies to the law enforcement officers ensuring order during the assembly is usually neutral. In some cases, elements of respect and support towards each other are observed.

With that, observers have noted cases of the use of force against police officers by participants of the assembly.

Example: On July 5th 2011, a group of residents of Bosteri village, a number of 700 persons, held a rally near the building of local DIA demanding to arrest officers of the MIA of the KR who had used firearms against two local residents. The rally was accompanied with threats and shouts from the crowd. One district police officer was beaten⁷³.

Example: On June 24th 2011, relatives of Dostaliev A., who eventually died after being tortured by officers of Ak-Suu RDIA, came to the rally before the building of Issyk-Kul oblast administration and beat the deputy chief of the Ak-Suu RDIA⁷⁴.

The above mentioned examples when the police got into difficult and dangerous situations that require instant decisions based on uncertain and rapidly changing circumstances show that in the process of implementation of commitments on human rights should not forget about the rights, health and safety of internal enforcement officers.

⁷³ Report on the monitoring № 4/2/1.

⁷⁴ Report on the monitoring № 4/2/4.

Observers have noted a significant reduction in the degree of interference and use of unreasonable restrictions of internal enforcement officers in assemblies. This fact is partly explained by the experience of the tragic events of 2010 when police officers were charged with “they went against their nation» and were greatly demoralized and have not had time for fully recover.



For example, during the assembly held near the Jogorku Kenesh on August 15, 2011 aimed on demand of dissolution of the Council on selection of judges, protesters sounded rude and insulting remarks against the police officers. Police officers did not respond.⁷⁵

However, observers noted cases when police did not intervene in cases where need for intervention of internal enforcement was necessary to ensure the safety of participants.

Example case, when a group of young people, who were not consonant with dismantling of the Statue of Liberty in the central square of Bishkek could not hold a planned flash mob were forced to leave area as counter- parties of flash mob were aggressive and it was expressed in the tearing of paper posters and hard thrusts. Police, which were nearby this area all the time, did not stopped obviously illegal acts of counter-parties of flash mob.⁷⁶

A similar situation was during the campaign “The funeral of my hopes for judicial reform” at the hotel “Dostuk” where the Council on the selection of judges was held. “the aggression and omission of the police were supervised by the strange little man in sunglasses. When police tried to get off the room of opponents of human rights defenders who were extremely loud and de facto stopped the briefing for 15 minutes, that man stopped the police and pushed his glasses up and police immediately retreated and started playing a role of observers”⁷⁷.

Particular attention was paid to the monitoring of choice of tactics of internal enforcement agencies aimed at handling of protesters in limited area and other similar techniques and ways of reactions. Obviously accuracy of choice will largely influence on decree of increasing tension, and in some cases such as when a solid cordon of assembly area by police can be viewed as a violation of individual rights to liberty and freedom of movement.

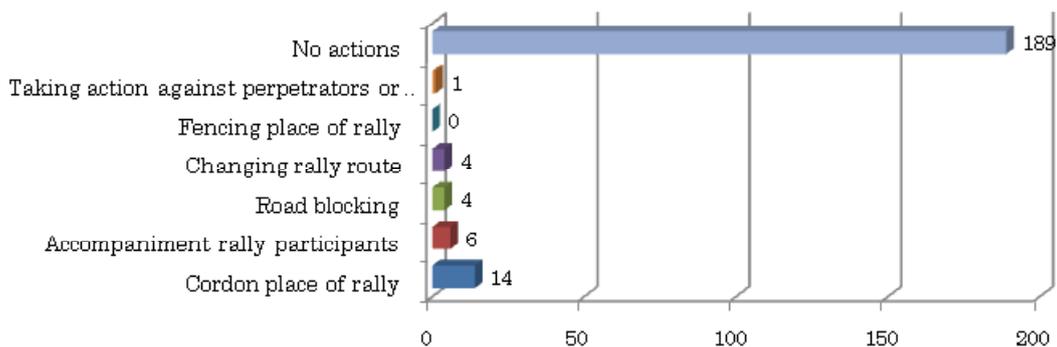


Diagram 38. Activities to ensure the assemblies.

As a result of analysis of meaning and content of the principles of freedom of peaceful assembly as well as the results of monitoring it can be concluded that internal enforcement bodies require special training on maintaining the order during assembly for its officers. It is necessary that in the end of the training they acquire skills that will help prevent the escalation of violence and bring the conflict to a minimum.⁷⁸

⁷⁵ Report on monitoring #1/8/10

⁷⁶ Report on monitoring #1/8/2.

⁷⁷ Report on monitoring #1/8/4.

⁷⁸ Explanatory Note to the Guidelines on Freedom of Peaceful Assembly, paragraph 147.

5.4. PROHIBITIONS, RESTRICTIONS AND CESSATION OF ASSEMBLY

5.4.1. Reasons for prohibition, restriction and cessation of assembly

International human rights agencies protecting a right to freedom of peaceful assembly allow States to establish certain limitations on this freedom.

Guidelines on Freedom of Peaceful Assembly recognize the restrictions of assembly in order to ensure:

- Public Order
- Public Safety
- Protect of Health
- Protection of Morals
- Protection of Rights and Freedoms of others
- National Security

At the same time in the Guiding Principles on Freedom of Peaceful Assembly use restrictions must strictly comply with the principles of legality and proportionality and non-discrimination are mentioned.⁷⁹ The Constitution of the Kyrgyz Republic stipulates that the rights and freedoms of citizens may be restricted by the Constitution and laws in an effort to protect national security, public order, health, morals, and rights and freedoms of others. Imposed restrictions must be proportionate to the pursued goals⁸⁰. Act on the right of citizens to peaceful assembly has the same statement.⁸¹

Act on the right of citizens to peaceful assembly provides grounds for cessation of the assembly. These reasons are listed in the table below in comparison with the grounds for cessation of the meeting, proposed by the authors of the bill “On peaceful assembly.”

Reasons for Cessation of Assembly		
	Act on the rights of citizens to peaceful assembly (article 11 part 1)	Bill “On peaceful assembly” (article 15 part 2)
1.	Organizer (s) or participants violated the requirements of the Act on the right of citizens to peaceful assembly.	Propaganda of war.
2.	Creation of the threat to life, health and safety of citizens, as well as to the property of legal entities and individuals.	Speech in favor of ethnic, racial or religious hatred, gender and other social superiority that constitutes incitement to discrimination, hostility or violence.
3.	Sedition of speakers to a violent change of constitutional system.	Appeals to a breach of national security, public order, rights and freedoms of other citizens.
4.		Conducting of counter assembly to disrupt another peaceful assembly

The current act on the right of citizens to peaceful assembly does not specify measures which can be adopted for reducing or eliminating non-peaceful assembly, as well as the application of those measures.

During the monitoring of observer the validity of law enforcement of restrictive measures, the selection of specific interventions and its consequences was on the focus.

⁷⁹ Guiding Principles on Freedom of Peaceful Assembly, principles 2.3-2.5.

⁸⁰ Constitution of Kyrgyz Republic, article 20 part 2.

⁸¹ The Law on the Rights of Citizens for Peaceful Assemblies, art.1 p.2

5.4.2. Usage of force for cessation of assembly: legality, proportionality and consequences

Guidelines on Freedom of Peaceful Assembly confirm that inappropriate, excessive or unlawful use of force by law enforcement agencies may violate fundamental freedoms and rights protected by law, undermine relations between police and citizens and become a reason for widespread distribution of tension and unrest. In this regard the use of force should be governed by national law.⁸²

The reasons and procedure of physical force, special means and firearms used by the police are regulated by the Law of Kyrgyz Republic “On the Bodies of Internal Affairs”.⁸³

In accordance with Article 11 of the right of citizens to peaceful assembly use of physical force and special means for cessation of assemblies is allowed only in cases when participants are violent against police ensuring law and order, and in case of prevention public disturbances, riots and acts that violate transportation, communications, enterprises, institutions and organizations, as well as for the liberation of occupied buildings, premises, facilities, vehicles, lands.



In 9 (3.8%) cases internal enforcement officers were taken as a measure to stop assembly. Most of these measures did not involve physical force.

Observers noted that the internal enforcement officers informed preliminary participants of assembly about the need of vacation of assembly place.

In one case, observer noted the dispersal of protesters with the use of physical force by officers of special police department.

Example: On October 19, 2011 residents of suburban areas nearby the airport “Manas” blocked the highway leading to the airport and demanded to give them the status of village. They said: “We have no registration because of the absence of village status; we cannot vote in elections, our children cannot go to school and get a passport.” Suddenly, 20-50 officers of special police department jumped out from the bus and began beating the protesters among whom old men and women were without warning. At first the protesters were taken aback, but then the men began to protect the elderly and women. But since the forces were unequal protesters were forced to flee.

At the same time there were cases of unjustified termination of public actions held by young activists.

Example: On October 28, 2011 university students in Bishkek in an amount up to 50 people started public action “Vote against all” and they were handing out leaflets to market traders of market «Dordoï». Participants placed previously information about action in Internet. The action was unlawfully terminated by market security officers and they detained students and had taken them to the police department of the Sverdlovsky District. The prosecutor’s office gave a legal assessment of action of students and could not find corpus delicti in their actions.

⁸² Explanatory Note to the Guidelines on Freedom of Peaceful Assembly, paragraph 171.

⁸³ Act on the Bodies of internal Affairs, January 11, 1994, #1360-XII, articles 12-15.