



REPORT

on the Social Monitoring of the Legislation and Law Enforcement Practices of the Local Police Service in the Area of Preventing Domestic Violence in the Republic of Kazakhstan

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This monitoring focuses on evaluating and forecasting the legislation by means of identifying contradictions in the legislation, obsolete, corruption-generating and ineffectively implemented statutes, as well as the drafting of proposals on improving the legislation and mechanisms of its implementation by units of the local police service.

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Introduction

Social monitoring purports to examine theoretical and some practical issues that the local police force personnel face in combating domestic violence. It offers conceptual and normative parameters for purposes of further development of the institution of preventing offences occurring in domestic settings, taking into account the patterns of the occurrence, development and functioning of state and legal phenomena in the examined field of social relations. The authors of the report propose their own vision of the solutions for issues associated with the nature, features, forms and structure of the efforts to prevent domestic violence offences. This involves providing and substantiating specific proposals for the improvement of the active legislation and its enforcement practices.

This monitoring proves relevant due to a number of factors.

"I am concerned over the rise in domestic violence against women and children. We must not tolerate disrespectful attitude towards women. And I will stress that this violence must be dealt with most definitively" [1]. It was this with message that the President N.A. Nazarbayev, in his "Strategy: Kazakhstan-2050" — New Political Course of the Established State", designated a policy priority directed toward preventing domestic violence in the Republic of Kazakhstan.

In May 2015, President Nursultan Nazarbayev formulated 100 concrete steps to implement five institutional reforms, of which number thirty involves the creation of a local police service mandated to maintain public order and prevent domestic offences [2].

The need for examining legal relations in the family and domestic settings is also a consequence of the fact that, following the adoption of a specialized Law of the Republic of Kazakhstan "On Preventing Domestic Violence", it was expanded with 7 changes and additions. Yet, remaining unresolved are a multitude of issues that emerged on 1 January 2015 as a result of adopting the new codified legislation. Efforts of actors involved in preventing domestic violence in this regard are closely related to preventing or eliminating the threat to life and health of people, as well as protecting their livelihoods. Criminal and administrative legislation contains statutes aimed to "normalize" law enforcement in this area.

Economic challenges, increased inflation, unemployment, decline in moral and humanitarian values have led in the past years to a significant rise in crime, including offences in a domestic setting. Increased unemployment, coupled with small

salaries and low level of social welfare, are mainly a product of the lack of financial capital, economic issues and substandard strategies for tackling these issues.

This monitoring effort focuses on evaluating and forecasting the legislation by means of identifying contradictions in the legislation, obsolete, corruption-generating and ineffectively implemented statutes, as well as the drafting of proposals on improving the legislation and mechanisms of its implementation by the divisions of the local police service.

To this end, the monitoring has:

- examined the kinds of domestic violence provided for by the legislation of the Republic of Kazakhstan, as well as legal responsibility for these actions, as provided by the codified legislation;

- formulated modern notions and legal characteristics of domestic offences falling under the jurisdiction of the local police service;

- analysed the current state of theoretical positions regarding the nature and contents of administrative liability for domestic offences;

- determined the place for administrative liability for domestic offences in the system of legal liability and formulated criteria of delineating administrative and other kinds of liability in the area of family and domestic offences;

- objectively evaluated the current state of the legislation on administrative offences in a domestic setting, revealed primary trends and vectors of its development, provided rationale behind scientific opinions, legislative proposals and practical recommendations for improving the procedure of holding administratively liable for domestic violence;

- analysed the mechanism for preventive efforts in this area involving the use of administrative legal methods by the local police service personnel, in conjunction with other actors involved in preventing domestic violence, along with non-governmental organizations and civil society organizations;

- based on the progress made in the legal science and active national legislations of all countries opposing domestic violence, discovered the nature, purpose, mechanism and features of inter-agency cooperation between the local police service and other actors involved in preventing domestic violence;

- analysed the regulatory framework and enforcement practices employed by units of the local police service; identified primary avenues of their improvement;

- generated proposals on enhancing the effectiveness of administrative and criminal enforcement by means of preventive measures applied to domestic offences;

- presented, evaluated and provided rationale for the available proposals, drafts and recommendations aimed to improve the administrative legal regulation of the efforts of the local police service, non-governmental organizations and civil society for preventing domestic offences;

- examined sanctions for domestic offences and substantiated a modern effective mechanism for their enforcement by the local police service provided with jurisdictional powers to impose penalties;

- surveyed 3,652 and interviewed 403 members of the local police force, with a median employment period of 8 years in the internal affairs (of which 5 — in their respective positions);

- held events (seminars-trainings, round tables, etc.) on discussing intermediate and final results of the monitoring;

- generated the final report, proposals and recommendations on introducing changes and additions into some legislative and agency-specific regulatory legal acts of the RK on the issues of preventing domestic violence.

The subjects of monitoring are as follows:

- 1) convention documents, codified and consolidated legislation, laws of the Republic of Kazakhstan;
- 2) regulatory legal decrees of the President of the Republic of Kazakhstan;
- 3) regulatory legal resolutions of the Government of the Republic of Kazakhstan;
- 4) regulatory legal acts of prevention actors;
- 5) regulatory legal decisions of maslikhats and akimats;
- 6) reports from prevention actors;
- 7) consolidations of the results of surveying and interviewing of the personnel of the local police service who possess sufficient practical experience in combating domestic offences.

The statutory monitoring does not cover regulatory legal acts and information containing state secrets or other legally protected secrets, as well as regulatory legal acts marked as "For Internal Use Only", "No Publication Allowed", "Off the Record".

The social monitoring covered all the regions of the Republic of Kazakhstan in the implementation of the following stages:

- 1) collection (surveying and interviewing), aggregation and analysis of the information on the subject of legal monitoring;
- 2) revision of regulatory legal acts in the area of domestic violence prevention conducted by the local police service;
- 3) aggregation of analytical results of the activities of the local police service in the examined area of social relations;
- 4) development of proposals for draft regulatory legal acts;
- 5) formatting of the results of the social monitoring.

The following was used in the monitoring:

- 1) information from programme documents establishing the policy in the area of domestic/family relations;
- 2) reviews of regulatory legal act enforcement practices prepared by prevention actors;
- 3) results of the analysis of regulatory legal acts;
- 4) results of the analysis and aggregation of petitions submitted by citizens and legal entities to state authorities, as well as the handling of acts of prosecutorial oversight, court rulings on the practices of enforcing regulatory legal acts in the domestic setting;
- 5) materials of research and practical conferences, seminars, meeting held to address issues of the active legislation, as well as materials provided by non-governmental organizations;
- 6) findings (recommendations) of social monitoring of the enforcement of legislative norms conducted by public councils, as well as non-profit organizations and citizens, as mandated by public councils;
- 7) results of previously conducted monitoring efforts [3, p.124; 4, p.154];
- 8) information contained in mass media and internet resources within publicly available telecommunication networks, including research publications;
- 9) statistical data on the law enforcement practices;
- 10) proposals and comments provided by domestic violence prevention actors regarding the improvement of the active legislation of the Republic of Kazakhstan.

It should be noted that the research and monitoring efforts were greatly bolstered by interested services of the Committee of Administrative Police of the MIA RK, heads of regional branches of local police and local executive bodies.

Section 1. The state of the domestic violence prevention efforts of the internal affairs bodies' local police service (IAB LPS) units

1.1 Legal framework of the activities of the local police service in the prevention of domestic violence

The underlying legal framework of preventing domestic offences is closely related with the state policy which is provided by the President of the Republic of Kazakhstan in programme documents.

In the Strategic Plan for the Development of the Republic of Kazakhstan up to 2020, approved by the Decree of the President of the Republic of Kazakhstan of 1 February 2010 No. 922, "By year 2020 it is expected that "as a result of measures taken, the percentage of felonies committed against women in a domestic setting will be reduced to 9.7%, and offences against minors — to 2.2%" [5].

1 January 2016 marked the beginning of the practical stage of the implementation of the National Plan "100 Concrete to Implement 5 Institutional Reforms". This involved the enactment of 59 laws that form a fundamentally new legal environment for the development of the state, economy and society. It falls within the competence of the local police service to maintain public order, prevent domestic violence, [...] and have a zero tolerance approach to small offences [5].

At the current stage, the domestic violence prevention process has become a political priority for the nation. It came as no surprise that in his "Kazakhstan 2050 Strategy: New Political Course of the Established State", N.A. Nazarbayev said that "there must be no disrespectful attitude towards women. And I will stress that this violence must be dealt with most definitively" [1]. But this does not mean that all "home tyrants" need to be imprisoned. There are two main areas of judicial policy of the state that influence the improvement of the legislation concerning domestic relations:

- 1) minimizing the process of involving citizens in the criminal justice system;
- 2) reduction of the prison population of the country. It

is for this reason that the President's quote "dealt with most definitively" should be interpreted as enhancing the preventive measures towards domestic offenders on the part of all the domestic violence prevention actors. Remaining relevant are the issues of prioritizing the use of enforcement measures alternative to deprivation of liberty of domestic offenders. This is a priority principle of domestic violence prevention and is directly provided under paragraph 7 of article 3 of the Law of the RK "On Preventing Domestic Violence" which says: "Domestic violence prevention is based on the principles

of prioritizing preventive measures over repressive ones [6].

These measures are as follows:

- 1) protective restraining order;
- 2) establishing special requirements for offender conduct;
- 3) barring order.

All of the above measures are aimed to preclude any contacts between the conflicting parties. We conducted an analysis of these measures in separate sections of this report.

At the completion of the implementation of the 2006–2016 Gender Equality Strategy, the President developed and adopted the Concept of Family and Gender Policy in the Republic of Kazakhstan for 2030. [7]

The concept was drafted on the basis of the Constitution of the Republic of Kazakhstan, the Kazakhstan-2050 Strategy, the 100 Concrete Steps National Plan, the Concept of Kazakhstan's Accession to the Top 30 Developed Nations, the UN Convention on the Elimination of All Forms of Discrimination Against Women, SDG and other ratified international treaties and conventions [8]. The Plan provides for:

- 1) development of the Concept of Draft Law of the RK "On the Introduction of Changes and Additions into Some Legislative Acts of the Republic of Kazakhstan on the Issues of Family and Gender Policy" with a view to ensure compliance with SDG and the final remarks of the UN Committee for the Elimination of Discrimination Against Women, as well as the standards of the OECD (Organisation of Economic Cooperation and Development) member states — November 2017;
- 2) monitoring court rulings on divorce proceedings in order to assess the level of observance of the equality of father right to participate in the upbringing of children — December 2017;
- 3) enhancement of the system for information and statistical recording of all forms of violence — December 2017;
- 4) submission of a draft consolidated report of the Government on the implementation of this Plan — by 15th of February every year.

At the same time, in September 2015, Kazakhstan joined the UN-led Sustainable Development Goals (SDG) process, where 12 out of 17 goals are gender-sensitive. These goals require

nationwide adaptation and monitoring as part of all strategic areas and objectives of the nation.

Implementation periods:

- First stage (2017–2019)
- Second stage (2020–2022)
- Third stage (2023–2030)

In the first stage (2017–2019) it is planned to ensure the implementation of measures to capitalize on the previously achieved results in the family and gender policy, which will be provided under the Plan for the Implementation of the Concept of Gender and Family Policy for 2017–2019.

The second stage (2020–2022) launches the implementation of long-term objectives and events under the umbrella of the family and gender policy.

The third stage (2023–2030) involves the implementation of long-term objectives and events under the umbrella of the family and gender policy with a view to achieve sustainable development goals, which, in turn, would help Kazakhstan join the ranks of the 30 most developed nations of the world.

Contents of the Concept:

1. Current situation analysis. Relevant issues and main achievements.
2. Vision of the Kazakhstan gender and family policy development until 2030
3. Aims, objectives, implementation period and target indicators of the Concept
4. Kazakhstan's family and gender policy implementation strategy
5. List of regulatory legal acts the Concept is meant to be implemented with.

The Law of the Republic of Kazakhstan "On Preventing Domestic Violence" is currently the primary legislative act providing legal, economic, social and organizational foundations for the activities engaged in by domestic violence prevention actors, including the local police service units.

Yet it would be incorrect to assume that 23 December 2009, when this law was enacted, marks the beginning of the formation of the legal groundwork of combating negative phenomena in the area of domestic violence. Prior to the adoption of the specialized Law of the RK "On Preventing Domestic Violence", the Code of the RK on Administrative Offences that had been in effect until 1 January 2015, since 2007 contained chapter 9-1 "Administrative offences infringing upon the person in a domestic setting" [9].

When comparing CAO regulations related to protecting social relations in domestic settings, currently there are only two significant differences:

- 1) missing is the specialized chapter 9-1 specifying the object of offence in the form of social relations in the area of family and domestic relations;
- 2) commission of economic domestic violence in the form of non-payment of alimony for the support of children, spouse(s) and other incapable family members is now criminally punishable under article 139 of CC RK, instead of article 79-6 CAO that had been in effect until 1 January 2015.

Since 1 January 2015 and until July 2017, domestic offenders who engaged in beatings and wilful infliction of light bodily harm were criminally liable under the procedure of private prosecution of a criminal misdemeanor [10].

As of 3 July 2017, the law of the Republic of Kazakhstan No. 84 "On the Introduction of Changes and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Improving the Law Enforcement System", domestic offenders guilty of beatings and wilful infliction of light bodily harm will be liable under articles 73-1 and 73-2 of CAO [11].

The local police service personnel operate under the above regulatory acts, that are based on the Constitution of the Republic of Kazakhstan, universal principles and norms of international law. In discharge of their jurisdictional duties, officers of the local police service must operate under the premise that international treaty and other obligations assumed by the Republic of Kazakhstan constitute, pursuant to article 4 of the Constitution of the RK, a component of the country's active law [12].

When handling cases, the local police service officers may not apply provisions of the legislation of the Republic of Kazakhstan if otherwise instructed by an international treaty, where the binding force of such treaty has been accepted by the Republic of Kazakhstan through ratification or accession. In these cases, international treaty provisions will prevail.

Kazakhstan will not deem binding any decisions of international organizations and their bodies that contravene the Constitution's provisions on the sovereignty of the nation and on the inadmissibility of changing the constitutionally defined unitary state and territorial integrity of the country and its form of government, as well as decisions that infringe upon constitutional rights and liberties of the person and the citizen (clause 4 of the regulatory resolution of the Constitution Council of the Republic of Kazakhstan dated 5 November 2009 No. 6 "On the Official Interpretation of the Provisions of Article 4 of the Constitution of the Republic of Kazakhstan as Applied to the Procedure of Compliance with Decisions of International Organizations and their Bodies") [13].

The underlying legal framework governing the activities of the local police service (LPS) is also provided by the Law of the RK of 23 April 2014

No. 199 "On Internal Affairs Bodies of the Republic of Kazakhstan". Pursuant to para. 4 of article 9-1, the activities of the local police service are carried out in the following main areas:

- 1) prevention of offences;
- 2) maintaining public order;
- 3) ensuring safety of road traffic;
- 4) prevention and suppression of criminal offences;
- 5) case proceedings on administrative offences and pre-trial investigation in protocol form for criminal misdemeanors [14].

As we can see, 4 out of 5 main areas of focus of the LPS pertain to the process of preventing domestic violence.

Law of the RK dated 29 April 2010 "On Preventing Offences", article 7, defines the competence of internal affairs bodies when it comes to preventive measures. However, paragraph 6 of article 23 states that "Measures of individual prevention of offences towards persons who have committed domestic violence are applied with due consideration of specific factors provided for by the legislation of the RK on preventing domestic violence" [15].

Similar provisions are found in the Law of the RK of 9 July 2004 No. 591 "On Preventing Offences Among Minors and Preventing Child Neglect and Child Abandonment", where article 10 also grants the internal affairs bodies (IAB) the competence to prevent offences. Para 5 of article 19-1 provides that "Measures of individual prevention of offences towards minors who have committed domestic violence are applied with due consideration of specific factors provided for by the legislation of the RK on preventing domestic violence" [16].

In their duties, the local police service officers must also follow the main provisions of the Law of the RK dated 29.12.2008 No. 114 "On Special Social Services" which governs social relations arising in the area of the provision of special social services for persons (families) who find themselves in challenging life situations. Para. 2 Article 6 provides that "Criteria for establishing the existence of abuse resulting in social dysadaptation and social deprivation will be set by the Ministry of Internal Affairs of the RK jointly with authorized bodies in the area of healthcare and social welfare, education". The law provides that the forms of abuse that results in social dysadaptation and social deprivation are acts associated with domestic violence, regardless of whether or not criminal proceedings have been initiated regarding the acts [17].

With a view to implement para. 2 of article 6 of the above Law, the Ministry of Internal Affairs, jointly with ministries of healthcare and

social development, education and science, have developed and adopted a joint order No. 630/399/240 "On the Adoption of Evaluation Criteria Establishing Instances of Abuse Resulting in Social Dysadaptation and Social Deprivation", registered at the Ministry of Justice on 25 December 2014

No. 10013. This order will provide domestic violence victims access to special social services [18].

A mechanism of rendering the above services was approved by the Order of the Minister of Healthcare and Social Development of the RK of 26 December 2016 No. 1079 "On the Adoption of the Standard for Providing Special Social Services to Domestic Violence Victims". According to this Standard, the local police service is vested with the following duties:

- interact with local executive bodies, authorities in education, healthcare, welfare, justice, non-governmental organizations, for addressing issues of social rehabilitation, restoration of civil, property and other rights of service recipients; (para.9)

- refer domestic violence victims to an organization that provides temporary lodging and special social services covered by the state budget, at the address of actual location of a service recipient; (para.25)

- identify the victim for purposes of determining the state of the domestic violence victim in challenging life circumstances, in the presence of a social worker and a psychologist; (para. 29)

- receive within three business days any information from a temporary lodging organization on the service recipient's refusal to file a report to internal affairs bodies regarding domestic violence, taking into account the confidentiality of personal data of service recipients [19].

Order of the MIA RK of 15 July 2014 No. 432 "On the Adoption of the Operating Procedures for the Preventive Control of Persons Under Preventive Monitoring at IAB" provides for a mechanism of performing preventive control over persons registered in preventive monitoring lists at internal affairs bodies. This manual provides a procedure for issuing a protective restrictive order and maintaining control over the domestic offender's compliance with the order, as well as a procedure for recordkeeping on the preventive control over domestic delinquents. Yet, this agency-specific document does not provide any instructions on enforcing para. 6 of part 2 of article 17 of the Law "On Preventing Domestic Violence" regarding the imposition of special requirements for the behaviour of the offender and his/her liability for violating these requirements [20].

Another drawback of this manual is its failure to provide a procedure for controlling persons against whom, pursuant to article 165 CPC RK, the court has issued a barring order.

The local police service's efforts would be in vain without involving law-abiding citizens in the process of preventing offences, including domestic violence. The Law of the Republic of Kazakhstan of 9 July 2004 No. 590 "On the Participation of Citizens in Maintaining Public Order" does not explicitly provide for individual participation of citizens in the process of preventing domestic violence [20].

However, the notion of "public order" incorporates the process of ensuring citizens' well-being in family and domestic settings. A mechanism of implementing this law is presented in the Order of acting Minister of Internal Affairs of the Republic of Kazakhstan dated 19 June 2015 No. 463 which changes the name and contents of the Order of MIA RK dated 27 November 2004 No. 641 "On the Adoption of the Rule of Involving Citizens in Efforts to Maintain Public Order, their Forms and Types, not Related to Control and Oversight Functions".

Maintaining public order, including in domestic settings, is performed by means of civilians assisting officers of the LPS by doing the following:

- 1) notify of any instances of planned, ongoing or committed offences, as well as accompanying causes and circumstances;
- 2) identify persons subject to being placed under preventive monitoring by district police inspectors and units dealing with minors, engaging in individual preventive efforts with them, with direct participation of the officers of the aforementioned departments of internal affairs bodies;
- 3) prevent offences perpetrated by minors and prevent child neglect and child abandonment;
- 4) raise legal awareness and so forth [22].

In our opinion, it is advisable to explicitly define powers and scope of civilian assistants of the police in the process of assisting the LPS officers in preventing domestic violence.

The Order of the Minister of Internal Affairs of the RK dated 30 January 2016 No. 89 "On the Adoption of the Rules of Interactions Between Internal Affairs Bodies of the RK in Monitoring Persons Released from Penitentiary Institutions" can also serve as grounds for preventing domestic violence, as a part of previously convicted persons with prison sentences remain prone to commit domestic offences [23].

Immediately pertinent to the process of preventing domestic violence are also the agency-specific orders of the MIA RK that govern the procedure of conducting activities of the main units of the local police service, namely, district police inspector units, their deputies, as well as district police inspectors for minors [24, 25].

The above Rules designate categories of persons placed under preventive monitoring, as well as the legal status of the district police inspectors service with respect to performing conventional duties of the local police service, inclusive of preventing domestic violence.

Domestic violence falls within the scopes of both administrative and criminal justice. The procedure of registration and responding to domestic offences is provided under not only codified legislation, but also agency-specific orders of the MIA RK regarding the procedure of the application of CAO RK by IAB officers and the receipt and registration of petitions and reports of criminal offences [26, 27].

1.2 Retrospective analysis and current state of the process of preventing domestic violence

Equality in family relations has been evolving for centuries, reflecting the history of the evolution of democracy in the society. Gender equality was only recently (a little over a century ago) added to the list of universal principle of equality, and may not be excluded from the general process of social development, establishment of the ideology and the practice of its implementation.

According to researchers, violence against women has existed in all ages, all civilizations and socio-economic structures. The society, operating under traditions and customs, separated women and men into two unequal groups, wherein men were seen as serving the society, while women were limited to their household duties. It was for this reason that in all cultures women

depended on men, were secondary to them, and men's right to control over their wives and children had been preserved until the 20th century.

In the 20th century, the women's status changed fundamentally. In many countries of the world, rights equality was achieved between men and women, and women were gradually able to attain the right to education and occupation.

Since Kazakhstan became a sovereign state, one of the priority objectives of the state has consisted in protecting the marriage and family, motherhood, fatherhood and childhood. These principal provisions are enshrined in the Constitution of the Republic of Kazakhstan adopted in 1995. Article 27 of the Constitution of the RK provides that "Marriage and family, motherhood, fatherhood and childhood are under the protection of the state" [12].

Furthermore, our country has ratified base international legal documents in the area of combating domestic violence. Currently the current legislation provides that perpetrators of various offences pertaining to this area (violation of human dignity, beatings, torture, infliction of bodily harm, sexual harassment, nonperformance of alimony obligations, etc.) are criminally and administratively liable.

Since the 1990s, Kazakhstan has seen the formation of the women's movement which, in our opinion, can be broken down into several stages. **The first** or preparatory stage can be traced back to 1991–1995. This period is characterized by the preliminary institutional formation of the women's rights movement in Kazakhstan, fragmented operation of women's non-governmental organizations aimed primarily at addressing social and economic problems, business and protecting the interests of the family and children. At this stage, state's policy towards women was marked by the automatic transfer of principles and mechanisms of the soviet system, wherein the social role of a woman is limited to social issues and tied with the family, motherhood and children. In this period, the women's rights movement did not exhibit significant political engagement, and at elections of the members of the Supreme Council and local representative bodies in 1994, only the Council of Women's Organizations nominated 6 candidates. In general, these elections were participated by 90 women (out of 756 candidates), amounting to 12% of the total number of runners.

Second stage — in 1995–1998 — is the time of actual development of the women's rights movement in Kazakhstan which saw an almost six-fold increase in the number of female NGOs nationwide.

In our opinion, the emergence of this stage was driven by the Fourth World Conference on Women in Beijing held in September 1995. It is at this time that the strategy and public policy priorities on women were established in Kazakhstan [28].

In the same year, a Decree of the President of the Republic of Kazakhstan established the Council for Family and Women's Affairs and Demographic Policy, which was subsequently transformed into the National Commission for Women and Family Affairs under the President of the RK [29].

The third stage — since 1998 and to the present day — is a period of comprehensive formation and implementation of public policy on women, creation of incentives for political involvement of women, on the one part, and active development and political engagement of women's non-governmental organization, transition to a level of institutional formation of women's political parties, on the other.

At the state level, as a first-priority measure, the Council for Family and Women's Affairs and Demographic Policy was actively modernized

. On 22 December 1998, the President issued a Decree reforming this body into a key institutional mechanism for gender issues in Kazakhstan — the National Commission for Family and Women's Affairs under the President of the RK, that, as per its legal status, is a consultation and advisory body under the President [29].

As such, in 1998–1999, in pursuance of the Beijing Platform For Action, the Commission developed a National Action Plan for Improving the Status of Women in the Republic of Kazakhstan, approved by the resolution of the Government of the Republic of Kazakhstan dated 19 July 1999, No. 999 [30].

The national plan was drafted in accordance with the model proposed by UNIFEM. In the same period, the Ministry of Internal Affairs created a special unit for combating violence against women [31]. It was the only such unit in the Eastern European and Central Asian nations, and only as late as in 2014, a similar unit became operational in the Republic of Tajikistan.

On 5 May 2000, the Law "On the Introduction of Changes and Additions into Some Legislative Acts of the Republic of Kazakhstan" was enacted, providing harsher punishment for persons committing criminally punishable acts against women [32].

In the same year, the national Parliament members initiated the drafting of a draft law "On Equal Rights and Opportunities", while the Government of the Republic of Kazakhstan on 5 September 2000 adopted a Resolution "On Measures to Support Women's Entrepreneurship" providing for the allocation of 4.5 M KZT for purposes of women's entrepreneurship [33].

2000 saw the development of the first version of the draft law "On Preventing and Suppressing Domestic Violence", which was enacted only on 9 December 2009, under a new name "On Preventing Domestic Violence".

In 2001, gender equality issues were incorporated into the Strategic Development Plan of the Republic of Kazakhstan until 2010; furthermore, on 12 March 2001, the Government of the Republic of Kazakhstan adopted the Rules of Cooperation of State Bodies, Organizations and Non-Governmental Organizations Addressing Issues of Violence Against Women [34].

This regulatory legal act is active to this day, but does not fully cover the issues of inter-agency cooperation of domestic violence prevention actors.

In 1999, the Government of the Republic of Kazakhstan prepared the nation's first report for the UN on the implementation of the Convention on Elimination of All Forms of Discrimination Against Women [35]. UN experts noted that Kazakhstan can be considered a model of progressive changes, including those concerning women's rights. Under the UN Convention "On the Rights of the Child" in 2002, the Republic of Kazakhstan

enacted the Law “On Children’s Rights in the Republic of Kazakhstan” [35].

In 2006, for purposes of implementing the 2006–2016 Gender Equality Strategy in the Republic of Kazakhstan, the President issued a Decree to reorganize the National Commission for Women and Family Affairs into the National Commission for Family Affairs and Gender Policy under the President of the Republic of Kazakhstan [36].

On 28 February 2006, the Government issued a resolution No. 128 adopting a Standard Provision on the Commission for Family Affairs and Gender Policy under akims (governors/mayors) of oblasts (provinces), and the cities of Astana and Almaty. In pursuance of this Resolution, all the regions created their commissions for family affairs and gender policy under akims of oblasts, the cities of Astana and Almaty, appointing secretaries of the commissions [37].

On 29 June 2006, the Government issued a Resolution No. 600 “On the 2006–2008 Action Plan for Implementing the 2006–2016 Gender Equality Strategy in the Republic of Kazakhstan”. On 16 February 2006, the Republic of Kazakhstan adopted the Law “On the Introduction of Changes and Additions into Some Legislative Acts on the Issues of Combating Trafficking in Persons”, and as of 1 July 2006, state welfare benefits were introduced for taking care of the child until the age of one year old [38].

In 2007, at the UN headquarters in New York, the Kazakh delegation defended the second periodic report of the Republic of Kazakhstan on the implementation of provisions of the Convention on Elimination of All Forms of Discrimination Against Women that Kazakhstan had joined in 1998.

With a view to implement recommendations received from the UN Committee, the Inter-agency Commission for International and Humanitarian Law and International Human Rights Treaties, on 7 November 2007, by protocol No. 5, developed and adopted an Action Plan for Implementing Recommendations for 2007–2011.

In 2014, the Republic of Kazakhstan presented its consolidated third and fourth national report on the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) that Kazakhstan had joined in 1998.

On 11 June 2001, the Government issued a Resolution No. 789 adopting a Standard Provision on the Commission for Minors and Protection of Their Rights [39].

On 1 February 2006, the President issued a Decree that reorganized the National Commission for Family Affairs and Gender Policy into the National Commission for Women, Family and Demographic Policy [40].

On 13 December 2008, at a meeting of the Inter-agency Law-Making Commission, a Manual for Gender Examination of Draft Regulatory Legal Acts

was adopted. In 2008, a draft 2009–2011 Action Plan for the Implementation of the Gender Equality Strategy in the Republic of Kazakhstan, which was adopted by the Resolution of the Government of the Republic of Kazakhstan No. 7 dated 15 January 2009. It includes measures to improve the prestige of marriage and family [41].

The Gender Equality Strategy in the 2006–2016 period was the core document aimed at implementing the state’s gender policy, serving as a tool for its implementation and monitoring conducted by both the state and the civil society, and an important factor influencing the growth of democracy. Over the course of this Strategy’s implementation, Kazakhstan reached new and impressive heights.

First and foremost, this was reflected in the targeted building of the women’s capacity, creation of conditions favourable for equal participation of both men and women in employment, business, politics, public administration, formation of equal access for women to quality education and healthcare, as well as comprehensive maternity welfare. To date, Kazakhstan has fostered a coherent institutional system for the gender and family/demographic policy, a comprehensive legislative framework has been created.

Due to the fact that the Strategy ran its course, its place has been occupied by a newly developed Concept of Gender and Family Policy in the Republic of Kazakhstan until 2030. It is implemented in three stages:

- First stage (2017–2019)
- Second stage (2020–2022)
- Third stage (2023–2030) [7].

The Concept aims to foster a favourable environment for the actual enjoyment of equal rights and equal opportunities for men and women in accordance with the Constitution of the Republic of Kazakhstan and international acts, as well as both genders’ equal participation in all areas of social life, harmonization of family relations, support, reinforcement and protection of the concept of the family and its values, facilitating families’ performance of its functions, improvement of families’ social welfare by means of developing and implementing social partnerships, social guarantees and individual responsibility.

Formation of an effective family healthcare system, improvement of the system of family-based upbringing, education and leisure, development of the system of social service of families with children will become the most highly prioritized areas of the family policy in the mid-term and long-term.

Family policy’s priorities:

1. Reinforce the concept of the family by forming family relations based on equal partnership of men and women

Issues of the positive image of the family and marriage, as well as family-based upbringing, will become among the core areas of public policy. Efforts will be intensified to promote family values and traditions, preserve continuity of generations through holding cultural awareness raising and mass events. With a view to reinforce the institution of the family, efforts will be made to improve the legislation of the RK that ensures equality of rights and opportunities of men and women in the area of family relations, maternity and childcare services, increasing parents' accountability for the upbringing of children. Responsible actors will look into the possibility of defining an institutional structure for examining the issues of the family policy in order to conduct multifaceted studies of the state of the family in Kazakhstan, along with examining prospects and avenues of further growth.

2. Improve the quality and expand the selection of auxiliary services for families

Expanding the selection of auxiliary services for families will be accompanied by further measures aimed towards the reduction of poverty and social deprivation in families. Employable members of single-parent, multi-child and low-income families will be covered by measures of assistance in employment and professional training on a priority basis. In order to improve women's employment rates, measures will be taken to expand the coverage of pre-school training and education of children aged 1–3, which would help parents balance their work and family lives.

3. Create conditions for reproductive health care and the elimination of gender gaps in life expectancy

Preserving reproductive health in men and women, improving health of children and youth, as well as maternity and childcare services will be prioritized in the activities engaged by state authorities and non-governmental organizations.

Efforts will continue to be made to reduce maternal and infant mortality. With a view to reduce the age at which the youth may seek care at healthcare institutions without parents' consent from 18 to 16, relevant authorities will explore the possibility of amending the active legislation on reproductive healthcare. In order to tackle the issue of infertility, new methods of infertility treatment using new technologies will be improved and introduced. To this end, clinical protocols of diagnosis and treatment of infertility will be revisited on a regular basis, taking into account international best practices, while taking measures to enhance the level of professional training of reproductive medicine specialists in accordance with international requirements.

4. Prevent violence in families and against children

Combating violence is considered one of the national priorities in the RK. One of

the Sustainable Development Goals consists in a significant reduction of prevalence of all forms of violence, which requires more constructive and specific state policies in this area.

Almost concurrently with the specialized law on preventing domestic violence, the Law of the Republic of Kazakhstan of 8 December 2009 No. 223 "On State Guarantees of Equal Rights and Equal Opportunities for Men and Women" was enacted. **This law aims to eliminate any infringement upon the rights of women not only in a domestic setting**, but also in other social settings. This law also made it possible to develop new legal institutions pertaining to the "gender approach", "gender sensitivity" and "gender budgeting" [42].

Current social monitoring revealed a number of issues that require a conceptual solution, namely:

1) Imperfect mechanisms of early prevention of domestic offences

"Early prevention of offences" should be construed as a broad set of educational measures aimed to foster high-moral and ethical values in minors.

Moral decadency in the society, degradation of the system of values, spiritual and life guidelines, coupled with open advertisement of alcohol and tobacco, promotion of self-indulgent lifestyles, cruelty, strength, drugs and violence, influence of negative information on the internet — *all of this leads to the fostering of an improper life philosophy.*

The report's authors conclude that in this area of concern, it is families, schools, physicians, juvenile police and justice that must lead the charge; further, authors propose the following ways of addressing the above issues:

- *recommend enrolling in a psychocorrective programme, as a preventive measure;*
- *minimize latency of domestic offences (actualize the zero tolerance principle);*
- *systematize the process of raising public awareness on protective measures and access to justice (one-off events are not effective).*

2) the problem of inter-agency interaction of domestic violence prevention actors remains unresolved. Having examined research materials and expert opinions in this area of expertise, we have come to a conclusion that any given domestic violence prevention actor engages in combating domestic violence on one's own, without receiving operational support from other actors. For instance, if a woman approaches an IAB with a complaint about her husband's (or cohabitant's) abuse of alcohol or alleged infidelity, then, usually, a district inspector has to dismiss it,

saying that infidelity is not against the law, and neither is alcohol consumption. Yet, if inter-agency interactions were initiated, the inspector would have referred the spouses to a psychologist, addictologist, sexual health expert, etc.

3) disparities between codified provisions of the CC RK and CAO RK in the area of domestic offences with respect to the degree of public danger. For instance, prior to July 2017, beatings and infliction of light bodily harm were not considered criminal misdemeanors of private nature, and rarely led to a conviction in court. As a result:

- latency increased;
- there was a contradiction with the Concept of Legal Policy, which resulted in citizens getting involved in criminal justice;
- arraignment was less prompt.

As of 1 January 2015, domestic economic violence (CC art. 139) attained the felony status, as it now entailed imprisonment for 2 years [43]. It should be noted that the offence in question, bypassing the status of a criminal misdemeanor, turned from an administrative offence to a criminal offence, which contravenes the Concept of Legal Policy of the Republic of Kazakhstan on humanization of criminal legislation. What is the point of such a punishment, if the offender poses no danger to the society and their detention at a penitentiary institution makes it impossible to sustain an unemployable or low-income spouse or children?

4) imperfection of preventive regulations involving restriction or deprivation of liberty for domestic violence: protective restraining order, imposition of special requirements for the behaviour of the offender, barring orders.

According to the media, experts and local police service members, short administrative detention (within 3 hours) and the fact that domestic offenders ignore protective restraining orders, hamstringing any efforts mounted by IAB. Law enforcement practices demonstrate that as far as the imposition of special requirements for the behaviour of a domestic offender (involving their expulsion from the domicile) is concerned, the wording "availability of another domicile" in article 54 of CAO RK makes this regulation unenforceable. Since 2014, Kazakhstani courts have had very little success at passing such a ruling.

5) low professional capacity of domestic violence prevention actors. Targeted seminars and trainings in regions do not contribute a comprehensive effect in improving the professionalism of prevention actors. After training events, experts conclude that domestic violence prevention actors:

- incorrectly qualify and evaluate the degree of domestic violence's danger to the society;
- lack concrete operating procedures;

- improperly draw up case files on domestic violence;

- do not utilize mechanisms of inter-agency cooperation, etc.

6) imperfect mechanism for separating conflicting parties. The local police service and domestic violence prevention actors have time and time wondered: how does one protect a domestic violence victim if they continue to cohabit with a domestic offender? Many regions do not have shelters for domestic violence victims, or impose insufficiently long detention terms for domestic offenders, do not enforce a regulation (article 54 CAO RK) providing for the prohibition of cohabitation of the offender with the victim of domestic violence.

7) non-existent psychocorrective programmes both for victims of domestic offences, and for domestic offenders themselves. Often-times, officers of IAB and other law enforcement agencies are forced to engage in domestic violence situation where all the efforts become in vain if there is no psychological influence being applied to the participants of domestic disputes. Such families experience the loss of family values, and non-observance of the principle of support and preservation of the family, as provided for by para.5 of article 3 of the Law of the RK "On Preventing Domestic Violence" [6].

8) no optimization for the mechanism of real evaluation of the degree, forms and methods of domestic violence. Court statistics still fails to reflect the real prevalence of violence, due to the fact that to this day reporting forms lack any corresponding indicators. To this day, additional indicators that characterize the prevalence of domestic violence and effectiveness of counter-measures provided by the Law are not included in the statistical data generated by the Committee for Legal Statistics and Information at the Prosecutor General's Office. For instance, beatings and infliction of bodily harm can occur both in a domestic setting, and in a public venue, and we are unable to precisely determine the prevalence of domestic violence nationwide, unable to track its growth or decline rates, and so forth. A similar problem occurs in the application of preventive measures of restricting the liberty of a domestic offender.

As a result of the enactment of the new codified legislation and the introduction of the notion of "criminal offence" that incorporates misdemeanors and felonies, as well as due to a fundamental overhaul of pre-trial proceedings, involving the removal of pre-investigation probes and initiation of a criminal case, this indicator is no longer compatible with the historical periods. At the same time, some conclusions can be drawn on the state of domestic offences based on comparing the past two years (2015 and 2016).

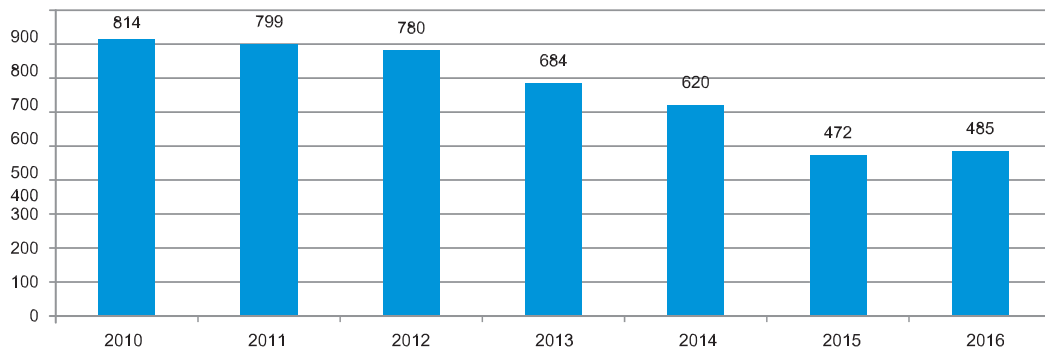
Over the 12 months of 2016, there was a **6.5%** decline in crime (from 386,718 to 361,389).

Of those, domestic offences went up **2.8%** (from 472 to 485). However, the growth was evident only in

the latest reporting period, even though ever since the specialized Law was enacted, there has been a consistent decrease in domestic offences.

Figure 1

Number of domestic offences



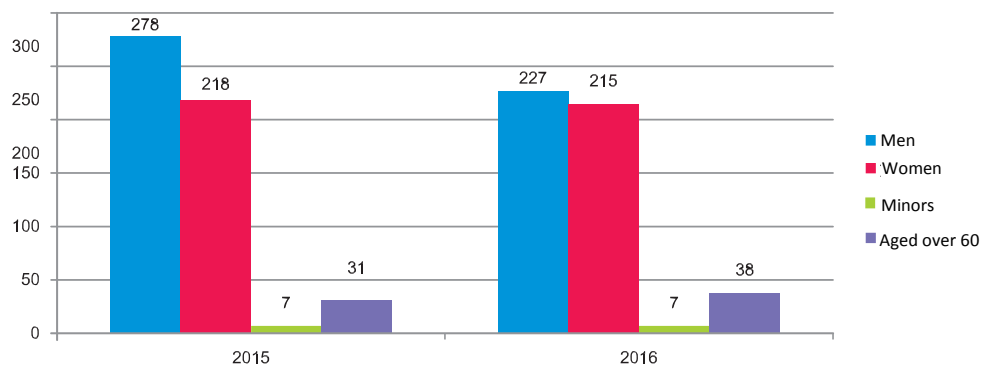
This graph does not reflect criminal offences that were committed in a domestic setting and heard in court on a private basis. For instance, in 2016 courts received 4,401 complaints regarding criminal prosecution under article 108 CC RK "Wilful infliction of light bodily harm", yet merely 678 persons were sentenced, and this does not mean that the bodily harm was inflicted necessarily in a domestic setting, and not in a public place. Same state of affairs is observed with regard to all articles of private and private-public prosecution.

Against the backdrop of the general decline in crime, there is a **90.3%** surge in criminal offences committed against women (65,325 vs. 124,298).

In domestic settings, however, the crime situation can be considered stable. In 2015 there were 218 women registered as victims, and in 2016 the number dropped to 215 (-1.4%). It should be noted that female domestic victims were outnumbered by male ones: 227 and 278 in 2015 and 2016 respectively.

Figure 2

Domestic violence victims



The Law "On Preventing Domestic Violence" enacted in 2009 made an impact on the crime levels in this category. One of the effective methods of preventing severe consequences of domestic disputes is

administrative practices as well as protective restraining orders and the imposition of special behaviour requirements for offenders, as well as other measures provided under the Law "On Preventing Domestic Violence".

Figure 3

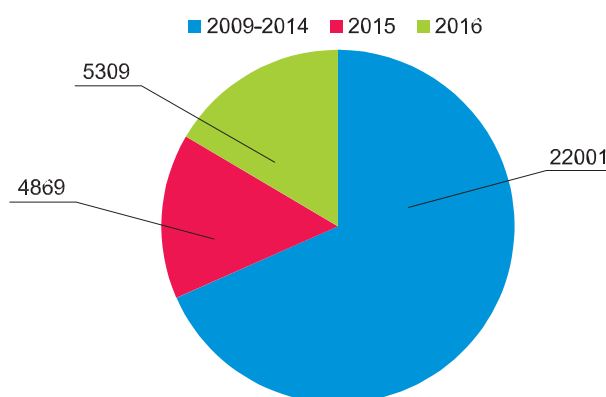


According to the data provided by the Ministry of Internal Affairs of the RK, following the enactment of the Law "On Preventing Domestic Violence", as of 1 January,

2017, internal affairs bodies issued 379,766 protective orders, while courts imposed 32,171 special behaviour requirements.

Figure 4

Imposition of special behaviour requirements for the offender



In 2010–2011, it was very rare for courts to impose special behaviour requirements for the offender. The reason was that courts did not consider this measure a court ruling, believing that there would be no reason to expect the offender to be brought to justice for non-compliance with the limitations imposed.

On 9 April 2012, the Supreme Court of the Republic of Kazakhstan issued a Regulatory Resolution No. 1 stating that should a person against whom an administrative action is brought fail to comply with court-imposed administrative restraining measures, this may constitute grounds for holding said person liable non-compliance with a court ruling, specifically in pursuance with article 669 of CAO RK [44].

It is impossible to determine the number of persons prosecuted under article 669 of CAO RK (art. 524 CAO RK before 01.01.2015) for non-compliance with special behaviour requirements for the offender, as

statistics authorities keep track of the total number of offences, without disaggregating administrative offences.

During the monitoring of listed data on the number of crimes committed in a domestic setting over the 12 months of 2016, compared to 2015, it was established that out 472 (485) registered crimes, 260 (292) were committed by persons in the state of alcoholic inebriation — that is, almost one in two offences.

Victim age groups are as follows: 14–80 in males and 18–86 in females; against persons aged over 60 there were 21 (18) crimes involving men and 17 (13) crimes involving women.

Death was the result of 113 (150) crimes, or one in two, of which 22 (24) were committed with the use of close-combat weapons (men — 69 (92), women — 44 (58), minors 7 (7)).

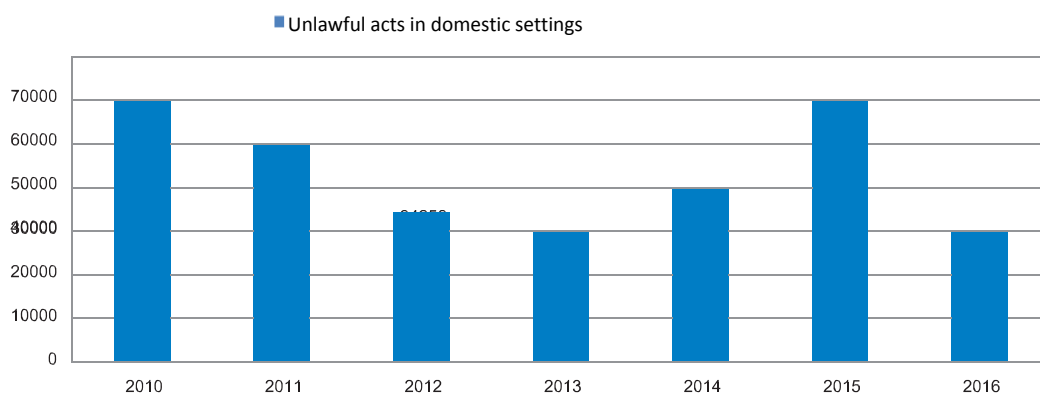
Bodily harm was inflicted to 211 (229) persons — 109 (142) men, 102 (87) women, and 3 (2) minors.

As a result of the unprotected and complicated nature of the process of proving violence against children, there only singular cases were registered.

Psychological violence (domestic disorderly conduct) remains the most prevalent form of domestic violence. In 2016 courts heard 29,718 domestic offence cases, which is almost twice as little compared to 2015 (59,886).

Figure 5

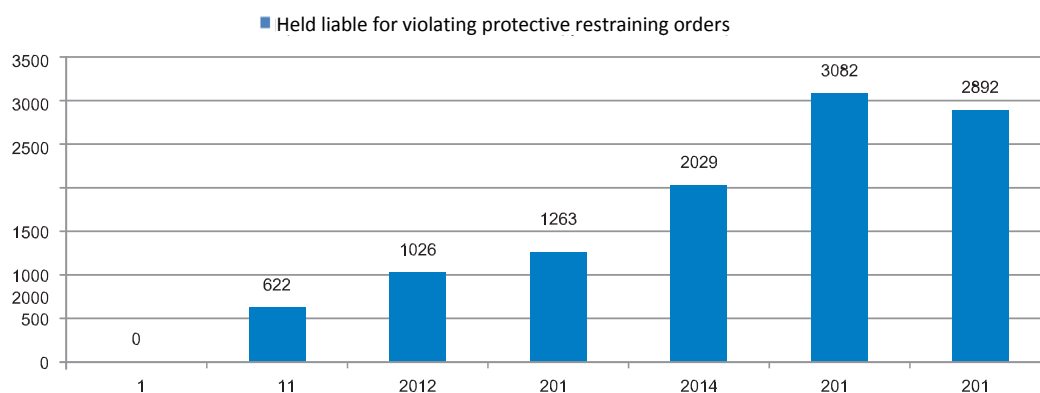
Unlawful acts in domestic settings



In 2016, for violating protective restraining orders under article 461 of CAO RK, 2,892 domestic offenders were held liable for non-compliance with

imposed restraints and repeat instances of domestic violence. [19].

Figure 6



Thus, it becomes readily apparent that the creation of favourable conditions for the formation of the modern stable family and the achievement of gender equality constitutes a crucial process of the modernization of the society. Development of the comprehensive Concept of Family and Gender Policy in the Republic of Kazakhstan, as a link between

the existing concepts in the area of competitiveness and social development proves to be an obvious and justified necessity, as well as one of the fundamental conditions for successful integration of the Republic of Kazakhstan into the global community.

1.3 Results of the analysis of the competence of the IAB LPS in the area of preventing domestic offences

Article 10 of the Law of the Republic of Kazakhstan "On Preventing Domestic Violence" specifies not only the powers of the LPS, but also other units and services of IAB. Since the enactment of the specialized Law, article 10 has been expanded with three changes and additions:

Firstly, the Law of the RK from 3 July 2013 No. 124 "On the Introduction of Changes and Additions into Some Legislative Acts of the Republic of Kazakhstan on the Issues of Bringing Them in Compliance with the System for Public Planning of the Republic of Kazakhstan" abolished paragraph 1) that reads as follows: "develop and implement, jointly with other state bodies, programme documents in the area of preventing domestic violence" [45];

Secondly, the Law of the RK from 13 January 2014 No. 159 "On the Introduction of Changes and Additions into Some Legislative Acts of the Republic of Kazakhstan on the Issues of Specifying the Competence of State Bodies on the Legislative and/or Sub-legislative Levels" abolished the authority to conduct criminological forecasting in the area of preventing domestic violence [46].

Thirdly, the Law of the RK from 18 February 2014 No. 175 "On the Introduction of Changes and Additions into Some Legislative Acts of the RK on the Issues of Preventing Domestic Violence" amended paragraph 7 as follows [47]:

| Version as of 18 February 2014 | Current version |
|---|--|
| Refers victims to organizations charged with rendering assistance or healthcare organizations | Upon the victim's request, refer them to organizations engaged in providing assistance or healthcare organizations |

IAB authority in matters of preventing domestic violence is explicitly designated by article 10 of the Law of the Republic of Kazakhstan "On Preventing Domestic Violence". However, authorities provided for by other Laws of the RK can also influence the process of preventing domestic violence. In this regard, of particular relevance is a comparative analysis of core laws that directly pertain to preventing offences.

As the Law of the RK "On Preventing Offences" grants IABs authority to

prevent offences, this authority covers also the prevention of domestic violence. As such, a comparative analysis of IAB powers provided for under the Law of the RK "On Preventing Offences" and specialized laws, can be used to determine full legal status of police officers in the area in question, as well as to substantiate conclusions regarding the improvement of the legislation examined.

Comparative analysis of the powers of the IAB LPS

| "On Preventing Offences". Law of the RK of 29 April 2010 No. 271 | "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". Law of the RK of 9 June 2004 No. 591 | "On Preventing Domestic Violence". Law of the RK of 4 December 2009 No. |
|---|--|--|
| Article 7 | Article 19-2. | Article 10 |
| 3) participate in legal education of citizens, examine public opinions regarding the state of law enforcement and measures to increase the effectiveness of the offence prevention activities of IAB; 4) take measures to prevent offences; 5) conduct preventive monitoring and preventive control; 6) interact with private citizens and organizations participating in the protection of public order and prevention of offences; | 1) identify, keep track of and take individual preventive measures towards minors specified in sub-paragraphs 1)–12) of paragraph 1 of article 19 of this Law, as well as against their parents or legal representatives who fail to fulfil their duties of education, upbringing and taking care of minors and/or negatively affect their behaviour; 2) identify persons who involve minors in the commission of offences and/or antisocial acts, or commit any other unlawful actions against children, as well as parents and legal representatives of minors, teachers, educators, other workers of educational or other institutions charged with overseeing minors, who do not perform or inadequately perform their duties related to upbringing, educating and/or taking care of minors, or negatively influence their behaviour, and take measures towards holding them liable under laws of the RK; | 2) participate in developing draft regulatory legal acts in the area of preventing domestic violence; 3) take measures to prevent domestic violence; 4) identify parents or persons acting in their stead who do not perform or inadequately perform duties related to upbringing children, or commit unlawful acts against said children; 5) conduct preventive monitoring and preventive control; |

| <p align="center">“On Preventing Offences”. Law of the RK of 29 April 2010 No. 271</p> | <p align="center">“On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment”. Law of the RK of 9 June 2004 No. 591</p> | <p align="center">“On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214</p> |
|--|--|--|
| <p align="center">Article 7</p> | <p align="center">Article 19-2.</p> | <p align="center">Article 10</p> |
| <p>7) engage in cooperation with protection actors;</p> <p>8) inform other law enforcement agencies about instances of known planned or committed offences falling under the authority of said agencies;</p> <p>9) engage in criminal prosecution, probation control, proceedings on administrative offences;</p> <p>10) ensure the arrangement of special training courses on the issues of preventing offences for personnel of internal affairs bodies;</p> <p>11-1) conduct preventive and investigative operations in order to prevent the commission of offences on the part of convicts kept at institutions of the criminal correctional system and placed under monitoring of probation services, as well as persons kept at pre-trial detention centres of the criminal correctional system;</p> <p>11-2) provide educational influence on convicts in accordance with the Penitentiary Code of the RK;</p> <p>12) perform other duties provided by the legislation of the RK.</p> | <p>3) handle, under the established order, any petitions or reports regarding criminal and administrative offences committed by minors or with their participation, and move for measures to be taken to eliminate causes and conditions contributing to said offences, and monitor/control the execution of said measures;</p> <p>4) provide assistance in referring children abandoned by their parents to state institutions or in legally arranging custody or guardianship over minors;</p> <p>5) participate in preparing materials regarding minors referred to special educational institutions and educational institutions with special treatment arrangements;</p> <p>6) ensure control over lifestyle and behaviour of minors placed under the monitoring conducted by the probation service;</p> <p>7) prepare materials regarding convicted women whose sentence serving is postponed in pursuance of article 74 of the Criminal Code of the RK, who fail to perform their duties related to upbringing, education, taking care of children and/or negatively influence their behaviour;</p> <p>8) inform interested authorities and institutions regarding abandoned or neglected children, offences and antisocial acts committed by minors, as well as causes and reasons contributing to such acts;</p> <p>9) provide assistance to educational institutions in legal education of minors, their parents and other interested representatives;</p> <p>10) use special institutions for housing persons under eighteen years of age, who have committed criminal offences, if their isolation is in order.</p> <p>Minors under the age of criminal liability, who have committed criminal offences, as well as referred to educational institutions with special treatment arrangements, prior to the court ruling coming into legal force, will be handed over to parents, custodians, guardians or other persons legally charged with upbringing said minors;</p> <p>11) deliver minors to educational institutions with special treatment arrangements, as well as to centres of adaptation of under-age abandoned children and teenagers aged three to eighteen years deprived of care of parents or persons in their stead, detained during operations of internal affairs bodies;</p> <p>12) perform other duties provided for by laws of the RK, acts of the President of the RK and the Government of the RK.</p> | <p>6) handle petitions and reports of instances of domestic violence or threats of such acts, which involves visiting the scene, and take suppressive measures;</p> <p>7) upon the victim’s request, refer them to organizations engaged in providing assistance or healthcare organizations;</p> <p>8) conduct a preventive conversation;</p> <p>9) arrange transfer of a person who has committed domestic violence to internal affairs bodies;</p> <p>10) issue a protective restraining order;</p> <p>11) move before the prosecutor to issue sanctions to extend the duration of the protective restraining order;</p> <p>12) impose administrative detention;</p> <p>13) move before the court to impose special behaviour requirements for the person who has committed domestic violence;</p> <p>14) engage in criminal prosecution and proceedings on administrative offence cases;</p> <p>15) apply measures of criminal procedural compulsion;</p> <p>16) apply criminal law measures of ensuring the victim’s safety;</p> <p>17) ensure the arrangement of special training courses on the issues of preventing offences for personnel of internal affairs bodies;</p> |

The term “компетенция” (“competence”) semantically incorporates “powers”. In law, “competence” is an array of legally established powers, rights and duties of a given body or official; competence determines the position of a given body or official in the system of state bodies (local self-governance bodies). Legal definition of the term “competence” includes such elements as: terms of reference (objects, phenomena and actions that the powers apply to);

rights and duties, powers of a body or person; responsibility; conformity to established goals, objectives and functions.

Paragraph 1 excluded by the Law of the RK dated 3 July 2013 No. 124-V;

Currently, activities related to the preparation and adoption of specialized programmes for domestic settings are not mandatory. This does not mean, however, that programme documents do not have to contain clauses, sections and paragraphs determining the policy in the area of preventing domestic offences.

The main programme document was adopted by a Decree of the President of the Republic of Kazakhstan dated 6 December 2016 No. 384 "On the Adoption of the Concept of Family and Gender Policy in the Republic of Kazakhstan until 2030" which is being implemented by a Resolution of the Government of the Republic of Kazakhstan from 3 March 2017, No 106, "On the Adoption of the Action Plan for Implementing the Concept of Family and Gender Policy in the Republic of Kazakhstan until 2030" [7, 8].

Minor attention is being paid to the matters of preventing domestic violence in the third section of the Strategy Plan for the Development of the Republic of Kazakhstan until 2020, adopted by the Decree of the President of the Republic of Kazakhstan of 1 February 2010 No. 922. It provides that "By year 2020 it is expected that "as a result of measures taken, the percentage of offences committed against women in a domestic setting will be reduced to 9.7%, and offences against minors — to 2.2%" [5].

Paragraph 2 provides that IAB "participate in developing draft regulatory legal acts in the area of preventing domestic violence"; In the laws being compared, this competence of IAB is not provided for, which leads to an assumption that IAB can participate in developing draft regulatory legal acts exclusively in the area of preventing domestic offences. This also raises a reasonable question: why is this competence not granted to other domestic violence prevention actors?

Paras. 24 and 25 of article 11 of the Law of the RK "On Internal Affairs Bodies of the RK" provides a large list of specific legislative acts that IAB are authorized to not only develop, but also independently adopt.

Such IAB functions are also governed by the Law of the Republic of Kazakhstan dated 6 April 2016 No. 480 "On Legal Acts" that governs relations arising out of the procedure of developing, presenting, discussing, adopting, registering, enacting, modifying, expanding, abolishing, suspending and publishing legal acts in the Republic of Kazakhstan [48].

A more comprehensive mechanism is provided under the Resolution of the Government of the Republic of Kazakhstan from 6 October 2016 No. 569 "On the Adoption of the Rules of Developing and Coordinating Draft Sub-Legislative Regulatory Legal Acts" [49].

As such, the existence of the paragraph in question in the Law of the RK "On Preventing Domestic Violence" is not a critical factor. This competence is absorbed by para. 12 of the Law of the RK "On Preventing Offences" which grants IAB other powers provided for by the legislation of the RK. And, with a view to improve the Law of the RK "On

Preventing Domestic Violence", para. 2 could be omitted, and article 10 expanded with a new para. 18 as follows: "exercise other powers provided by the legislation of the RK". This can also allow us to eliminate other problems regarding the establishing of the full scope of competence of IAB in the area of preventing domestic violence.

Paragraph 3 is contained in all laws examined, as well as in the Law of the RK "On IAB RK" in article 6 part 1 para. 4, but not as a competence, but as powers: "take general, special and individual measures of preventing offences". A similar wording is present in article 20 of the Law of the RK "On Preventing Offences", indicating that the system of measures of preventing offences consists in general, special and individual preventive measures. Yet, it should be noted that, pursuant to the Law of the RK of 3 July 2013

No. 124, article 22 "Special Measures of Preventing Offences" was omitted. In other words, the notion of special preventive measures was removed, but the legal grounds for their application were preserved.

One may logically ask, why is it that the Law "On Preventing Domestic Violence" does not provide for any measures of general and special prevention of offences? The answer lies in article 16 of the Law "On Preventing Domestic Violence", which establishes that "Governing relations arising out of the application of measures of prevention of domestic violence is performed in accordance with the legislation of the RK on the prevention of offences, taking into account any specific features provided by this chapter". This means that in their efforts to combat domestic violence, IAB must, alongside measures of individual prevention, utilize special and individual measures of preventing domestic violence. In our opinion, the wording of the foregoing article 16 should be present in the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Child Abandonment" (9 July 2004, No. 591).

No explanations regarding preventing measures can be found in the agency-specific order of the MIA RK dated 15 July 2014, No. 432, "On the Adoption of the Rules of Preventive Control Over Persons Placed Under Preventive Monitoring at Internal Affairs Bodies" [20]. In this regard, we believe that the legislation of the RK ought to provide a list of special measures of preventing offences. A second option of resolving this issue could consist in removing from the Law of the RK "On IAB RK" and the specialized law "On Preventing Offences" any legal grounds of the application of special measures of preventing offences. However, all specialized laws governing the prevention of offences should explicitly provide for the IAB's competence to take measures of general and individual prevention of offences.

Legal framework of the process of preventing domestic violence is not limited to the Law of the

RK "On Preventing Domestic Violence", as article 17 of said law provides for only a list of measures of individual prevention of domestic violence. A wider scope of competence of the IAB LPS is provided under other Laws of the Republic of Kazakhstan:

- "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". Law of the RK of 9 July 2004 No. 591;

- "On Preventing Offences". Law of the RK of 29 April 2010 No. 271;

- "On Probation". Law of the RK of 30 December 2016 No. 38;

- "On Compulsory Treatment of Persons Afflicted by Alcoholism, Drug Addiction and Inhalant Addiction". Law of the RK of 7 April 1995 No. 2184;

- "On Administrative Oversight of Persons Released from Penitentiary Institutions". Law of the RK of 15 July 1996 No. 28.

However, apart from the specialized Law, direct (main) impact on the domestic violence prevention process is made by the first two laws. Besides measures of individual prevention of offences, the IAB LPS must conduct general measures of preventing offences listed in article 21 of the Law of the RK "On Preventing Offences".

Paragraph 4 grants IABs the power to identify troubled families, namely, "parents or persons acting in their stead who do not perform or inadequately perform duties related to upbringing children, or commit unlawful acts against said children". A similar competence is provided under the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment", but this competence is not provided for under the Law of the RK "On Preventing Offences". Despite this, in our opinion, there is no contradiction here, as para. 12 of article 7 of this law stipulates that IAB "exercise other powers provided by the legislation of the RK".

As such, we believe that the existence of this power in the Law of the RK "On Preventing Domestic Violence" is not a critical factor. It should suffice to expand article 10 with a new paragraph with the standard wording: "exercise other powers provided by the legislation of the RK".

Paragraph 5 authorizes IABs to maintain preventive monitoring and conduct preventive control. In different interpretations, similar competences are provided under all the laws examined in the area of preventing offences, as well as in the Law of the RK "On IAB RK". This paragraph completely matches the fifth paragraph of article 7 of the Law of the RK "On Preventing Offences", thereby duplicating it.

In pursuance of article 28 of the Law of the RK "On Preventing Offences", preventive monitoring will cover persons in respect of whom:

- 1) a protective restraining order is issued;
- 2) special behaviour requirements are imposed;
- 3) a decision is made to release under parole from serving a prison sentence;
- 4) administrative oversight is in effect;
- 5) a punishment is imposed that does not involve isolation from the society or other measures of criminal relief;
- 6) a decision is made to release from imprisonment after serving a sentence for committing a severe or especially severe crime, or convicted and sentenced to imprisonment multiple times for intentional crimes.

Pursuant to article 11 para. 25 of the Law of the RK "On IAB RK", the MIA RK is granted the power to develop and adopt "the rules of conducting preventive control over persons placed under preventive monitoring at internal affairs bodies". These rules were instituted by the order of the Minister of Internal Affairs of the Republic of Kazakhstan dated 15 July 2014, No. 432, but they provide for only seven categories of monitored persons:

- 1) persons in respect of whom a protective restraining order is issued;
- 2) persons in respect of whom a decision is made to limit leisure and impose special behaviour requirements;
- 3) minors that have committed acts containing elements of a criminal offence, but not subject to criminal liability due to being under the age at which criminal liability can occur;
- 4) minors accused or suspected of committing criminal offences, in respect of whom pre-trial restrictions have been imposed that do not involve arrest;
- 5) minors released from penitentiary institutions;
- 6) alumni of specialized educational institutions and educational institutions with special treatment arrangements;
- 7) parents or other legal representatives of minors that fail to perform their duties related to upbringing, education and/or providing care for minors, as well as negatively affect their behaviour [20].

However, this does not list all the persons placed under preventive monitoring at IAB, or in respect of whom an IAB would conduct preventive control. At IABs, preventive monitoring covers other persons that could also be domestic offenders. For instance, the order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 December 2015, No. 1095, "On the

Adoption of the Rules Governing the Activities of District Police Inspectors Charged with Managing the Operations of a District Police Stations, District Police Inspectors and their Assistants” also provides for preventive monitoring of the following persons:

- 1) in respect of whom administrative oversight is in effect;
- 2) in respect of whom a decision is made to release on parole from a penitentiary institution;
- 3) in respect of whom a decision is made to release from a penitentiary institution following the serving of a sentence for committing a severe and/or especially severe crime, or convicted and sentenced to imprisonment for intentional offences (formally falling under the Law of the Republic of Kazakhstan of 15 July 1996 “On Administrative Oversight of Persons Released from Penitentiary Institutions”) [24].

Pursuant to the order of the Minister of Internal Affairs of the Republic of Kazakhstan dated 15 August 2014, No. 511, “On the Adoption of the Operating Rules of the Probation Service”, probation officers, on top of their conventional functions, must also conduct preventive control over the following persons:

- 1) sentenced to community and correctional service, revocation of the right to occupy certain positions or engage in certain activities;
- 2) with suspended sentences or partial deprivation of liberty at place of residence;
- 3) sentenced pregnant women and women with small children, as well as men who on their own bring up small children, in respect of whom a court has delayed the serving of the sentence [50].

In this regard, it is reasonable to conclude that the name of the order of the Minister of Internal Affairs of the Republic of Kazakhstan dated 15 July 2014, No. 432 does not reflect its contents. In other words, this legal act should be renamed into “On the Adoption of the Rules of Preventive Control over **Some Categories of Persons** Placed Under Preventive Monitoring at Internal Affairs Bodies”.

There is an alternative approach that does not only have the right to exist, but proves practical to implement on the basis of the experience of the Republic of Belarus. A new compound Law of the RK “On Preventing Offences” should be enacted, along with the accompanying Law of the RK that would assimilate the specialized laws:

- “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment”. Law of the RK of 9 July 2004 No. 591;
- “On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214-IV ZRK;
- On Preventing Offences. Law of the RK of 29 April 2010 No. 271-IV ZRK.

Correspondingly, should such a new compound law “On Preventing Offences” be enacted, there will be a need to develop a specialized agency-specific legal act of the MIA RK concerning the implementation of said law and provisions on uniform recordkeeping on the measures taken toward individual prevention of offences.

Pursuant to sub-paragraph 4) of paragraph 2 of article 7 of the Law of the RK “On Preventing Domestic Violence”, local executive bodies identify and keep records of minors who have suffered from domestic violence, as well as troubled families. In parallel with the aforementioned provision, under sub-paragraph 5) of article 10, internal affairs bodies will conduct preventive monitoring and perform preventive control.

Similar monitoring of minors and troubled families, in pursuance of the Law of the RK “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment”, is also conducted by other bodies: local executive bodies (art. 8), education authorities (art. 12), healthcare authorities (art. 15).

It then follows that the monitoring activities of the foregoing bodies and internal affairs bodies must be coordinated. It should be noted that the Law does not specify a mechanism of such interaction.

Paragraph 6 grants IAB the competence to handle petitions and reports of instances of domestic violence or threats of such acts, which involves visiting the scene, and take suppressive measures. This competence is governed by the Law of the Republic of Kazakhstan dated 12 January 2007, No. 221, “On the Procedure of Handling Petitions of Natural and Legal Persons” and is implemented in pursuance of codified legislation, regulatory resolutions of the Supreme Court of the RK and agency-specific Rules and Instructions of the MIA RK.

Order of the Minister of Internal Affairs of the RK dated 22 May 2017, No. 351, abolished the order of the Minister of Internal Affairs of the RK dated 10 April 2012, No. 225, “On the Adoption of the Operating Procedures for Handling and Resolving Petitions from Natural and Legal Persons, Reception of Citizens at Internal Affairs Bodies of the RK”. Now, the procedure of handling materials on administrative offences is governed by the order of the Minister of Internal Affairs of the Republic of Kazakhstan of 13 December 2013, No. 713, “On the Adoption of the Operating Procedure of Processing Cases on Administrative Offences at Internal Affairs Bodies of the Republic of Kazakhstan”. This scheme has a very serious flaw: the aforementioned Operating Procedures was adopted prior to the enactment of the new CAO RK, and their contents have been rendered partially obsolete [26].

Processing of criminal cases is done — on top of the Criminal Procedure Code — in pursuance of the order of the Prosecutor General of the RK dated 19 September 2014, No. 89, “On the Adoption of the Rules of Receipt and Registration of Petitions and Reports on Criminal

Offences, as well as the Keeping of the Single Registry of Pre-Trial Investigations”.

It should be noted, however, that not all issues related to the processing of complaints and applications are regulated by the aforementioned legal acts. There exists no legal mechanism that would have governed the procedure of receiving citizens on personal matters, as well as the procedure of IAB units' acting on the information received from citizens. It is necessary to adopt appendices on official records management in the process of handling complaints and petitions: samples and rules of keeping (filling out) of books, journals, blanks. All this can be found in various agency-specific legal acts, but all these samples and rules of keeping (filling out) of books are kept in a fragmented state, which makes it difficult to use those in practice. For this reason, we also second the call for the development of comprehensive Operating Procedures of the MIA RK which would govern the entire set of measures incorporating the activities of IAB units related to the receipt and resolution of complaints and petitions from citizens.

Paragraph 7 grants IAB the competence to refer victims of domestic disputes who found themselves in challenging life situations due to domestic violence to assistance organizations and healthcare institutions. These competences are missing from the laws compared, even though personal abuse leading to social disadaptation and social deprivation is not limited to domestic settings.

We are against the idea that such actions IAB can perform only upon the request of the victim. Firstly, domestic violence victims may not know that the state must provide them special guaranteed and additional special social services. Secondly, the need for services provided by specialized institutions and healthcare institutions can occur at a later stage, and the domestic violence victim would have to seek help again. Thirdly, visiting assistance institutions and healthcare institutions should remain the right of citizens, but not their duty, even if there is a referral from IAB.

Paragraph 8 grants IAB the competence to conduct preventive conversations. Having examined the competence of other actors involved in preventing domestic violence, we come to a conclusion that only IAB have the authority to conduct “preventive conversations”. In our opinion, such a provision of the Law “On Preventing Domestic Violence” should be considered inadequate. This conclusion also contravenes article 19 of the Law of the RK “On Preventing Domestic Violence”, according to which “ 2. Preventive conversation is conducted by a domestic violence prevention actor with a person who has committed domestic violence or in respect of whom there are grounds for measures of individual prevention of domestic violence”.

Logically, when placed under preventive monitoring, any domestic violence prevention actor must conduct a preventive conversation, explaining the procedure of being under monitored, prospects of preventive efforts and so forth. Similar monitoring activities are engaged in by education authorities when dealing with minors and troubled families, and by healthcare institutions when dealing with alcohol and drug abusers. Domestic violence prevention actors also take appropriate measures of individual prevention, as listed in chapter 3 of the Law “On Preventing Domestic Violence”.

Article 25 of the Law of the RK “On Preventing Offences” provides that “2. Preventive conversation is conducted by a offence prevention actor whose competence includes measures of individual prevention of offences, with a person who has committed an offence, or in respect of whom there are grounds for measures of individual prevention of offences”. Article 19-3 of the Law of the RK “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment” also grants other bodies the competence to conduct preventive conversations: “2. Preventive conversation is conducted by a representative of a state body and institution for the prevention of offences, neglect and abandonment among minors, whose competence includes measures of individual prevention of offences, with a person who has committed an offence, or in respect of whom there are grounds for measure of individual prevention of offences”.

Laws of the RK grant all prevention actors, and not just IAB, the competence to conduct preventive conversations. As such, it is reasonable to conclude that para. 8 of article 10 should be omitted from the Law of the RK “On Preventing Domestic Violence”. A second option for addressing this issue could consist in rendering all laws of the RK free from regulations that provide for the procedure of conducting a preventive conversation, with the exception of the Law of the RK “On Preventing Offences”.

Paragraph 9 grants IAB the competence to hand over a person who has committed domestic violence to internal affairs bodies.

In our opinion, this paragraph should be excluded, for the following reasons. Firstly, in accordance with law theory, handing over (bringing) an offender to IAB premises does not constitute a measure of individual prevention of offences, but a measure of pre-trial restriction or procedural compulsion in the system of constraints.

Secondly, transfer can also be arranged by parties other than IAB. Pursuant to part 3 of article 36 of CAO RK, “Right to detain a person who has committed an offence is granted to victims and other natural persons, along with specially authorized parties”. Detention is impossible

without handing the person over to IAB, which is why this competence should be granted to a larger group of parties.

Thirdly, this contravenes the Law of the RK “On Preventing Offences” which does not provide for such a measure of individual prevention and a power of IAB (see art. 7 and 23). Finally, fourthly, the procedure of transferring a domestic offender to IAB for committing a criminal offence is governed by article 129 of the CPC RK.

One should avoid confounding the terms “transfer” and “administrative detention”, as transfer is not a short term restriction of personal liberty of a natural person, a representative of a legal person or an official with a view to prevent an offence or launch court proceedings on an administrative case.

In law enforcement practices, it sometimes happens that the provision of part 1 of article 789 CAO RK is misunderstood; it reads: “The commencement of the term of detention is the hour, down to a minute, when the restriction of liberty of a detainee becomes a reality, regardless of whether or not the detainee has been assigned any procedural status or any other formal procedures have been performed. Term of administrative detention of a person in a state of inebriation — from the moment of their becoming sober, as attested by a medical worker. The moment of expiry of this term is the expiry of three hours calculated without interruptions from the moment of actual detention.”

How should one interpret the commencement of the term of actual restriction of liberty of a citizen? When does the actual detention start for a person who has committed an administrative offence? The answer to these questions is explicitly provided by part 7 of article 788 of CAO RK: “Persons subjected to administrative detention are held at specially designed facilities that meet sanitary requirements and exclude the possibility of unauthorized abandonment.” In other words, until such time as a person transferred to IAB crosses the threshold of a special facility (a room for administrative detentions), such person’s liberty is not actually restricted, and the term of the administrative detention must be calculated from the moment of the person’s placement into said special facility. Any activities engaged in with the person at an official facility (IAB officer’s room, district police station) must be considered as proceedings with the offender, who has been transferred (handed over), and not detained by IAB officers.

Pursuant to article 129 of CPC RK, transfer in connection with a criminal offence must be carried out within 3 hours. These terms can be observed within city limits, yet in rural areas this could be problematic, as terms may elapse in the process of compulsory transfer of the offender. There are two ways to address this issue.

Based on examining international legislations, it would be more logical to completely exclude this article from the CPC RK (for instance, it does not exist in the CPCs of Russia or Belarus), as this notion does not require a legal definition. Current version, when referring to

to the term of transfer (3 hours), does not explicitly specify the moment of the commencement of the process of handing the suspect over, which allows investigative authorities locally interpret this notion in an arbitrary fashion, which violates the rights of the person being transferred.

A second way to resolve this problem would be to amend article 129 of CPC RK to read as follows:

“1. Transfer is a measure of procedural compulsion in the form of compulsory transfer of a person into an official facility of a law enforcement body engaged in criminal investigation with a view to establish the person’s involvement in the criminal offence in question.

2. Upon establishing actual involvement of the person in the criminal offence, the criminal investigation authority may proceed with the detention following the procedure provided for by article 131 of this Code; the transfer period will not be included in the total term of detention provided for by part four of article 131 of this Code.

2-1. Actual involvement of the person transferred in the criminal offence in question shall be established in the shortest time, no longer than three hours.

3. At the expiry of the time of the transfer procedure, the person will be immediately issued a notice of transfer, with the exception of instances of his/her subsequent procedural detention.”

Another similarly substantiated approach is to merge para. 9 and para. 12 of this article. Detention is impossible without transfer. If these paragraphs, 9 and 12, are omitted from the Law, this would have no effect on the process of preventing domestic violence, as the competence to transfer and detain is provided for by the Law of the RK “On Internal Affairs Bodies” and CAO RK.

Paragraph 10 grants IAB the competence to issue a protective restraining order. In all laws being compared, this measure of individual prevention is being provided for, but its use is limited to offences in domestic settings. This measure of protecting domestic violence victims is aimed to preclude any contacts between conflicting parties and is the most commonly used in practice.

Article 20 of the Law of the Republic of Kazakhstan “On Preventing Domestic Violence” in regard to the mechanism of issuing a protective restraining order has had three versions.

Firstly, the Law of the RK dated 18 February 2014 No. 175 “On the Introduction of Changes and Additions into Some Legislative Acts of the RK on the Issues of Preventing Domestic Violence” expanded the list of officials that are authorized to issue a protective restraining order. The same law expanded the duration of a protective restraining order from 10 to 30 days (24-hour periods), without the involvement of the prosecutor’s office, which previously had to authorize the extension of a protective restraining order for the duration of up to 30 days [].

Secondly, following the issuance of a protective restraining order, the protection

can be enjoyed by not only the domestic violence victim, but also any minors and/or unemployable family members of the victim.

Thirdly, the Law of the RK dated 2 November 2015 No. 388 "On the Introduction of Changes and Additions into Some Legislative Acts of the RK on the Issues of the Activities of the Local Police Service" granted the power to issue a protective restraining order to chiefs of the local police service of IAB and their deputies, while stripping chiefs of IAB and their deputies of the same power.

Pursuant to the Law of the Republic of Kazakhstan "On Internal Affairs Bodies", the chief of a local police service is the deputy of chief of IAB, and he/she must not have greater jurisdiction in the application of administrative control measures on an offender. *It then follows that the chief of IAB must have the power to issue a protective restraining order against a person who has committed an offence in domestic settings.*

In practice there are cases where a domestic offender does not confess to committing domestic violence and refuses to sign the restraining order. As such, in part one of article 20 of the Law of the RK "On Preventing Domestic Violence", it is advisable to omit the last sentence: "In the event of a refusal to sign, the protective restraining order shall include a corresponding note", as this contravenes a foregoing phrase therein: "...in the absence of grounds for...". Refusal to sign a protective restraining order on the part of the offender is exactly the grounds for detaining in lieu of a protective restraining order, as this is the offender's way of saying that he/she will not comply with legal restrictions applied to his/her behaviour specified in the restraining order.

Surveying officers of local police services, and specifically district police inspectors and district inspectors for minors' affairs, revealed that domestic violence victims do not always understand the idea of a protective restraining order and do not believe it could be effective, which is why they do not always voice their opinion regarding advisability of its use against the offender. This complicates the issuance of a protective restraining order, and prosecution service members, without taking into account the victim's opinion, consider the actual issuance of the order as a violation of lawful interests of the participants of domestic relations.

Our approach is substantiated by the fact that we eliminate contradictions with part 2 of article 18 of the Law of the RK "On Preventing Domestic Violence", according to which IAB officers can issue protective restraining orders prior to the occurrence of an offence, without the need to receive a complaint from a potential domestic violence victim.

Paragraph 2 of article 18 of the Law of the Republic of Kazakhstan provides that "an internal affairs body officer's actual uncovering of a domestic violence incident or an attempt to commit domestic violence"

constitutes legal grounds for the application of measures of individual prevention, and, ergo, the protective restraining order. Therefore, IAB officers may issue protective restraining orders prior to the commission of an offence, without having to receive a complaint from a potential domestic violence victim, which contravenes the requirement to take into account the opinion of the domestic violence victim. *In this regard, we propose that the words "taking into account the opinion of the victim" be omitted from part one of article 20 of the Law of the RK "On Preventing Domestic Violence".*

It is also reasonable to believe that this paragraph has no place in article 10, as paragraph 3 of the article in question already provides for the competence to take measures to prevent domestic violence. In other words, IAB can take all measures listed in article 17 of the Law of the RK "On Preventing Domestic Violence", inclusive of the protective restraining order. Article 20 of the Law also grants specific IAB officials the powers to independently (without sanctions or coordination) issue protective restraining orders with the corresponding restrictions against the domestic offender.

This competence of IAB is not explicitly provided for by the laws being compared, which should be noted as a positive factor. For instance, para. 4 of article 7 of the Law of the RK "On Preventing Offences" provides for the competence to apply measures of preventing offences, without duplicating the competence for each measure of preventing offences.

Paragraph 11 should be omitted. The Law of the RK of 18 February 2014, No. 175, introduced a new procedure for the issuance of protective restraining orders which excludes the prosecutor's office's capacity to extend the time of a protective restraining order.

Paragraph 12 should also be omitted for reasons similar to those presented in the comments for paragraph 9.

Paragraph 13 grants IAB the competence to move before the court for imposing special behaviour requirements for the person who has committed domestic violence. In the laws compared, this IAB competence is not provided for. Article 19-1 of the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" does not provide for this measure of individual prevention, which, in our opinion, is a ill-advised.

Firstly, special behaviour requirements can be imposed for offenders aged 16 and older. Secondly, this contradicts the compared laws and part 2 of para. 2 of article 19-5 of the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" which provides for the procedure of placing under monitoring a minor in respect of whom a decision has been made to limit leisure and impose special behaviour requirements.

Apart from being provided under articles of the compared laws regarding the imposition of special requirements for the offender, this measure is provided for by

article 54 of CAO RK and can also be applied for offences outside of the domestic field.

Part 1 of article 54 of CAO RK provides that “During the proceedings for an administrative offence, upon a motion from participants of the administrative proceedings and/or internal affairs bodies, the court may impose special behaviour requirements for the person who has committed said administrative offence”. In other words, such a measure is not exclusively contingent upon a motion from IAB, which is why this competence should be provided for in articles 7 through 15 of the Law of the RK “On Preventing Domestic Violence” for all domestic violence prevention actors that could act as participants in administrative proceedings. Pursuant to the Law of the RK of 18 February 2014, No. 175, part 1 of article 54 was amended. Previously, only IAB could move before the court to impose special behaviour requirements for the offender. In this regard, it is reasonable to conclude that the version of the IAB competence in question is obsolete, and its availability in article 10 is of no consequence.

In view of the above, we propose that paragraph 13 be omitted. Furthermore, article 27 of the Law of the RK “On Preventing Offences” and article 22 of the Law of the RK “On Preventing Domestic Violence” can also be omitted, using references to indicate that such a measure is taken under the procedure provided for by CAO RK. These articles differ in their contents, while the introduction of changes and additions to them is not always synchronized, which could lead to certain issues in IABs’ law enforcement practices.

There is, however, alternative rationale. Pursuant to art. 54 of CAO RK, this action can be performed by any participants of the court proceedings for an administrative offence. Therefore, this paragraph should be omitted, or this competence granted to all prevention actors.

Paragraph 14 grants IABs the competence to criminally prosecute and conduct proceedings for administrative offences. Similar competences are provided for in the laws being compared, the Law of the RK “On Internal Affairs Bodies of the RK”, codified procedural legislation and agency-specific regulatory legal acts.

Paragraph 9 of article 7 of the Law of the RK “On Preventing Offences” proves to be more complete: “engage in criminal prosecution, probation control, proceedings for administrative offences”. The probation service has placed under monitoring a large number of citizens who have committed criminal domestic offences, which is why the probation service should also be considered an actor involved in the prevention of offences, including domestic violence.

As such, this discrepancy can be eliminated in two ways: firstly, paragraph 14 could be amended with the words “probation control”. The second method is, in our opinion, the most advisable, and involves the omission of paragraph 14,

as the legal regulation provided under the Law of the RK “On Preventing Offences” is sufficient.

For purposes of a uniform application of the codified legislation nationwide, MIA RK should issue an order adopting samples of documents that are used in the activities of the IAB LPS.

Paragraph 15 grants IAB the competence to utilize measures of criminal procedural compulsion and is codified by section 4 of the Criminal Procedural Code of the RK. In the laws compared, this particular competence is not explicitly provided for, and we support that. Measures of procedural compulsion, by their very nature, do not constitute measures of preventing offences, including domestic violence. In this regard, it is reasonable to suggest that paragraph 15 of article 10 and article 23 of the Law of the Republic of Kazakhstan “On Preventing Domestic Violence” be omitted.

According to **paragraph 16**, IAB are authorized to utilize criminal law measures to ensure safety of the victim, in pursuance of articles 96–98 of the CPC RK. For reasons similar to those explained in the comments for paragraph 15, we consider the existence of paragraph 16 in article 10 of the Law “On Preventing Domestic Violence” optional.

Paragraph 17 grants IAB the competence to arrange special training courses on the issues of domestic violence prevention for internal affairs body personnel. A similar competence is provided under para. 10 of article 7 of the Law of the RK “On Preventing Offences”. However, this IAB competence is missing from the Law of the RK “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment”. In our opinion, it is sufficient that the legal basis for this competence is established in the Law of the RK “On Preventing Offences”.

Internal affairs bodies holding training events for their personnel is a function that is governed by special regulatory legal acts adopted by orders of the MIA RK. If internal affairs bodies were to hold courses and other training events on domestic violence prevention for other organizations and the public at large, then establishing such a function in the Law would have been warranted.

1.4 Results of examining domestic violence prevention measures utilized by the IAB LPS personnel

Prior to analysing measures of the prevention of domestic offences, it should be noted that measures of individual prevention can be used without official registration of the offence in question, as there is enough information on the existence of the threat of domestic violence.

| “On Preventing Offences”. Law of the RK of 29 April 2010, No. 271 | “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment.” Law of the RK of 9 July 2004, No. 591 | “On Preventing Domestic Violence”. Law of the RK of 4 December 2009, No. 214 |
|--|--|--|
| Article 24 | Article 19-2. | Article 18 |
| Grounds for taking measures of individual prevention of offences | Grounds for taking measures of individual prevention of offences, neglect and abandonment among minors | Grounds for taking measures of individual prevention of domestic violence |
| <p>1. Constituting grounds for taking measures of individual prevention is one of the following circumstances:</p> <p>1) reports or petitions of natural and legal persons, as well as reports in mass media</p> <p>2) authorized official’s actual discovery of the commission or attempted commission of an offence</p> <p>3) materials received from state bodies and local executive bodies</p> <p>2. Petitions and reports of the commission of an offence or the threat of its commission are handled by state bodies following the procedure established by the legislation of the RK</p> | <p>1. Constituting grounds for taking measures of individual prevention of offences, neglect and abandonment among minors is one of the following circumstances:</p> <p>1) reports or petitions of natural and legal persons, as well as reports in mass media;</p> <p>2) internal affairs body officer’s actual discovery of the commission or attempted commission of an offence</p> <p>3) materials received from state bodies and local executive bodies</p> <p>2. Petitions and reports of the commission of an offence or the threat of its commission are handled by state bodies following the procedure established by the <u>legislation</u> of the RK</p> | <p>1. Constituting grounds for taking measure of individual prevention of domestic violence is one of the following circumstances:</p> <p>1) receipt of a petition or report from natural or legal persons;</p> <p>2) internal affairs body officer’s actual discovery of the commission or attempted commission of domestic violence;</p> <p>3) materials received from state bodies and local executive bodies</p> <p>2. Petitions and reports of the commission of domestic violence or the threat of its commission are handled by state bodies following the procedure established by the legislation of the RK</p> |

Comparative analysis of the grounds for applying measures of individual prevention has revealed that these measures do not have fundamental differences, and it is possible to leave in its entirety the original version of the articles in question in the principal law “On Preventing Offences” which covers all areas of social relations that warrant the application of measures of individual prevention, for purposes of preventing any unlawful phenomena. In other words, articles 19-2 and 18 can be omitted from the corresponding aforementioned specialized laws.

First grounds for taking measures of individual prevention match, with the exception of a version of the Law “On Preventing Domestic Violence”. In essence, reports in mass media concerning domestic violence should not constitute legal grounds for applying measures of individual prevention toward domestic offenders, which is unacceptable in law enforcement practices of IAB.

It should be noted that petitions and reports, pursuant to the Law of the Republic of Kazakhstan of 12 January 2007, No. 221, “On the Procedure of Handling Petitions of Natural and Legal Persons”,

are petitions and can be individual or collective, written, oral or in the form of an electronic document, video conference call or a video address. In this law, petitions in the form of a publication of reports or petitions in mass media are not provided for [51].

This does not mean, however, that IAB should not react to criminal reports in mass media. Pursuant to paras. 11–12 of the Order of the Prosecutor General of the RK dated 19 September 2014, No. 89, "On the Adoption of the Rules of Receipt and Registration of Petitions and Reports on Criminal Offences, as well as the Keeping of the Single Registry of Pre-Trial Investigations", information in mass media constitutes a reason to launch a pre-trial investigation. This information is to be immediately recorded in the Single Registry of Pre-Trial Investigations on the part of investigators, investigating officers, prosecutors, as well as officials at criminal prosecution authorities, whose competences provide for conducting a pre-trial investigation into this occurrence [27].

Codified legislation provides legal grounds for responding to information from mass media. For instance, article 802 of CAO RK provides that

a cause for launching an investigation into an administrative offence can consist in a report or petition from natural persons, as well as reports in mass media.

Similar specifications can be found in article 183 of CPC RK: "Report in mass media can constitute a cause for launching a pre-trial investigation, where such report is published in a newspaper or magazine, or promulgated over the radio, television or telecommunication networks". Furthermore, persons with managerial functions at the mass media outlet that has published or disseminated a report on a criminal offence, at the request of a body authorized to launch a pre-trial investigation, must provide any documents or materials in their possession that could corroborate the report, and must also name the person who has supplied them with said information, with the exception of cases where said person has provided the information as a confidential source.

It is therefore reasonable that legal grounds for taking measures of individual prevention toward a person who has committed domestic violence must consist in any information on all types of domestic violence in mass media.

| | | |
|---|--|---|
| 2) actual internal affairs body officer authorized official commission or attempted of offence | 2) actual discovery of the commission or attempted commission offence | 2) actual discovery by internal affairs body officer of the commission of domestic by violence or attempted commission; commission |
|---|--|---|

Comparative analysis of paragraphs 2 of parts 1 of the articles in question reveals slight divergences in that the RK "On Preventing Offences" provides a nebulous characterization of persons who, upon discovering the actual commission of an offence, are authorized to apply measure of individual prevention. Yet, in essence, if one were to refer the list of preventive measures, it would become apparent that those measures are taken by IAB officials. Legal grounds, on the other hand, must consist in the actual discovery of the commission of the crime or attempt thereof, not only by any domestic violence prevention actor, but all law-abiding citizens of the RK. This is also required by the political principle of "zero tolerance" to all offences, promulgated by many programme documents.

For instance, part 2 of article 19 of the Law of the RK "On Preventing Offences" explicitly provides that "Offence prevention actors must immediately inform state bodies of the discovery of any instances of planned or committed offences falling within the competence of said bodies". Similar requirements are contained also in the specialized laws. Para. 5 part 1 article 15 of the Law of the RK "On Preventing Domestic Violence" stipulates that organizations providing assistance,

confidentiality principle notwithstanding, must inform IAB of the instances of domestic violence or threats thereof.

Addressing this issue is relevant due to the emergence of a new complex of preventive measures aimed at detecting, restricting and eliminating factors of offences in domestic settings at an early stage of a family conflict, as well as measures towards precluding any contacts between conflicting parties.

In its pure form, domestic violence is impossible to prevent, as causes of domestic offences match with causes of offences in other areas of social relations: jealousy, insobriety, alcoholism, use of other mind-altering substances, envy, low level of cultivation, predisposition toward marginal behaviours, financial dependence, sexual promiscuity and so forth. Therefore, the notions of preventive activities must be equated, with the exception of some features unique to the family settings.

Interpretation of individual prevention measures in the laws compared varies in a number of ways.

| <p>“On Preventing Offences”. Law of the RK of 29 April 2010, No. 271</p> | <p>“On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment” Law of the RK of 9 July 2004, No. 591</p> | <p>“On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214</p> |
|---|---|--|
| <p>Article 23</p> | <p>Article 19-1</p> | <p>Article 17</p> |
| <p>Measures of individual prevention of offences are used to exercise systematic and targeted influence on legal awareness and behaviour of a person or a limited group of persons with a view to prevent the commission of offences on their part, as well as to eliminate causes and conditions that contribute to said offences.</p> | <p>Measures of individual prevention of offences, neglect and abandonment among minors are used to exercise systematic and targeted influence on legal awareness and behaviour of minors with a view to prevent the commission of new offences on their part, as well as to eliminate causes and conditions that contribute to said offences.</p> | <p>Measures of individual prevention of domestic violence are used to exercise systematic and targeted influence on legal awareness and behaviour of a person who has committed domestic violence, with a view to prevent the commission of offences on his/her part, as well as to ensure the safety of the victim.</p> |

As we can see, there are differences in the definitions offered by these laws. At the same time, it is evident why it is that within the framework of preventing domestic violence, it is impossible to influence legal awareness and behaviour of a limited group of persons — only behaviour of a single person. Furthermore, the wording “eliminate causes and conditions contributing to said offences” is also missing from the measures of individual prevention of domestic violence, when compared to the general definition. Whereas in the definition of the term “prevention of domestic violence”, in sub-paragraph 4 of article 1 of the Law, provides for not only elimination, but also identification of causes and conditions of said offences.

Therefore, the definition of the individual prevention of domestic violence must take into account the definitions offered in the laws compared.

Article 16 of the Law of the RK “On Preventing Domestic Violence” provides that “governing of relations arising out of the use of measures of

domestic violence prevention, is done in accordance with the legislation of the Republic of Kazakhstan on preventing offences, with due regard to features specified in this chapter”. In other words, the entire array of preventive measures provided for by the Law of the RK “On Preventing Offences” applies to the domestic settings.

Thus, chapter 3 of the Law of the RK “On Preventing Domestic Violence” should not mirror the Law of the RK “On Preventing Offences” — instead, it should specify certain unique features. Otherwise, this full redundancy renders it pointless to establish measures of preventing domestic violence.

Meanwhile, analysis of paragraph 2 article 17 reveals that seven out of ten measures of individual prevention of domestic violence duplicate measures of individual prevention of offences.

| <p>“On Preventing Offences”. Law of the RK of 29 April 2010, No. 271</p> | <p>“On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment” Law of the RK of 9 July 2004, No. 591</p> | <p>“On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214</p> |
|---|--|--|
| <p>Article 23</p> | <p>Article 19-1</p> | <p>Article 17</p> |
| <p>Measures of individual prevention of offences are:</p> <ol style="list-style-type: none"> 1) preventive conversation; 2) protective restraining order; 3) motion/petition for the elimination of causes and conditions contributing to the commission of offences; 4) compulsory measures of medical nature; | <p>Measures of individual prevention of offences, neglect and abandonment of minors are:</p> <ol style="list-style-type: none"> 1) preventive conversation; 2) motion/petition for the elimination of causes and conditions contributing to the commission of offences; 3) preventive monitoring and control; | <p>Measures of individual prevention of domestic violence are:</p> <ol style="list-style-type: none"> 1) preventive conversation; 2) transfer (handing over) of a person who has committed domestic violence to internal affairs bodies in order to draw up an administrative offence report or the rendering of a protective restraining order; 3) protective restraining order; 4) administrative detention; |

| <p>“On Preventing Offences”. Law of the RK of 29 April 2010, No. 271</p> | <p>“On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment” Law of the RK of 9 July 2004, No. 591</p> | <p>“On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214</p> |
|--|--|---|
| <p>Article 23</p> | <p>Article 19-1</p> | <p>Article 17</p> |
| <p>5) imposition of special behaviour requirements for the offender;</p> <p>6) preventive monitoring and control;</p> <p>7) administrative penalty;</p> <p>8) termination or restriction of parental rights, termination of adoption of the child, release and removal of guardians and carers from performing their duties, early termination of an agreement on transfer of the child for foster care;</p> <p>9) measures taken following the court sentence;</p> <p>10) imposition of administrative oversight;</p> <p>11) preventive restraining of liberty of movement.</p> | <p>4) referral to special educational institutions and educational institutions with special treatment arrangements;</p> <p>5) measures of educational influence;</p> <p>6) protective restraining order;</p> <p>7) administrative penalty;</p> <p>8) measures taken following the court sentence.</p> | <p>5) compulsory measures of medical nature;</p> <p>6) imposition of special behaviour requirements for the offender;</p> <p>7) administrative penalty;</p> <p>8) termination or restriction of parental rights, termination of adoption of the child, release and removal of guardians and carers from performing their duties, early termination of an agreement on transfer of the child for foster care;</p> <p>9) measures of procedural compulsion and security measures for victims in criminal proceedings;</p> <p>10) measures taken following the court sentence.</p> |

As is evident from the table above, the compared laws provide for different number of measures of individual prevention and their types. The general Law of the RK “On Preventing Offences” provides for the largest number of measures of individual prevention of offences (11) and

this is logical enough. The following comparative analysis purports to determine the optimal number of domestic violence prevention measures.

Paragraph 1: Preventive conversation is provided for by all the laws in question.

| Art.25 Preventive conversation | Art. 19-3 Preventive convers. | Art. 19. Preventive conversation |
|---|---|--|
| <p>1. Preventive conversation's primary objectives are to identify causes and conditions resulting in unlawful behaviour, explain social and legal consequences of the offence and convince of the need to adhere to law-abiding conduct.</p> <p>2. Preventive conversation is conducted by an offence prevention actor whose competence includes measures of individual prevention of offences, with a person who has committed an offence, or in respect of whom there are grounds for measures of individual prevention of offences.</p> <p>3. Preventive conversation is conducted in office spaces of offence prevention actors, as well as at place of residence, education, employment, or directly on the site where the offence has been uncovered, and may not last more than one hour.</p> <p>4. The person with whom a preventive conversation is to be conducted, shall be forewarned of the need to cease all unlawful activities.</p> <p>5. Preventive conversation with a minor will be conducted in presence of his/her parents, teachers or other lawful representatives.</p> | <p>1. Preventive conversation's primary objectives are to identify causes and conditions resulting in unlawful behaviour, explain social and legal consequences of the offence and convince of the need to adhere to law-abiding conduct.</p> <p>2. Preventive conversation is conducted by a representative of a state body and an institution for the prevention of offences, neglect and abandonment among minors, whose competence includes measures of individual prevention of offences, with a person who has committed an offence, or in respect of whom there are grounds for measure of individual prevention of offences.</p> <p>3. Preventive conversation is conducted in office spaces of state bodies of the system of preventing offences, neglect and abandonment of minors, as well as at place of residence, education, employment, or directly on the site where the offence has been uncovered, and may not last more than one hour.</p> <p>4. The minor with whom a preventive conversation is to be conducted shall be forewarned of the need to cease all unlawful activities.</p> <p>5. Preventive conversation with a minor will be conducted in presence of his/her parents, teachers or other lawful representatives.</p> | <p>1. Preventive conversation's primary objectives are to identify causes and conditions of committing domestic violence, explain social and legal consequences of domestic violence and convince of the need to adhere to law-abiding conduct.</p> <p>2. Preventive conversation is conducted by a domestic violence prevention actor with a person who has committed domestic violence or in respect of whom there are grounds for measures of individual prevention of domestic violence.</p> <p>3. Preventive conversation is conducted in office spaces of domestic violence prevention actors, as well as at place of residence, education, employment, or directly on the site where the offence has been uncovered, and may not last more than one hour.</p> <p>4. The person with whom a preventive conversation is to be conducted, shall be forewarned of the need to cease all unlawful activities.</p> <p>5. Preventive conversation with a minor will be conducted in presence of his/her parents, teachers or other lawful representatives.</p> |

The comparison demonstrates that the articles do not involve any fundamental differences in the mechanism of conducting a preventive conversation. Therefore we believe that there is no need to explain the notions and procedure of conducting this measures of individual prevention in all the laws. It then follows that the aforementioned articles 19-3 and 19 of the laws compared should be omitted.

Paragraph 2 provides for a measure of individual prevention in the form of transferring (handing over) the person who has committed domestic violence. The laws compared do not provide for such a measures of individual prevention, and in our opinion, this is adequate.

Chapter 40 of CAO RK codifies transfer as a measure of enforcing the administrative case proceedings. Educational and scientific literature in the field of administrative law and administrative activities of IAB interprets transfer as

a pre-trial restriction measure, as a form of administrative compulsion.

Furthermore, the paragraph in question provides for only two purposes of transfer, namely: to draw up a report on the administrative offence, or issue a protective restraining order. Article 786 of CAO RK additionally provides for two more purposes:

- 1) to prevent an offence;
- 2) to establish the identity of the offender.

In view of the above, we believe that paragraph 2 should be omitted from part 2 article 17 of the Law of the RK "On Preventing Domestic Violence". The notion of transfer, causes, timeframes and the procedure of a transfer are governed by a superior law (CAO RK), which is why there is no need to duplicate the procedure of transfer in other laws.

Another significant issue arose in connection with the adoption of a new CAO RK from 1 January 2015. The problem is that in article 786 of CAO RK, authors of the Code forgot to provide for legal grounds for transferring (handing over) a domestic offender. Draft versions of the CAO RK and the CC RK involved moving all of the articles of Chapter 9-1 of CAO RK (active until

01.01.2015) into the CC RK, which is why article 786 of the new CAO RK now does not provide for the possibility of transferring to IAB facilities for such offences. At the last minute, authors decided to use article 79-5 (article 73 in the new version of the CAO RK) to preserve the administrative offence status, but failed to provide for the possibility of transferring a domestic offender to IAB facilities.

| Article 786. Transfer (after 01.01.15) | Article 619. Transfer (before 01.01.15) |
|---|--|
| Missing: | 1-1) offences provided for by articles 79-1 and 79-5, 79-6 of this Code, - by officers of internal affairs bodies to an internal affairs body (police); |

Such wording of the article can be interpreted in a way that implies that handing a domestic offender over to IAB is not permitted, even despite the fact that in such case domestic violence will most likely continue. The Regulatory Resolution of the Supreme Court of the RK dated 9 April 2012, No. 1 (as amended on 25.11.2016, No. 11) also fails to clarify this problematic situation:

“Transfer to a place of the drawing up of an administrative offence report is carried out in the form of involuntary convoy of a natural person, legal representative of a legal person, with a view to prevent the offence, establish the identity of the offender, as well as to draw up the administrative offence report or issue a protective restraining order, if executing these documents is impossible on scene, and if the execution of a report or a protective restraining order is mandatory where the person has committed offences provided under sub-paragraphs 1), 3), 4), 5), 7) of part 1 and part 2 of article 786 of the CAO RK. Grounds for the use of said enforcement measure consist in the existence of objective data concerning the commission of an administrative offence, and a substantiated assumption that it has been committed by the person in respect of whom said measure is taken. One of additional grounds is the offender’s refusal to comply with legal requirements or state body representatives’ orders to cease the commission of the administrative offence. In other cases, the use of said enforcement measure is not permitted.”

In other words, if a district police inspector or district juvenile police inspector is able to draw up an administrative offence protocol or issue a protective restraining order under article 73 of the CAO RK on the scene of the offence, then the domestic offender may not be transferred, and paragraphs 1), 3), 4), 5), 7) of part 1 and part 2 of article 786 of the CAO RK do not provide for this.

In our opinion, this problem needs to be resolved by an explanation through the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan from 9 April 2012, No. 1, “On the Use of Measures of Enforcing Proceedings and Other Issues of Administrative Law Enforcement”, or through the introduction of corresponding changes and additions to article 786 of the CAO RK.

Previously, transfer in the event of a domestic administrative offence was provided for by the CAO RK, valid until 01.01.2015, but afterwards the law maker excluded transfer from the CAO RK, as its draft involved moving articles 73 and 461 to the CC RK. However, pursuant to articles 788 and 789 of the CAO RK, a domestic offender can be detained. Yet, how could one detain a domestic violence without transferring him/her to an IAB facility?

Article 788 of the CAO RK should be amended to provide for administrative transfer to an IAB facility of persons who have committed an administrative offence in a domestic setting, namely in articles 73, 73-1, 73-2 and 461 of the CAO RK.

Paragraph 3 provides for a specialized measures of preventing domestic violence in the form of the protective restraining order. This measure is utilized with a view to ensure safety of the victim, provided that there are no grounds for enforcing administrative or criminal procedure detention. So, if there are grounds for any kind of detention, then one may not use a protective restraining order, even if no actual detention takes place.

Protective restraining orders are also provided for by all laws being analysed, but the explanation on the procedure of the use of this measure is offered only in the Law of the RK “On Preventing Domestic Violence”, as this measure can be employed only in the event of domestic conflicts and only between the parties to family relations. In other words, if a conflict occurs among neighbours, friends, colleagues, as well as distant relatives, who reside separately and having never resided together, then a protective restraining order can not be utilized. Furthermore, scene of domestic violence does not matter, because, pursuant to article 18 of the Law of the RK “On Preventing Domestic Violence”, grounds for taking measures of individual prevention consist in not only the actual instance of domestic violence, but also information regarding the threat or attempt at committing domestic violence.

In essence, in order to impose restrictions upon a domestic offender, conflicting parties must reside separately. A protective restraining order prohibits:

- 1) commission of domestic violence;

2) against the victim's will, **search** for the victim of domestic violence. What is the purpose of a measure that prohibits one from searching for the victim if the aggressor continues living with the victim in the same home?

3) **stalk/harass;**

4) **visit;**

5) **engage in oral and telephone conversations.**

Here we must note that these prohibitions must not cover oral and telephone conversations that do not purport to inflict psychological (emotional) violence. For instance, a domestic offender could ask by telephone if he/she could visit the house and collect personal belongings.

6) **contact** otherwise, including minors and/or incompetence family members.

In our opinion, a protective restraining order should not eliminate contacts that are based on justifiable reasons; for instance, in the event of an illness of the child of the parties. Such situations must be provided for ahead of time and be taken into account during the very issuance of the protective restraining order. For instance, contacts related to meetings with the child or division of property can be scheduled provided that there will be social workers or other third parties present.

Protective restraining orders against members of the same family must not imply an intrusion into economic issues, such as parties' obligations to pay housing rent, rent, ownership

and division of property. Protective restraining order must not have legal impact on common efforts to care for a common child, his/her sustenance and visitation rights provided there are not attempts of committing domestic violence.

In this regard, a protective restraining order can provide for separate residence of the conflicting parties.

Regarding part 1 of article 20, it should be noted that the words "taking into account the victim's opinion" must not preclude IAB officers from making a final decision on issuing a protective restraining order. Where there is no certainty that domestic violence will not continue, or that a domestic conflict will not transform into its more severe forms, then the protective restraining order should be utilized at the discretion of the IAB officer.

Paragraph 4 offers a measure in the form of administrative detention. The compared laws do not provide for such a measure of individual prevention, and, much as in the case of transfer, we believe that paragraph 4 could be omitted.

Chapter 40 of CAO RK codifies detention as a measure of enforcing the administrative case proceedings. In educational and scientific literature on administrative law and administrative activities of IAB, detention, just like transfer, is a measure of pre-trial restriction, i.e. a form of administrative compulsion, and not a measure of individual prevention.

| Art.787 CAO | Art.21 of the Law of the RK "On Preventing Domestic |
|--|--|
| Administrative detention, that is a short-term restriction of personal liberty of a natural person, a representative of a legal person, an official, with a view to prevent an offence or enforce proceedings... | With a view to prevent domestic violence constituting an administrative offence, and where there are reasons to believe that issuing a protective restraining order would be insufficient for ensuring the safety of the victim, an official of internal affairs bodies performs an administrative detention of the person who has committed domestic violence, consisting in his/her temporary deprivation of liberty of action and movement, with his/her involuntary placement in a special facility. |

Comparing the definitions and purposes of the administrative detention enables us to reveal a number of discrepancies. Firstly, pursuant to the CAO RK, administrative detention is a short-term restriction of liberty, whereas according to the Law — it is a "temporary deprivation of liberty of action and movement". The Law provides an outdated and erroneous definition of administration detention, which was previously available in an old edition of the CAO RK, in force until 1 January 2015.

Administrative detention has always fallen within the jurisdiction of IAB, citizens and other law enforcement agencies, whereas deprivation of liberty can be imposed only by courts. For this reason, the definition of administrative detention was changed.

Administrative detention serves the same purpose both in preventing an offence and preventing domestic violence. However, the Law does not provide one extra purpose of administrative detention: enforcing administrative case proceedings. Article 21 of the Law of the RK "On

Preventing Domestic Violence" does not specify any particularities in the use of administrative detention, thus, the existence of this article in the law is of no value.

As expected, major issues in the regulatory enforcement practices arose after 1 January 2015 regarding the determination of the time of administrative detention.

Firstly, the new version of article 787 of the CAO RK provides for detaining offenders for 3 hours, and, only in exceptional cases, as explicitly provided in the offence description, for up to 48 hours.

Secondly, this article precludes any administrative detentions lasting up to 48 hours for administrative offences punishable by administrative arrest. This provision was justified in the initial version of the draft CAO RK, which provides for a sanction in the form of administrative arrest.

For instance, following the enactment of the new CAO RK, unlawful actions in the area of domestic relations (see article 73 of the current CAO RK) could entail detention only for up to three hours and/or until the detainee reaches sobriety, as attested by a medical worker, if the domestic offender is inebriated. What kind of prevention of domestic violence could there be if a domestic offender is let go

after holding him/her for three hours? It is most likely that this problem occurred when lawmakers returned 56 provisions of the draft Criminal Code of the RK to the CAO RK, but forgot to amend article 787 of the CAO RK "Administrative detention".

Doubtful is the advisability of a new time limit for determining the start and end of the detention term

| Article 622 CAO RK before 01.01.2015 | Article 789 CAO RK after 01.01.2015 |
|---|---|
| Term of administrative detention is calculated from the moment of the natural person's transfer | The commencement of the term of detention is the hour, down to a minute, when the restriction of liberty of a detainee becomes a reality, regardless of whether or not the detainee has been assigned any procedural status or any other formal procedures have been performed. |
| Missing | The moment of expiry of this term is the expiry of three hours calculated without interruptions from the moment of actual detention. |

In essence, according to the above description of article 789 of the new CAO RK, the term of administrative detention commences prior to the transfer of the offender to an IAB facility. However, it could happen (especially in the work of rural district police inspectors) that the term of administrative detention can expiry prior to the transfer of the person in a special facility, if the allotted three hours are wasted on the commute to IAB facilities. In other words, administrative detention, provided for in article 787 of the CAO RK, fails to serve its purpose (or only partially).

Furthermore, there is evidence of a conflict with paragraph 7 article 788 of the new CAO RK, which provides that "Persons subjected to administrative detention are held in facilities intended for this purpose...". It then follows that until such time as the person detained for an administrative offence has crossed the threshold of a special facility (institution), his/her status should be treated as that of a person "transferred" (handed over), and not detained for the administrative offence.

It should be noted that the Resolution of the Government dated 30 June 2017, No. 398, "On the Draft Law of the Republic of Kazakhstan "On the Introduction of Changes and Additions to the Code on Administrative Offences of the Republic of Kazakhstan" provided an increase of the term of detention of an offender up to 24 hours for cases where the article prescribes an administrative punishment in the form of administrative arrest [54]. It is not clear as to why the authors decided not to return to the detention term of up to 48 hours, which had been used in practice until 1 January 2015. When surveyed and interviewed, respondents expressed their doubts regarding this being able to ensure safety of the domestic violence victim without introducing the institution of "judge on duty". According to respondents, this is due to the fact that the rural police staff size can provide insufficient, as well as due to irregularity of the work of judges on duty.

Paragraph 5 provides for a measure of individual prevention in the form of imposing upon a domestic offender a compulsory measure of medical nature.

A similar measure is provided under the Law of the RK "On Preventing Offences", yet this measure is missing from the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". This does not mean, however, that such a measure is not applied to minors. Part 2 article 13 of this law provides that "...in handling an issue of the referral of minors abusing alcoholic beverages, narcotics and psychoactive substances and their counterparts to special educational institutions, it is mandatory to examine the advisability of the ordering of a treatment course for drug addiction conditions".

In other words, paragraph 4 article 19-1 of the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" absorbs a measure of individual prevention related to imposing upon a minor offender a compulsory measure of medical nature, which constitutes a distinct feature of this measure of individual prevention. The Law of the RK "On Preventing Domestic Violence" does not provide for any features of the use of compulsory measures of medical nature, and duplicating the Law of the RK "On Preventing Offences" serves no purpose.

The Code of the Republic of Kazakhstan "On the Health of the Nation and the Healthcare System" dated 18 September 2009, No. 193, provides the legal grounds for rendering medical and social assistance to individuals suffering from alcoholism, drug addiction and inhalant addiction. The state offers a system of measures to prevent and treat alcoholism, drug addiction and inhalant addiction [52].

Compulsory measures of medical nature are applied by a court decision towards persons, who have:

- 1) committed criminal offences, and recognized as in need of treatment of alcoholism or drug addiction or inhalant addiction;
- 2) committed an administrative offence, and recognized as suffering from chronic alcoholism or drug addiction or inhalant addiction;

- 3) evaded volunteer treatment and recognized as suffering from chronic alcoholism or drug addiction or inhalant addiction.

Medical and social rehabilitation of persons suffering from alcoholism, drug addiction and inhalant addiction is carried out on a voluntary basis, upon the person's own attempt to seek medical assistance at a medical institution rendering addictology care and, at the patient's request, care could be given anonymously. For a minor suffering from alcoholism, drug addiction or inhalant addiction, as well as for drug addiction sufferers recognized by the court as incompetent, medical and social rehabilitation is provided at the consent of their legal representatives.

Persons are recognized as suffering from alcoholism, drug addiction and inhalant addiction by state-run healthcare institutions, following a corresponding medical examination in the manner prescribed by the authorized body.

Where the person objects to his/her recognition as suffering from alcoholism, drug addiction or inhalant addiction, this decision can be appealed against at a superior healthcare authority and/or in court. Persons suffering from alcoholism, drug addiction and inhalant addiction, are entitled to:

- 1) receive qualified medical care;
- 2) choose a drug addiction institution;
- 3) receive information on their rights, nature of their drug abuse conditions, methods used for treatment and medical-social rehabilitation;
- 4) undergo medical-social rehabilitation at place of residence, and, if necessary, at their actual location.

A drug addiction patient, or his/her legal representative, may refuse the offered medical-social rehabilitation at any stage. The person who has refused medical-social rehabilitation, or his/her legal representatives, will need to be explained possible repercussions of the refusal to undergo medical-social rehabilitation. Refusal to undergo medical-social rehabilitation, with the specification of possible consequences, is drawn up in the form of a note in medical documentation, with the signature of the person suffering from drug addiction, or his/her legal representative, and the psychiatrist-addictologist.

It is not admissible to restrict rights and liberties of persons suffering from drug addiction solely on grounds of the diagnosis of drug addiction, actual undergoing of dynamic observation at a drug addiction institution, with the exception of cases provided for in the legislation of the Republic of Kazakhstan.

Persons recognized as suffering from alcoholism, drug addiction and inhalant addiction are subject to monitoring and observation at healthcare institution at place of residence and are to undergo maintenance treatment at them in the manner prescribed by the authorized body.

Pursuant to the Law of the Republic of Kazakhstan of 7 April 1995, No. 2184, "On compulsory treatment

of Individuals Suffering from Alcoholism, Drug Addiction and Inhalant Addiction", alcoholism, drug addiction and inhalant addiction are diseases that harm public health, the country's gene pool, and contribute to the rise in crime. Individuals suffering from alcoholism, drug addiction and inhalant addiction who evade voluntary treatment, are subject to involuntary inpatient treatment at addictology organizations for compulsory treatment within the healthcare system, with involvement in public labour for the duration of the treatment. Involuntary commitment to addictology institutions of the healthcare system does not entail a conviction [53].

Registration arrangements for involuntary commitment of individuals suffering from alcoholism, drug addiction or inhalant addiction are performed by state healthcare institutions, at the initiative of the individual's relatives, labour associations, non-profit organizations, internal affairs bodies, prosecution bodies, guardianship and custody authorities, provided there are medical assessment reports. Registration arrangements for involuntary treatment of individuals who do not have a permanent place of residence is performed by internal affairs bodies at place of residence at the time of the application submission.

The matter of involuntary commitment to addictology institutions for compulsory treatment is adjudicated by court at place of residence of the individual in question, within ten days from the day of receiving materials, in the form of an open court session with the individual's participation, as well as the participation of healthcare institutions and internal affairs bodies, relatives, representatives of labour associations, non-profit organizations.

Term of commitment to addictology institutions for involuntary treatment will not exceed **two years**, and for repeat commitments — **three years**. Involuntary commitment of an individual to addictology institutions for treatment is not considered a repeat commitment if from the day of its expiry less than three years have passed.

In the event of an evasion of summons to a court hearing by the individual in respect of whom a motion was made to commit him/her involuntarily for treatment at an addictology institution, he/she will be taken into custody by internal affairs bodies.

In the process of preparing the required materials, and specifically when handling a motion of involuntary commitment of an individual to a treatment and prevention institution, a district inspector must take into account the individual's health and health status. A police officer (usually a district police inspector or his/her assistant) has to follow a specific sequence of actions:

- assist healthcare authorities in arranging a medical examination;
- in the event that the individual evades medical examination, when notified by an addictology institution and at the orders of the chief of the internal affairs body, arrange for involuntary outpatient examination, and in the event that the individual categorically refuses to undergo outpatient examinations, arrange for involuntary inpatient examination, provided that there are beds available for this purpose at the relevant addictology institution; provides the addictology institution, if

necessary, additional materials, including in regard to abuse of alcoholic beverages, narcotic and toxic substances, disorderly conduct (copies of reports, minutes of interviews of neighbours, relatives, notes from place of work);

- dispatch the collected materials to addictology institutions to decide on the issue of involuntary commitment of said individual for treatment.
- Pursuant to the Law of the RK of 23 April 2014 "On Internal Affairs Bodies of the Republic of Kazakhstan", internal affairs bodies exercise the following powers in the area of combating drunkenness and alcoholism:
- hand over individuals who find themselves in public places in the state of inebriation, affronting human dignity and public morality, to healthcare institutions or internal affairs bodies;
- perform searches, detain and transfer individuals evading court-ordered compulsory measures of medical nature to special medical institutions.

Pursuant to the Order of the MIA RK No. 1095 dated 29 December 2015 "On the Adoption of the Rules of Arranging the Activities of District Police Inspectors Responsible for Organizing the Activities of District Police Stations, District Police Inspectors and their Assistants", district police inspectors must be in possession of lists of persons:

- placed under health centre monitoring at healthcare authorities, registered as alcohol abusers;
- placed under health centre monitoring at healthcare authorities, registered as engaging in non-medical use of narcotics, psychoactive and toxic substances [24].

Paragraph 6 provides for a measure of individual prevention in the form of imposition of special behaviour requirements for a domestic offender. A similar measure is provided under the Law of the RK "On Preventing Offences", but this measure is missing from the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". This does not mean, however, that there is no way to impose special behaviour requirements for minors. Paragraph 5 article 19-1 of this law provides for the use of a measure of educational influence upon minors, which overwrites the measure of individual prevention under analysis.

Paragraph 4 part 1 article 69 of the CAO RK provides for the use of a measure of educational influence upon a minor in the form of restricting leisure and imposition of special behaviour requirements for the offender. Part 3 of this article of the CAO RK provides for the terms of the use of this measure as three months, which contravenes part 1 article 54 of the CAO RK stipulating that special behaviour requirements can be imposed upon the offender only for the term between 3 months and 1 year.

Partially resolving this issue is para. 22 of the Regulatory Resolution of the Supreme Court of the RK dated 22 December 2016, No. 12, "On Some Issues of Courts' Use of the Provisions of the General Provisions of the Code of Administrative Offences of the Republic of Kazakhstan".

Paragraph 22 reads: "Measure of educational influence, in pursuance of article 68 of the CAO RK, can be ordered for a minor who has for the first time committed an administrative offence, by the court, authority (official) authorized to handle administrative offence cases, provided that the minor is released from administrative liability or from the enforcement of an assigned administrative punishment. Restriction of leisure and imposition of special behaviour requirements for the minor, pursuant to part three of article 69 of the CAO RK, must be set for the duration of up to three months. A provision in sub-paragraph 3) part 1 article 54 of the CAO RK that prohibits minors from visiting certain places, travel to other locales without consent of the commission for the protection of the rights of minors, can be ordered by the court to be enforced for the term period of three months to one year, strictly by a motion from the parties to the administrative case, or internal affairs bodies during the case proceedings. Such a prohibition is imposed as a special behaviour requirement for an individual who has committed an administrative offence specified by articles 73, 127, 128, 131, 434, 435, 436, 440 (parts four and five), 442 (part three), 448, 461, 482, 485 (part two) of the CAO RK, and is used regardless of the ordering of a penalty and covers minors that are repeat administrative offenders" [44].

It then follows that changes are warranted for part 1 article 54 of the CAO RK, without specifying the lowest limit of the term of the use of the measure of individual prevention in the form of the imposition of special behaviour requirements for the offender. On 18 February 2014 the Law of the RK No. 175 "On the Introduction of Changes and Additions into Some Legislative Acts of the RK on the Issues of Preventing Domestic Violence" was passed, which had already implemented this amendment [47]. However, in the course of the development of the new CAO RK, an old version of article 59-1 of the CAO RK was copied — the one which was in effect until 1 January 2015.

When comparing the contents of articles of the laws and the CAO RK with the contents of the document "Imposition of Special Behaviour Requirements for the Offender", we conclude that there are significant differences. Article 54 of the CAO RK received multiple changes and additions (Laws of the RK of 31 October 2015 No. 378, from 9 April 2016 No. 501, from 3 July 2017 No. 84), yet the corresponding national laws have ignored these changes. As such, the mechanism of the imposition and monitoring the enforcement of special requirements for the offender is interpreted in multiple ways.

**Art.27 of the Law
of the RK
"On Preventing**

**Art.22 of the Law of the RK "On
Preventing Domestic**

Art.54 CAO

1. The court may impose special behaviour requirements for the offender with a view to prevent said offender from committing new offences.

2. Imposition of special behaviour requirements for the offender is a measure of administrative legal compulsion and is used along with the imposition of an administrative punishment, as well as in lieu of the latter, where the individual who has committed an administrative offence is exempted from administrative liability.

3. Imposition of special behaviour requirements for the offender involves the restriction of certain rights and the assignment of certain obligations on the individual who has committed an administrative offence.

4. The procedure of imposing special behaviour requirements for the offender, the period of its validity, rights and obligations of the parties to the administrative proceedings, are established in the CAO RK.

5. The individual in respect of whom special behaviour requirements are imposed is placed by IAB under preventive monitoring and preventive control.

1. With a view to ensure the safety of the victim, the court may impose special behaviour requirements for the individual who has committed domestic violence.

2. Imposition of special behaviour requirements for the offender is a measure of administrative legal compulsion and is used along with the imposition of an administrative punishment, as well as in lieu of the latter, where the individual who has committed an administrative offence is exempted from administrative liability.

3. The individual in respect of whom special behaviour requirements are imposed can be prohibited from:

1) against the will of the victim, searching, pursuing, visiting, engaging in oral, telephone talks and otherwise engaging in contacts with the victim, including minors and/or incompetent family members;

2) procuring, storing, carrying and discharging firearms and other types of weapons.

In exceptional cases, for purposes of protecting the victim and members of his/her family, the court may also impose a measure of administrative compulsion that bars the individual who has committed domestic violence from co-habiting a personal house, apartment or another domicile with the victim, provided that said person has another domicile.

4. For the duration of special behaviour requirements for the offender, said offender can be issued an order to report to internal affairs bodies one to four times a month for engaging in a preventive conversation.

5. The procedure of imposing special behaviour requirements for the offender, the period of its validity, rights and obligations of the parties to the administrative proceedings, are established in the CAO RK.

6. The individual in respect of whom special behaviour requirements are imposed is placed by IAB under preventive monitoring and preventive control.

1. When handling an administrative case, upon receiving a motion from the parties to the administrative case proceedings and/or internal affairs bodies, the court may impose special behaviour requirements for the individual who has committed an administrative offence specified under articles 73, 73-1, 73-2, 127, 128, 131, 434, 435, 436, 440 (part four and five), 442 (part three), 448, 461, 482, 485 (part two) of this Code, for the duration of three months up to one year, which involves a full or partial prohibition from:

1) against the will of the victim, searching, pursuing, visiting, engaging in oral, telephone talks and otherwise engaging in contacts with the victim, including minors and/or incompetent family members;

2) procuring, storing, carrying and discharging firearms and other types of weapons.

3) for minors: visiting certain places, travel to other locales without consent of the commission for the protection of the rights of minors;

4) consuming alcoholic beverages, narcotics, psychoactive substances.

2. When imposing special behaviour requirements for the individual who has committed an administrative offence in the sphere of domestic relations, for purposes of protecting the victim and members of his/her family, the court may, in exceptional cases, also impose a measure of administrative compulsion that bars the individual who has committed domestic violence from co-habiting a personal house, apartment or another domicile with the victim, provided that said person has another domicile, for the duration of up to thirty days.

3. For the duration of special behaviour requirements for the offender, said offender can be issued an order to report to internal affairs bodies one to four times a month for engaging in a preventive conversation.

Article 54 of the CAO RK has the superior status relative to the provisions of the laws being compared. Part 3 and 4 of the Law of the RK "On Preventing Domestic Violence" partially duplicates the provisions of article 54 of the CAO RK. Article 22 of the Law of the RK "On Preventing Domestic Violence" does not contain any unique features regarding the mechanism of imposing special behaviour requirements for the individual who has committed domestic violence, which is why this regulation serves no purpose.

Paragraph 7 provides for a measure of individual prevention in the form of imposing an administrative penalty. The compared laws also contain such a measure, and the mechanism of its use is explicitly provided under the General and Procedural parts of the CAO RK. Because legal grounds for the use of measures of administrative punishment are provided for in the Law of the RK "On Preventing Offences", duplicating this measure of individual prevention in the Law of the RK "On Preventing Domestic Violence" also serves no purpose. Similar conclusions

can be drawn in regard to the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment".

Paragraph 8 provides for the termination or restriction of parental rights, termination of adoption of the child, release and removal of guardians and carers from performing their duties, early termination of an agreement on transfer of the child for foster care. This paragraph, both by number and contents, fully mirrors the Law of the RK "On Preventing Offences" and is missing from the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment", which is completely illogical.

Para. 8 article 17 of the Law of the RK "On Preventing Domestic Violence" does not contain any unique features regarding the mechanism of the use of this measure of preventing domestic violence, which is why this provision serves no purpose.

Paragraph 9 provides for a large array of measures of individual prevention in the form of "measure of procedural compulsion and measure of safety for the victims in criminal proceedings". In essence, these measures should be considered inclusive, as their use is provided only by the Law of the RK "On Preventing Domestic Violence", which is why they must be applied exclusively to domestic offenders.

The final **paragraph 10** provides for measures taken following the court sentence. Similar measures are provided under the compared laws, which also renders useless paragraph 10 of article 17 of the Law of the RK "On Preventing Domestic Violence".

It is worth also noting certain other issues and deficiencies of statutory regulation of the use of measures of preventing offences, including domestic violence:

- 1) articles 19–23 of the Law of the RK "On Preventing Domestic Violence" are dedicated to refining the measures listed in paragraph 2 article 17. Yet, such measures as transfer to internal affairs body facilities, administrative penalty, termination and restriction of parental rights and measures applied following the sentencing are not represented even as references;
- 2) apart from pointless duplication of certain measures of individual prevention from the Law of the RK "On Preventing Offences", contents of paragraphs 3 and 4 of article 17 mirror paragraphs 3 and 4 of article 23 of the Law "On Preventing Offences", which is also pointless;
- 3) it should be noted that measures of domestic violence prevention are represented solely by measures of individual prevention. The Law does not provide for general and special measures of prevention, which would have

involved the detection of social phenomena and processes that trigger domestic violence;

4) when defining the prevention of domestic violence, the Law of the RK "On Preventing Domestic Violence", just like in the laws compared, specifies that it is a complex of legal, economic, social and organizational measures. Correspondingly, the Law lacks any economic, social or other measures aimed at prevention. As such, in the setting of definitions of the terms used, the Law attempts to cover a wide range of preventive measures. However, there are no regulations that enable actors to effectively perform preventive activities;

5) in the laws compared, regarded as measures of individual prevention are "preventive monitoring and control" paras. 5 and 3). It is sound that this measure is missing from the Law of the RK "On Preventing Domestic Violence". However, the existence of these measures in the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" is completely unfounded, as it constitutes merely additional duplication of the Law of the RK "On Preventing Offences".

It is reasonable to conclude that the laws of the RK in the area of preventing offences are in disarray, with many provisions being duplicated, or conflicting with one another, which enables prevention actors to arbitrarily interpret these provisions. The name of the current law of the RK "On Preventing Offences" does not match its contents, as this law fails to encompass all the areas of tortious phenomena that must be prevented.

Domestic violence prevention in the purest sense of the term is impossible. When dealing with a domestic offender, one is forced to influence the causes behind the violence, and address the issues of drunkenness, alcoholism, drug addiction, neglect and abandonment of minors, non-performance of parental duties and so forth. In this regard, we propose to initiate the development and the adoption of a new compound Law of the RK "On Preventing Offences", as well as an accompanying Law of the RK constituting a combination of specialized laws:

- "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". Law of the RK of 9 July 2004 No. 591;

- "On Preventing Domestic Violence". Law of the RK of 4 December 2009 No. 214-IV ZRK

- "On Preventing Offences". Law of the RK of 29 April 2010 No. 271-IV ZRK.

"On Compulsory Treatment of Persons Afflicted by Alcoholism, Drug Addiction and Inhalant Addiction". Law of the RK of 7 April 1995 No. 2184.

Section 2. Analysing the activities of the local police service of the internal affairs bodies of the RK in the area of preventing domestic violence

2.1 Results of surveying the personnel of the local police service of the internal affairs bodies of the Republic of Kazakhstan

This sub-section offers a good empirical material for further research on the matters of preventing domestic violence. In the preparation of the recommendations for public monitoring, we took into account individual opinions and findings. As the median length of service of the surveyed individuals surpassed 5 years, the results of the questionnaire stage prove to be trustworthy and must always be accounted for in the development of managerial solutions on the improvement of the mechanism of domestic violence prevention.

The survey covered all the regions of the Republic of Kazakhstan. The survey included all the categories of officials of the local police service, with the exception of environment protection police units and special institutions of IAB.

Capital letters are used to indicate additional opinions of all the respondents, despite the fact that individual opinions are isolated, but, in our opinion, they deserve attention for further analysis.

Individual indicators by region are presented in the annex to this report.

| No | Region name | Number of respondents | Total time of service | Including in the |
|----|-------------------------|-----------------------|-----------------------|------------------|
| 1 | Pavlodar Oblast | 196 | 8.7 | 5.4 |
| 2 | Akmola Oblast | 100 | 8.4 | 4.3 |
| 3 | Aktobe Oblast | 118 | 6.6 | 4.4 |
| 4 | City of Astana | 230 | 9.3 | 6.6 |
| 5 | Karaganda Oblast | 266 | 9.3 | 5.1 |
| 6 | Kyzylorda Oblast | 55 | 8.5 | 4.5 |
| 7 | Mangistau Oblast | 133 | 7.8 | 4.2 |
| 8 | North Kazakhstan Oblast | 162 | 8.3 | 3.8 |
| 9 | South Kazakhstan Oblast | 600 | 10.5 | 5.5 |
| 10 | Almaty Oblast | 600 | 6.6 | 4.5 |
| 11 | City of Almaty | 268 | 5.2 | 3.6 |
| 12 | Atyrau Oblast | 82 | 6.1 | 3.2 |
| 13 | East Kazakhstan Oblast | 220 | 8 | 5.4 |
| 14 | Zhambyl Oblast | 230 | 9.8 | 5.9 |
| 15 | Kostanay Oblast | 200 | 8.1 | 5.6 |
| 16 | Uralsk Oblast | 193 | 9.2 | 5.4 |
| | | 3652 | 8 | 5 |

2. Should preventive monitoring be placed on persons in respect of whom a restriction has been imposed under art.165 of the CPC RK "Barring Order"

- 1) yes = 62%
- 2) no = 32%

Other opinion:

- this measure should be used more often;
- monitoring by probation service;

- monitoring and control should be performed by criminal police service;
- ineffective measure, as the conflicting parties continue living together;
- a restraining measure in barring order is used by the court, not LPS. In this regard, the control should be conducted by other services;
- only for repeat violation of art.165 of the CPC RK;

- violation of the barring order, as well as the protective restraining order, should entail criminal liability;
- only if poses a threat to the victim of domestic violence;
- if such measures are to be used, then only in lieu of punishment;
- our society is not yet ready for such measures!
- protective restraining order is better;
- no point, as the conflicting parties continue to live together;
- there should be a single protective restraining order (police and court);
- place under monitoring with the district police inspector.

3. Which offences should warrant placing domestic offenders under preventive monitoring at IAB?

- 1) under article 73 of the CAO RK = 46%
- 2) for all offences related to the infliction of bodily harm in a domestic setting = 33%
- 3) where a protective restraining order is issued = 26%
- 4) where special behaviour requirements are imposed for the offender = 20%
- 5) under article 434 of the CAO RK, if a petty crime is committed as a result of domestic relations = 15%
- 6) if a criminal procedure measure of the barring order is used = 11%
- 7) for those sentenced to punishments not involving the deprivation of liberty for a criminal offence in a domestic setting = 12%
- 8) for those previously sentenced for criminal offences in domestic settings = 10%
- 9) for those evading the payment of money for supporting children, unemployable parents, unemployable spouse = 5%

Other opinion:

- all categories of individuals previously sentenced for domestic criminal offences must be placed under monitoring at the probation service.

4. What term should be admissible for an administrative detention for a domestic offence?

- 1) only up to 3 hours = 21%
- 2) up to 3 hours, and if inebriated, then until reaching sobriety, as attested by a medical worker = 21%
- 3) up to 24 hours if the institution of the "Judge on duty" exists = 7%
- 4) up to 48 hours = 25%
- 5) until the matter is resolved in court, but no more than 48 hours = 18%
- 6) until the matter is resolved in court = 16%

Other opinion:

- there should be conditions and legal grounds (rules) for holding in a room for temporary detention;
- up to 72 hours;
- we have to go back to 48-hour terms ASAP;
- up to 4 days.

6. Should the court be authorized to temporarily evict a domestic offender from their permanent place of residence if no other domicile is available to them?

- 1) no = 38%
- 2) yes = 60%

Other opinion:

- remove "availability of another domicile" from article 54 of the CAO RK;
- it's better to arrest for 15 days;
- open Holding Centres for Family Offenders to engage offenders in psycho-corrective programmes;
- this measure is unacceptable as the offender would have no place to live;
- it would be better to commit domestic offenders to specialized treatment institutions;
- only administrative arrest;
- if we were to evict domestic offenders, then houses would have to be under surveillance of a police officer;
- at least for 24 hours;
- vest district police inspectors with this power;
- only upon availability of another domicile;
- no point in this preventive measure;
- it would be better to use community service for up to 100 hours.

7. Should the IABs be authorized to temporarily evict a domestic offender from their permanent place of residence if no other domicile is available to them?

- 1) no = 45%
- 2) yes = 52%

Other opinion:

- evict until the case is resolved in court;
- IABs should not be authorized to do so, as there would be many complaints from citizens;
- this measure should be applied only by courts;
- useless measure;
- family members evicted from their homes themselves become domestic violence victims.

8. Should citizens be held criminally liable for systematic violations of art. 73 of the CAO RK (the collateral estoppel principle)?

- 1) no = 30%
- 2) for committing two and more misdemeanors = 41%
- 3) for committing three and more misdemeanors =

26%

Other opinion:

- *escalate the sanction up to administrative arrest.*

9. Which IAB units must issue protective restraining orders on their own? (underline the right answers)

- 1) District police inspectors and their assistants = 50%
- 2) DPI for minors' affairs = 30%
- 3) duty IAB officer = 9%
- 4) women protection unit officers = 14%
- 5) special investigative agent of criminal police = 4%
- 6) all qualified officers of the local police service = 17%
- 7) officers of road and patrol police responding to domestic disturbances = 7%

Other opinion:

- *inquiry officers and investigators should have this authority.*

10. Which new measures of compulsion should be used in Kazakhstan?

- 1) administrative liability for all types of domestic violence, with criminal liability under collateral estoppel = 32%
- 2) administrative liability for sexual harassment in domestic settings = 14%
- 3) prohibit a domestic offender from living together with the victim even if the offender has no other domiciles available = 7%
- 4) specialized measures of prevention in cases of domestic violence (psycho-correctional measures) = 4%
- 5) psychological work with domestic offenders = 11%
- 6) all measures of compulsion against conflicting individuals that are legitimately engaged in romantic relations = 6%
- 7) force the conflicting parties to participate in specialized treatment and consultation programmes = 8%
- 8) utilize probation sentences for first-time domestic offenders = 5%
- 9) utilize community services in administrative cases involving domestic disputes = 29%

Other opinion:

- *all types of domestic violence should entail criminal liability;*

- *real assistance from a psychologist is necessary.*

11. How would you rate inter-agency interaction of domestic violence prevention actors in your region?

- 1) good = 41%
- 2) satisfactory = 39%
- 3) interaction is non-existent = 16%

Other opinion:

- *conclude a local agreement of prevention actors;*
- *very weak cooperation;*
- *don't know.*

12. Should there be shelters, rehabilitation centres for protecting individuals subjected to domestic violence?

- 1) only for women and children = 27%
- 2) for all citizens = 35%
- 3) no = 9%
- 4) for women, children and senior citizens = 30%

Other opinion:

- *separately for seniors.*

13. Which forms of citizen involvement should be used in the prevention of domestic offences?

- 1) reintroduce voluntary self-defence militias = 18%
- 2) introduce the institution of deputed assistants of the police = 14%
- 3) community assistants of the police = 22%
- 4) create a community council at akimats (mayor's offices) = 14%
- 5) Aksakal council, Elder council = 13%
- 6) there should be specialized community institutions for combating domestic offences = 27%

Other opinion:

- *community assistants with a regular salary;*
- *remunerate community assistants for each work hour;*
- *create regional women's councils and mothers' councils;*
- *none of the above would help;*
- *regularly reward community assistants of the police;*
- *register former police force members as community assistants on a remunerated basis.*

14. Your proposals on the improvement of the legislation on domestic relations:

- 1) the specialized law of the RK "On Preventing Domestic Violence" will suffice = 23%
- 2) we should enact a single law of the RK "On Preventing Offences" which would cover all the unlawful phenomena (alcoholism, drugs, neglect and abandonment of minors, those previously sentenced, sentenced

to non-imprisonment punishment measures, sentenced on probation, placed under administrative oversight, etc.) = 36%

3) develop a mechanism of preventing offences in domestic settings and adopt it using a specialized order of the MIA RK = 17%

4) develop a long-term State Programme = 7%

5) develop guidelines = 6%

6) leave everything as is, current legislation is perfect already = 3%

7) reintroduce articles of the now-obsolete chapter 9-1 of the CAO RK = 5%

8) provide for a more severe punishment for domestic violence = 13%

9) reintroduce articles 108 and 109 of the CC RK in regard to beatings and infliction of light bodily harm into the CAO RK = 11%

Other opinion:

- introduce a punitive sanction for domestic violence in the form of community service;

- institute a wider application of involuntary psycho-corrective measures for domestic offenders;

- return to the CAO RK the mechanism of administrative detention of domestic violence for up to 48 hours;

- provide a more severe punishment under art. 73-1 and 73-2 of the CAO RK;

- extend the deadlines for the information records, as it takes 7–10 days to wait for a forensic medical examination;

- abolish the warning sanction in article 73 of the CAO RK and extend the term of the administrative arrest and administrative detention;

reintroduce -108 and 109 to the CC RK;

- all articles 73 of the CAO RK should be merged into a single chapter "Domestic violence".

15. Have there been issues in the law enforcement practices of IAB following the enactment of the new codified legislation?

1) issues with qualifying offences = 31%

2) insufficient term of the administrative arrest of a domestic offender = 50%

3) nebulous explanation of the start and end of the detention term = 16%

Other opinion:

- bad arrangements for the local police service's operations in preventing domestic violence;

- difficulties classifying offences due to waiting for forensics or the victim's refusal to be examined;

- no issues;

- we should return administrative detention for up to 48 hours.

16. Do conciliation procedures pose an obstacle for preventing domestic violence?

1) yes = 50%

2) no = 28%

3) only repeated conciliation = 16%

Other opinion:

- repeated conciliation should be abolished;

- conciliation procedures end up significantly distracting a LPS officer from performing his/her conventional duties;

- conciliation should be contingent upon a court ruling.

17. How can conciliation procedures be modernized?

1) completely abolish the legal concept of conciliation = 21%

2) conciliation should be contingent upon a court ruling = 27%

3) conciliation should only be used once per 1 year = 25%

4) conciliation should only be used 2 times per 1 year = 12%

5) conciliation should only be used once per 1 year for an administrative offence and should not be used for criminal domestic offences = 16%

Other opinion:

- there should be no possibility of conciliation of the conflicting parties;

- repeated conciliation should be abolished;

- there should be a tailored approach for each case of conciliation;

- conciliation should only be used by a district police inspector;

- IAB should not participate in conciliation procedures.

18. Should there be a legal fact of the commission of an offence in the presence of underage children?

1) yes = 38%

2) no = 21%

3) only as an aggravating circumstance = 20%

4) as a classification criterion for administrative offences = 5%

5) as a classification criterion for administrative and criminal offences = 8%

6) as a classification criterion only for criminal offences = 4%

Other opinion:

- provide for the child's age at which the offence would be considered as committed under aggravating circumstances.

- 19. Should the classification of domestic offences include domestic violence committed outside of a domicile?**
- 1) yes = 48%
 - 2) no = 26%
 - 3) only if the domestic motive is directed against close relatives = 17%
 - 4) only if the domestic motive is directed against close relatives and in-laws = 9%
- 20. Economic domestic violence, as provided under art.139 of the CC "Failure to Make Child Support Payments, Evasion from Payments for the Support of Unemployable Parents, Unemployable Spouse", should be:**
- 1) administrative offence = 36%
 - 2) criminal misdemeanor = 32%
 - 3) criminal felony = 21%
 - 4) prosecution should be civil = 11%
- Other opinion:**
- eliminate the institution of criminal misdemeanors;
 - introduce a sanction of the CAO RK in the form of compulsory community service with payments transferred to the domestic violence victim;
 - introduce a CAO RK sanction in the form of community service.
- 21. How would you eliminate contacts between the conflicting parties in domestic settings?**
- 1) prohibit joint residence of the conflicting parties = 40%
 - 2) placement of the domestic violence victim at a shelter = 30%
 - 3) detention of the domestic offender = 34%
- Other opinion:**
- make these decisions in a civil court;
 - only in court, following an examination of each situation individually;
 - no point in issuing a protective restraining order when conflicting parties continue joint residence.
- 22. Should there be specialized legal statistics for domestic offences?**
- 1) yes = 36%
 - 2) no = 24%
 - 3) only at agency level at MIA RK = 20%
 - 4) yes, there should be a uniform recordkeeping of indicators for all domestic violence prevention actors at the Committee for Legal Statistics and Special Accounts of the Prosecutor General's Office of the RK = 20%
- 23. Should legal liability be incurred for coercion to abortion or involuntary sterilization?**
- 1) yes = 44%
 - 2) no = 16%
 - 3) only administrative liability = 12%
 - 4) administrative and criminal liability = 13%
 - 5) only criminal liability = 13%
- 24. How should offenders be held accountable for "beatings" and "infliction of light bodily harm" in domestic settings?**
- 1) leave everything as it is = 28%
 - 2) hold accountable by pressing private-public charges = 23%
 - 3) hold accountable by pressing public charges = 15%
 - 4) transfer these essential offence elements into the CAO RK = 29%
- Other opinion:**
- introduce arrest for up to 45 days
 - reintroduce 73-1 and 73-2 into the CC RK and hold liable through public charges;
 - only criminal liability;
 - should have been left in the CC RK;
 - sanction should be escalated to administrative arrest;
 - if a domestic offender is not held liable, they would feel impunity;
 - leave it in the CAO RK, but the arrest term should 45 days maximum.
- 25. Should women protection unit officers be granted the authority to issue protective restraining orders on their own?**
- 1) yes = 54%
 - 2) no = 23%
 - 3) only on behalf of the IAB LPS chief = 21%
- 26. How large should women protection unit staff be?**
- 1) one inspector per each city/rayon/line IAB = 49%
 - 2) one inspector per every 10,000 pop. = 24%
 - 3) leave everything as it is = 16%
 - 4) no need for this service at all = 10%
- Other opinion:**
- 2 per each IAB, or 1 per each district police station;
 - expand the authority of women protection unit personnel;
 - one inspector per every 5,000 pop. = 2.
- 27. Does the multifunction role of district police inspectors matter in preventing domestic violence?**
- 1) yes = 63%

- 2) no = 23%
- 3) only in urban areas = 12%

28. How should early prevention of domestic violence be conducted?

- 1) leave everything as it is = 28%
- 2) hold psychological classes at schools = 31%
- 3) mandatory "family studies" classes from early age = 25%
- 4) special psycho-corrective courses for newlyweds = 22%

Other opinion:

- psychocorrection should be done before marriage;
- open free-of-charge clubs for children;
- ban cartoons containing any forms of violence;
- hold events to distract children from the internet.

29. How should the professional capacity of the IAB LPS be enhanced?

- 1) conduct regular seminars and trainings = 33%
- 2) regular coverage of specialized topics in the process of professional and service training = 34%
- 3) provide each district police station and LPS unit with training literature = 37%

Other opinion:

- provide the LPS with physical assets: cars, internet, service phones, etc;
- regularly held professional development courses for LPS personnel.

30. Are there other issues in applying measures of individual prevention to domestic offenders?

- 1) no practical use of the measure of individual prevention in the form of temporary eviction of a domestic offender = 27%
- 2) trouble issuing a criminal procedural measure — the barring order = 26%
- 3) poor assistance from other domestic violence prevention actors in preventive efforts = 19%
- 4) the mechanism of providing special social services to domestic violence victims has not been polished/practiced = 17%
- 5) often-times, there is no compliance with protective restraining orders = 12%
- 6) conciliation procedures hamstring any preventive efforts made by the LPS = 17%

Other opinion:

- not enough time for preventing domestic violence;
- poor physical infrastructure;
- imperfection of the Law of the RK "On Preventing Domestic Violence";
- violation of special requirements should entail arrest only;
- there should be a more severe punishment for violating special behaviour requirements;
- there should be explicitly defined legal grounds and mechanism for punishing violators of art.54 of the CAO RK;
- escalate sanctions up to administrative arrest;
- omit the warning provision from art.73 and increase the term of the administrative detention to 48 hours;
- there is a lot of red tape in prosecuting domestic offenders in court;
- provide for a more severe punishment for domestic violence;
- grant LPS officers additional powers.

2.2 Results of the interviewing of the LPS personnel in regions of the Republic of Kazakhstan

The majority of problems were revealed through interviewing officers of district police stations whom the report authors visited in the city of Almaty, Karaganda, Uralsk, Pavlodar and Kostanay Oblasts (provinces). LPS officers were offered not only to describe the problem and give reasoning, but also provide their own way of addressing the issue. We compiled the interview results in the following format.

| No | Problem | Ways of resolving, and exp. results | Rationale behind concl. and solutions |
|----|---|---|--|
| 1 | There are insufficient temporary detention rooms (TDR) for individuals transferred to IAB for committing offences. Rooms are available, but inspections at prosecution bodies revealed these facilities do not meet the conditions of protecting life and health of detainees. | <p>1. Develop and adopt the order of the MIA RK "On the Arranging of the Operations of Temporary Detention Rooms at IAB".</p> <p>2. Compel local representative and executive bodies to finance and build TDRs at dispatch centres of IABs.</p> <p>This would provide temporary restriction of liberty of offenders for purposes of administrative detention.</p> | Pursuant to the Order of the MIA RK dated 17 July 2014, No. 439, "On the Adoption of the Rules of Operations of Centres of Operational Control and Dispatch Centres of IAB RK", the number of TDRs is determined in relation to their mean daily occupancy rate, but no less than three rooms for separated holding of men, women, minors. TDRs must be located in close proximity to the workplace of an on-duty officer. |
| 2 | <p>There is no way to ensure safety of domestic violence victims:</p> <p>a) there are no capacity for precluding contacts between the conflicting parties by means of detaining the offender for a sufficient term;</p> <p>b) no capacities for placing domestic violence victims at shelters;</p> <p>c) there is no implementation of art.54 of the CAO RK, which provides for issuing an order barring the individual who has committed domestic violence from co-habiting a personal house, apartment or another domicile with the victim, provided that said person has another domicile.</p> | <p>A) there are two solutions of equal value:</p> <p>1) increase the term of detention up to 24 hours, while also introducing the legal institution of the "on-duty judge";</p> <p>2) increase the term of administrative detention until the case is resolved in court, but to a maximum of 48 hours.</p> <p>B) issue a Resolution of the Government of the RK to define the number, procedure of opening and arrangement of operations of organizations providing assistance with shelters for domestic violence victims.</p> <p>C) Introduce changes and additions to the CAO RK and the specialized law of the RK "On Preventing Domestic Violence" regarding the mechanism of imposing special behaviour requirements for domestic offenders, so as to enable the prohibition of joint residence with the victim could be activated regardless of whether or not the offender has any other housing available.</p> | <p>A) According to experts and local police service members, short administrative detention (maximum of 3 hours) hamstrings any efforts mounted by IAB to ensure safety of domestic violence victims.</p> <p>B) Pursuant to p.2 art.15 of the Law of the RK "On Preventing Domestic Violence", organizations engaged in the provision of assistance are created by local executive bodies, as well as natural and legal persons, following the procedure established by the legislation of the RK.</p> <p>Surveying and interviewing members of the LPS has revealed that rural areas do not have any shelters for domestic violence victims;</p> <p>B) Law enforcement practices demonstrate that the wording "availability of another domicile" in article 54 of CAO RK makes this regulation unenforceable. Since 18 February 2014, when this measure was enacted, there has only been 3 instances of the use of this restriction. Simple analysis of lifestyles of families that frequently suffer from domestic offences reveals that domestic offenders do not have other places of residence. As such, it is reasonable to conclude that the current provision is ineffective, as it fails to achieve its most important goal — prevent contacts between the conflicting parties.</p> |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 3 | <p>Rural communities do not have centres for temporary adaptation and detoxification (CTAD), and law enforcement agencies are forced to transfer individuals detained in a state of inebriation to facilities located 90–120 kilometres away. During the transfer, the detainee’s level of alcohol intoxication decreases to the “light” degree, which does not constitute grounds for placing the offender at a CTAD.</p> | <p>Almost 100% of respondents advocated for the return of CTADs into the system of IABs, also proposing that they be called by their former name: “medical sobering-up stations”. Medical institutions should have departments for treating individuals suffering from alcoholism.</p> <p>The second solution consists in opening CTADs in every rural region.</p> | <p>Combating alcoholism is a legal matter in the medical field, while preventing drunkenness is a legal matter in the police’s area of responsibility.</p> <p>CTADs justifiably refuse to handle domestic offenders in a state of alcohol inebriation, as they are not placed under monitoring as persons with alcoholism.</p> |
| 4 | <p>The laws of the RK in the area of preventing offences are in disarray, with many provisions being duplicated, or conflicting with one another, which enables prevention actors to arbitrarily interpret these provisions.</p> <p>The name of the current law of the RK “On Preventing Offences” does not match its contents, as this law fails to encompass all the areas of tortious phenomena that must be prevented.</p> | <p>1 option: Development of a new compound Law of the RK “On Preventing Offences” should be enacted, along with the accompanying Law of the RK that would assimilate the specialized laws:</p> <ul style="list-style-type: none"> - “On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment”. Law of the RK of 9 July 2004 No. 591; - “On Preventing Domestic Violence”. Law of the RK of 4 December 2009 No. 214-IV ZRK - “On Preventing Offences”. Law of the RK of 29 April 2010 No. 271-IV ZRK. - “On Compulsory Treatment of Persons Afflicted by Alcoholism, Drug Addiction and Inhalant Addiction”. Law of the RK of 7 April 1995 No. 2184. <p>2 Option: Conduct monitoring of the current legislation in the area of preventing domestic offences, with the ultimate goal of developing a draft law “On the Introduction of Changes and Additions into Certain Acts of the Republic of Kazakhstan on Preventing Domestic Violence”.</p> | <p>Public monitoring has revealed that 89% of respondents believe that there needs to be a single compound Law of the RK “On Preventing Offences” that would provide for the prevention of all kinds of offences and other negative phenomena in the society.</p> <p>When laws like “On the Introduction of Changes and Additions into Some Legislative Acts of the RK...” are enacted, similar and competing legal provisions do not always change in sync with each other, which leads to contradictions between them. It is demonstrative enough to compare these provisions: art.22 of the Law “On Preventing Domestic Violence”, art. 54 of the CAO RK and art. 27 of the Law of the RK “On Preventing Offences”.</p> |
| 5 | <p>The multifunctional role of district police inspectors leaves them little room for preventing domestic violence.</p> | <p>Introduce the corresponding changes and additions to the Resolution of the Government of 24 December 1996, No. 1598, “On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety” and the Order of the MIA RK No. 1095 dated 29 December 2015 “On the Adoption of Rules of Arranging the Operations of District Police Inspectors Charged with Managing the Operations of District Police Stations, District Police Inspectors and their Assistants”.</p> | <p>Mobile nature of operations prevents officers from promptly responding to instances of domestic violence — a fact that is not taken into account when assessing performance of district police inspectors in rural areas. Compounding the issue is the fact that DPIs do not have their service vehicles, petrol and compensations for using personal cars.</p> |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 6 | District police stations have no internet access, which makes it harder to use central and local databases, the reference and search system "Adilet", email. | Introduce the appropriate changes and additions into the Resolution of the Government No. 1598 from 24 December 1996 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety". This regulatory legal act should stipulate as the primary objective the supplying of district police stations with computers with internet access. | When performing their conventional duties, district police inspectors are not able to promptly check citizens against the Automated Database, establish identity, register reports, and submit operation reports. |
| 7 | Insufficient staffing of the district police inspector service. Regulations regarding the number of district police inspectors and their assistants are not being observed, which constitutes a gross violation of the current Resolution of the Government of the RK No. 1598 dated 24 December 1996. | Introduce changes and additions into the Resolution of the Government of the RK No. 1598 dated 24 December 1996 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety". This regulatory act should provide that every year, local budget funds are to be contributed to the enrolment of new DPIs. | Despite the population growth, DPI personnel size practically never increases. However, district police inspectors in urban areas should service no more than 3,000 people, while rural DPIs are assigned to territories with population of no more than 2,000. |
| 8 | Local representative and executive bodies ignore the Resolution of the Government of the RK dated 23 May 2001 No. 701 on the enrolment of DPI assistants. | Introduce changes and additions into the Resolution of the Government of the RK No. 701 dated 23 May 2001 "On Additional Measures to Maintain Public Order and the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies", in which the procedure of determining the staff size of DPI assistants must be an obligatory regulation, not a recommendation, for oblast akims (governors). | Many oblasts do not have a single DPI assistant. All oblasts reduced the staff size of DPI assistants in order to introduce the position of deputy chiefs of DPIs. This situation creates additional stress on staff DPIs and their assistants, distracting them from their standard duties pertaining to the prevention of offences, including domestic violence. |
| 9 | In all regions of the RK there is a negative system of assessing the performance of the service of district police inspectors and their assistants using the quantitative indicator. In doing so, the assessors ignore quality of work indicators, the level of lawfulness, crime situation in the serviced district, multifunctional role, mobile nature of work, as well as unique factors of working in urban and rural areas. | Create a workgroup, conduct research, examine international experience of evaluating police performance. Expand the Resolution of the Government of the RK No. 1598 dated 24 December 1996 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety" with a new section on the DPI performance evaluation criteria. In all agency-specific orders of the MIA RK provide performance evaluation criteria for all units of the LPS. | District police inspectors are being challenged to achieve standard indicators: for how many people every year protective restraining orders are issued, how many people are placed under administrative oversight, how many administrative reports are drawn up, how many criminal cases are closed using a simplified form of inquiry, etc. In other words, there is an average rating that doesn't take into account specific work conditions and public opinions. In this regard, 100% of respondents advocated for the revision of the performance evaluation criteria for the LPS members, and the primary criterion should be the evaluation by the community. |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 10 | A lot of time (sometimes the entire workday) is spent by DPIs to work toward a conviction for a domestic offender or delinquents. | Introduce changes and additions into p.1 of articles 73 and 434 of the CAO RK, eliminate the administrative penalty in the form of administrative arrest from these articles. Grant DPIs the authority to impose administrative punishment under art. 73 and 434 of the CAO RK on their own, that is, harmonize 684 and 685 on the changes in jurisdictional powers of the court and IAB. | 83% of LPS officers surveyed proposed the following way of addressing the issue. In order to enable district police inspectors to promptly respond to instances of domestic violence, enhance the jurisdictional powers of DPIs for imposing administrative penalties under the first parts of art. 73 and 434 of the CAO RK. |
| 11 | Large percentage of offenders not paying fines, including for domestic offences. | Introduce the corresponding changes and additions into the CAO RK. In domestic matters, we should reduce to the farthest extent or outright abolish fines, as the conflicting parties continue living together, and these fines hurt the family budget. | Almost 100% of respondents proposed to reduce the repressiveness of sanctions under articles of the CAO RK which authorize them to impose administrative penalties. The mechanism—provided for by the CAO RK—designed to reduce fine sanctions by 30%, does not function. |
| 12 | Courts unjustifiably demand that a note from an addictologist and psychiatrist be provided and forensic medical examinations be performed upon hearing an administrative offence case. | Explain the legal grounds for appointing and performing forensic medical examinations in administrative offence cases using the Regulatory Resolution of the Supreme Court of the RK. | A forensic examination requires several days, which gives the domestic offender an opportunity to evade accountability on account of the conciliation of conflicting parties, or the offender simply absconds. This also makes it harder to ensure the safety of the domestic violence victim, as the aggressor remains at large. |
| 13 | District police inspectors spend a lot of their labour hours (one workday) on seeking a conviction of a domestic offender in the administrative court. | Introduce changes and additions into art.5 para.3 of the Law of the RK No. 353 dated 30 March 1999 “On the Procedure and Conditions of Holding Persons in Special Institutions Designed for Temporary Isolation from the Society”, allowing to subject the accused to administrative arrest immediately after the court hearing on the grounds of a special note, prior to the preparation of the court ruling. | A district inspector, following the conviction of a domestic offender, is forced to drive him/her around until 6-8 PM, because judges are not able to prepare the ruling earlier, and this takes a lot of labour hours from the LPS personnel, which effectively precludes them from responding to other offences. Until there is the judge’s ruling in favour of the arrest, the domestic offender would not be admitted to a special detention centre. |
| 14 | According to part 2 art. 821 of the CAO RK: “Following the case hearing, and upon recognizing the legal assessment of the incident improper, the judge, or a body (official) is authorized to change the classification of the offence into a statutory article that provides for a less severe administrative penalty”. This provision allows a domestic offender to evade punishment, if it is necessary to re-classify the offender’s actions for a less severe administrative penalty. | Introduce changes and additions into art. 821 of the CAO RK, authorizing judges to re-classify offences either way — that is, both in favour of a smaller or a greater administrative penalty. | Since courts are not entitled to re-classify administrative offences to impose a more severe administrative penalty, there are issues when attempting to hold offenders accountable under articles 73, 73-1 and 73-2 of the CAO RK. The victim does not seek forensic examination upon the decision of the district police inspector, and the decision on the classification of the offence needs to be made within 24 hours. |

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| 15 | Extremely large amount of time is spent on conducting list-monitoring of persons. | Introduce changes and additions into the Order of the MIA RK No. 1095 dated 29.12.2015 to eliminate the need for the recordkeeping of cumulative cases on persons placed under list monitoring by district police inspectors. It is reasonable to propose that all cumulative cases be kept in digital form, which would save significant amounts of time for district police inspectors and reduce document flow. | Pursuant to the Order of the MIA RK No. 1095 dated 29 December 2015 "On the Adoption of the Rules Governing the Activities of District Police Inspectors Charged with Managing the Operations of a District Police Stations, District Police Inspectors and their Assistants", lists are updated at least once in a quarter. All the corroborative and other materials are filed using accumulating files for each category separately, which unjustifiably bloats document flow and requires large time investments. |
| 16 | In some organizations providing social help have very few beds or no beds at all for domestic violence victims, and not all special social services are provided. | Information to the authorized healthcare body and akims of oblasts. | Interviewing LPS personnel has revealed that social assistance organizations provide only psychological help, without ensuring physical protection and other services. |
| 17 | The community is annoyed by frequent and repetitive district police inspector reports for the public. | Introduce changes into the Order of the MIA RK No. 1095 dated 29 December 2015 "On the Adoption of the Rules Governing the Activities of District Police Inspectors Charged with Managing the Operations of a District Police Stations, District Police Inspectors and their Assistants". There should be a DPI community report once every six months at most, and the LPS chief should report once per year. | Community surveys on the quality and periodicity of reporting by DPIs demonstrated that these reports are presented too often and they are much too similar. |
| 18 | Courts often use the sanction of a warning for a failure to obey a police officer (art. 667 of the CAO RK). | Introduce changes and additions into art. 667 of the CAO RK eliminating the warning sanction from part 1 of this article and increase the term of administrative arrest up to 15 days. In part 2 art. 667, increase the administrative arrest sanction to 30 days. | Due to the fact that domestic offenders often disobey police officers, it is proposed that sanctions under article 667 of the CAO RK be made stricter, namely, eliminate the warning sanction and increase the term of the administrative arrest to 30 days. |
| 19 | Rural district police inspectors, despite their right to carry firearms, are not provided with them, as there are no means of storing them (no housing or a strongbox with an alarm). | Introduce additions into the Resolution of the Government of the RK No. 1598 dated 24 December 1996 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety", compelling local executive bodies to provide DPIs with strongboxes with alarm systems. | Rural DPIs do not have the necessary arrangements for storing firearms (no housing of their own, strongboxes, or other equipment), which precludes the right to carry a service weapon at all times. This could lead to DPIs themselves becoming victims of violence. |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 20 | Providing rural DPIs with dashboard cameras is currently impossible as district police stations lack technical means for reading information or relaying it to the city/district/line departments. | There should be a mechanism of reading information from dashboard cameras for rural DPIs through the introduction of changes and additions to the order of the Minister of Internal Affairs of the Republic of Kazakhstan No. 971 dated 31 December 2014 "On the Adoption of the Operating Procedures of the Use of Technical Means for the Recording of the Instances of Criminal and Administrative Offences and Actions of the Officers of Internal Affairs Bodies of the Republic of Kazakhstan". | The use of dashboard cameras by the LPS members is substantiated by many factors, and this issue can become a chronic one if today measures are not taken to remedy it. How to do daily information readouts? |
| 21 | DPIs carrying firearms are not let into courts, prosecutor's office, department of internal affairs. A DPI who intends to transfer a domestic offender to a courthouse must first turn in his/her service weapon at a district office of internal affairs. | Introduce the corresponding changes and additions to the Law of the RK dated 23 April 2014 "On Internal Affairs Bodies of the RK" and the Resolution of the Government of the RK dated 24 December 1996 No. 1598 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety". We should extend the uninhibited access to these institutions for DPIs carrying weapons or provide that LPS officers need only transfer offenders to IAB facilities, and interested authorities can themselves then transfer these individuals to service facilities. | Rural DPIs have the permanent weapon carry permit, and upon arriving to meetings at a Department of Internal Affairs or when transferring offenders to a courthouse, they have to leave their service weapons in a service car, which can result in the theft of the weapons. |
| 22 | District police inspectors are misused: 1) collection of fines; 2) search for military conscripts and their transfer; 3) a lot of time is spent on complying with art. 505 of the CAO RK "Violation of Rules of Land Improvements and Public Amenities in Cities and Settlements, as well as Destruction of Infrastructure Facilities, Destruction and Damage to Greenery of Cities and Settlements". | 1) these activities should fall within the competence of judicial enforcement agents, which is why the corresponding additions to the CAO RK are warranted; 2) searching and transferring draft conscripts should be performed by military draft office personnel, and as such, the corresponding additions should be introduced to the CAO RK; 3) introduce changes and additions into the CAO RK to vest in environmental protection police units the powers to initiate proceedings under art. 505 of the CAO RK. | In the public monitoring, over 92% of respondents indicated that the misuse of district police inspectors and their assistance leaves them little time for performing their conventional duties toward the prevention of offences, including domestic violence. |
| 23 | Much time is spent on responding to citizens' admissions into trauma rooms of hospitals with non-criminal bodily injuries and deaths. | Adopt the joint order of the MIA RK and Ministry of Healthcare of the RK which would compel physicians to seek IAB's assistance exclusively in cases where bodily harm is associated with a complaint about an offence or bodily harm that is criminal in nature and resulted in death. | There are many cases where citizens die after a long chronic and terminal illness. Responding to such cases (especially in rural areas) consumes far too much service time. |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 24 | Domestic offenders refuse to pass medical examination. The CAO RK provides for legal liability only for vehicle drivers that refuse to be medically examined. | The CAO RK should provides for liability for refusing to be medically examined applying to all citizens, or provide for involuntary medical examination. | Previously there were legal grounds for compulsory medical examination of citizens in the event of drunkenness or alcoholism (see repealed order of the MIA RK 37 from 1993). Currently there is no practical recourse for holding administratively liable under art. 667 of the CAO RK and conduct involuntary medical examination, which creates significant difficulties for LPS personnel in carrying out administrative offence proceedings. |
| 25 | There remains the problem of non-prompt receipt of notices of prior convictions. | Efforts should be made to set up a mechanism for receiving such a notice, similarly to how a citizen's certificate of civil registration can be obtained through Public Service Centres. | Around 70% of LPS personnel interviewed echoed this opinion. However, for example, Karganda Oblast does not have this problem at all. |
| 26 | Centres for temporary adaptation and detoxification (CTADs) receive only drunk individual apprehended in public places, and often refuse to accept domestic offenders, arguing that they ought to sober up at home, and should be considered drunkards, and not alcoholics. | Introduce changes and additions into the Law of the RK "On IAB RK" and the corresponding regulatory legal acts in respect to the restoration of the institution of medical sobering-up stations within the system of MIA RK. This would enable us to tackle not only the foregoing issue, but would also clarify the situation around the powers vested in prevention actors to transfer citizens to specialized treatment facilities. | Combating alcoholism traditionally falls within the competence of healthcare authorities. Preventing drunkenness, drug addiction and inhalant addiction are not considered police matters. |
| 27 | There exists no legal mechanism for dismissing an administrative offence case in the event that the domestic offender fails to appear in court, or immediately disappears before the arrival of IAB officers. | Introduce the corresponding changes and additions into the CAO RK. Additionally, agency-specific legal acts should be used to develop and introduce the procedure for declaring such offenders as wanted, particularly under articles 73, 73-1, 73-2 of the CAO RK. | The interviews have revealed that in the experience of the IAB LPS personnel, it is a frequent occurrence that a person who has committed disorderly conduct (art. 434 of the CAO RK) or offences in domestic settings (art. 73 of the CAO RK), facing the threat of punishment, decides to abandon his/her permanent place of residence, goes into hiding for two months, in order to evade administrative liability through the expiry of the limitation period. Sometimes, during the administrative offence case proceedings, the offender specifies false place of residence or place of registration that he/she does not actually inhabit. |
| 28 | Often, under parts 1 of articles 73 and 434 of the CAO RK, courts impose an administrative penalty in the form of a warning or fine, and district police inspectors spend much time and effort on enforcing the proceedings. | Introduce the corresponding changes and additions into the CAO RK. Besides authorizing LPS personnel to independently impose administrative penalties under parts one of articles 73 and 434 of the CAO RK, there should be created an institution of criminal imposition of punishment within the CAO RK. | Interviews have demonstrated that a suspended fine should be imposed for all types and cases of domestic violence, but the domestic offender must pay it out only in the event that he/she repeats the offence, which would also entail administrative liability separately for the second offence. This should positively affect the behaviour of domestic offenders and protect the family budget |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 29 | Zero tolerance principle is erroneously equated to the inevitability of punishment, whereas in reality it should consist in the inevitability of IAB personnel responding to all offences. | Introduce the corresponding changes and additions into the CAO RK. In light of excessive repressiveness of sanctions provided under articles of the CAO RK, we should restore the legal institution of dismissing administrative offence cases on account of insignificance. | Reduce the repressiveness toward first-time misdemeanor offenders and those with extenuating circumstances, as well as in the event that the act does not pose a significant public threat. |
| 30 | Courts demand the submission of the certificate of forensic medical examination of the domestic violence victim's beatings. | It is important to explain clear criteria of differentiating between beatings and infliction of light bodily harm, through the order of the MoJ RK No. 484 dated 27 April 2017 "On the Adoption of the Rules of Arranging and Performing Forensic Examinations at Forensic Examination Bodies". We believe that it should suffice it to prove the infliction of physical pain through witness testimony or the certificate of examination of the victim. | In the law enforcement practice, the victim of domestic (physical) violence often avoids seeking forensic medical examination or refuses to undergo medical examination, and law enforcement officers can only hold the offender liable for beatings. Circumstances that need to be proven can be determined on the grounds of other confirming documentation (note of medical care provided, on temporary unemployable status, information on the treatment received, etc.). |
| 31 | District police inspectors in rural areas are not able to detain domestic offenders in time to prevent the offence and initiate administrative case proceedings, as is required by art. 787 of the CAO RK. | Introduce the corresponding changes and additions to the Order of the MIA RK No. 1095 dated 2015. Taking into account the working conditions of rural DPIS, create the capacity for equipping rural district police stations with rooms for temporary detention (for at least 3 hours). | DPI's assistants can be charged with ensuring compliance with the requirements of article 14 of the CAO RK: "a person subjected to administrative detention must be held in conditions that prevent any threat to his/her life and health". |
| 32 | In rural areas remote from rayon centres, DPIS have practically no possibility of ordering a medical examination of persons to establish their use of psychoactive substances or the degree of alcohol inebriation. | Provide DPIS and rural health posts with certified equipment for determining the degree of inebriation. Other solutions: - authorize central rayon hospitals to provide around-the-clock medical examinations; - increase the number of forensic medical examination stations in rural areas. | Pursuant to para. 17 of the Order of the MIA RK No. 1095 dated 29 December 2015 "On the Adoption of Rules Governing the Activities of District Police Inspectors Charged with Managing the Operations of a District Police Stations, District Police Inspectors and their Assistants", DPI and their assistants are authorized to "conduct examination of persons to establish whether or not they used psychoactive substances or are under the influence of alcohol, and, if possible, transfer to healthcare institutions for an examination". For instance, Karaganda Oblast has only two such healthcare institutions, which makes the process of handing over individuals for a medical examination almost impossible. The time it takes for transferring the offender is enough for the level of intoxication to go down. |
| 33 | It often happens in rural areas that citizens (including domestic offenders) have old identification documents without the Individual Identification Number (IIN), which makes it impossible to draw up a report on the administrative offence.. | Introduce the corresponding changes and additions into article 803 of the CAO RK. It was proposed that the information be relayed to the migration service for documentation, using public money, and hold domestic offenders accountable without the IIN. | Art. 803 part 1 para 3 demands that the identification number be produced. If a citizen has the old documents that do not contain the IIN, then the DPI may not hold them administratively liable. There is no instruction as to who is supposed to register such an offender, and how. |

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| 34 | It is extremely difficult to hold a domestic offender criminally liable when he/she threatens the victim with physical violence. | In order for the procedure of holding legally liable for psychological domestic violence to be simplified, article 115 of the CC RK "Threat Made in Domestic Settings" should be moved to the CAO RK. | Threat in domestic settings, as per the Law of the RK No. 214 dated 9 December 2009 "On Preventing Domestic Violence" is classified as psychological domestic violence. Unlawful acts on the part of a domestic offender manifest in the intimidation of the person to whom the offender is domestically related, by means of applying psychological pressure. Methods of threatening can vary: they can be oral or written, addressed directly to the victim, or through third parties, or through the victim's relatives; using a telephone, telegraph, fax or email. |
| 35 | The work of "judicial rooms" significantly hinders the process of holding domestic offenders liable, when in absence of the offender, cases end up dismissed. | Discontinue the operation of "judicial rooms". Materials of these cases should be included in court proceedings on a mandatory basis, while the transfer of offenders to the court room needs to be performed by court enforcement officers. | Order No. 1095 of 2015 excludes the possibility of engaging district police inspectors and their assistants in efforts not associated with their principal scope of activities (patrolling, maintaining public order when holding athletic, holiday and other mass events, guarding facilities, performing involuntary transfers, secondments to other branches etc.). The mechanism of holding offenders liable under art. 434, 73, 73-1, 73-2 of the CAO RK in court should exclude the misuse of DPIs. |
| 36 | In practice, police and prosecutor's office at their own discretion interpret the timeframes of transfer and detention. | In order to ensure uniform use of the terms of transfer and detention under the CAO RK, law makers should offer a clear definition of the points in time that are used to calculate time frames for these compulsory measures by using a Regulatory Resolution of the Supreme Court of the RK or through clear definitions in articles 786–689 of the CAO RK. Art. 128 of the CPC RK should be abolished outright, as the process of involuntary transfer may not be time-limited. | The interviews have revealed that the prosecutor's office confuse the notions of transfer and detention, while also confounding the notions of detention for administrative offences and criminal procedural detentions; on top of that, the prosecution tends to unjustifiably initiate disciplinary proceedings against LPS officers. Any transfer should be performed as soon as possible. |
| 37 | Violating a protective restraining order and violating special behaviour requirements both entail the same maximum sanction in the form of administrative arrest for 5 days. | Adopt a specialized regulation of the CAO RK for non-performance of art. 54 of the CAO RK with a more severe sanction, compared to the article 461 sanction for violating a protective restraining order. | In essence, violating special behaviour requirements for the offender, administrative penalty should be more severe, as the terms of determination and restriction applied to the domestic offender are of a more repressive nature. |

| N | Problem | Ways of resolving, and exp. results | Rationale behind concl. and |
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| 38 | IAB LPS officers practically always handle domestic offences on their own. Without influencing the psychology of domestic conflict participants, IAB LPS officers' efforts are inefficient. | Introduce changes and additions into the Law of the RK "On Preventing Domestic Violence". Psychological correctional measures should be applied not only to domestic violence victims, but also to the domestic offenders. | There is a justified need to develop psycho-correctional programmes for all domestic conflict participants: newlyweds, inter-ethnic and inter-cultural mixed families and other participants. To this end, international best practices (Duluth, MN; Moldova, etc.) should be introduced, and the Law of the RK "On Preventing Domestic Violence", as well as the codified legislation, should be amended to provide for a compulsory involvement in psycho-correctional programmes. |
| 39 | Due to large physical distances between juvenile courts and rural regions, it takes a lot of money and time to prosecute parents for failing to perform their parental duties. | Introduce changes and additions into art. 684 of the CAO RK and authorize specialized administrative courts of rural areas to independently make decisions under art. 127 of the CAO RK. | Over 75% of interview respondents reported that Kazakhstan does not have enough juvenile courts, which significantly distracts LPS officers (specifically, district police inspectors for affairs of minors), forcing them to transfer parents from troubled families to juvenile courts in order for administrative measures could be applied to them. |
| 41 | District police inspectors' frequency of presenting performance reports for the community turns it into a formal procedure. | Amend the Order of the MIA RK No. 1095 dated 29 December 2015 "On the Adoption of the Rules Governing the Activities of District Police Inspectors Charged with Managing the Operations of a District Police Stations, District Police Inspectors and their Assistants" to change the frequency of presenting DPI reports before the community. | DPI's community reports in urban settings and rayon centres should be presented not by every DPI, but the district police station, and namely, the DPI responsible for the operations of said police station. |
| 42 | In almost all regions, LPS members are bound to collect fines. | Introduce the appropriate changes and additions into the Resolution of the Government No. 1598 from 24 December 1996 "On the Enhancement of the Role of District Police Inspectors of Internal Affairs Bodies in the Efforts to Maintain Public Order and Ensure Public Safety", eliminating the adverse practice of involving LPS members in the process of collecting fines from offenders. | In Karaganda Oblast, district police inspectors are punished for the fact that citizens fail to pay their fines (over 170 members surveyed). It is very strange that it is citizens that are at fault, but police officers get punished! |
| 43 | Imposing a fine for non-payment of a fine is an ineffective compulsory measure for coercing to pay the fine. | We propose to introduce new sanctions into the CAO RK in the form of community service. | Non-performance of court rulings on the payment of fines under article 669 of the CAO RK again incurs a fine of 10 monthly calculation indices, while the debtor is unable to pay out the first debt, and, obviously, ends up unable to pay any subsequent fines. As such, other kind of fines should be imposed. In the Code of Administrative Offences of the USSR (1984) there was a sanction involving correctional labour. |

| No | Problem | Ways of resolving, and exp. results | Rationale behind concl. and solutions |
|----|--|---|---|
| 44 | Insufficient professional capacity of LPS personnel. | Introduce proposals into the curriculum of post-graduate education of the Kostanay Academy of the MIA RK on arranging higher attestation courses for LPS chiefs and professional development courses for DPIs and women protection units. Explain the operating procedures for LPS personnel in the order of the MIA RK No. 713-2013 on IAB personnel responding to domestic violence incidents. | With a view to enhance professional capacities of LPS chiefs, the latter should be regularly (once in two years) sent to professional development courses at the Sh. Kabylbayev Kostanay Academy of the MIA RK which trains administrative law specialists. Afterwards, chiefs should impart the new knowledge upon their underlings. |
| 45 | When issuing a protective restraining order, the Almaty city prosecutor's office demands that a district police inspector get fingerprints off the domestic offender. The process of notifying the prosecutor's office about the protective restraining order is no different from the process of imposing a sanction. | Explain the Order of the Prosecutor General of the RK No. 68 dated 30 June 2017 "On the Adoption of the Rules of Keeping and Using the Monitoring Lists of Individuals Who Have Committed Criminal Offences, Been Held Criminally Liable, Persons Held Criminally Liable for Committing Criminal offences and Fingerprint Monitoring of Detainees in Custody and Convicted Individuals". | No regulatory legal acts provide for the procedure of taking fingerprints from persons in respect of which a protective restraining order is issued. |

Section 3. Monitoring Recommendations

Conclusions presented in this section were drawn through auditing the legal groundwork of the operation of the local police service (LPS) of internal affairs bodies (IAB), analysing their authority and examining measures for preventing domestic violence used by the local police force members, as well as consolidating the survey results. Conclusions, rationale and recommendations based on the interview results are presented in sub-section 2.2 of this monitoring.

Our recommendations can be used not only with a view to improve the national legislation, but also in research, law enforcement activities of the LPS and other law enforcement agencies of the Republic of Kazakhstan, as well as in the operations of other domestic violence prevention actors.

Practical value of the public monitoring's findings lies in the derivative proposals for the development of new and improvement of existing legislative and other regulatory legal acts of the Republic of Kazakhstan that govern legal relations in the area of preventing domestic offences; for the optimal and effective engagement of prevention actors and the community in addressing this issue, and adjusting their legal status.

Applied value of these results consists in their focus on improving the arrangements and enhancing the effectiveness

of preventive efforts mounted by the Kazakhstani IAB LPS, and primarily by district police inspectors who are charged with maintaining public order and personal protection of citizens from possible unlawful phenomena in domestic settings.

The study of domestic violence prevention competences of the IAB LPS was conducted within the framework of a competitive analysis of IAB competences provided for under specialized laws on the prevention of various kinds of offences. In this regard, the following recommendations are warranted:

- 1) article 10 of the Law of the RK "On Preventing Domestic Violence" should be expanded with a new paragraph 18 reading as follows: "exercise other powers provided for by the legislation of the RK", with the elimination of paragraph 2 of this article;
- 2) in their efforts to combat domestic violence, IAB should utilize, alongside measures of individual prevention, also special and individual measures of prevention of domestic violence, as provided for by the Law of the RK "On Preventing Offences". In our opinion, this legal provision should be a part of the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Child Abandonment" (9 July 2004, No. 591);
- 3) besides measures of individual prevention of offences, the IAB LPS must take

- general measures of preventing offences listed in article of the Law of the RK "On Preventing Offences";
- 4) efforts should be made to initiate the preparation and adoption of a new compound Law of the RK "On Preventing Offences", along with the accompanying Law of the RK that would assimilate the specialized laws:
 - "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment". Law of the RK of 9 July 2004 No. 591;
 - **"On Preventing Domestic Violence"**. Law of the RK of 4 December 2009 No. 214-IV ZRK;
 - "On Preventing Offences". Law of the RK of 29 April 2010 No. 271-IV ZRK.
 - "On Compulsory Treatment of Persons Afflicted by Alcoholism, Drug Addiction and Inhalant Addiction". Law of the RK of 7 April 1995 No. 2184.
 - 5) correspondingly, should such a new compound law "On Preventing Offences" be enacted, there will be a need to develop a specialized agency-based legal act of the MIA RK concerning the implementation of said law and provisions on uniform recordkeeping on the measures taken toward individual prevention of offences;
 - 6) legal grounds for addressing citizens' petitions are found in various agency-specific legal acts, but all these samples and rules of keeping (filling out) of books are kept in a fragmented state, which makes it difficult to use those in practice. We recommend developing comprehensive Operating Procedures of the MIA RK which would govern the entire set of measures incorporating the activities of IAB units related to the receipt and handling of complaints and petitions from citizens;
 - 7) visiting victims of domestic violence, providing them assistance and referring to healthcare organizations must remain a right of domestic violence victims, but not their duty, even upon receiving a referral from IAB;
 - 8) laws of the RK authorize all prevention actors—and not just IAB—to conduct "preventive conversations". As such, it is reasonable to conclude that para. 8 of article 10 should be omitted from the Law of the RK "On Preventing Domestic Violence". A second option for addressing this issue could consist in rendering all laws of the RK free from regulations that provide for the procedure of conducting a preventive conversation, with the exception of the Law of the RK "On Preventing Offences".
 - 9) para.9 and para 12 of article 10 of the Law of the RK "On Preventing Domestic Violence" should be merged, as it is impossible to detain a domestic offender without first transferring him. Another option is removing these paragraphs 9 and 12 from the Law, as this would have no effect on the process of preventing domestic violence. Authority to transfer and detain is provided under the Law of the KR "On Internal Affairs Bodies" and the CAO RK.
 - 10) Pursuant to the Law of the Republic of Kazakhstan "On Internal Affairs Bodies", the chief of a local police service is the deputy of chief of IAB, and he/she must not have greater jurisdiction in the application of administrative control measures on an offender. It then follows that the chief of an IAB must have the power to issue a protective restraining order against a person who has committed an offence in domestic settings.
 - 11) in part one of article 20 of the Law of the RK "On Preventing Domestic Violence", it is advisable to omit the last sentence: "In the event of a refusal to sign, the protective restraining order shall include a corresponding note", as this contravenes a foregoing phrase therein: "...in the absence of grounds for...". Refusal to sign a protective restraining order on the part of the offender is exactly the grounds for detaining in lieu of a protective restraining order, as this is the offender's way of saying that he/she will not comply with legal restrictions applied to his/her behaviour specified in the restraining order.
 - 12) IAB officers may issue protective restraining orders prior to the commission of an offence, without having to receive a complaint from a potential domestic violence victim, which contravenes the requirement of taking "into account the opinion of the domestic violence victim". In this regard, we propose that the words "taking into account the opinion of the victim" be omitted from part one of article 20 of the Law of the RK "On Preventing Domestic Violence";
 - 13) para. 11 art.10 of the Law of the RK "On Preventing Domestic Violence" should be omitted. The Law of the RK of 18 February 2014, No. 175, introduced a new procedure for the issuance of protective restraining orders which excludes the prosecutor's office's capacity to extend the time of a protective restraining order;
 - 14) The Law of the RK No. 175 dated 18 February 2014, part 1 article 54 was amended, and previously, only IAB could move before the court to impose special behaviour requirements for the offender. In this regard, it is reasonable to conclude that the version of the IAB competence in question is obsolete, and its availability in article 10 is of no consequence.
 - 15) article 27 of the Law of the RK "On Preventing Offences" and article 22 of the Law of the RK "On Preventing Domestic Violence" can also be omitted, using references to indicate that such a measure is taken under the procedure provided for by CAO RK. These articles differ in their contents, while the introduction of changes and additions to them is not always synchronized, which could lead to certain issues in IABs' law enforcement practices;
 - 16) the probation service has placed under monitoring a large number of citizens who have committed criminal domestic offences,

which is why the probation service should also be considered an actor involved in the prevention of offences, including domestic violence. In this regard, para. 18 article 10 of the Law of the RK "On Preventing Domestic Violence" we propose to amend to read similarly to para. 9 article 7 of the Law of the RK "On Preventing Offences": "performs criminal prosecution, probation control, administrative offence proceedings". The second method is, in our opinion, the most advisable, and involves the omission of paragraph 14, as it is sufficient to rely on the legal regulation offered by the Law of the RK "On Preventing Offences";

- 17) for purposes of a uniform application of the codified legislation nationwide, MIA RK should issue an order adopting samples of documents that are used in the activities of the IAB LPS;
- 18) measures of procedural compulsion are, in their nature, not measures of preventing offences, but measures of criminal procedural compulsion and are governed by section 4 of the CPC RK. In this regard, it is reasonable to suggest that paragraph 16 of article 10 and article 23 of the Law of the Republic of Kazakhstan "On Preventing Domestic Violence" be omitted;
- 19) existence of para.17 in article 10 of the Law of the RK "On Preventing Domestic Violence" is not important, as a similar competence is provided under para. 10 article 7 of the Law of the RK "On Preventing Offences". If internal affairs bodies were to hold courses and other training events on domestic violence prevention for other organizations and the public at large, then establishing such a function in the Law would have been warranted;
- 20) chapter 3 of the Law of the RK "On Preventing Domestic Violence" should not mirror the Law of the RK "On Preventing Offences" — instead, it should specify certain unique features. Otherwise, this full redundancy renders it pointless to establish measures of preventing domestic violence. 21) contents of article 19-3 of the Law of the RK "On Preventing Offences "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" and article 19 of the Law of the RK "On Preventing Domestic Violence" do not differ in any significant way in terms of the mechanism of conducting preventive conversations from provisions of article 25 of the Law of the RK "On Preventing Offences". Therefore we believe that there is no need to explain the notions and procedure of conducting this measures of individual prevention in all the laws. It then follows that the aforementioned articles 19-3 and 19 of the laws compared should be omitted;
- 22) paragraph 2 should be omitted from part 2 article 17 of the Law of the RK "On Preventing Domestic Violence". The notion of transfer, causes, timeframes and the procedure of a transfer are governed by a superior law (CAO RK), which is why there

is no need to duplicate the procedure of transfer in other laws;

- 23) Kazakhstani IAB LPS officers must issue protective restraining orders without taking into account the use of transfer and detention of the domestic offender. In this regard, this problem needs to be resolved by an explanation through the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan from 9 April 2012, No. 1, "On the Use of Measures of Enforcing Proceedings and Other Issues of Administrative Law Enforcement", or through the introduction of corresponding changes and additions to article 786 of the CAO RK.
- 24) article 788 of the CAO RK should be amended to provide for administrative transfer to an IAB facility of persons who have committed an administrative offence in a domestic setting, namely in articles 73, 73-1, 73-2 and 461 of the CAO RK.
- 25) protective restraining order's prohibitions must not cover oral and telephone conversations that do not purport to inflict psychological (emotional) violence. For instance, a domestic offender could ask by telephone if he/she could visit the house and collect personal belongings;
- 26) protective restraining orders should not eliminate contacts that are based on justifiable reasons; for instance, in the event of an illness of the child of the parties. Such situations must be provided for ahead of time and be taken into account during the very issuance of the protective restraining order. For instance, contacts related to meetings with the child or division of property can be scheduled provided that there will be social workers or other third parties present.
- 27) in part 1 of article 20 of the Law of the RK "On Preventing Domestic Violence", it should be noted that the words "taking into account the victim's opinion" must not preclude IAB officers from making a final decision on issuing a protective restraining order. Where there is no certainty that domestic violence will not continue, or that a domestic conflict will not transform into its more severe forms, then the protective restraining order should be utilized at the discretion of the IAB officer;
- 28) part 1 article 21 of the Law "On Preventing Domestic Violence" provides an outdated and erroneous definition of administration detention, which was previously available in an old edition of the CAO RK, in force until 1 January 2015. Administrative detention is not a short-term deprivation of liberty, but a restriction of liberty. Article 21 of the Law "Preventing Domestic Violence" does not specify any particularities in the use of administrative detention, thus, the existence of this article in the law is of no value;
- 29) para. 5 article 17 of the Law of the RK "On Preventing Domestic Violence" does not provide for features of the use of any compulsory measures of medical nature, and duplicating the Law of the RK "On Preventing Offences" serves no purpose.

- 30) it then follows that changes are warranted for part 1 article 54 of the CAO RK, without specifying the lowest limit of the term of the use of the measure of individual prevention in the form of the imposition of special behaviour requirements for the offender;
- 31) Article 54 of the CAO RK has the superior status relative to the provisions of the laws being compared. Part 3 and 4 of the Law of the RK "On Preventing Domestic Violence" partially duplicates the provisions of article 54 of the CAO RK. Article 22 of the Law of the RK "On Preventing Domestic Violence" does not contain any unique features regarding the mechanism of imposing special behaviour requirements for the individual who has committed domestic violence, which is why this regulation serves no purpose;
- 32) legal grounds for the use of measures of administrative punishment are provided for in the Law of the RK "On Preventing Offences", which is why duplicating this measure of individual prevention in the Law of the RK "On Preventing Domestic Violence" also serves no purpose. Similar conclusions also apply to the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment";
- 33) paragraph 8 article 17 of the Law of the RK "On Preventing Domestic Violence", both by number and contents, fully mirrors the Law of the RK "On Preventing Offences" and is missing from the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment", which is completely illogical. Para. 8 article 17 of the Law of the RK "On Preventing Domestic Violence" does not contain any unique features regarding the mechanism of the use of this measure of preventing domestic violence, which is why this provision serves no purpose;
- 34) it is worth also noting certain other issues and deficiencies of statutory regulation of the use of measures of preventing offences, including domestic violence:
- articles 19–23 of the Law of the RK "On Preventing Domestic Violence" are dedicated to refining the measures listed in paragraph 2 article 17. However,

such measures as transfer to internal affairs body facilities, administrative penalty, termination and restriction of parental rights and measures applied following the sentencing are not represented even as references;

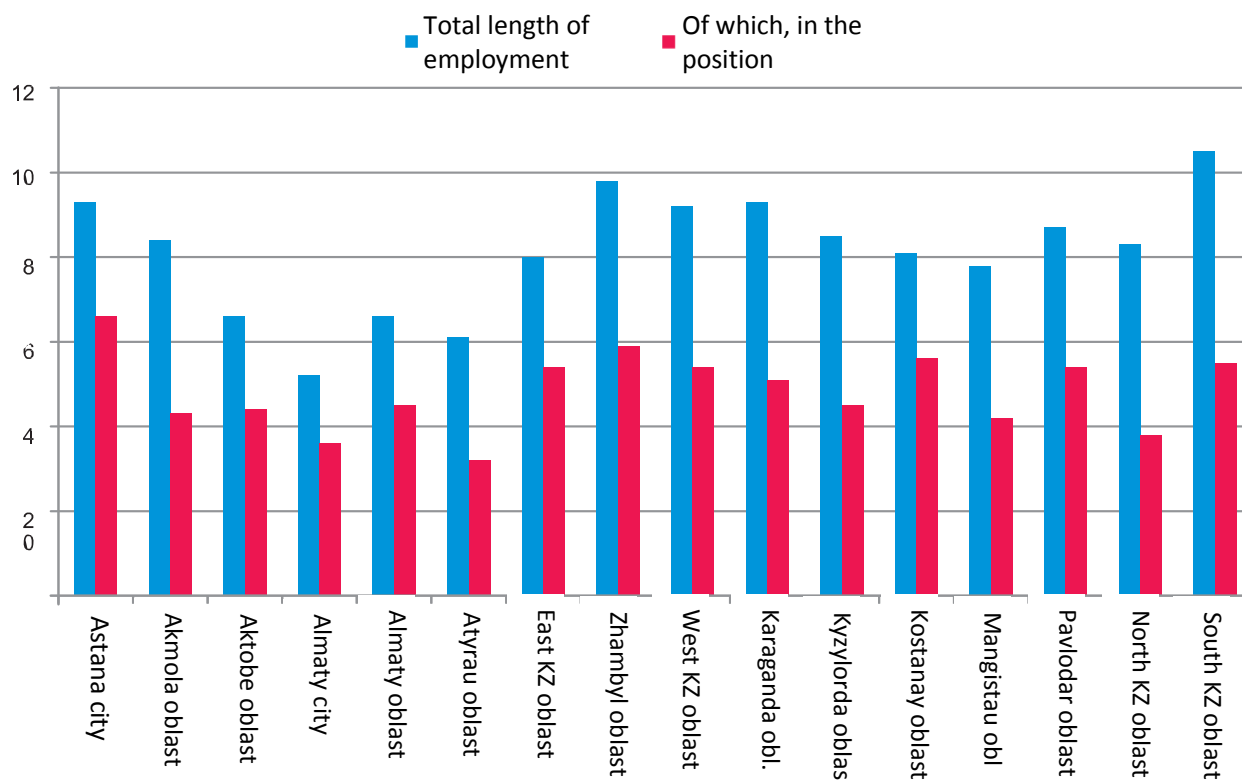
- apart from pointless duplication of certain measures of individual prevention from the Law of the RK "On Preventing Offences", contents of paragraphs 3 and 4 of article 17 mirror paragraphs 3 and 4 of article 23 of the Law "On Preventing Offences", which is also pointless;
- it should be noted that measures of domestic violence prevention are represented solely by measures of individual prevention. The Law does not provide for general and special measures of prevention, which would have consisted in identifying social phenomena and processes that can trigger domestic violence;
- when defining the prevention of domestic violence, the Law of the RK "On Preventing Domestic Violence", just like in the laws compared, specifies that it is a complex of legal, economic, social and organizational measures. Correspondingly, the Law lacks any economic, social or other measures aimed at prevention. As such, in the setting of definitions of the terms used, the Law attempts to cover a wide range of preventive measures. However, there are no regulations that enable actors to effectively perform preventive activities;
- in the laws compared, regarded as measures of individual prevention are "preventive monitoring and control" paras. 5 and 3). It is sound that this measure is missing from the Law of the RK "On Preventing Domestic Violence". However, the existence of these measures in the Law of the RK "On Preventing Offences Among Minors and Preventing Child Neglect and Abandonment" is completely unfounded, as it constitutes merely additional duplication of the Law of the RK "On Preventing Offences".

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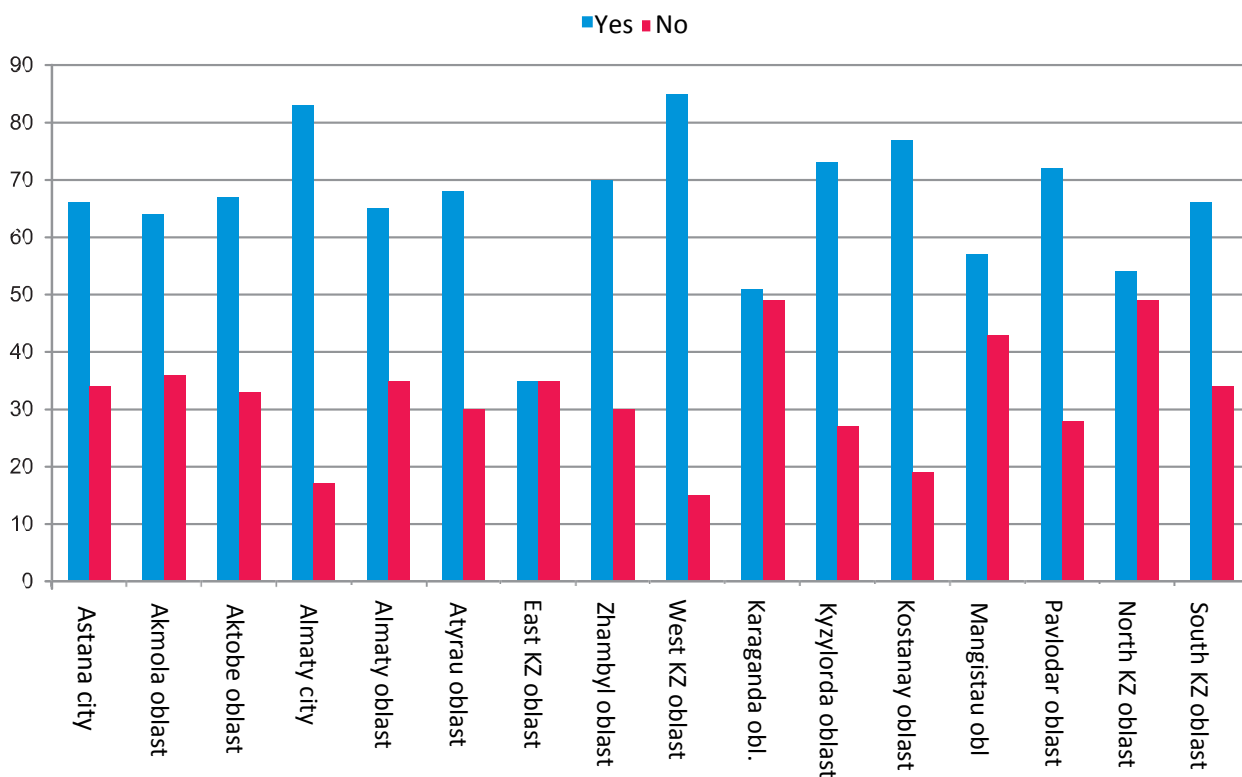
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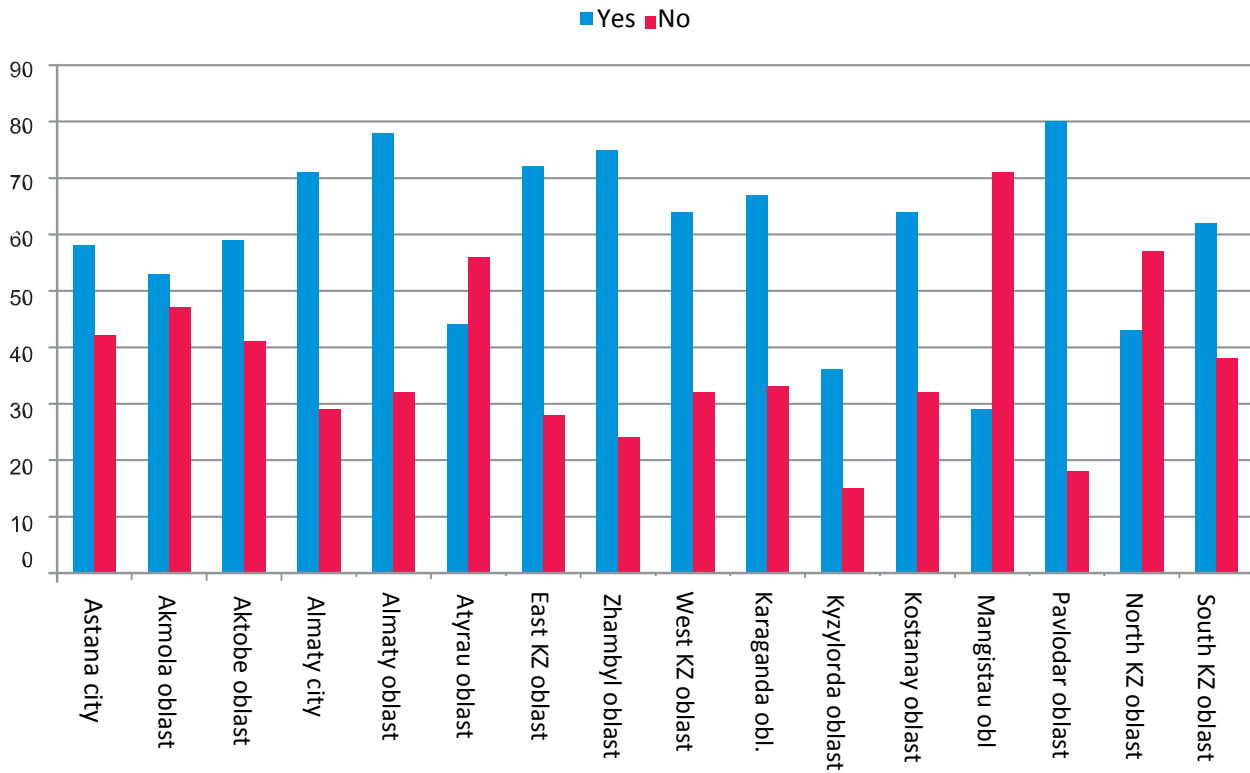
Length of service of LPS personnel surveyed



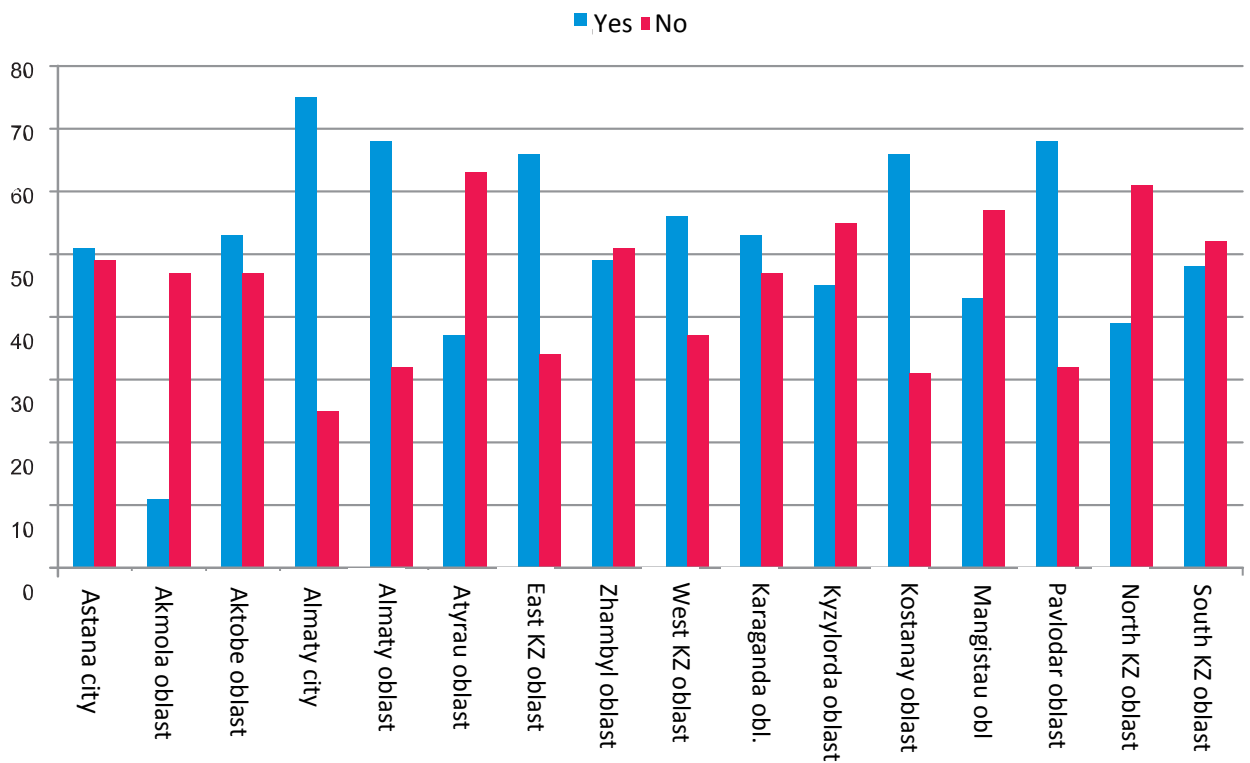
Should preventive monitoring be placed on persons in respect of whom a restriction has been imposed under art.165 of the CPC RK "Barring Order"



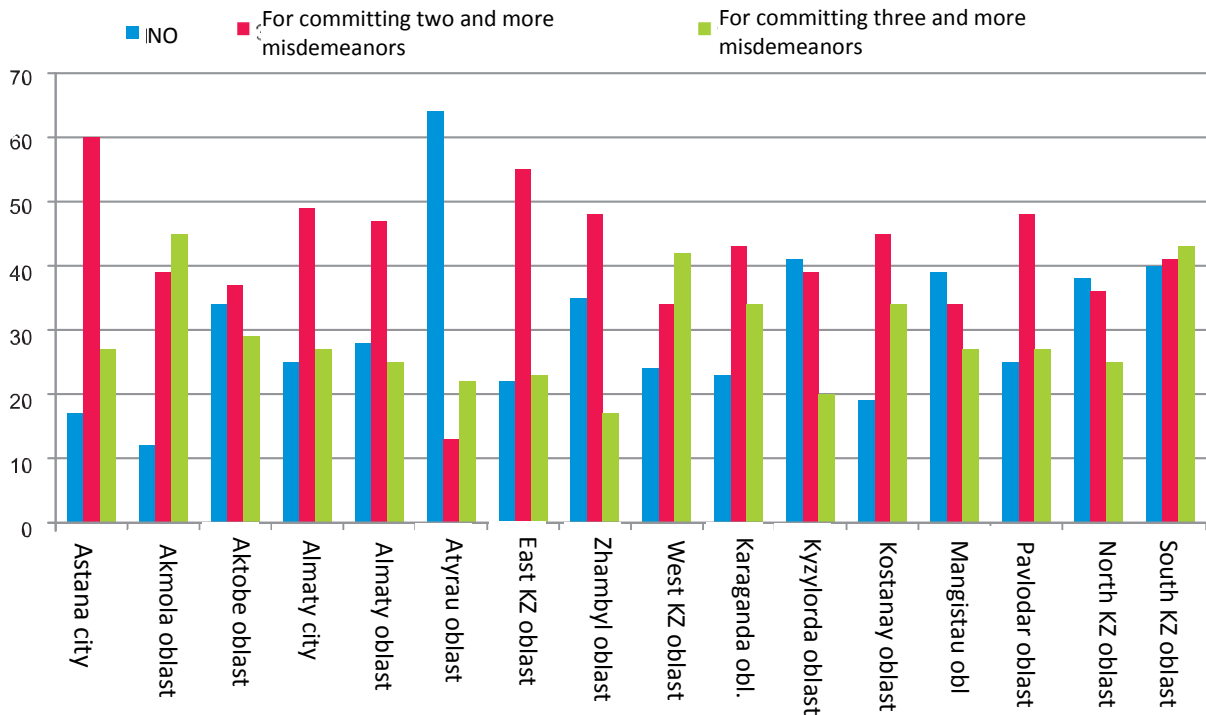
Should the IABs be authorized to temporarily evict a domestic offender from their permanent place of residence if no other domicile is available to them?



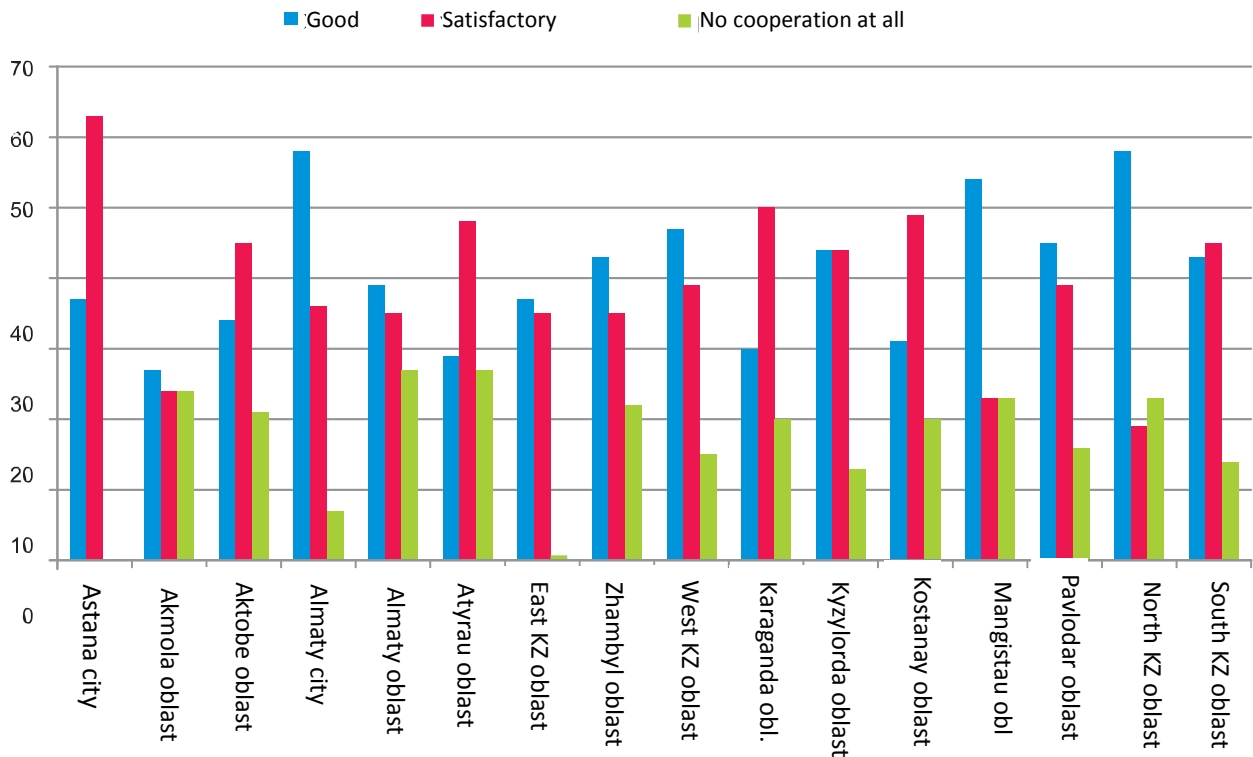
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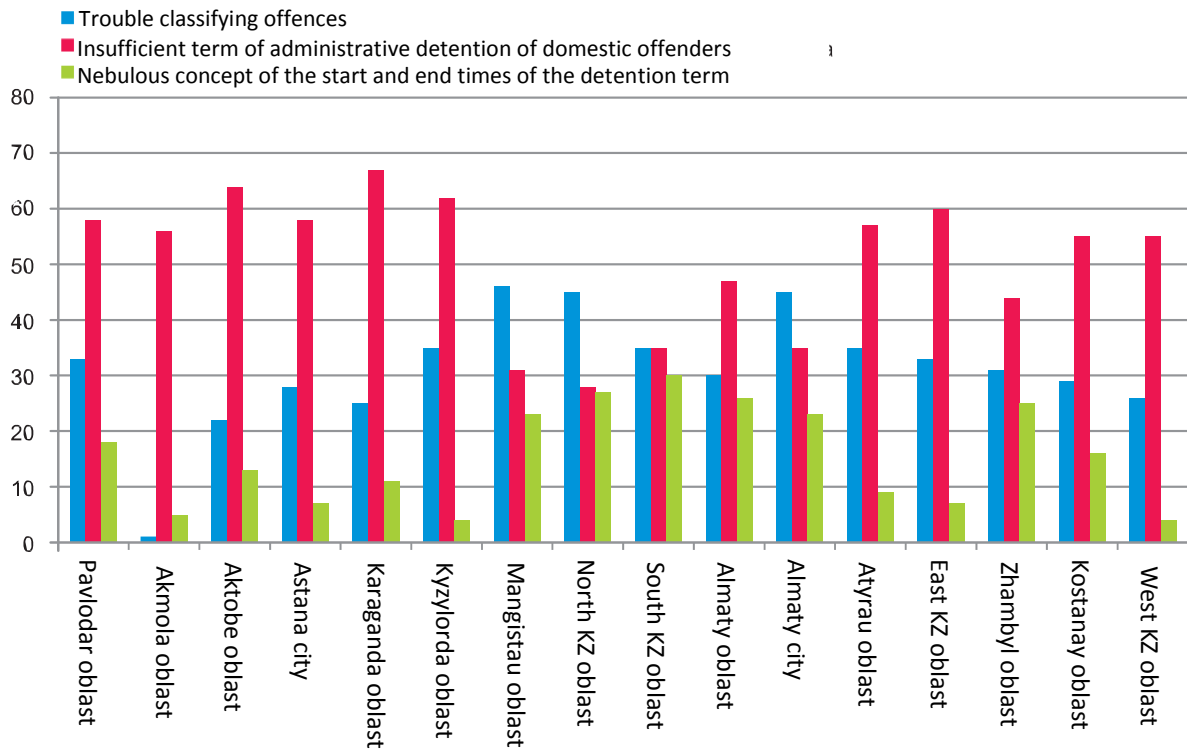
Should citizens be held criminally liable for systematic violations of art. 73 of the CAO RK (the collateral estoppel principle)?



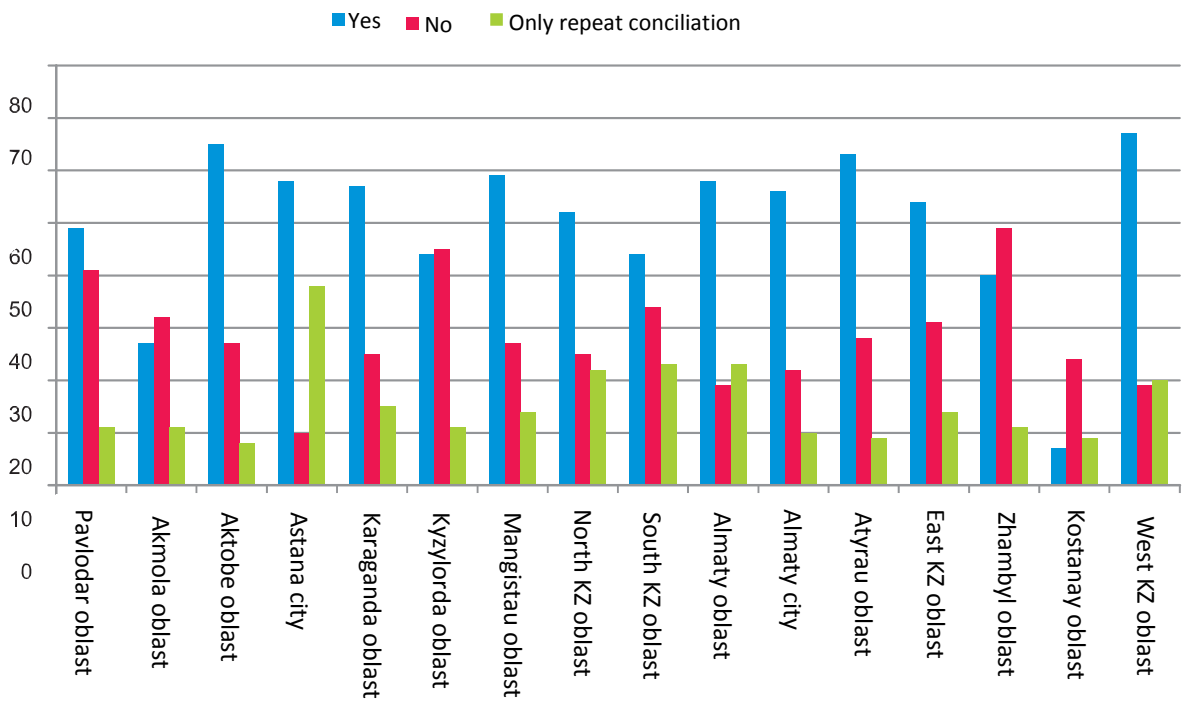
How would you rate inter-agency interaction of domestic violence prevention actors in your region?



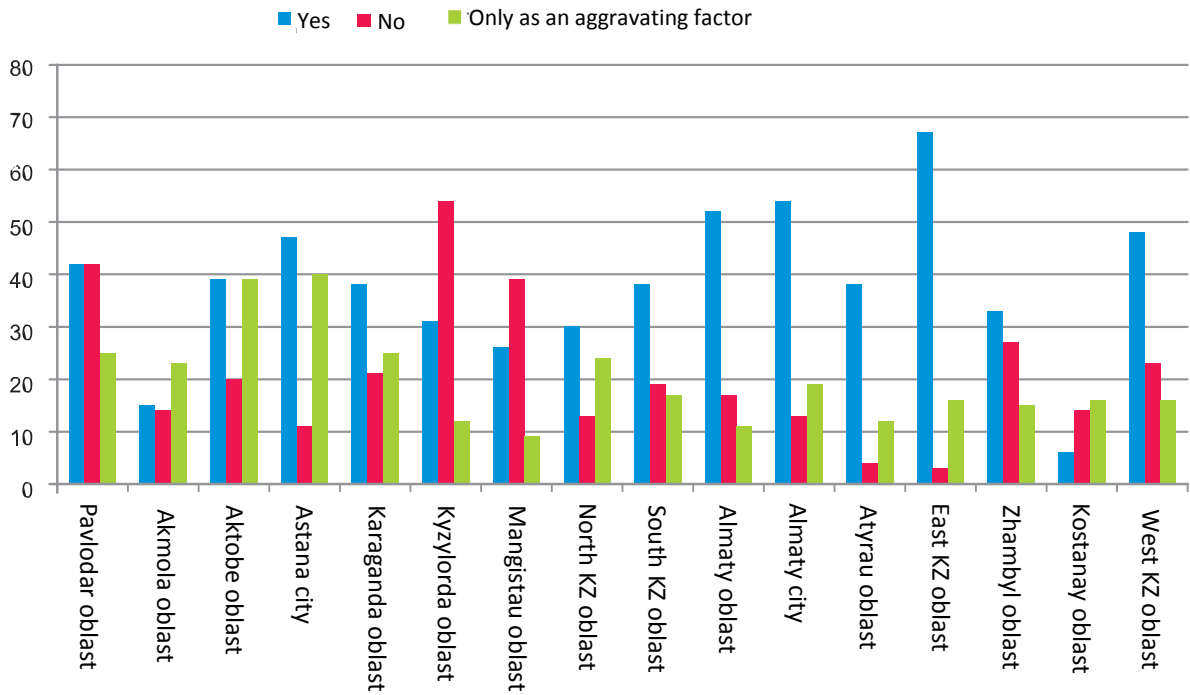
Have there been issues in the law enforcement practices of IAB following the enactment of the new codified legislation?



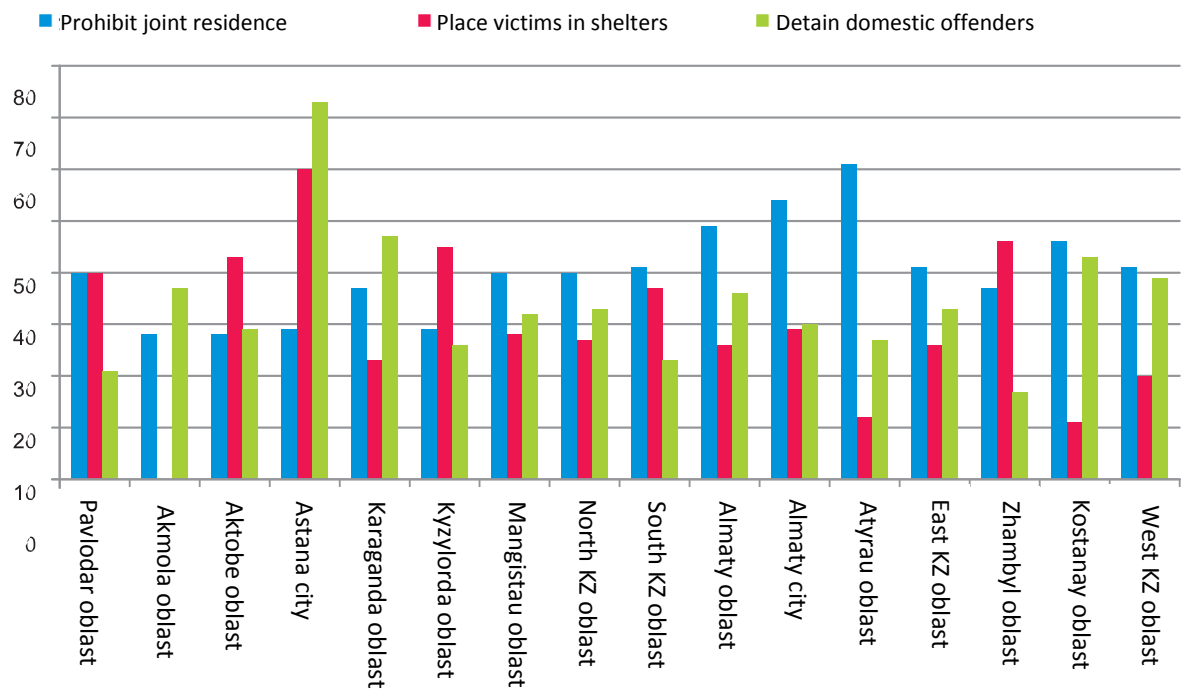
Do conciliation procedures pose an obstacle for preventing domestic violence?



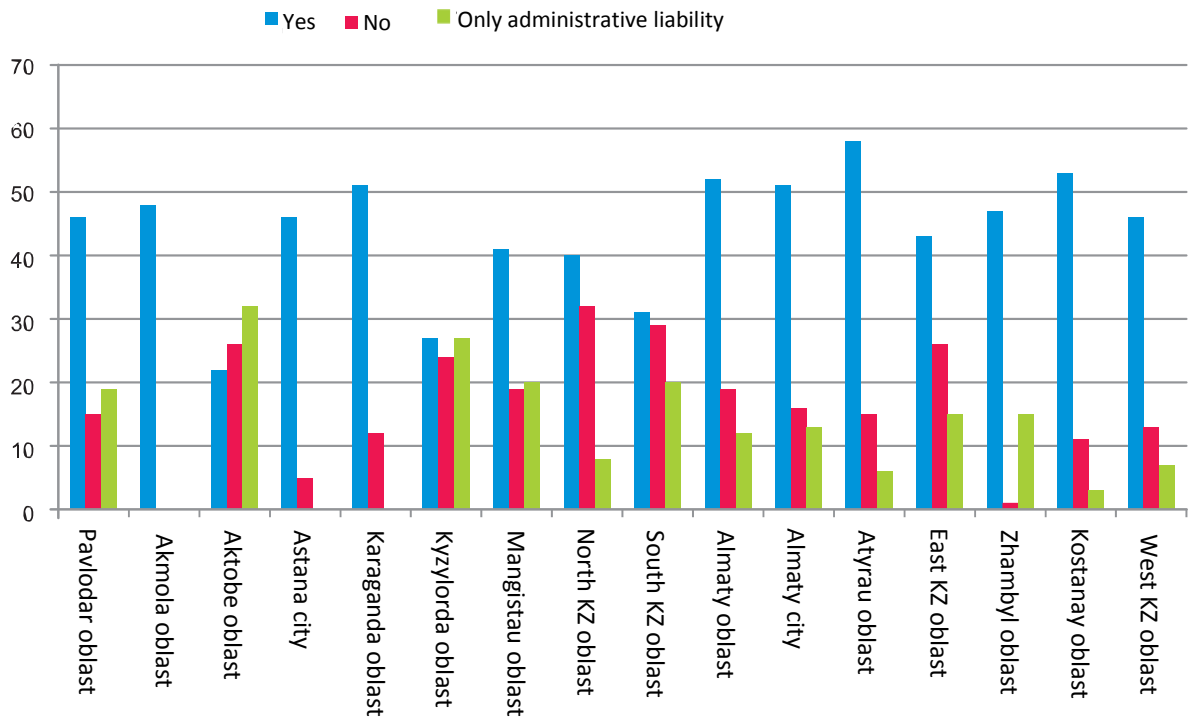
Should there be a legal fact of the commission of an offence in the presence of underage children?



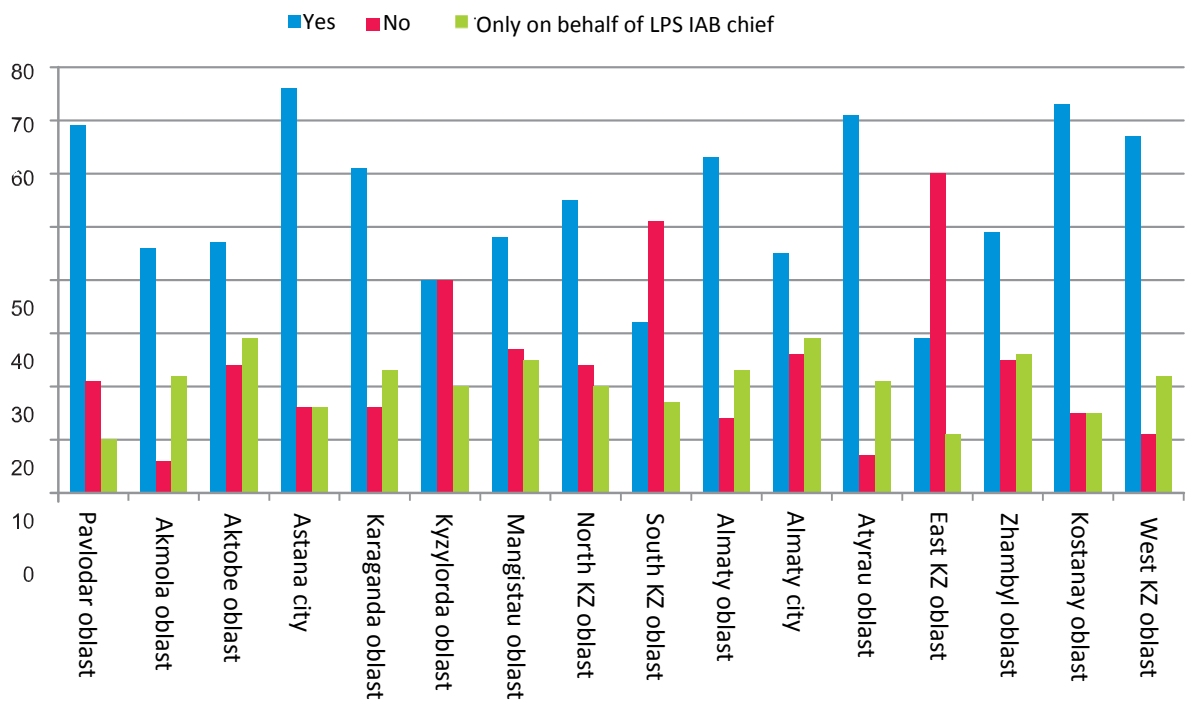
How would you eliminate contacts between the conflicting parties in domestic settings?



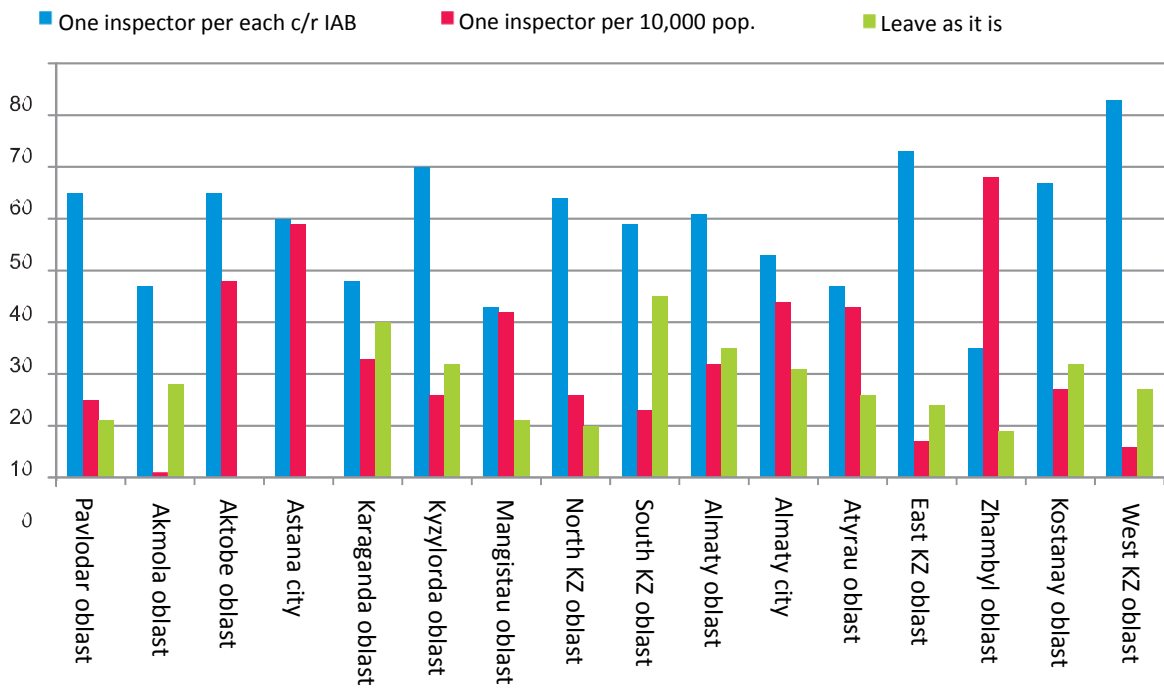
Should legal liability be incurred for coercion to abortion or involuntary sterilization?



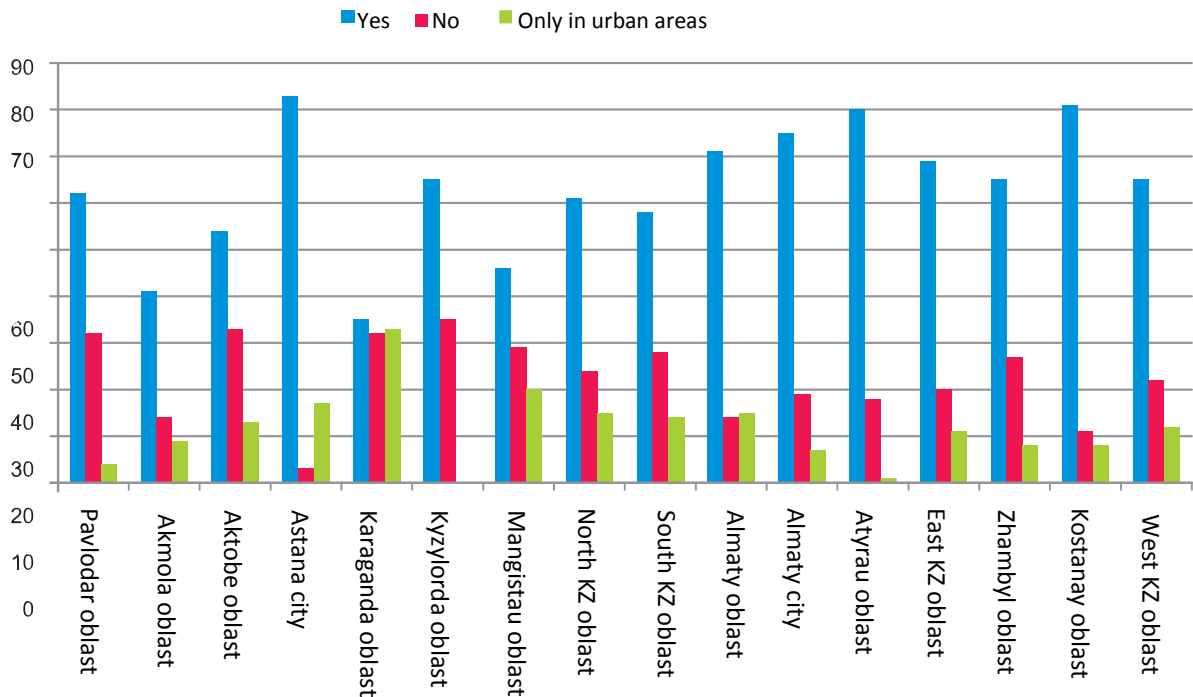
Should women protection unit personnel be authorized to issue protective restraining order on their own?



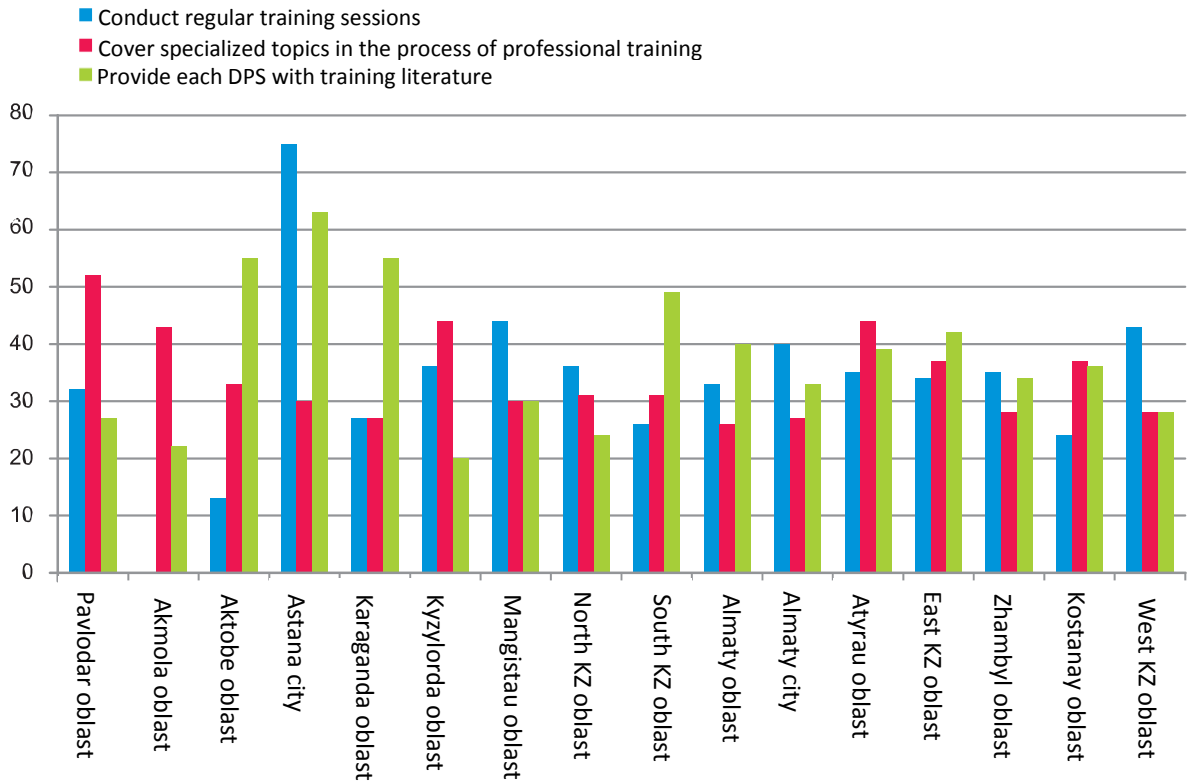
How large should women protection unit staff be?



Does the multifunction role of DPis matter in preventing domestic violence?



How should the professional capacity of the IAB LPS be enhanced?



REPORT
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Korneytchuk S.V., Gladyr N.S.

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