



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2416/2014\*, \*\*

<i>Communication submitted by:</i>	Bakytgul Suleymenova (represented by counsel, Bakhytzhan Toregozhina)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	10 May 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 10 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	17 July 2019
<i>Subject matter:</i>	Apprehension and conviction for an administrative violation; imposition of a fine for conducting an unauthorized mass event
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Freedom of association; freedom of expression; right to a fair trial
<i>Articles of the Covenant:</i>	14, 19 (2) and 21
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communication is Bakytgul Suleymenova,<sup>1</sup> a citizen of Kazakhstan born in 1959. She claims that the State party has violated her rights under articles 14, 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel.

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication:  
Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

<sup>1</sup> The author is a civil society activist, a member of the social movement “Leave housing to people”.



**The facts as submitted by the author**

2.1 On 1 October 2013, the author, together with some 200 other persons, arrived in Astana<sup>2</sup> and gathered in front of Government House to hand over their petition to the President of Kazakhstan. The petition concerned housing issues and dishonest banks and loans in Kazakhstan. The visit was planned beforehand by the social movement “Leave housing to people”. The Government was informed about it through the Internet and by telegram.

2.2 On the same date, two officials (one of whom was the First Vice-Minister for Regional Development) spoke to the crowd and promised to announce the authorities’ decision before lunchtime. The crowd peacefully remained near Government House. By 4 p.m. no one from the Government had appeared and the crowd started to chant “Nazarbayev, help!” Thereafter, the police started to arrest people and to take them to the different departments of internal affairs in Astana.

2.3 The author was one of those apprehended. On the same day, she was brought before the Specialized Inter-district Administrative Court of Astana. She was found guilty of participating in an unauthorized mass event under the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations and article 373 (3) of the Administrative Offences Code<sup>3</sup> and ordered to pay a fine of 18,520 tenge (approximately \$50).

2.4 On 3 October 2013, the author appealed the decision of the Administrative Court to the Astana City Court; but her appeal was dismissed on 21 October 2013.

2.5 Subsequently, she lodged two complaints: one, on 22 January 2014, to the Prosecutors Office of Astana and another, on 14 March 2014, to the General Prosecutor’s Office, under supervisory review proceedings, contesting the judgment of 1 October 2013. Her requests were rejected by the Prosecutor’s Office of Astana on 24 February 2014 and by the General Prosecutor’s Office on 24 April 2014. She explains that she has exhausted all available domestic remedies.

**The complaint**

3.1 The author claims that the State party has violated her rights under articles 14, 19 (2) and 21 of the Covenant. The Government was aware that a group of people would hand over a petition to the President, but the authorities ignored the gathering and failed to properly communicate with the crowd. According to the author, the right to address the President and to draw his attention to social issues cannot be regarded as unlawful. The gathering near Government House was peaceful and did not pose a threat to the interests of national security or public safety or the protection of public health or morals or the rights and freedoms of others. Moreover, the crowd was asked to wait for a decision near Government House. However, the crowd’s requests were disregarded and people were violently arrested by the police and fined or sentenced to administrative detention.

3.2 The author submits that, in her case, the conviction and administrative sanction imposed were the consequence of her holding a public assembly that had not been permitted by the local authorities. She maintains that, under such circumstances, her conviction constitutes restrictions on her freedom of assembly. She submits that the above restrictions are not compatible with article 21 of the Covenant.

3.3 The author notes that, according to the Committee’s jurisprudence, any restrictions on the right to freedom of assembly must fall within the permissible limitations of article 21 of the Covenant. She submits that the police and the courts did not provide any justification for the imposition of restrictions on her freedom of assembly and, accordingly, the administrative sanctions imposed on her constituted an unjustified limitation on her right to freedom of assembly, as protected by article 21 of the Covenant.

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<sup>2</sup> On 27 March 2019, Astana was renamed Nur-Sultan.

<sup>3</sup> See unofficial translation at [http://adilet.zan.kz/eng/docs/K010000155\\_](http://adilet.zan.kz/eng/docs/K010000155_).

3.4 The author asks the Committee to urge the State party to hold accountable the persons responsible for the violation of her rights and to compensate her for moral damage; to ensure that the unjustified restrictions on freedom of assembly and freedom of expression are removed and that the relevant legislation is in line with articles 19 (2) and 21 of the Covenant; and to guarantee that the organization of peaceful assemblies and the expression of opinion do not result in punishment.

#### **State party's observations on admissibility**

4.1 In a note verbale dated 28 January 2015, the State party submitted its observations on admissibility, arguing that the communication was inadmissible and unsubstantiated under article 5 (2) (b) of the Optional Protocol. The State party submits that article 40 of the Administrative Offences Code provides for an exceptional procedure under which the author could have requested the Prosecutor General to initiate supervisory review proceedings in her administrative case before the Supreme Court. By failing to resort to this procedure, the author has failed to exhaust domestic remedies.

4.2 The State party recalls that the rights enshrined in articles 19 and 21 of the Covenant are subject to certain limitations. While stating that freedom of peaceful assembly is not prohibited in Kazakhstan, the State party explains that there is a certain procedure to follow in order to organize an assembly. The State party refers to articles 2, 7, and 10 of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, according to which: the organizers should request an authorization from the local executive authorities to hold an assembly; the local authorities can prohibit a mass event that has an illegal aim or the conduct of which threatens public order and the safety of citizens; and the local authorities can set up additional requirements for holding mass events. The author did not obtain such an authorization. She was sanctioned therefore for violating the procedure for holding an assembly.

4.3 The State party claims that the national courts carefully assessed the author's claims that she did not commit any unlawful acts and found them unsubstantiated. The courts took into account the circumstances of the author's case and found that the sanction applied was within the limits set out in article 373 (3) of the Administrative Offences Code.

#### **Author's comments on the State party's observations on admissibility**

5.1 On 3 February 2015, the author challenged the State party's observations as unsubstantiated. The author claims to have exhausted all available domestic remedies, including submitting a request to the Prosecutor General's Office to initiate a supervisory review before the Supreme Court, even though it is not an affective remedy. She stresses that this argument of the State party is not convincing.

5.2 The author submits that, although, according to the State party, the rights under articles 19 and 21 of the Covenant are guaranteed in Kazakhstan and can only be restricted under certain circumstances, the State party did not explain why it was necessary to sanction her with a fine.

5.3 The author states that the courts, in violation of article 14 of the Covenant, were not impartial, disregarded the author's petitions and ignored the provisions of the Covenant.

#### **State party's observations on the merits**

6. On 17 April 2015, the State party submitted its observations on the merits. It contended that no violation of the author's rights under articles 14, 19 and 21 of the Covenant had occurred in the present case. It also reiterated its argument regarding inadmissibility.

#### **Author's comments on the State party's observations on the merits**

7.1 On 22 May 2015, the author provided comments on the State party's observations. She claims that, according to international obligations assumed by the State party, any restrictions on freedom of assembly should be proportionate and applied according to the

specific circumstances of each case, that the involvement of the authorities in the process of organizing public events should be reduced to a minimum and that the forceful curtailment of assemblies should be a measure of last resort. The author claims that the State party ignores and violates these principles.

7.2 The author recalls the observations of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, that is to say that the law is an expression of the peoples will and is therefore meant to serve the people. The rule of law implies that individuals are free to enjoy their human rights without prior authorization from State authorities (A/HRC/29/25/Add.2, para. 91).

7.3 The author also reiterates her claims that her rights under articles 14, 19 (2) and 21 of the Covenant have been violated.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. It also notes the State party's observation that the author has not requested the Prosecutor General to initiate supervisory review proceedings before the Supreme Court and that she has thus failed to exhaust domestic remedies. In this regard, the Committee notes that the author submitted two requests to initiate supervisory review proceedings to the Prosecutor General's Office on 22 January 2014 and on 14 March 2014. Her requests were rejected by the Prosecutor's Office of Astana on 24 February 2014 and by the General Prosecutor's Office on 24 April 2014. The Committee further recalls its jurisprudence, according to which a petition to a court or to the prosecutor's office requesting a review of court decisions that have taken effect and that depend on the discretionary power of a judge or a prosecutor constitutes an extraordinary remedy and the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.<sup>4</sup> In the present case, the Committee notes that the State party has not shown that petitions under supervisory review procedures have been successful in cases concerning freedom of expression and assembly. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.4 The Committee notes the author's claim that her rights under article 14 of the Covenant have been violated because of the court's bias and accusatory approach when considering her case. In the absence of any other pertinent information on file in that respect, however, the Committee considers that the author has failed to sufficiently substantiate that claim for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 The Committee considers that the author has sufficiently substantiated her claims under articles 19 (2) and 21 of the Covenant, for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

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<sup>4</sup> See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.2; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.3; *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3; and *Sviridov v. Kazakhstan* (CCPR/C/120/D/2158/2012), para. 9.3.

*Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that, by imposing an administrative fine on her for participating in a peaceful event, the State party violated her rights to freedom of expression and assembly. The author contends that she was apprehended at a peaceful protest held in "direct and immediate" response to the lack of a decision on their petition about housing rights violations, which had been promised by the authorities. The State party argues that the author was apprehended for participating in an unauthorized public event.

9.3 The Committee notes that sanctioning the author for expressing her views through participation in a public protest interfered with her right to impart information and ideas of any kind, as protected under article 19 (2) of the Covenant. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others and for the protection of national security or of public order (*ordre public*) or of public health or morals. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that those freedoms were indispensable conditions for the full development of the person and were essential for any society. These freedoms constitute the foundation stone for every free and democratic society. Any restriction on the exercise of those freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they were predicated. The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were necessary and proportionate.<sup>5</sup>

9.4 The Committee recalls that the right to peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society.<sup>6</sup> That right entails the possibility of organizing and participating in a peaceful assembly in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction on that right is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right of peaceful assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.<sup>7</sup> The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant and to demonstrate that it does not serve as a disproportionate obstacle to the exercise of the right.<sup>8</sup>

9.5 The Committee observes that a requirement to notify the authorities of a planned peaceful assembly, or to seek authorization for such a public event if such an authorization is granted as a matter of course, does not in itself violate article 21 if its application is in line with the provisions of the Covenant. At the same time, authorization regimes in which the authorities have broad discretion as to whether to grant permission to assemble should, in general, not be imposed (CCPR/C/MAR/CO/6, paras. 45–46; and CCPR/C/GMB/CO/2, paras. 41–42). In all events, in situations in which a notification or authorization procedure is used, it should not be overly burdensome.<sup>9</sup> Even in the case of assemblies for which no notification has been given and a request for authorization has not been submitted, any

<sup>5</sup> See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; and *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5.

<sup>6</sup> See, for example, *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

<sup>7</sup> *Ibid.*

<sup>8</sup> See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

<sup>9</sup> See, as an example, *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

interference with the right to peaceful assembly must be justified under the second sentence of article 21.

9.6 The Committee notes the author's claim that the State party's authorities or courts have not justified the imposition of her administrative fine for having participated in a peaceful, albeit unauthorized assembly. The Committee also notes the State party's submission that the restriction was imposed on the author in conformity with the Administrative Offences Code and the provisions of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. The Committee also notes the State party's argument that the requirement to file a request is aimed at protecting public order, as well as the rights and freedoms of other citizens. The Committee further notes, however, the author's claim that, although the restriction may have been lawful under national law, her apprehension and conviction were unnecessary in a democratic society for the pursuance of the legitimate aims invoked by the State party. The author further argues that the protest, in response to an important issue – disregard by the authorities of its citizens' housing and dishonest banks and loans – was peaceful and did not harm or endanger anyone or anything.

9.7 The Committee observes that the State party relied only on the provisions of the law on public events, which requires a request made 10 days prior to the event and the permission of the local executive authorities, which already in itself restricts the right to peaceful assembly. Restrictions on the right in question, even if authorized by national laws, must also meet the criteria under the second sentence of article 21 of the Covenant in order to comply with the Covenant. The Committee observes that the State party has not demonstrated that the author's administrative fine for participating in a peaceful public protest was necessary in a democratic society to pursue a legitimate aim or was proportionate to such an aim in accordance with the strict requirements under the second sentence of article 21 of the Covenant. For these reasons, the Committee concludes that the State party has violated article 21 of the Covenant.

9.8 Similarly, in view of the restriction on the author's freedom of expression, in the absence of any pertinent information from the State party demonstrating the compliance of the restriction imposed with the provisions of article 19 (3) of the Covenant, the Committee concludes that the author's rights under article 19 (2) of the Covenant have been violated.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 19 (2) and 21 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide the author with adequate compensation and reimbursement of any legal costs incurred by her. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under article 21 of the Covenant, including organizing and conducting peaceful assemblies, meetings, processions, pickets and demonstrations, may be fully enjoyed in the State party.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.