



## 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. 2420/2014\*, \*\*

<i>Communication submitted by:</i>	Esenbek Ukteshbaev (represented by counsel, Bakhytzhan Toregozhina)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	10 March 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>	Arrest and conviction for an administrative violation, and administrative detention for conducting an unauthorized mass event
<i>Procedural issue:</i>	Substantiation
<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 Esenbek Ukteshbaev,<sup>1</sup> a Kazakh citizen born in 1958. At the time of the submission of the communication, he claimed to be a victim of violations, by Kazakhstan, of his rights under article 21 of the Covenant. On 28 April 2015, he claimed further violations of his rights under articles 14 and 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel, Bakhytzhan Toregozhina.

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

\*\* The following members of the Committee participated in the examination of the present 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, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.

<sup>1</sup> The author is a civil society activist and 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 the government building in order to hand a 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”, and the Government was informed about it through the Internet and by telegram.

2.2 On the same date, two officials, one of whom was First Vice Minister for Regional Development, spoke to the crowd and promised to announce the authorities’ decision before lunchtime. The crowd was peaceful and remained near the government building. By 4 p.m. no representative of the Government had appeared, and the crowd started to chant “Nazarbayev, help!”. Thereafter, the police started to arrest people and take them to various locations of the Ministry of Internal Affairs in Astana.

2.3 The author was also apprehended. On the same day, he was brought before the Specialized Inter-District Administrative Court of Astana. He was found guilty of participating in an unauthorized mass event under Law No. 2126 of 17 March 1997 on the Procedure for the Organization and Conduct of Peaceful Assemblies, Mass Meetings, Processions, Pickets and Demonstrations in Kazakhstan and under article 373 (3) of the Code of Administrative Offences of Kazakhstan, and was held in administrative detention for 15 days.

2.4 On 7 October 2013, the author lodged an appeal against the decision of the Specialized Inter-District Administrative Court before the City Court of Astana, but it was dismissed on 8 October 2013.

2.5 Subsequently, the author lodged two complaints, one on 4 November 2013 with the Office of the Prosecutor of Astana, and one on 23 December 2013 with the Office of the General Prosecutor, under the supervisory review proceedings, contesting the judgment of 1 October 2013. The complaints were rejected. The author explained that he had exhausted all available domestic remedies.

**The complaint**

3.1 The author claims that the State party has violated his rights under article 21 of the Covenant. The Government was aware of the arrival of people to hand 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 constituting an unlawful assembly. The gathering near the government building was peaceful and was not a threat to the interests of national security or public safety, public health, morals or the rights and freedoms of others. Moreover, the crowd was asked to wait for the decision near the government building. However, the crowd’s requests were disregarded, and people were arrested by the police in a violent manner and fined or held in administrative detention.

3.2 The author submits that, in his case, the conviction and administrative sanctions imposed were the consequences of his holding a public assembly that had not been permitted by the local authorities. He maintains that, under such circumstances, his conviction constitutes restrictions on his freedom of assembly. He submits that such 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. He further submits that the police and the courts did not provide any justification as to which values were being protected by the imposition of restrictions on his freedom of assembly and, accordingly, that the administrative sanctions imposed on him constituted an unjustified limitation of his right to freedom of assembly, as protected by article 21 of the Covenant.

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<sup>2</sup> Since 27 March 2019, Nur-Sultan has replaced Astana as the name of the capital of Kazakhstan.

3.4 The author asks the Committee to urge the State party to hold accountable the persons responsible for the violation of his rights; to ensure that the unjustified restrictions on the freedom of assembly are removed and that the respective legislation is in line with article 21 of the Covenant; and to guarantee that the organization of peaceful assemblies does not result in punishment.

3.5 The author later claimed another violation of his rights by the State party, under articles 14 and 19 (2) of the Covenant (see paras. 5.4 and 5.5 below).

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

4.1 On 21 April 2015, the State party submitted its observations on the admissibility and merits of the communication and requested that it be declared inadmissible because it was not substantiated.

4.2 The State party reiterates the facts pertaining to the events of 1 October 2013 and submits that the author had been convicted and sentenced that same day to 15 days of detention for an administrative offence under article 373 (3) of the Code of Administrative Offences of Kazakhstan by the Specialized Inter-District Administrative Court of Astana. The State party also submits that the above ruling had been confirmed, following an appeal on 8 October 2013, by the City Court of Astana. The State party notes that the author submitted a request to the Office of the General Prosecutor to initiate a supervisory review of the Administrative Court's decision before the Supreme Court, which was rejected.

4.3 The State party submits that the format and the manner of the expression of societal, group or personal interests in public places, as well as certain limitations thereon, are established by the Law No. 2126 of 17 March 1997 on the Procedure for the Organization and Conduct of Peaceful Assemblies, Mass Meetings, Processions, Pickets and Demonstrations in Kazakhstan. According to article 9 of that law, failure to comply with such procedural requirements entails liability. The author had not submitted a request to the executive authorities and had not received a positive reply. Moreover, on 22 May 2013, the author was found liable for a similar administrative offence and, being aware of the requirements of the law, he deliberately violated it.

4.4 The State party further 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 conduct 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, Mass Meetings, Processions, Pickets and Demonstrations, according to which the organizers are required to request authorization from the local executive authorities to hold an assembly. Under the law, local authorities can prohibit a mass event that has an illegal aim and can set additional requirements for holding mass events. The author did not obtain such authorization. He was therefore sanctioned for violating the procedure for conducting an assembly.

4.5 The State party recalls that the need for certain limitations to be imposed on freedom of assembly is recognized under international human rights law. In Kazakhstan, special venues have been allocated for assemblies in order to protect the rights and freedoms of others and public order. Thus, the State party claims that the realization of the freedom of assembly in Kazakhstan is in full conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

5.1 On 28 April 2015, the author provided comments on the State party's observations. He submits that, although, according to the State party, the rights under articles 19 and 21 of the Covenant are guaranteed in Kazakhstan and can be restricted only in certain circumstances, the State party did not explain why it was necessary to hold him in administrative detention for 15 days.

5.2 He 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 ending of assemblies should be a measure of last resort. The author alleges that the State party ignores and violates such principles.

5.3 The author recalls the observations of the Special Rapporteur on the rights to freedom of peaceful assembly and of association 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”.<sup>3</sup>

5.4 The author states that the courts, in violation of article 14 of the Covenant, were not impartial, did not take into account the author’s petitions and ignored the provisions of the Covenant.

5.5 The author also claims the violation of his right to freedom of expression under article 19 (2) of the Covenant.

#### **Parties’ further submissions**

6. On 28 March 2017, the State party reiterated its initial observations.

7. On 19 April 2017, the author reiterated his previous comments on the State party’s observations on admissibility and merits.

#### **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 that the State party has not contested the fact that the domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

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

8.5 The Committee notes the author’s claim that his rights under articles 19 and 21 have been violated, given that he was sanctioned without justification for having participated in a peaceful assembly with others to protest about housing rights and to hand over a petition to that effect. The Committee considers that this claim has been sufficiently substantiated for the purposes of admissibility. It therefore declares it admissible and proceeds with its consideration of the merits.

##### *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 holding him in administrative detention, the State party violated his rights to freedom of expression and assembly. The

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<sup>3</sup> See the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, mission to Kazakhstan (A/HRC/29/25/Add.2), para. 91.

author contends that he had been arrested at a peaceful protest held in “direct and immediate” response to the lack of a decision concerning the petition to protest about violations of housing rights, which had been promised by the authorities. The State party argues that the author was arrested for participating in an unauthorized public event.

9.3 The Committee notes that sanctioning the author for expressing his views through participation in a public protest interfered with his right to impart information and ideas of all kinds, as protected under article 19 (2) of the Covenant. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions, but only 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. Those freedoms constituted 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>4</sup>

9.4 The Committee recalls that the right to peaceful assembly 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>5</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 imposed in conformity with the law and 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 to 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>6</sup> The State party is thus under the 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 that right.<sup>7</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 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 whether or not to grant permission to assemble should generally not be imposed.<sup>8</sup> In all events, where a notification or authorization regime procedure is used, it should not be overly burdensome.<sup>9</sup> Even in cases of assemblies for which no notification has been given and a request for authorization has not been submitted, any 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 has not justified the imposition of his administrative detention 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 Code of Administrative Offences and the provisions of the Law on the Procedure for the Organization and Conduct

<sup>4</sup> See, for example, communications No. 1830/2008, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3, and No. 1785/2008, *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5.

<sup>5</sup> See, for example, *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

<sup>6</sup> *Ibid.*

<sup>7</sup> See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

<sup>8</sup> See CCPR/C/MAR/CO/6, para. 45, and CCPR/C/GMB//CO/2, para. 41.

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

of Peaceful Assemblies, Mass Meetings, Processions, Pickets and Demonstrations. The Committee also notes the State party's argument that the requirement to file a request exists to protect 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 domestic law, his arrest 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 situation and dishonest banks and loans – was absolutely 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 the submission of a request 10 days in advance and the permission of the local executive authorities for a peaceful assembly, which already in itself restricts the right to peaceful assembly. Restrictions on the right in question, even if authorized under domestic law, must also meet the criteria established in 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 detention for 15 days, which is a severe punishment, 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 stipulated in the second sentence of article 21 of the Covenant. For those 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 restrictions 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 the author's rights under 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 provide the author with adequate compensation and reimbursement of any legal costs incurred by him. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that 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, which cover the right to organize and conduct 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 to have them widely disseminated in the official languages of the State party.