



## 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. 2540/2015\*, \*\*

<i>Communication submitted by:</i>	Ayauzhan Kurtinbaeva (represented by counsel of the non-governmental organization Ar.Rukh.Khak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	2 September 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 11 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2020
<i>Subject matter:</i>	Sanctioning of the author for expressing her opinion; unfair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Freedom of assembly; freedom of expression; fair trial
<i>Articles of the Covenant:</i>	14 (3) (d) and (g), 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author is Ayauzhan Kurtinbaeva, a national of Kazakhstan born in 1980. She claims that Kazakhstan has violated her rights under articles 14 (3) (d) and (g), 19 and 21 of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is represented by counsel.

#### Facts as presented by the author

2.1 The author is unemployed. On 15 February 2014, she participated in a peaceful demonstration in Almaty to protest against the 30 per cent devaluation of the Kazakhstan national currency (the tenge). The author happened to be in the vicinity of the demonstration

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Marcia V.J. Kran, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, H el ene Tigroudja, Andreas Zimmermann and Gentian Zyberi.



and joined it when she found out what it was about, without having planned in advance to attend. Participants in the demonstration, including the author, were apprehended brutally by the police.

2.2 On the same day, the specialized interdistrict administrative court of Almaty found the author guilty under article 373 of the Code of Administrative Offences – concerning the violation of the legislation on the organization and conduct of peaceful assemblies, marches, meetings, processions, pickets and demonstrations – and fined her 3,704 Kazakhstan tenge (approximately \$20). The author claims that she was not provided with a lawyer after her arrest, despite having requested one, and that members of her family, journalists and observers from human rights organizations were denied access to the hearing.

2.3 On 24 February 2014, the author appealed to the Almaty city court. Her appeal was rejected on 4 March 2014.

2.4 The author submitted a request for a supervisory review of the trial court decision to the Office of the Prosecutor of Almaty on 31 March 2014 and to the Office of the Prosecutor General of Kazakhstan on 26 May 2014. Her requests were rejected on 4 April 2014 and on 14 July 2014, respectively.

### **Complaint**

3.1 The author claims that the State party has violated her rights under articles 19 and 21 of the Covenant, owing to the sanctions imposed on her for participating in a peaceful demonstration.

3.2 The author claims that her rights under article 14 (3) (d) of the Covenant were violated because she was not provided with a lawyer after her apprehension, and members of her family, journalists and observers from human rights organizations were denied access to the hearing. The author also claims a violation of article 14 (3) (g) of the Covenant, but has not presented any further details.

3.3 The author requests that the Committee recommend to the State party that it: bring to justice those responsible for the violation of her rights;<sup>1</sup> compensate her for the moral and material damages suffered, including the amount of the fine and the cost of legal aid; adopt measures to eliminate the existing limitations on the right to freedom of peaceful assembly in the State party's legislation and to eliminate violations on the right to a fair trial under articles 14 (3) (d) and (g) of the Covenant; and guarantee, as a matter of urgency, that peaceful protests are not followed by unjustified interference with and prosecution of protest participants by State authorities.

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

4.1 In a note verbale dated 26 March 2015, the State party submitted its observations on the admissibility of the communication and requested that the Committee declare it inadmissible as unsubstantiated.

4.2 The State party recalls the facts of the case and observes that the author took part in an unauthorized mass event. The participants were disturbing the peace of others, chanting slogans and urging other people to join them. The police requested that the participants stop the unauthorized event, but the request was ignored.

4.3 The State party submits that the author was sanctioned for a violation of the order of the holding of mass events, which constitutes an administrative offence under article 373 (1) of the Code of Administrative Offences. The State party submits that the author never requested to be represented by a lawyer or any other representative. She also did not request that her relatives and journalists be granted access to the courtroom.

4.4 The State party disagrees with the author's arguments, namely that her actions did not constitute an offence since her decision to attend the meeting was spontaneous and that she therefore could not seek authorization, and that she just happened to be in the vicinity of the demonstration and decided to join it. The State party submits that the rights enshrined in

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<sup>1</sup> The author does not specify who these persons are.

articles 19 and 21 of the Covenant are subject to certain restrictions. While stating that the freedom of peaceful assembly is not prohibited in Kazakhstan, the State party explains that there is a certain procedure to follow in order to hold an assembly. In that connection, the State party refers to article 32 of the Constitution and articles 2 and 9 of the law on the organization and conduct of peaceful assemblies, meetings, marches, processions, pickets and demonstrations, according to which organizers are to request an authorization from the local authorities to hold an assembly and that otherwise, those violating the order are to be found liable.

4.5 The State party considers that certain limitations on the right to freedom of assembly are necessary. As the recent European experience shows, realization of the right to freedom of assembly by a certain part of the society can result in damage to the State and to private property and transport, among others, even if the mass events started out peacefully. Therefore, it is necessary to regulate (but not to prohibit) the conduct of mass events.

4.6 The State party maintains that the events the author participated in could have provoked counteractions from other people who hold another point of view. The event caused a disturbance of the peace and of public safety, and it interfered with the functioning of public transport and infrastructure since it was held in an inappropriate venue where people rest, and public transport operates. People who wish to exercise their right to participate in such events have specific obligations and responsibilities since their actions can have severe consequences. Thus, the limitations imposed constitute an adequate response by the law. In the present case, the police managed to suppress the unlawful actions of the author and other persons in a timely manner. As a result, severe outcomes were prevented.

4.7 The State party submits that specific places for holding public events have been allocated in order to guarantee the protection of the rights and freedoms of others, the safety of the public, the normal functioning of public transport and infrastructure, and the protection of green spaces and architectural objects. The State party recalls that international human rights law recognizes the need for certain limitations to be imposed on the freedom of assembly.

4.8 The State party therefore claims that the realization of the right to 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.

4.9 The State party submits that the author was not found liable for expressing her opinion, but rather for the violation of the order of the holding of a mass event, during which that opinion was expressed.

4.10 The State party submits that the author's arguments about the violation of her rights under article 14 of the Covenant were the subject of an examination and were determined to be unfounded. The author was informed of all her rights and she confirmed this fact with her signature. In addition, there are no court records in the administrative file containing the author's request to allow the presence of her representative or observers.

4.11 The State party also submits that the police actions towards the participants of the mass event were lawful since they had to stop a violation of the law.

4.12 The State party submits that the legislation of Kazakhstan does not recognize the concept of spontaneous mass events. All mass events are to be organized and held in line with the law on the organization and conduct of peaceful assemblies, meetings, marches, processions, pickets and demonstrations.

4.13 The State party further submits that it studied the practice of several other countries and found that the restrictions on public events in some countries were more stringent than in Kazakhstan. In the city of New York, for example, it is necessary to request permission 45 days before a planned event, and to indicate the exact itinerary of the event. The city authorities have a right to move the location of the event. Other authorities, such as those of Sweden, have a blacklist of organizers of previously prohibited or dispersed demonstrations. In France, local authorities have the right to prohibit any demonstration, and in the United Kingdom of Great Britain and Northern Ireland, the authorities have the right to introduce temporary bans. In addition, in the United Kingdom, street events are allowed only after permission has been received from police authorities. In Germany, the organizers of any mass

event, meeting or demonstration, indoors or outdoors, must obtain the prior permission of the authorities.

4.14 The State party contends that the author did not request the Prosecutor General to submit a protest motion seeking a supervisory review in her case and has thus failed to exhaust domestic remedies.

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

5.1 On 17 November 2015, the author provided comments to the State party's observations. She submits that although 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 an administrative fine. She reiterates that her right to a fair trial was violated, and that despite her request, she was not provided with a lawyer when she was apprehended. She also submits that she could not present any written petitions in court, and that her oral petitions were ignored. In addition, the court did not keep a transcript of the hearing.

5.2 The author claims that according to the international obligations assumed by the State party, any restrictions on the right to freedom of assembly must be proportionate and applied depending on the specific circumstances of each case, and that the involvement of the authorities in the process of the organization of public events should be reduced to a minimum. The author alleges that the State party ignored and violated these principles.

5.3 With regard to the State party's argument that she failed to exhaust domestic remedies, the author argues that a request for a supervisory review submitted to the Prosecutor General does not constitute an effective domestic remedy. She notes that she submitted such requests to the Office of the Prosecutor of Almaty and to the Office of the Prosecutor General, but both requests were rejected.

5.4 The author refers to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in connection with his visit to Kazakhstan in January 2015, in which the Special Rapporteur criticized the restrictive approach to freedom of assembly in the country.<sup>2</sup> She also refers to the *Guidelines on Freedom of Peaceful Assembly*,<sup>3</sup> developed in 2007 by the Organization for Security and Cooperation in Europe, and notes the commitment of the State party to follow them. Although article 10 of the law on the organization and conduct of peaceful assemblies, meetings, marches, processions, pickets and demonstrations allows local authorities to regulate the procedure of a peaceful assembly, the author submits that it does not grant them the power to determine permanent places where assemblies are to take place, nor the power to limit them to just one location. In this context, she adds that any restriction imposed on the right to freedom of assembly should be proportional, and its application should not be automatic but reviewed on a case-by-case basis, taking into account the specific circumstances.

5.5 The author claims the violation of her rights under articles 14, 19 and 21 of the Covenant.

#### **State party's further observations**

6.1 In a note verbale dated 16 March 2016, the State party submitted its observations on the merits. It contends that no violation of the author's rights under article 21 of the Covenant occurred in the present case. It also reiterates its inadmissibility arguments. The State party further reiterates that freedom of peaceful assembly is not prohibited in Kazakhstan, but is regulated by certain limitations.

6.2 The State party refutes the author's statement that there was no explanation as to why the limitation of her rights was necessary. The State party recalls that the rights enshrined in articles 19 and 21 of the Covenant are subject to certain limitations. The right to freedom of

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<sup>2</sup> A/HRC/29/25/Add.2.

<sup>3</sup> Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Warsaw/Strasbourg, 2010).

assembly is not prohibited in Kazakhstan, but it can be restricted 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. In Kazakhstan, the provision of public order is the most important element of the respect for human rights guaranteed by the law, and authorized officials must stop any violations of public order and administrative offences.

6.3 The State party observes that the imposed limitation to the right to freedom of assembly, in particular relating to the venue of mass events, is compliant with the provisions of the Covenant. Decision No. 167 of the Akimat<sup>4</sup> was adopted by a legitimate body, within its competence. The State party submits that the decision does not allow for discrimination on the basis of political grounds; it only recommends the venues for mass events. Therefore, the Akimat can identify the venue – the square behind the “Sary-Arka” cinema – for official and all other events, depending on the circumstances.

6.4 The State party also submits that the complaint of the author should be found inadmissible as incompatible with the provisions of the Covenant since a violation claimed in a complaint should concern the rights protected by the Covenant. The Committee is generally not in a position to review a sentence imposed by national courts, nor can it review the question of innocence or guilt. In addition, the Committee is generally not in a position to review the evaluation of facts and evidence made by national courts and authorities, nor can it review the interpretation of domestic legislation unless the author of the communication can demonstrate that such evaluation was arbitrary or amounted to a manifest error or denial of justice, or that the courts otherwise failed in their duty of independence and impartiality.

6.5 The State party submits that the claims of the author are not compatible with the above-mentioned principles. The author has requested the Committee to go beyond its competence and to intervene in the internal affairs of an independent State, and to have a direct impact on public policies in the field of human rights. At the same time, the author did not provide any substantiated or expert conclusions to demonstrate that the national law on freedom of association and freedom of expression contradicts international standards.

6.6 The State party also submits that the appeal to the Prosecutor General is an effective remedy. It provides three examples of successful appeals to the Prosecutor General.

6.7 The State party submits that the complaint should be found inadmissible under article 3 of the Optional Protocol and rule 99 (b) of the rules of procedure since the author did not provide any information as to why she was unable to submit her complaint personally.

6.8 The State party reiterates that the author was not found liable for the realization of her right to freedom of assembly, but rather for the violation of the order of this right’s realization as prescribed by the law. The mass event that the author participated in violated public order, which is why the applied measures were proportionate and justified.

#### **Author’s comments on the State party’s additional observations**

7. On 27 September 2016, the author informed the Committee that she did not have additional comments.

#### **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.

<sup>4</sup> Equivalent to a mayor’s office (municipal, district or provincial government).

8.3 The Committee notes that the State party has objected to the admissibility of the communication, because in its opinion, the author failed to file a petition for supervisory review to the Prosecutor General against the court decisions in the case. The Committee notes that on 26 May 2014, the author petitioned the Office of the Prosecutor General for a supervisory review of her administrative case. The request, however, was rejected by a Deputy Prosecutor General on 14 July 2014. The Committee further recalls its jurisprudence according to which a petition for supervisory review to a prosecutor's office for the purposes of requesting a review of court decisions that have taken effect, which is dependent on the discretionary power of the prosecutor, does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.<sup>5</sup> Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 The Committee notes the State party's submission that the communication was brought before the Committee by a third party instead of the author herself. In this respect, the Committee recalls that rule 99 (b) of its rules of procedure provides that a communication should be submitted by the individual personally or by that individual's representative. In the present case, the Committee notes that the alleged victim duly issued a power of attorney authorizing her counsel to represent her before the Committee. Accordingly, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the communication.

8.5 Regarding the author's claim, framed under article 14 (3) (d), that her legal representatives were not allowed into the courtroom, the Committee notes the State party's argument that the author did not request to be represented by a counsel either at the police station or in court. In light of the information before it, the Committee considers that the author has failed to sufficiently substantiate this part of the communication for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

8.6 The Committee notes that the author has not provided any information supporting her claims under article 14 (3) (g) of the Covenant. It concludes that this part of the communication is insufficiently substantiated for purposes of admissibility, and is thus inadmissible under article 2 of the Optional Protocol.

8.7 The Committee notes the author's claim that her rights under articles 19 and 21 have been violated, given that she was sanctioned without justification for having participated in a peaceful assembly with others to protest against the 30 per cent devaluation of the Kazakhstan national currency. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares them admissible and proceeds with its examination of the merits.

#### *Consideration of the merits*

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

9.2 The Committee notes the author's claim that her right to freedom of assembly under article 21 of the Covenant was violated as, on 15 February 2014, she was apprehended, tried and fined for having participated in an unauthorized mass event to protest against the governmental devaluation of the national currency. The Committee recalls that the right of 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 is indispensable in a democratic society. It enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the

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<sup>5</sup> See, for example, *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; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3.

rule of law and pluralism.<sup>6</sup> Given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of the target audience,<sup>7</sup> and no restriction on that right is permissible unless it is imposed in conformity with the law, and is 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. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions.<sup>8</sup> Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. Where this onus is not met, article 21 is violated.<sup>9</sup> The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it.<sup>10</sup> Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.<sup>11</sup>

9.3 The Committee observes that authorization regimes, where those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, undercut the idea that peaceful assembly is a basic right.<sup>12</sup> Where such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Such systems should also not be overly bureaucratic.<sup>13</sup> Notification regimes, for their part, must not in practice function as authorization systems.<sup>14</sup> The Committee also observes that spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21.<sup>15</sup>

9.4 The Committee observes that the obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.<sup>16</sup> Moreover, States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counterdemonstrators and private security providers.<sup>17</sup> Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.<sup>18</sup> The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to

<sup>6</sup> Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly, para. 1.

<sup>7</sup> *Ibid.*, para. 22. See also *Strizhak v. Belarus* (CCPR/C/124/D/2260/2013), para. 6.5.

<sup>8</sup> *Gryb v. Belarus* (CCPR/C/108/D/1316/2004), para. 13.4.

<sup>9</sup> *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

<sup>10</sup> *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.4.

<sup>11</sup> Human Rights Committee, general comment No. 37, para. 36.

<sup>12</sup> CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, para. 41; and African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 71.

<sup>13</sup> *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

<sup>14</sup> Human Rights Committee, general comment No. 37, para. 73; and CCPR/C/JOR/CO/5, para. 32.

<sup>15</sup> Human Rights Committee, general comment No. 37, para. 14.

<sup>16</sup> *Ibid.*, para. 23.

<sup>17</sup> *Ibid.*, para. 24.

<sup>18</sup> *Ibid.*, para. 25.

protect all participants and to allow such assemblies to take place in an uninterrupted manner.<sup>19</sup>

9.5 The Committee notes the author's claim that no authorities or courts of the State party have 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 Code of Administrative Offences and the provisions of the law on the organization and conduct of peaceful assemblies, meetings, marches, 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 others. 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 – the 30 per cent devaluation of the Kazakhstan national currency by the Government – was peaceful and did not harm or endanger anyone or anything.

9.6 The Committee notes that the State party relied on the provisions of the law on public events, which requires that a request be made 10 days prior to the event and that the permission of the local executive authorities be obtained, both of which constitute restrictions to the right of peaceful assembly. The Committee recalls that freedom of assembly is a right, not a privilege. Restrictions on this right, even if authorized by law, must also meet the criteria under the second sentence of article 21 of the Covenant, in order to be in compliance with it. The Committee further notes the State party's observation that the author's apprehension was needed for the protection of public order, because the participants in the assembly disturbed people and affected the functioning of public transport. In this connection, the Committee observes that restrictions imposed for the protection of "the rights and freedoms of others" may relate to the protection of Covenant rights or other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide a detailed justification for any restrictions.<sup>20</sup> The Committee also observes that "public order" refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.<sup>21</sup> States parties should not rely on a vague definition of "public order" to justify overbroad restrictions on the right of peaceful assembly.<sup>22</sup> Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. "Public order" and "law and order" are not synonyms, and the prohibition of "public disorder" in domestic law should not be used unduly to restrict peaceful assemblies.<sup>23</sup> Furthermore, the Committee notes that the State party has not provided any specifics as to the nature of the disturbance occasioned by the assembly in question, nor any information as to how it crossed the threshold of permissible disruption to be tolerated.

9.7 The Committee recalls that article 21 of the Covenant provides that any restrictions must be "necessary in a democratic society". Restrictions must therefore be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.<sup>24</sup> Such restrictions must be appropriate responses to a pressing social need, related to one of the permissible grounds in article 21. They must also be the least intrusive among the measures

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<sup>19</sup> Ibid., para. 27.

<sup>20</sup> Ibid., para. 47. See also *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; and *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8.

<sup>21</sup> Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, para. 22.

<sup>22</sup> CCPR/C/KAZ/CO/1, para. 26; and CCPR/C/DZA/CO/4, para. 45.

<sup>23</sup> Human Rights Committee, general comment No. 37, para. 44.

<sup>24</sup> Ibid., para. 40.

that might serve the relevant protective function.<sup>25</sup> Moreover, they have to be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering.<sup>26</sup> If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible. The Committee further 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. The Committee also recalls that any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate.<sup>27</sup> For these reasons, the Committee concludes that the State party failed to justify the restriction of the author's right. Therefore, the State party has violated article 21 of the Covenant.

9.8 The Committee also notes the author's claim that her right to freedom of expression under article 19 of the Covenant was violated. The Committee must therefore decide whether the limitations imposed on the author are allowed under one of the permissible restrictions laid out in article 19 (3) of the Covenant.

9.9 The Committee notes that sanctioning the author for expressing her views through participation in a public event of protest interfered with her right to impart information and ideas of any kind, as protected under article 19 (2) of the Covenant. It recalls that article 19 (3) of the Covenant allows certain restrictions, but only if they 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. In its general comment No. 34 (2011) on the freedoms of opinion and expression, the Committee stated that those freedoms were indispensable conditions for the full development of the person and were essential for any society. It also stated that those 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 both necessary and proportionate.<sup>28</sup>

9.10 Regarding the restriction on the author's freedom of expression, the Committee recalls that political speech enjoys a heightened level of accommodation and protection as a form of expression.<sup>29</sup> The Committee notes the author's claim that the assembly was held to protest against the 30 per cent devaluation of the Kazakhstan national currency by the Government. In the absence of any pertinent information from the State party explaining how the restriction was in line 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 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 the fine imposed on her and 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 the State party's obligations under article 2 (2) of the Covenant, the State party

<sup>25</sup> *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

<sup>26</sup> Human Rights Committee, general comment No. 37, para. 40.

<sup>27</sup> *Ibid.*, para. 38.

<sup>28</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>29</sup> Human Rights Committee, general comment No. 34 (2011), paras. 34, 37–38 and 42–43.

should review its legislation and practice with a view to ensuring that the rights under articles 19 and 21 of the Covenant, including the organization and conduct of peaceful assemblies, meetings, marches, 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.

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