



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. 2503/2014*, **

<i>Communication submitted by:</i>	Bakhytzhan Toregozhina (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	13 June 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>	23 July 2020
<i>Subject matter:</i>	Refusal of authorization to hold a peaceful assembly
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Freedom of association
<i>Articles of the Covenant:</i>	19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communication is Bakhytzhan Toregozhina,¹ a national of Kazakhstan born in 1962. She claims that the State party has violated her rights under articles 19 and 21 of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author is the head of the non-governmental organization "Ar. Rukh. Khak". On 1 March 2012, she applied to the *Akimat*² of Almaty for authorization to hold a peaceful

* Adopted by the Committee at its 129th session (29 June–24 July 2020).

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

¹ The author is a civil society activist.

² The equivalent of a mayor's office (the seat of the municipal, district or provincial government).



assembly (meeting)³ entitled “100 days after the shooting of people in Zhanaozen”, which was to take place on 24 March 2012, in the square in front of the Palace of the Republic, next to the monument to Abai Qunanbaiuli. In her application, the author provided a list of 29 alternative locations in Almaty, should the *Akimat* decide that it would not be possible to organize the meeting in the square in front of the Palace of the Republic.

2.2 On 19 March 2012, the author received from the *Akimat* of Almaty a refusal to authorize the meeting in any of the 30 proposed locations.⁴ The *Akimat* based its refusal on Almaty *Maslikhat*⁵ Decision No. 167 of 29 July 2005, in which it recommends that all non-governmental public events of a “social and political nature” be organized solely in the square behind the “Sary Arka” cinema. Pursuant to the same decision of the Almaty *Maslikhat*, official events at the national and local levels organized by relevant State bodies, as well as other events with the participation of high-level State officials and the leadership of Almaty, are to be held on Republic Square. Other squares and public gardens are to be used for holding official, cultural and entertainment activities in accordance with their architectural and functional purposes. According to the author, Decision No. 167 is always used by the *Akimat* as a ground for refusal to authorize all gatherings that are not held at the “Sary Arka” cinema.

2.3 Given that the remote location offered by the *Akimat* was not suitable for the purpose of the gathering, the author decided to carry it out in a different location, which she considered suitable. As a result, she was fined for having committed an administrative offence by holding an unauthorized gathering. According to the author, her submission to the Committee does not relate to that particular gathering or the sanctions imposed in relation to it, but rather to Decision No. 167. The gathering is given as an example of the general effect of the Decision.

2.4 On 10 August 2012, the author applied to the Almalinsk District Court of Almaty with a request to repeal Decision No. 167, as it breached the Constitution and international standards on freedom of peaceful assembly.⁶ The author claimed that the Decision was not registered with the judicial authorities and that it was therefore not a binding legal document. On 5 September 2012, the Almalinsk District Court of Almaty rejected the author’s request, saying that the complaint was time barred. The Court also found that Decision No. 167 had been adopted in accordance with the law and did not violate the rights of individuals. The Court found groundless the author’s arguments about breaches of international standards, saying that the local authorities had the right to impose additional regulations on the organization of public gatherings.

2.5 On 17 September 2012, the author appealed to the Almaty City Court, arguing that the Almalinsk District Court of Almaty had failed to consider her complaint in substance and requesting that her case be referred for a new hearing. On 23 October 2012, the Almaty City Court confirmed the regional court’s judgment.

2.6 On 29 March 2013, the author submitted a cassation appeal to the Almaty City Court, and it was rejected on 22 April 2013.

³ Pursuant to the Act on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations of 17 March 1995, an organizer of a peaceful assembly should submit an application to a local executive body, requesting authorization to hold such an assembly, at least 10 days prior to the intended event. Once the organizer receives a written authorization to hold the peaceful assembly, it is considered to be “authorized”. All peaceful assemblies organized in the absence of a written authorization are considered to be “unauthorized”, and their organizers and participants are systematically held responsible through administrative sanctions.

⁴ As transpires from the decision of the Second Almalinsk Region Court of Almaty of 19 June 2012, the author organized the so-called unauthorized meeting on 24 March 2012 to commemorate the shooting of people in Zhanaozen. She was subsequently issued an administrative sanction for having violated the legislation on organizing and holding peaceful assemblies.

⁵ The equivalent of a city council, that is, an elected, local representative body (a local government) in regions and districts of Kazakhstan.

⁶ The author’s request was of a general character and was not directly linked to the fine imposed on her for the gathering referred to in para. 2.3.

2.7 On 13 May 2013, the author submitted a request for a supervisory review to the Supreme Court of Kazakhstan. On 12 September 2013, having found no breach of material or procedural provisions by the lower courts, the Supreme Court rejected the author's request for a supervisory review.

Complaint

3. The author affirms that Decision No. 167 violates her rights under article 21 of the Covenant because: (a) it limits her right to hold a mass event in the venue of her choice on the basis of factors such as the aims of mass events and the target group, without explaining the aim of this limitation; (b) the sanctions applied to her stem directly from Decision No. 167; and (c) the Decision is of a discriminatory nature since it identifies only one venue for non-State mass events while allowing State mass events in all squares and public gardens.

State party's observations on admissibility and the merits

4.1 On 19 October 2015, the State party submitted its observations on the admissibility of the communication and requested the Committee to declare it inadmissible on the ground that it was unsubstantiated.

4.2 The State party recalls the facts of the case and observes that the courts considered and rejected the arguments of the author that Decision No. 167 contradicted national and international human rights standards. The legality of the courts' decisions was verified by the Office of Prosecutors of Almaty and the Prosecutor-General's Office.

4.3 Article 32 of the Kazakh Constitution guarantees the right of citizens to gather peacefully and to hold meetings, rallies, demonstrations, street processions and pickets. The realization of this right, however, may be restricted by law in the interests of State security, public order, or the protection of the health, rights and freedoms of others. The format and the manner of the expression of societal, group or personal interests in public places, as well as certain limitations on the above, are established by Act No. 2126 of 17 March 1995 on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. Article 10 of the Act allows the local executive bodies to regulate the order of organization of public events based on requirements determined by the local conditions.

4.4 The State party submits that, pursuant to the Act on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, organizers should obtain an authorization from local executive bodies prior to holding a public event. According to article 5 of the Act, mass events should be held in a designated venue.

4.5 The State party submits that, in order to guarantee the protection of the rights and freedoms of others and public safety, the normal functioning of public transport and infrastructure, and the protection of landscaping and architecture, it is recommended in Decision No. 167 that all non-governmental public events of a "social and political nature" be organized in the square behind the "Sary Arka" cinema.

4.6 Decision No. 167 was taken by an authorized body, within its competence, in accordance with the Act on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations on the basis of national legislation and international norms, in order to protect the rights of others, based on the will of the majority population of Almaty.

4.7 The State party observes that the author refused to hold the mass event in the designated venue.

4.8 The State party recalls that international human rights law allows for the imposition of limitations on freedom of assembly. In order to protect the rights and freedoms of others, public order, and the transportation system and other infrastructure in Kazakhstan, the State party's authorities have designated special locations for non-governmental public events. Currently, almost all regional capitals and some districts have such designated areas, based on decisions taken by local executive bodies.

4.9 The State party further submits that it studied the practices of several other countries and found that the restrictions on public events in certain countries were more stringent than in Kazakhstan. In New York in the United States of America, for example, it is necessary to request permission 45 days before the planned event and to indicate the route to be taken during the event. The city authorities hold the right to change the location of the event. Other countries, such as Sweden, keep a blacklist of organizers of previously prohibited or dispersed demonstrations. In France, local authorities hold the right to prohibit any demonstration, and in the United Kingdom of Great Britain and Northern Ireland the authorities hold the right to introduce “temporary bans”. Also in the United Kingdom, street events are allowed only after receiving permission from police authorities. In Germany, any mass event, meeting or demonstration held inside or outside must be permitted by the authorities.

4.10 The State party submits that the communication is unsubstantiated.

Author’s comments on the State party’s observations on admissibility and the merits

5.1 On 24 November 2016, the author submitted that Decision No. 167 limited her realization of freedom of assembly and expression and violated her rights under articles 19⁷ and 21 of the Covenant. All applications for a mass event not held in the square behind the “Sary Arka” cinema are systematically rejected.

5.2 The author claims that, as a consequence of Decision No. 167, she has to hold assemblies without authorization, which results in the imposition of administrative sanctions against her. The Decision, providing for a single location for mass events, also discriminates against non-State initiatives.

5.3 The author submits that freedom of assembly is a right, not a privilege. Its implementation cannot depend on the authorization of the *Akimat*. She believes that the Government should introduce a notification system for the organization of mass events to facilitate the implementation of freedom of assembly. It should be possible to hold spontaneous mass events without prior authorization.

State party’s additional observations

6.1 On 12 January 2017, the State party submitted additional information.

6.2 It observes that the limitation imposed on freedom of assembly, relating in particular to the venue for mass events, is compliant with the provisions of the Covenant. Decision No. 167 was adopted by a legitimate body, within its competence.

6.3 The State party submits that Decision No. 167 is not discriminatory on the basis of political grounds. In the Decision, the *Almaty Maslikhat* only recommends the venues for mass events. So, 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 contests the author’s arguments that the realization of freedom of expression and assembly is limited in Kazakhstan. It notes that, during the period 2012–2016, 140 different mass events were conducted, and the requirements of the law were observed by the organizers. Thus, the author is not prevented from organizing a mass event, provided that she respects the law.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

⁷ The author did not invoke article 19 in her initial complaint.

7.2 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.

7.3 The Committee notes that the State party has not contested that the domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee notes the author's claims that her rights under articles 19 and 21 of the Covenant have been violated, as Decision No. 167 limits her right to hold a mass event at the venue of her choice. 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

8.1 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.

8.2 The Committee has taken note of the author's claim of a violation of her right under article 21 of the Covenant by the adoption and implementation of Decision No. 167, in particular, in the case of the author's application for an assembly entitled "100 days after the shooting of people in Zhanaozen" at the venue of her choice, which was planned to take place on 24 March 2012.

8.3 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.⁸ The Committee further notes that 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.⁹ The State party is thus under an obligation to justify the limitation of the right protected under article 21 of the Covenant and to demonstrate that it does not serve as a disproportionate obstacle to the exercise of the right.¹⁰

8.4 In the present case, the Committee observes that both the State party and the author agree that Decision No. 167 imposes limitations on freedom of assembly, but that the parties disagree as to whether the limitation in question was permissible.

8.5 The Committee notes the State party's observation that article 10 of Act No. 2126 of 17 March 1995 on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations allows the local executive bodies to regulate the organization of public events based on requirements determined by the local conditions. The Committee also notes the State party's explanation that Decision No. 167 was adopted in order to guarantee the protection of the rights and freedoms of others and public safety, the normal functioning of public transport and infrastructure, and the protection of landscaping and architecture, which is why the square behind the "Sary Arka" cinema was identified as the venue for all non-governmental public events of a "social and political nature".

8.6 The Committee considers that peaceful assemblies may in principle be conducted in all places to which the public has access or should have access by virtue of article 12 of the Covenant and other related rights, such as public squares and streets. The Committee also notes that participants in an assembly should, as far as possible, be allowed to assemble "within sight and sound" of their target audience.¹¹ Location, like timing, is often central to

⁸ For example, *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

⁹ *Ibid.*

¹⁰ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

¹¹ *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.4.

the expressive rationale of assemblies. Participants may not be relegated to remote areas where they cannot capture the attention of those who are being addressed or the general public.¹² General prohibitions on assemblies across the entire capital,¹³ or in any public location except a single specified place, either in a city¹⁴ or outside the city centre,¹⁵ or more general prohibitions such as on “the streets”, may not be imposed.

8.7 The Committee further considers that it is in the nature of assemblies that they sometimes disrupt the daily exercise of rights such as freedom of movement. This has to be tolerated, unless it imposes a disproportionate burden, in which case detailed grounds for limitations must be provided. Claims that an assembly will result in the undue disruption of traffic and the movement of pedestrians must be substantiated to allow for a full assessment.¹⁶

8.8 The Committee, however, considers that the State party did not sufficiently explain why the prohibition on public events of a “social and political nature” except in the square behind the “Sary Arka” cinema was necessary for the purpose that Act No. 2126 envisaged or to what extent such a measure imposed on the event that the author had planned to hold was proportionate to that purpose. The Committee accordingly considers that, in this case, the State party failed to demonstrate the necessity and proportionality of the imposed limitations on the author’s freedom of assembly. The State party also did not indicate which other official events at the national and local levels organized by relevant State bodies had been conducted in the square behind the “Sary Arka” cinema (see para. 6.3).

8.9 The Committee notes the author’s claim that Decision No. 167 is of a discriminatory nature since it assigns only one venue for non-State mass events, in comparison with all squares and public gardens for State mass events. The Committee notes the State party’s argument that Decision No. 167 is not discriminatory on the basis of political grounds, and that the venue recommended – the square behind the “Sary Arka” cinema – can also be used for official events at the national and local levels organized by relevant State bodies, as well as other events with the participation of high-level State officials and the leadership of Almaty.

8.10 The Committee recalls that participants should freely determine the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. The Committee notes that restrictions on such assemblies must not be discriminatory, that the regulation of the time, place and manner of assemblies is generally content neutral, and that if there is more scope for limitations that affect these elements, the onus remains on the authorities to justify any such restriction.¹⁷ The Committee, however, considers that, in this case, the restrictions applied by the State party to the author’s right to assembly were directly related to the nature of the public event, namely, whether it was an official event organized by a relevant State body or a sociopolitical event organized by a non-State subject.

8.11 In the absence of any explanations from the State party to justify the different treatment, the Committee considers that the State party has failed to establish that the restriction imposed on the author’s right to peaceful assembly was based on reasonable and objective criteria and in pursuit of an aim that is legitimate under the Covenant, and that the adoption and implementation of Decision No. 167 therefore amounted to a violation of the author’s rights under article 21 of the Covenant.

8.12 Having found a violation of article 21 of the Covenant, the Committee decides not to examine separately the author’s claim under article 19.

¹² Ibid. and CCPR/C/KAZ/CO/1, para. 26.

¹³ CCPR/C/DZA/CO/4, para. 45.

¹⁴ *Turchenyak et al. v. Belarus*, para. 7.5.

¹⁵ *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5.

¹⁶ *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.

¹⁷ Organization for Security and Cooperation in Europe, *Guidelines on Freedom of Peaceful Assembly*, para. 70.

9. 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 article 21 of the Covenant.

10. 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 her court expenses. 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.

11. 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.
