



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 communications No. 2257/2013 and No. 2334/2014*, **

<i>Communications submitted by:</i>	Bakhytzhan Toregozhina (not represented by counsel in communication No. 2257/2013, and represented by counsel, Anna Smirnova, in communication No. 2334/2014)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Dates of the communications:</i>	7 November 2012 (for communication No. 2257/2013) and 25 September 2013 (for communication No. 2334/2014) (initial submissions)
<i>Document references:</i>	Decisions taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 14 June 2013 (for communication No. 2257/2013) and 15 January 2014 (for communication No. 2334/2014) (not issued in document form)
<i>Date of adoption of Views:</i>	15 October 2018
<i>Subject matter:</i>	Preventing the author from participating in peaceful protests
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly; discrimination
<i>Articles of the Covenant:</i>	19, 21 and 26
<i>Article of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communications: Tania María Abdo Rocholl, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann.



1.1 The author of the communications is Bakhytzhan Toregozhina, a citizen of Kazakhstan, born in 1962. She claims that the State party violated her rights under articles 19, 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is not represented by counsel in communication No. 2257/2013, and is represented by counsel in communication No. 2334/2014.

1.2 On 15 October 2018, pursuant to rule 94, paragraph 2, of the rules of procedure of the Human Rights Committee, the Committee decided to join communications No. 2257/2013 and No. 2334/2014, submitted by the same author, for decision, in view of their substantial factual and legal similarity.

The facts as submitted by the author

Communication No. 2257/2013 (concerning events of 28 April 2012)

2.1 On 28 April 2012, at approximately 11 a.m., the author was arrested for organizing an unauthorized public protest, which was to take place on the same day. The author was planning to voice her protest against the allegedly unfair court trials of 37 oil workers in Zhanozen, and of 12 persons in Shetpe. She also planned to demand the release of all prisoners of conscience in Kazakhstan. Upon arrest, the author was taken to a police station in the city of Almaty, making it impossible for her to take part in the protest.

2.2 On the same day, the Specialized Inter-district Administrative Court of Almaty found the author guilty of an administrative offence and sentenced her to 15 days in prison. In its decision, the Court stated that the author had applied for permission to hold an event, but that on 20 April 2012, the local authorities had refused to grant the permission. Despite that refusal, the author called for a public protest to be held near the Abai Kunanbaev monument on 28 April 2012. The author submits that she had been previously subjected to administrative fines for organizing and participating in unauthorized protests on 17 January 2012, 25 February 2012 and 24 March 2012. During one of those protests, the author made a speech contesting the results of the parliamentary elections held on 15 January 2012.

2.3 The author claims that she was not provided in a timely manner with a copy of the court decision sentencing her to 15 days in prison, which created difficulties in appealing the decision. On 2 May 2012, while still in detention, the author managed to file an appeal against the decision with the Almaty City Court. She claims that she could not consult her lawyers regarding the appeal, as they were not allowed to visit her in the detention centre.

2.4 In her appeal, the author claimed that the protest of 28 April 2012 had been peaceful and had not posed a threat to the public order or to public security, health or morals. On 4 May 2012, the Almaty City Court upheld the decision of the Administrative Court. The author then appealed her sentence to the Office of the Prosecutor General. In her appeal, she argued that the witness statements used as a basis for her conviction were unconvincing and did not prove her guilt.

2.5 The author adds that the Administrative Court wrongly charged her as the organizer of the protest, even though, in fact, the organizer had been one Mr. M., the person who had applied to the Almaty city authorities for permission to hold the protest in the first place. The author claims that, in her speech on 17 April 2012, she had only expressed her support for the protest. She claims that, at the time of her speech, she had not yet received a response from the city authorities. Therefore, she could not have called the public to take part in an “unauthorized” protest. According to the court decision, she had encouraged the public to participate in the protest on the Internet, which, she claims, is not true and the Court did not provide any evidence in reaching that conclusion. Although she had been arrested at 11 a.m., the term of her sentence started at 7 p.m. on 28 April 2012, eight hours later, contradicting the national law, which prescribes that the duration of the administrative detention should be considered to commence at the moment of arrest.

2.6 On 29 May 2012, the Office of the Prosecutor General forwarded her appeal to the Office of the Almaty City Prosecutor, which dismissed her appeal on 13 June 2012.

Communication No. 2334/2014 (concerning events of 30 July 2012)

2.7 On 19 July 2012, the author submitted a request to the Almaty city authorities to authorize a one-person picket on 30 July 2012, from 11 a.m. to noon, on Republic Square, near the Monument to Independence. The author was planning to voice her support for the International Day of Friendship. On 24 July 2012, the author received a refusal from the city authorities. The decision referred to a previous decision, dated 29 July 2005, adopted by the Almaty city council, allowing all non-governmental public events or meetings of a social and political nature to be held on the square located behind the Sary Arka cinema.

2.8 On 20 August 2012, the author submitted a claim to the District Court of Almaty under article 27 of the Civil Procedure Code of the Republic of Kazakhstan asking the Court to find the refusal of permission of 24 July 2012 inconsistent with the Covenant and international practice concerning the right to peaceful assembly.

2.9 On 2 October 2012, the District Court of Almaty agreed with the Almaty city authorities. The Court stated in its decision that the authorities had not refused a one-person picket, but had offered an alternative location. On 17 October 2012, the author appealed that decision to the Almaty City Court as being contrary to the Constitution of the Republic of Kazakhstan and to the Covenant. On 29 November 2012, the Almaty City Court dismissed the author's claims as unfounded.

2.10 On 4 April 2013, the author submitted a cassation appeal to the Almaty City Court challenging the decisions of the District Court and the Almaty City Court. The author argued, inter alia, that the court decisions had contradicted international standards on the right of peaceful assembly and the right to freedom of expression. On 2 May 2013, the cassation appeals chamber of the Almaty City Court upheld the decisions of the lower courts and dismissed the author's complaint. On 20 June 2013, the author submitted a petition to the Supreme Court of Kazakhstan for a supervisory review of the earlier court decisions, which was rejected on 8 August 2013.

The complaint

Communication No. 2257/2013 (concerning events of 28 April 2012)

3.1 The author claims that, by arresting her on 28 April 2012 and sentencing her to 15 days of administrative detention, the State party violated her rights under articles 19 and 21 of the Covenant, and furthermore that the decisions taken against her violated the provisions of the Constitution of Kazakhstan. The author also claims that she has taken no action that would threaten the public order or justify action by the law enforcement authorities.

Communication No. 2334/2014 (concerning events of 30 July 2012)

3.2 The author claims that the prohibition on holding the one-person picket amounts to a violation of her rights under article 21 of the Covenant. Referring to the findings of the Committee in *Kivenmaa v. Finland*,¹ the author submits that the requirement to notify may be compatible with permitted limitations laid down in article 21 of the Covenant insofar as it would normally be for the reasons of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The author claims that, since her one-person picket did not represent any threat in relation to the above-mentioned reasons, its prohibition, along with the general requirement to hold it only in one place, is contrary to article 21 of the Covenant.

3.3 The author further claims that the remoteness of the proposed location from the busy streets would render the conducting of the picket meaningless. She therefore claims that by designating only one place for peaceful assemblies, in the outskirts of the city of Almaty (on the square behind the Sary Arka cinema), the State party violates her right under article 21 of the Covenant.

¹ CCPR/C/50/D/412/1990.

3.4 The author asserts that the one-person picket should not be considered as an assembly by the Kazakhstan authorities and should not require permission, as the picketing person exercises his or her right individually in such a picket. Referring to communication No. 458/1991,² concerning the case *Mukong v. Cameroon*, in which the Committee considered that, even though the State party had indicated that the restrictions on the author's freedom of expression had been provided for by law, it still had to be determined whether the measures taken against the author had been necessary for the safeguarding of national security and/or the public order, the author claims that the restrictions on exercising her right of freedom of expression in a one-person picket were not necessary and therefore contrary to article 19 (2) of the Covenant.

3.5 Moreover, the author submits that authorizing the holding of non-governmental social or political meetings at only one specially designated place, while authorizing governmental and non-political meetings at other locations, is politically motivated and discriminatory, and amounts to a violation of article 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 Responding to the author's claims in communication No. 2257/2013, the State party, on 13 August 2013, asked the Committee to declare the complaint as inadmissible. On 10 April 2012, a group of citizens indeed requested to hold a public event on 28 April 2012, near the Abai Kunanbaev monument. The permission was not granted. The author nevertheless continued to call for people to gather at that location. The author was therefore charged and found guilty of violating article 373 (3) of the Code on Administrative Offences and was sentenced to 15 days of administrative detention. The author's appeal was rejected on 4 May 2012 by the Almaty City Court. The author further asked the Office of the Almaty City Prosecutor to bring a complaint, which it refused to do on 13 June and 4 October 2012.

4.2 However, the State party notes that, under article 676 of the Code on Administrative Offences, the author has the right to request the Office of the Prosecutor General to initiate supervisory review proceedings before the Supreme Court, on behalf of the author. The State party further notes that the Office of the Prosecutor General never received such a request. The State party therefore considers that the author failed to exhaust all available domestic remedies, in violation of article 5 (2) (b) of the Optional Protocol to the Covenant.

4.3 Regarding the merits of communication No. 2257/2013, the State party confirms that the only location designated for holding such events was the square behind the Sary Arka cinema. The court decision shows that the author organized an unauthorized event and actively called on people to participate in it.

4.4 Article 19 (2) of the Covenant provides that everyone shall have the right to freedom of expression, which includes the freedom to seek, receive and impart information of any form through any media. Under article 19 (3), however, the exercise of this right also carries with it certain obligations and responsibilities. It may be subject to restrictions provided for by law and necessary for respecting the rights and reputations of others, or for the protection of national security or the public order, or of public health or morals. Similarly, article 21 provides for the right to freedom of assembly, and provides for similar restrictions.

4.5 Furthermore, article 32 of the Constitution of Kazakhstan provides for the right of citizens to gather peacefully and hold public events. This right, again, can be limited in the interests of State security, public order and the protection of the health and rights and freedoms of others. The procedure for holding public events in public places is regulated by law No. 2126, on the procedure for organizing and holding peaceful meetings, pickets and demonstrations, dated 17 March 1995. Article 7 of that law forbids the holding of public events if those events threaten the public order or the security of citizens. The courts examined the record and events on 28 April 2012 and found the author guilty of violating article 373 (3) of the Code on Administrative Offences.

² CCPR/C/51/D/458/1991.

4.6 In response to both communications No. 2257/2013 and No. 2334/2014, the State party reiterates its position, and additionally submits that it has studied the practices of several other countries and found that the restrictions on public events in some countries are more formidable than in Kazakhstan. In the city of New York, for example, it is necessary to request permission 45 days before the event itself, and to indicate the route of the event. The city authorities have the right to move the location of the event if the requested location is not acceptable. Other authorities, such as those in Sweden, have “blacklists” of previously banned organizations. 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 the United Kingdom, street events are allowed only after receiving permission from police authorities. In Germany, any mass event, meeting or demonstration, inside or outside, must be permitted by the authorities. In general, in recent years, European countries have been incurring billions of euros in damages to public and private property resulting from “multiple pogroms” so that the rights of certain groups to hold public events can be implemented. Moreover, the work of private and State networks, including transportation networks, has had to be disrupted as a result.

4.7 To protect the rights and freedoms of others and the public order, as well as the transportation system and other infrastructure, the authorities of the State party have designated special locations for non-governmental public events. Currently, almost every regional capital, and some districts, have such designated areas, depending on the decisions of local councils.

4.8 The State party therefore considers that its laws and regulations are in line with the requirements of established international law and the practices of other countries. Moreover, the author has systematically violated the national laws and regulations by organizing, or participating in, unauthorized public events. During the period 2011–2013, the author participated in five unauthorized events. As a result, she was found guilty of administrative violations, for example, on 19 January 2012, and fined, but has continued to commit similar violations. During 2012 alone, the author was found guilty four times under article 373 (3) of the Code on Administrative Offences.

4.9 The State party has analysed those actions and submits that the author does not have a true desire to hold a public event. It has been ascertained, for example, that the author submitted requests to hold public events to the authorities of several regions, such as Akmola, South Kazakhstan, West Kazakhstan, Aktyube, Karaganda and Kostanai, and to the cities of Astana and Almaty. The requests were to hold flash mobs, on the same date (26 June 2014) and at the same time (from 11 a.m. to 1 p.m.). But the author did not hold any of the events as requested, as the organizers appeared neither at the locations designated by the authorities nor at any alternative locations as suggested by the local authorities. Therefore, it can be concluded that, in the absolute majority of these cases, the author simply pretended to be an active human rights defender.

4.10 Regarding communication No. 2334/2014, the State party reiterates its position on articles 19 and 21, and adds the following. The State party confirms that the Almaty city authorities were indeed asked for permission to hold a one-person picket near the Monument to Independence on 30 July 2012, and that they stated that there was only one location designated for such events: behind the Sary Arka cinema. The author did not make use of the opportunity provided but instead filed a complaint with the courts. The final decision of the Supreme Court of Kazakhstan was issued in this case on 8 August 2013. The Court concluded that the decision by the city authorities to designate one location for non-governmental public events did not violate the author’s rights.

4.11 The State party further submits that the author also failed to exhaust all domestic remedies in relation to her communication. It is true that the Deputy Prosecutor General rejected the author’s request to file a petition for a supervisory review on 22 October 2013. However, pursuant to articles 384 and 385 of the Civil Procedure Code, the author had the right to request the Prosecutor General to file a petition (protest) to initiate supervisory review proceedings before the Supreme Court of Kazakhstan. The author failed to make such a request to the Prosecutor General, therefore her communication before the Committee should be found inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

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

5.1 Concerning the events of 28 April 2012, in comments dated 18 March 2014 the author disputes the State party's assertion that she failed to exhaust all domestic remedies by not requesting the Office of the Prosecutor General to file an appeal for a supervisory review. On 8 November 2012, she made such a request, which was rejected on 7 February 2013.

5.2 The author's actions never threatened the public order or the security of others. It is clear that the author was sanctioned because her message did not coincide with the official position of the authorities. The location that was offered by the authorities cannot serve as a venue for public events because it is located far from the city centre, making it hard for citizens to reach. Moreover, during that time, the area around the cinema was being renovated and access was closed to the public.

5.3 Any limitation placed on the freedom of assembly must also be proportionate. In following the law, the State party must nevertheless choose restrictions that are less intrusive and that would still allow the holding of an event. The restrictions allowed in conformity with the law must not be applied automatically, but must consider the individual circumstances of each event. Banning a protest or event must be a measure of last resort, to be taken if no other restrictions are available. The State party violated all these principles. By arresting the author and sentencing her to 15 days of imprisonment, the authorities of the State party showed once again that the international obligations of Kazakhstan are not taken seriously.

5.4 On 28 April 2012, the author did not even have the opportunity to participate in the event. She was arrested while leaving her apartment. The event was held without her, and was held peacefully, which shows once again that it was not necessary to arrest and imprison her. In any case, the right to freedom of assembly is considered to be one of the fundamental rights, and the potential participants of such events should not have to ask for permission from the authorities to participate. The law on public events, in its article 10, does provide for the further regulation of the conduct of such events by local authorities, but it does not allow the authorities to limit the location of such events to only one place.

5.5 Instead of responding to the substance of the communication, the authorities of the State party accused the author of repeatedly violating the laws of Kazakhstan. The author confirms that she has been charged and sentenced five times for violating article 373 (3) of the Code on Administrative Offences for exercising her right to peaceful assembly, and asks the Committee to consider this fact when adopting its decision.

5.6 Furthermore, the State party identified some countries that have a "notification system", as opposed to the "permission system" in Kazakhstan. In October 2012, the author went to the United States of America, where she held a small protest in front of the White House in Washington, D.C., along with a Kazakh journalist, L.A. They did not seek permission, were allowed to protest and did not face an administrative fine or arrest. In Warsaw, the author also participated in several protests of approximately 10 people, which did not require permission.

5.7 The State party also attempted to insult the author by stating that, instead of being a human rights defender, she simply pretends to do so. The author confirms that she filed 30 requests to hold public events, but received a refusal for each of them. She did not want to be jailed for 15 days again, so she did not participate in those events. In addition to the present communications, the author filed three separate complaints with the Special Rapporteur on the rights to freedom of peaceful assembly and of association.³

5.8 Regarding the prohibition on holding a one-person picket, referred to in communication No. 2334/2014, the author submits that the picket did not threaten the public order or the rights and freedoms of other persons. Therefore, the refusal by the State party to allow the event was a violation of the author's rights under article 21. In accordance with the Committee's general comment No. 10 (1983) on freedom of opinion,

³ Along with her comments, the author attached copies of her complaints to the Special Rapporteur, which concern events different from those described in the two present communications.

although the authorities can impose certain restrictions, those restrictions cannot threaten the right of freedom of assembly itself, must be narrowly tailored to serve the intended purpose and must be in conformity with the law. In its decision, the local council, in identifying the location where non-governmental public events could be held, behind the Sary Arka cinema, did not indicate why it was necessary to hold such events at that particular location.

5.9 Furthermore, the law on public events also requires pickets and demonstrations to consist of at least two persons: one as the organizer and one as the person responsible for safety. According to the law itself, a one-person picket does not constitute a public event and does not require permission from authorities.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee notes the State party's contention that, concerning her present claims, the author failed to exhaust all domestic remedies available to her, by not filing a supervisory review appeal request with the Office of the Prosecutor General. The Committee recalls its jurisprudence, according to which the filing of a request with a court, or with a prosecutor's office, for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge or a prosecutor constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such a request would provide an effective remedy in the circumstances of the case.⁴ The State party has not shown, however, whether and in how many cases petitions under supervisory review procedures were applied successfully in cases concerning freedom of expression and assembly. In addition, the Committee notes that the author, on 8 November 2012, did file a supervisory review request, which was rejected on 7 February 2013. Under those circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.⁵

6.4 The Committee takes note of the author's allegations that her rights under article 21 were violated when the local authorities refused to grant permission for her to hold a one-person picket on 30 July 2012. The Committee considers that it is more appropriate to review these issues as involving a prohibition of an exercise of freedom of expression, under article 19 of the Covenant.⁶ It therefore finds the author's allegations concerning violations of her rights under article 21 of the Covenant, related to the planned protest on 30 July 2012, as insufficiently substantiated, and declares the part of the communication relating to those allegations inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also takes note of the allegations that the author's rights under article 26 of the Covenant were violated. It notes that the State party has not responded to those allegations. However, in the absence of further detailed information, explanations or

⁴ See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protosko and Tolchin v. Belarus* (CCPR/C/109/D/1919–1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2; *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.3; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

⁵ See also *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.

⁶ See *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4, and *Levinov v. Belarus*, (CCPR/C/123/D/2235/2013), para. 5.7.

evidence in support of those claims, the Committee finds those allegations insufficiently substantiated for the purposes of admissibility, and declares the part of the communication relating to those allegations inadmissible under article 2 of the Optional Protocol.

6.6 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under article 19, and under article 21 (with respect to the events of 28 April 2012) of the Covenant. The Committee therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered these cases in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that, by arresting her on 28 April 2012 and sentencing her to 15 days of administrative detention (communication No. 2257/2013), the State party violated her right to freedom of assembly. On 28 April 2012, the author was intending to hold a peaceful protest that was not intended to threaten the public order or the rights and freedoms of others. The State party argues that the author was arrested on 28 April 2012 and sentenced to administrative detention for holding a public event without obtaining permission from the local authorities, and that those authorities have designated a special location for such events in Almaty, behind the Sary Arka cinema.

7.3 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.⁷ 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 hearing 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 with 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.⁸ The State party is thus under the obligation to justify the limitation of the right protected under article 21 of the Covenant.⁹

7.4 The Committee notes the State party's assertion that the restriction was imposed in conformity with the Code on Administrative Offences, and other relevant laws, to protect rights and freedoms of others and the public order, as well as the transportation system and other infrastructure (para. 4.7 above). The author contends, however, that the planned event was intended to be peaceful and would not harm or endanger anyone or anything. The Committee therefore considers, on the basis of the material before it, that the State party has failed to demonstrate that the author's arrest, conviction and 15-day sentence for planning to hold a peaceful public protest were necessary in a democratic society and were proportionate to the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, as required under article 21 of the Covenant. For those reasons, the Committee concludes that, with respect to the events of 28 April 2012, the State party has violated article 21 of the Covenant.

7.5 Similarly, in the Committee's opinion, the actions of the authorities described in both communications amounted to a limitation of the author's rights to impart information and ideas of any kind, under article 19 (2), of the Covenant. The Committee must therefore decide whether those limitations are allowed under one of the restrictions set out in article 19 (3). The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, according to which freedom of opinion and freedom of expression

⁷ See, for example, *Margarita Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

⁸ *Ibid.*

⁹ See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows for certain restrictions only as provided for by law and necessary for: (a) respecting the rights and reputations of others; and (b) the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such 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 are predicated.¹⁰ The Committee recalls that any restriction on the freedom of expression must not be overly broad in nature, that is, it must be the least intrusive among the measures that might achieve the relevant protective function and must be proportionate to the interests of those for whom protection is sought. The Committee further recalls that it falls to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.¹¹ The State party contends that the author violated the procedure for obtaining permission for a planned event, but does not otherwise respond to the author's allegations. In particular, the State party does not attempt to demonstrate in either case that the author's arrest, detention and subsequent prosecution were necessary and proportionate to a legitimate government aim. The Committee considers that, in the circumstances, the prohibitions imposed on the author were not justified by the State party pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.¹²

8. 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 19 (2) (concerning both events) and article 21 of the Covenant (concerning the events of 28 April 2012).

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated 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 the fine 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 its obligations under article 2 (2) of the Covenant, the State party should review its legislation, in particular the law on the organization and conduct of peaceful assemblies, meetings, processions, pickets and demonstrations, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

10. 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 or 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.

¹⁰ See general comment No. 34 (2011) on the freedoms of opinion and expression, para. 22.

¹¹ See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹² See general comment No. 34 (2011), para. 34.