

**International Covenant on
Civil and Political Rights**Distr.: General
11 January 2022

Original: English

Human Rights Committee**Views adopted by the Committee under article 5 (4) of the
Optional Protocol, concerning communications
Nos. 2904/2016 and 2907/2016*, ****

<i>Communication submitted by:</i>	Ermek Narymbaev (represented by counsel, Balgabaeva Zhanara)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communications:</i>	7 October 2016 (both communications) (initial submissions)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 December 2016 (No. 2904/2016) and 15 December 2016 (No. 2907/2016) (not issued in document form)
<i>Date of adoption of Views:</i>	20 October 2021
<i>Subject matter:</i>	Participation in peaceful assembly, freedom of expression
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Fair trial; freedom of assembly; freedom of expression
<i>Articles of the Covenant:</i>	14, 19 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the two communications is Ermek Narymbaev, a national of Kazakhstan born in 1970. He claims to be a victim of a violation by Kazakhstan of his rights under articles 14, 19 and 21 of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 June 2009. The author is represented by counsel.

1.2 On 20 October 2021, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to deal with the two communications jointly, in view of their substantial factual and legal similarity.

* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram Bassim, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as submitted by the author

Communication No. 2904/2016

2.1 The author is a well-known public activist in Kazakhstan. As a result of several accidents associated with Russian rocket carriers powered by the rocket fuel heptyl, around 134,000 *saiga* antelopes perished in Kazakhstan in June 2015. Heptyl is reported to poison land, pollute air, contaminate water and has proven to be very harmful to humans and animals.

2.2 On 19 June 2015, the author applied to the Almaty city administration for authorization to hold a peaceful meeting with the aim of protesting against the inaction of the Government in the face of the environmental consequences of rocket launches. Having received no reply from the city authorities,¹ the author, together with around 20 other persons participated in a ceremony on 28 June 2015 of laying flowers at the Independence Monument in Almaty. The purpose of this event was to protest against the ecological disaster the country was facing as a result of 25 years of unfair and not free elections. The author indicates that laying flowers at monuments does not require any prior permission. Following the ceremony, the author gave an interview to a journalist. On 3 July 2015, police officers came to the author's house and took him to the police station, where he was questioned in the presence of a lawyer. The police filed an administrative record under article 488 (3) of the Code of Administrative Offences for violating the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations.

2.3 On 4 July 2015, the Almaty city specialized interregional administrative court found Mr. Narymbaev guilty under article 488 (3) of the Code of Administrative Offences and sentenced him to 15 days of administrative arrest. The author submits that the court erred in its decision and failed to take into account that the city authorities had ignored his request for authorization to conduct a peaceful meeting; that instead of conducting a meeting, which was not authorized, the author decided to participate in the ceremony of laying flowers, for which there is no need to receive permission from the City authorities; that the ceremony was conducted peacefully and did not pose any threat to national security, public order or public health, or to the protection of the rights and freedoms of others; and that the rights to freedom of expression and peaceful assembly are protected by articles 32 and 20 of the Constitution of Kazakhstan and articles 19 and 21 of the Covenant.

2.4 On 13 July 2015, the author appealed against the decision to the Almaty city court, claiming a violation of his rights to freedom of expression and peaceful assembly, as guaranteed by the Constitution of Kazakhstan and articles 19 and 21 of the Covenant. In his complaint, the author also noted that the administrative record filed by the police contained several discrepancies which were not addressed by the court, thus violating his right to a fair trial under article 14 of the Covenant. On 14 July 2015, the Almaty city court rejected the appeal, noting that on 23 June 2015 the author had publicly urged people to attend the upcoming event, thus acting as the organizer of an unauthorized public event. The Court concluded that 15 days of administrative arrest imposed on the author was in line with article 488 (3) of the Code of Administrative Offences.

2.5 The author's further complaint to the Almaty city court and an appeal to the Almaty City Prosecutor for a supervisory review were dismissed on 25 October 2015 and 29 March 2016, respectively.

Communication No. 2907/2016

2.6 On an unspecified date, the author announced on his Facebook page that he was planning to hold a picket in front of the Independence Monument on 20 August 2015 at 7 p.m. to protest against the devaluation of the tenge. As he was leaving his office, the author was arrested by police officers and taken to the police station. An administrative record was filed against the author for violating the procedure on holding peaceful assemblies, meetings,

¹ Materials on file demonstrate that under the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations, the organizers of the meeting should seek authorization and submit applications to the local authorities at least 10 days prior to the planned event. The authorities should notify their decision no later than 5 days prior to the event.

processions, pickets and demonstrations as foreseen under article 488 (3) of the Code of Administrative Offences.

2.7 On 21 August 2015, the Almaty city specialized interregional administrative court established that the author had posted on his Facebook page an invitation to people to gather at the Independence Monument in Almaty at 7 p.m. on 20 August 2015 for a meeting in order to demand the resignation of the President, the Prime Minister and the Government; the transfer of all loans to local currency at the exchange rate of January 2014, as well as the conduct of a subsequent indexation of pensions; the nationalization of all natural resources and of extracting and processing companies; the prohibition of mass dismissals and layoffs; and that the authorities default on all the foreign borrowings of Kazakhstan. The court found the author's actions contrary to article 488 (3) of the Code of Administrative Offences and sentenced him to 15 days of administrative arrest. The court further noted that owing to the author's disrespectful behaviour towards the judicial authorities in the courtroom; his challenging of the composition of the court; his disobeying of the orders of the presiding judge; and his violation of court rules, it sentenced the author to an additional 5 days of administrative arrest for contempt of court.

2.8 On 3 September 2015, the Almaty city court dismissed the author's appeal, stating that the lower instance court had lawfully sentenced the author to 20 days of administrative arrest, including 15 days for violating the procedure on holding peaceful meetings and 5 days for contempt of court.

2.9 On an unspecified date, the author filed a further appeal with the Almaty city court, requesting that his rights to freedom of expression, peaceful assembly and a fair trial be restored. His appeal was dismissed on 12 November 2015.

2.10 The author's further appeal to the Almaty City Prosecutor for a supervisory review was dismissed on 14 April 2016.

Complaint

3.1 The author claims that by convicting and imposing on him an administrative arrest, the State party authorities have restricted his right to freedom of expression in violation of article 19 of the Covenant and his right to freedom of assembly in violation of article 21. The author claims that the restrictions imposed by the State party authorities on the exercise of his rights to freedom of expression and peaceful assembly were not necessary in 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.

3.2 The author claims a violation of article 14 of the Covenant, arguing that the courts were not independent and failed to appraise all the evidence correctly, and thus erred when applying the Code of Administrative Offences and the subsequent decision for his arrest.

3.3 In communication No. 2904/2016, the author argues that the court did not allow his legal representatives to participate in the proceedings, thereby denying him the right to a counsel in violation of article 14 (3) (d) of the Covenant.²

3.4 The author requests the Committee to urge the State party to take the necessary measures to bring to justice those responsible for the violation of his rights.

3.5 The author requests the Committee to take measures to eliminate existing restrictions in the national legislation on freedom of expression, freedom of peaceful assembly and the right to fair trial, arguing that their provisions are incompatible with articles 19, 21 and 14 of the Covenant.

3.6 The author further requests the Committee to urge the State party to ensure that peaceful protests are held without unjustified interference by the State authorities and without organizers and participants being persecuted.

² However, materials in the file show that the court hearings were open and that the author's representative took part.

State party's observations on admissibility and the merits

4.1 In notes verbales dated 7 February, 25 September and 24 November 2017, the State party submits that both communications should be declared inadmissible under articles 2, 3 and 5 of the Optional Protocol owing to their incompatibility with the provisions of the Covenant.

4.2 In this context, the State party refers to the Committee's established practice in relation to consideration of the facts and evidence in cases that have already been decided by national courts and observes that the Committee is competent to consider possible violations of the rights guaranteed by the treaties concerned, but not to act as an appellate instance with respect to national courts and tribunals; it cannot, in principle, examine the determination of the administrative, civil or criminal liability of individuals, nor can it review the question of innocence or guilt.³ Based on these principles and with reference to article 3 of the Optional Protocol, the Committee has stated that the Covenant does not provide for the right to see another person criminally prosecuted.⁴ The author's request for holding the perpetrators accountable is therefore incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol, and should be declared inadmissible by the Committee.

4.3 The State party further observes that in his remaining requests, the author is in effect asking the Committee to overreach its authority and interfere in the domestic affairs of a sovereign State, and influence State policies in the area of freedom of expression, assembly and judicial protection, which is incompatible with the provisions of the Covenant.

4.4 The State party adds that a communication submitted to the Committee can be considered inadmissible if the claims do not fall under the purview of the Covenant. As it transpires from the Committee's established jurisprudence, the author's claims under article 14 (1) and 14 (3) (d) and (e) were not sufficiently substantiated and were considered inadmissible.⁵ The State party, with reference to the materials on file, concludes that the author was provided with legal representation and with the right to a fair trial, as foreseen in the national legislation.

4.5 The State party further submits that the author also failed to exhaust all domestic remedies and observes that the Code of Administrative Offences provides for a procedure under which the author could have requested the Almaty City Prosecutor to initiate supervisory review proceedings in his administrative case before the Supreme Court.⁶ The author therefore has a right to petition the Prosecutor General himself for an additional review. "Mere doubts" about the ineffectiveness of a remedy does not absolve the author of the necessity to exhaust a certain remedy.⁷ The State party notes that there are cases of action taken by the supervisory court, such as the decisions dated 29 April 2015. The supervisory panel of the Supreme Court also decided to consider as unlawful the decision issued by the Almaty city court on 14 March 2014 and the appeal court decision dated 20 May 2014. In that decision, the Supreme Court stated that the hunger strike that was organized by two persons in their apartment was not unlawful and asked the *akimat* of Almaty to remedy the violations that had occurred.

4.6 The State party continues that following the entry into force on 27 June 2017 of the amendments to article 851 of the Code of Administrative Offences, the author could have filed a complaint directly with the Supreme Court, requesting an assessment of the lawfulness of his administrative sentence. The State party observes that owing to non-exhaustion of the available domestic remedies, the present communications should be declared inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

4.7 The State party denies that the author's rights to freedom of peaceful assembly or freedom of expression were violated. It contends that the provisions of articles 19 and 21 of the Covenant are fully reflected in the domestic legislation of Kazakhstan. The right of

³ See Office of the United Nations High Commissioner for Human Rights. "Individual complaint procedures under the United Nations human rights treaties" fact sheet No. 7, rev. 2 (2013), page 8.

⁴ See, for example, *H.C.M.A. v. Netherlands*, communication No. 213/1986, para. 11.6.

⁵ The State party refers to *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010).

⁶ The State party refers to article 676 of the Code of Administrative Offences (revised on 01.01.2015).

⁷ The State party refers to *T.K. v. France*, communication No. 220/1987.

peaceful assembly, as guaranteed by article 32 of the Constitution, can only be restricted by the law in the interests of national security, public order, the protection of public health or the rights and freedoms of others. At the same time, the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations establishes procedures for the expression of public and personal interest in public places, as well as certain restrictions on that right. Article 2 of the Law states that peaceful assemblies can be held only with the prior authorization of the local municipalities, whereas article 9 establishes liability for breaches of the procedures for organizing and holding an event. Prior authorization is required in the interests of national security and public safety and the protection of public health or the rights and freedoms of the organizers of and participants in the events. In that context, the State party submits that its national legislation is in line with article 21 (3) of the Covenant, which allows the imposition of restrictions in conformity with the law that are necessary 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.

4.8 In both communications, the courts established that no authorization had been obtained by the author prior to the events of 28 June and 20 August 2015. The national courts have established that according to communication No. 2904/2016, the author not merely attended a ceremony of laying flowers on 28 June 2015, but acted as an organizer of the event, making public statement against the policies pursued by the President of Kazakhstan. According to communication No. 2907/2016, the courts have established that the author undertook actions aimed at holding a public meeting on 20 August 2015 and the courts found him guilty of violating article 488 (3) of the Code of Administrative Offences. The State party affirms that the courts acted lawfully in sentencing him to 15 days of administrative arrest in both communications and imposing 5 additional days of imprisonment for contempt of court, as set out in communication No. 2907/2016.

4.9 The State party emphasizes that the author was subjected to administrative arrest, not for expressing his views, but for having breached the procedures governing the organization of peaceful assemblies, as established by the law.

4.10 The State party concludes that the author's claims under articles 14, 19 and 21 of the Covenant are unsubstantiated.

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

5.1 In letters dated 18 June and 15 July 2017 and 12 February 2019, the author noted that the State party had publicly admitted, in numerous international forums, that the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations needed to be brought into line with international standards. In that context, the author argues that the provisions of articles 19 and 21 of the Covenant are not fully reflected in the domestic legislation of Kazakhstan and notes that the restrictions imposed on his rights to freedom of expression and peaceful assembly were unnecessary and that there was no need to sentence him to administrative arrest.

5.2 The author submits that the State party failed to demonstrate the reasons for restricting his rights to freedom of expression and peaceful assembly and for holding him administratively liable. He maintains that his actions did not pose any risk to the State.

5.3 The author submits that the State party failed to implement the views adopted by the Committee in relation to violations of articles 19 and 21 of the Covenant in a similar case.⁸

5.4 The author further refers to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Kazakhstan, in which he stated that the right to peacefully assemble, hold meetings, rallies and demonstrations, street processions and pickets is guaranteed by the Constitution.⁹ However, in practice, the government approach to regulating assemblies renders that right meaningless. The 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches,

⁸ See *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012).

⁹ See *A/HRC/29/25/Add.2*.

Pickets and Demonstrations requires that representatives of labour collectives, public associations or separate groups of citizens of Kazakhstan who have reached the age of 18 seek prior permission from the local authorities at least 10 days before the date of a gathering. Those requirements do not comply with international standards, which provide that no authorization should be required to assemble peacefully and that everyone has the right to freedom of peaceful assembly and of association.¹⁰

5.5 The author notes that according to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, although certain restrictions are allowed under paragraph 4 of Human Rights Council resolution 15/21, the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights provide a clear framework for the authorized limits under international human rights law. Fundamentally, the scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned and shall be interpreted strictly and in favour of the rights at issue. In that context, the Special Rapporteur emphasizes that the right of peaceful assembly must not be subject to prior permission from the authorities, but at best a notification procedure whose rationale is to ensure police protection for demonstrators and bystanders.¹¹

5.6 The author adds that by specifying that authorized assemblies can only be held at specific designated sites and following the grant of permission from the State, the Special Rapporteur believes that the right to freedom of assembly is treated as a privilege or a favour rather than a right. Although in limited circumstances, for a certain period of time, the right of peaceful assembly may legitimately be restricted in certain locations, prohibiting assemblies in all but one designated area violates international human rights law.¹²

5.7 The author further notes that the Special Rapporteur echoes the findings of the Human Rights Committee and notes that the Government of the State party has admitted on multiple occasions that the Law on Assemblies falls short of international standards. In 2007, for example, the Human Rights Commission, a consultative body under the President, concluded in its baseline report on human rights in Kazakhstan that the 1995 Law failed to comply with international standards. Among other things, it highlighted the fact that the law did not differentiate between participants in a gathering and monitors or passers-by, often resulting in the arrest of the latter.¹³

5.8 Finally, the author emphasizes that the Special Rapporteur encouraged the authorities to consider a complete overhaul of its approach to regulating peaceful assemblies, starting by repealing the requirement of prior authorization and by allowing assemblies to take place in areas other than designated “protest spaces”.¹⁴

5.9 The author explains that although he filed a complaint with the office of the Almaty City Prosecutor under the supervisory review procedure, he was not successful. The author argues that this procedure does not constitute an effective remedy. Referring to the State party’s observation implying that he had failed to exhaust all domestic remedies since he did not file a complaint directly with the Supreme Court, as foreseen under the new legislation of 27 June 2017, the author argues that the present communications were submitted to the Committee before amendments to article 851 of the Code of Administrative Offences entered into force and thus exhausting the supervisory review procedure was not necessary.

5.10 The author notes that the State party violated his rights to freedom of expression and peaceful assembly, as guaranteed under article 32 of the Constitution, as well as articles 19 and 21 of the Covenant. He further notes that neither the State party nor the national courts have provided any explanation as to why the restriction, including an administrative arrest, was necessary for a legitimate purpose.

5.11 Referring to violation of article 14 of the Covenant in communication No. 2907/2016, the author notes that by sentencing him to prison the courts erred in restricting his rights to

¹⁰ See Human Rights Council resolution 15/21.

¹¹ [A/HRC/29/25/Add.2](#), para. 59.

¹² *Ibid.*, para. 60.

¹³ *Ibid.*, para. 62.

¹⁴ *Ibid.*, para. 66.

freedom of expression and peaceful assembly. He further notes that the Court ignored his request to recuse the judge, did not allow the proceedings to be recorded on video and refused to allow the media and relatives to be present in the courtroom during the hearings. The author disagrees with the court's assessment of him as disobeying the orders of the presiding judge and the subsequent imposition of five days of administrative arrest for contempt of court.

State party's additional observations

6.1 In a note verbale of 30 July 2020, the State party refers to communication No. 2904/2016 and submits that according to rule 96 (b) of the of the Committee's rules and procedures, a communication submitted on behalf of an alleged victim may be accepted when it appears that the individual in question is unable to submit the communication personally.¹⁵ The State party submits that the author failed to provide any evidence certifying that he was not able to complain before the Committee personally and therefore the communication should be considered inadmissible.

6.2 The State party contends that the author has failed to exhaust all domestic remedies, stating that he is still entitled to file a complaint with the Supreme Court to probe the lawfulness of the court rulings that sentenced him to administrative arrest.

6.3 The State party reiterates that the holding of public events in Kazakhstan is governed by the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations and recalls that international human rights law allows for the imposition of limitations on freedom of assembly. For example, in the United Kingdom of Great Britain and Northern Ireland, the procedure for conducting marches and demonstrations is regulated by the Public Order Act 1986, according to which street events are allowed only after receiving permission from the police authorities. The organizers have to notify the police authorities at least six days in advance of the event, indicate the date, place and time of the meeting, and also provide information about the organizers.

6.4 In the United States of America, the procedures for holding public meetings lies within the competence of each State. For example, in New York it is necessary to request permission 45 days before the planned event, in Los Angeles it is 40 days, whereas in Washington it is 15 days. In some cities, rallies cannot be held near government and administrative buildings.

6.5 The State party concludes that the author has failed to follow the requirements established by the procedures for holding meetings, which was confirmed by the courts. The author failed to substantiate his claims of violation of his rights to freedom of expression, peaceful assembly and a fair trial. The State party states that the communication should be considered inadmissible under articles 2, 3 and 5 of the Optional Protocol.

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.

7.2 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 challenges the admissibility of both communications, stating that the author failed to file a petition with the Prosecutor General for a supervisory review of the court decisions in the case. The Committee recalls its jurisprudence, according to which a petition to a prosecutor's office requesting a review of court decisions that have entered into force, and depending on the discretionary power of the prosecutor, constitutes an extraordinary remedy and the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the

¹⁵ CCPR/C/3/Rev.10.

circumstances of the case.¹⁶ The Committee notes that the author did submit requests to initiate supervisory review proceedings to the Office of the General Prosecutor, which were denied by the Prosecutor of Almaty city on 29 March 2016 (communication No. 2904/2016) and on 14 April 2016 (communication No. 2907/2016). The Committee further recalls its jurisprudence, according to which a petition to a prosecutor's office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹⁷ The Committee also notes that the legislative amendments to article 851 of the Code of Administrative Offences, allowing people to file complaints with the Supreme Court came into force on 27 June 2017, i.e. after the submission of the present communications. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communications.

7.4 The Committee takes note of the State party's submission that communication No. 2904/2016 was brought before the Committee by third-party individuals instead of the author himself. In that respect, the Committee recalls that rule 99 (b) of its rules of procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative.¹⁸ In the present case, the Committee notes that the alleged victim duly issued a power of attorney to authorize counsel to represent him before the Committee. Accordingly, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the communication.

7.5 The Committee notes the author's claim that his rights under article 14 (1) of the Covenant were violated because the Court ignored the author's request to recuse the judge, did not allow the proceedings to be recorded on video and did not let the media and his relatives into the courtroom during the trial. The Committee considers however that the author's general claim and the information contained in the case file do not allow the Committee to reach a conclusion on this allegation. Accordingly, the Committee declares this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

7.6 The Committee also notes that the author has not provided any clarification of his claims under article 14 (3) (d) of the Covenant in communication No. 2904/2016. It thus finds that part of the claims unsubstantiated and inadmissible under article 3 of the Optional Protocol.

7.7 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant for the purposes of admissibility of both communications and proceeds with their consideration on the merits.

Consideration of the merits

8.1 The Committee has considered both communications in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim in communication No. 2904/2016 that the State party violated his rights to freedom of expression and to peaceful assembly under articles 19 and 21 of the Covenant by arresting him on 3 July 2015 for participating in a peaceful event of laying flowers, and in communication No. 2907/2016 for arresting him on 20 August 2015, when he was leaving the office to attend a peaceful gathering. The Committee notes that the author does not consider the restrictions imposed on his rights to be necessary and to fall within the permissible restrictions enshrined in articles 19 and 21 of the Covenant. The Committee further notes that the State party acknowledges that the

¹⁶ See, for example, *Suleymenova v. Kazakhstan* (CCPR/C/126/D/2416/2014), para. 8.3; *Toregozhina v. Kazakhstan* (CCPR/C/126/D/2311/2013), para. 7.3; and *Insenova v. Kazakhstan* (CCPR/C/126/D/2542/2015-CCPR/C/126/D/2543/2015), para. 8.3.

¹⁷ 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.

¹⁸ CCPR/C/3/Rev.12.

author's rights under articles 19 and 21 of the Covenant have been restricted but considers that the imposed restrictions are compatible with the Covenant.

8.3 The Committee also notes the author's claim in communication No. 2904/2016 that his freedom of expression was unlawfully restricted, in that he was found guilty of an administrative offence and sentenced to administrative arrest for participating in a ceremony of laying flowers to protest against environmental issues in the country and again for his intention to hold a picket in front of the Independence Monument to raise concerns over the devaluation of the national currency (communication No. 2907/2016). The issue before the Committee is therefore to determine whether the sanctions imposed on the author by the domestic authorities for participating in and trying to hold a peaceful assembly with an expressive purpose, amounts to a violation of article 19 of the Covenant.

8.4 The Committee recalls its general comment No. 34 (2011), in which it stated, *inter alia*, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society (para. 2). It notes that article 19 (3) of the Covenant allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary: (a) for respect of the rights or reputation of others; or (b) for the protection of national security or public order (*ordre public*), or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature – that is, it must be the least intrusive among the measures that might achieve the relevant protective function and be proportionate to the interest being protected.¹⁹ The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.²⁰

8.5 The Committee observes that sentencing the author to administrative arrest for participating in a peaceful, albeit unauthorized, event with an expressive purpose, raises serious doubts as to the necessity and proportionality of the restrictions on the author's rights under article 19 of the Covenant. The Committee observes in this regard that the State party has failed to invoke any specific grounds to support the necessity of such restrictions, as required under article 19 (3) of the Covenant,²¹ nor has the State party demonstrated that the measures selected were the least intrusive in nature or proportionate to the interests that it sought to protect. The Committee considers that in the circumstances of the case, the restrictions imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 of the Covenant have been violated.²²

8.6 The Committee notes the author's claim in relation to both communications that his right of peaceful assembly under article 21 of the Covenant was violated when the national authorities imposed an administrative arrest on him for participating in the ceremony of laying flowers that took place on 28 June 2015 and again for his intention to hold a picket in front of the Independence Monument on 20 August.

8.7 The Committee recalls its general comment No. 37 (2020) and states that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for public expression of an individual's views and opinions and is indispensable in a democratic society. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21, whether they are stationary, such as pickets, or mobile, such as processions or marches.²³ No restriction to this 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*), protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to peaceful assembly

¹⁹ General comment No. 34 (2011), para. 34.

²⁰ See, for example, *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

²¹ See, for example, *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

²² See, for example, *Svetik v. Belarus*, (CCPR/C/81/D/927/2000), para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.

²³ General comment No. 37 (2020) para. 6.

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.²⁴ The State party is thus under an obligation to justify limitations on the right protected by article 21 of the Covenant and to demonstrate that such limitations do not serve as a disproportionate obstacle to the exercise of that right.²⁵

8.8 The Committee observes that the State party relied on the provisions of the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations, which requires the authorization of the local executive authorities for a peaceful assembly, which already in itself restricts the right of peaceful assembly.²⁶ The Committee recalls that authorization regimes, where those wishing to assemble have to apply for permission from the authorities to do so, undercut the idea that peaceful assembly is a basic right.²⁷ 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.

8.9 The Committee further notes the State party's observation that the procedure for the organization of public events set out in the Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations is necessary for the preservation of the rights of others and therefore the Law is a sufficient ground for limitation of the right to peaceful assembly. In that respect, the Committee notes that the second sentence of article 21 of the Covenant consists of two inseparable conditions.²⁸ The limitations should be based on domestic laws, but at the same time they should be 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. The limitations should also be proportionate to the objective they aim to achieve, which requires an assessment by the State authorities, balancing the nature and the extent of the interference against the reason for interfering.²⁹ Establishing whether a restriction is necessary requires therefore not only a legal but also a factual assessment.³⁰ A previous legislative act is thus necessary but not sufficient for such an evaluation. In the present cases, the State party has not attempted to demonstrate that the sanction in the form of administrative arrest imposed on the author for participating in or trying to attend a peaceful unauthorized assembly was necessary and proportionate under article 21 of the Covenant. The Committee therefore concludes that the State party has violated article 21 of the Covenant.

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

9. 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, including to reimburse the fine and any legal costs incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof, in order to make it compatible with its obligations under article 2 (2) of the Covenant to adopt measures able to give effect to the rights recognized by articles 19 and 21.

²⁴ *Ibid.*, para 36.

²⁵ See, for example, *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

²⁶ See, for example, *Insenova v. Kazakhstan*, para. 9.7.

²⁷ General comment No. 37 (2020), para. 84.

²⁸ *Ibid.*, paras. 44–46.

²⁹ *Ibid.*, para. 46.

³⁰ *Ibid.*, para. 45.

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 and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable 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.
