



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. 2521/2015*, **

<i>Communication submitted by:</i>	Ermek Narymbaev
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	2 September 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	6 November 2020
<i>Subject matters:</i>	Participation in a non-authorized peaceful protest; fair trial
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly; fair trial guarantees
<i>Articles of the Covenant:</i>	14 (3) (d) and (g), 19 and 21
<i>Article of the Optional Protocol:</i>	2

1. The author is Ermek Narymbaev, a citizen of Kazakhstan born in 1970. He claims to be the victim of a violation by Kazakhstan of his rights under articles 14 (3) (d) and (g), 19 and 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 September 2009. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author is a human rights defender and founder of a non-governmental organization for “the working and unemployed”. On 30 September 2013, he supported the delivery of a petition to the United Nations office in Almaty protesting the use of the Baikonur launch site by the Russian Federation to fire a missile. The author finds it

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

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



unacceptable that the ecology and the health of the people of Kazakhstan should be damaged by such an act. He claims that all civilized nations except the Russian Federation have stopped using heptyl, a gas used in the ignition of missiles. In July 2013, a missile that had been ignited with heptyl exploded a minute after launch and fell to the ground. According to the relevant insurance company, the missile discharged some 500 tons of fuel containing heptyl and amyl, both highly poisonous substances. The author emphasizes that heptyl is highly toxic and able to interact with several human systems, such as internal organs, the central nervous system and the circulatory system.

2.2 On 2 October 2013, the author was fined 86,550 tenge by the specialized inter-district administrative court of Almaty for participating in an unauthorized event under provisions of the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations. On 5 November 2013, that decision was upheld on appeal.

2.3 The author requested the Office of the Prosecutor and the Office of the Prosecutor General of Almaty to conduct a supervisory review of the appeal court's decision. On 25 April 2014, a Deputy Prosecutor General of the city of Almaty found no reason to seek a supervisory review of the case. On 14 July 2014, another Deputy Prosecutor General rejected the appeal. Thus, according to the author, domestic remedies have been exhausted.

2.4 The author claims that, under article 14 (3) (d), everyone has the right to defend himself or herself in the presence of a lawyer, but this did not happen in his case. In addition, the court did not question the police witnesses on whose testimonies the author was fined.

2.5 During the trial, the author's rights under article 14 (3) (d) and (g) were also violated, because he was never informed of the date of examination of the appeal, which took place in his absence.

2.6 In addition, according to the author, the judges acted in a biased manner, ignoring his arguments and the testimony of one of his witnesses, as well as the norms of national and international human rights law, clearly acting in favour of the police. Since the beginning of the trial, the court treated the author as an offender.

2.7 The author refers to the Committee's case law on freedom of expression, in particular to its Views in *Olechkevitch v. Belarus* (communication No. 1785/2008) and *Protsko and Tolchin v. Belarus* (communications Nos. 1919-1920/2009), in which the Committee concluded that the restrictions imposed on the authors' freedom of expression were unjustified.

Complaint

3.1 The author claims that his rights under article 14 (3) (d) of the Covenant have been violated as he was never notified of the date of examination of the appeal and as the court examined his appeal in his absence. The presiding judge of the specialized inter-district administrative court of Almaty did not take into consideration the fact that his guilt was never established and did not question a number of witnesses of relevance.

3.2 The author claims that, during the trial, he admitted to having been present at the handing over of the petition to the United Nations office, but he rejected any guilt. The presiding judge did not take into account his submissions to the effect that he had not organized the event, had not intervened or given interviews and had only positioned himself as an observer. He also explained that, under the Code of Administrative Offences, factors existed exonerating him from responsibility for the event in question.¹

3.3 The author claims that the court disregarded the fact that he had a right to join in the handing over of the petition under both national and international law. Under article 22 of the Constitution of Kazakhstan and article 19 of the Covenant, freedom of expression is recognized, including the right to hold opinions and to seek, receive and disseminate all kinds

¹ The author points out that, under article 38 (1) of the Code of Administrative Offences, an act committed in self-defence does not constitute a crime if it is committed when someone is protecting his or her own personality, housing, property, plot of land or other rights, or those of other people, as protected by the law in the interests of society or the State. Under article 38 (2) of the Code, everyone, irrespective of his or her professional or special training, has equal entitlement to a defence.

of information, ideas and artistic forms of expression, irrespective of national borders, orally, in writing, through the press or by other means.

3.4 The event of 30 September 2013 was a peaceful one that posed no threat to State security and did not violate the rights or freedoms of others. Under article 21 of the Covenant, the right to peaceful assembly is subject only to such limitations as are imposed by law and necessary in a democratic society 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. According to the Committee, when imposing restrictions, States should not endanger the principle of the right to freedom of assembly. The restrictions should be justified as necessary under one of the above-mentioned exceptions.

3.5 In accordance with the ruling of the Supreme Court of 10 July 2008, Kazakhstan is obliged to protect the rights and freedoms of all people under its jurisdiction, in line with the Constitution and the State's international obligations.

3.6 The author believes that the fine imposed on him was aimed at punishing him for the handing over of a petition to the United Nations office in Almaty, in violation of his rights to freedom of expression and freedom of assembly, guaranteed under articles 19 and 21 of the Covenant. The authorities have failed to justify why the restrictions imposed were necessary.

3.7 The handing over of a petition, in the author's view, cannot be qualified as an assembly, as only five or six people were present on that occasion. His participation as an observer cannot justify a fine. In addition, no evidence was adduced and the conclusions of the court do not correspond to the factual circumstances of the case. The court's conclusion of his guilt was based on the police report on the commission of an offence. The handing over of the petition posed no threat to national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Thus, in the author's view, the organizers had no obligation to inform the authorities of the planned action.

3.8 The author believes that not only must States ensure the right to peaceful assembly, but they must also avoid adopting unjustified indirect restrictions on the realization of that right.

State party's observations

4.1 The State party presented its observations on admissibility and the merits in a note verbale dated 1 April 2015. In it, the State recalls the facts of the case: at around 11 a.m. on 30 September 2013, in front of the United Nations building in Almaty, the author, without the prior authorization of the local authorities and with the aim of attracting citizens' attention, together with members of a non-governmental organization, organized a protest to denounce the use of heptyl for fuelling Proton missiles launched from Baikonur. The author handed out an A3 leaflet reading "If the Government authorizes Proton, I am against".

4.2 Representatives of the Office of the Prosecutor explained to those participating in the action that the requirements of the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations were not being respected, but the participants did not react to the suggestion that they stop their unlawful acts.

4.3 Also on 30 September 2013, an official record on the commission of an offence was drawn up against the author under article 373 (3) of the Code of Administrative Offences. By its ruling of 2 October 2013, the specialized inter-district administrative court of Almaty fined the author 86,550 tenge. The author's guilt was duly established, based on the above-mentioned official record of 30 September 2013, his depositions, the witnesses' testimonies and other evidence on file all having been assessed by the court.

4.4 The author appealed against that ruling. On 5 November 2013, the Almaty city court confirmed the trial court's judgment.

4.5 The author appealed to the Office of the Prosecutor and the Office of the Prosecutor General of Almaty, requesting a supervisory review of the court decisions in the case. The Prosecutor's Office found no reason to initiate such a review.

4.6 The State party believes that the communication submitted by the author is unfounded and inadmissible. The fact that the author participated in the handing over of a petition in the framework of an unsanctioned event near the United Nations building on 30 September 2013 was duly established in court and was not contested by the author. However, the author contests that his acts constitute an offence, given that, according to him, he participated only as an observer and merely exercised his rights to peaceful assembly and freedom of expression.

4.7 At the same time, however, it has been established by witnesses' depositions and other case file material that the author was one of the organizers of the event and was taking a most active part in it, including by carrying a poster during the event.

4.8 In general, the right to freedom of expression is subject to restrictions. Article 19 (3) of the Covenant clarifies that this right can be restricted, if the restrictions are provided by law and are necessary: (a) to respect the rights or reputations of others; and (b) to protect national security or public order, or public health or morals.

4.9 Article 21 of the Covenant protects the right to peaceful assembly. This right too is subject to restrictions, and only to those that are provided by law and are necessary in a democratic society 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.

4.10 Those requirements have been transposed in national law. Article 32 of the Constitution protects the right to peaceful assembly. That right can be limited only under the law and in the interest of State security, public order, defence or health, and for the protection of the rights and freedoms of others. Article 2 of the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations requires that such events be held with the authorization of the competent organs. Article 9 of that same law establishes that those violating those requirements are administratively liable under the law.

4.11 Thus, peaceful meetings, assemblies, rallies, pickets and other such events are not forbidden in Kazakhstan but are regulated, including through the imposition of certain restrictions.

4.12 The democratic sources of written law, for example the recommendations of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), recognize the need for particular restrictions to be imposed on the right to freedom of association.

4.13 The State party notes that, in recent years in Europe, the exercise of the right to freedom of assembly by some parts of society has damaged States. For example, there have been pogroms, a deterioration in State and private property and interruptions to the work of businesses and transport networks. Such actions have always started as peaceful assemblies. Hence, there is a need to regulate – not forbid – the conduct of such events, including by requiring organizers to obtain the authorization of the relevant authorities.

4.14 Regarding the case at hand, the State party notes that the conduct of such spontaneous, unauthorized actions in unsuitable places, such as where there is a high volume of traffic or where the expression of opinion may provoke violent reactions from other members of society, has the potential to disturb the calm and safety of the surroundings and the normal functioning of transport and infrastructure facilities. Thus, the action of which the author was one of the organizers could clearly have disturbed the public order, posing a threat to the health and safety of the author himself and also to others and causing a serious threat to public security.

4.15 Enjoying freedom of expression and assembly implies particular obligations and responsibilities, as their abuse can have serious consequences. They can disrupt the normal functioning of transport networks and result in mass disorder and other forms of antisocial behaviour. For this reason, restrictions on these rights have been imposed, including by establishing administrative liability for violations of the law on the conduct of such events. Due to the timely intervention of the police, no serious consequences occurred as a result of the unlawful action of the author.

4.16 The State party adds that, in many developed countries, the rights to freedom of assembly and to hold meetings are limited by special laws. In Kazakhstan, certain places have been designated for the conduct of meetings, as determined by the local authorities.

4.17 The State party notes that, in New York City, United States of America, for example, the conduct of a rally requires a 45 days' prior application, with an exact indication of the itinerary; the authorities may determine another itinerary. In Sweden, organizers of meetings that have been refused or dismantled are blacklisted. In France, the authorities can refuse the conduct of any meeting. In the United Kingdom of Great Britain and Northern Ireland, temporary moratoria on meetings can be imposed and meetings may only be held upon authorization by the police. In Germany, an indoor or outdoor mass event, assembly or demonstration must first be authorized by the authorities.

4.18 Thus, the legal regulation of mass events in Kazakhstan fully corresponds to the norms of international law, including the Universal Declaration of Human Rights and the Covenant, as well as the practice of developed democracies.

4.19 The State party clarifies its practice regarding mass events. The organizers of a planned event must apply to the local executive body. Under article 9 of the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, those violating the law can be held responsible.

4.20 As it transpires from the material on file in the author's case, no *akim* (head of local government authority) authorized an assembly, rally or picket to be held on 30 September 2013 next to the United Nations building in Almaty. This fact is not contested by the author, who deliberately decided to violate the law. The author's argument to the effect that, by actively participating in an unauthorized meeting he committed no offence, was assessed by the trial court and on appeal and declared to be unfounded. The author was sanctioned not for having freely expressed his opinion but for having breached the order on the conduct of sociocultural events as prescribed by law.

4.21 The author's allegations regarding a breach of fair trial guarantees – that he was not informed of his right to be represented by a defence counsel and that the hearing on the appeal took place in his absence – were, according to the State party, considered in court but declared to be groundless. It should be noted that, when the administrative record of an offence was drawn up and during the trial, the author's rights were explained to him and that the author did not request to have a defence lawyer appointed. The court of first instance had acquainted the author with all his procedural rights under article 584 of the Code of Administrative Offences, including his right to be represented by a lawyer. This is attested by the author's signature on the relevant form.

4.22 Article 589 of the Code of Administrative Offences lists the situations when a defence lawyer's presence is compulsory. The circumstances of the present case do not warrant inclusion in that list.

4.23 Under article 584 (2) of the Code of Administrative Offences, a case can be examined in the absence of the accused if there is information that he or she has been duly notified of the location and time of the hearing and if no request for adjournment has been received. The appeal court was satisfied that the author had been duly notified and, in the light of the absence of a request for adjournment, decided to proceed with its examination of the appeal in the author's absence.

4.24 Moreover, the State party believes that the case is inadmissible because the author has not exhausted all available domestic remedies. For instance, he has not applied directly to the Prosecutor General for a supervisory review to contest the decision of the Deputy Prosecutor General.

4.25 In conclusion, the State party considers that, in finding the author liable of an administrative offence, its authorities have respected the provisions of the Covenant. Thus, the communication is unsubstantiated and inadmissible.

Author's comments on the State party's observations

5.1 The author presented comments to the State party's observations in a letter dated 21 May 2015. He emphasizes that the handing over of the petition on 30 September 2013 posed no threat to the State or to public security, nor did it violate public order, public health, public morals or the protection of the rights and freedoms of others. Rather, the issues raised during the campaign related to the protection of public security and public health. Heptyl contains highly toxic substances that could have a negative effect on human health. All civilized countries, including the Russian Federation, have renounced the use of heptyl in their territories. In the regions where the gas is still used, people suffer from a wide spectrum of diseases. A group of activists prepared a petition against the use of heptyl by the Russian Federation in Kazakhstan and wanted to deliver it to the United Nations office in Almaty. The author, an activist and the leader of a non-governmental organization, came to support the action when he learned about it on social media.

5.2 The author notes that the rights to freedom of expression and assembly may be subject to restrictions. The State party has not explained, however, why a citizen is unable to express his opinion or why a peaceful assembly was interrupted and its participants subjected to an administrative fine. The authorities wanted to suppress civil society engagement by indicating to citizens that they were not allowed to express their opinion or to voice demands publicly.

5.3 The author refers to the 2007 *Guidelines on Freedom of Peaceful Assembly* of the OSCE Office for Democratic Institutions and Human Rights, in accordance with which the right to freedom of peaceful assembly is a key right and should be enjoyed without external regulation to the extent possible. Those willing to participate in a peaceful assembly must not be required to obtain authorization. Legislation should unequivocally create a presumption in favour of the freedom of assembly. States must protect peaceful assemblies and provide a range of mechanisms and procedures for the effective practical fulfilment of the freedom of assembly, without superfluous bureaucratic regulation. Restrictions on freedom of assembly must be proportionate. The authorities must opt for the least intrusive form possible of interference in the right to peaceful assembly.

5.4 The author claims that the public handing over of the petition was a way to express an opinion, which did not threaten State power or public order, and that it was therefore unnecessary to interrupt it.

5.5 He explains that suppression of civil activity can have tragic consequences. In support of that statement, he cites the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his visit to Kazakhstan,² who, in 2015, noted that people who were unable to express dissatisfaction peacefully were prone to expressing themselves using violence or to finding consolation in extremist ideology.

5.6 The author addresses the examples given by the State party of other countries regulating freedom of assembly. As to the comparison with the United States of America, where a request, including the itinerary, must be made 45 days prior to an event, the author notes that, in Kazakhstan, such a right cannot be realized, as the authorities have designated the square near the cinema "Sary-Arka" in Almaty as the location for holding mass events. Thus, for private entities in Almaty, and elsewhere, there is only one area designated for mass events.

5.7 The author adds that, while an appeal to the Office of the Prosecutor is not an effective remedy, he nevertheless appealed to that Office and to the Prosecutor General.

5.8 According to the author, the judges examining his case immediately took the position of the authorities, without bearing in mind the international standards and disregarding the author's oral requests, in violation of article 14 of the Covenant. In addition, no trial transcript has been kept. The author was unable to present any written requests. The case file does not contain a statement that he declined the assistance of a defence lawyer. In addition, the author was not informed of the date and venue of the appeal hearing and, as a result, he was not present during that hearing and could not represent his interests in court.

² A/HRC/29/25/Add.2.

5.9 In the author's opinion, the State party refuses to examine in substance the violation of his rights to freedom of expression and peaceful assembly.

5.10 To improve the situation in Kazakhstan, the author proposes, *inter alia*, the following: (a) the authorities should adopt a new law on freedom of peaceful assembly that is in line with the Constitution and international standards; (b) the new law must require organizers to notify – not seek the authorization of – the authorities, with the notification taking the form of a letter or any form of electronic message or other means of communication; (c) the local government authorities should be obliged to acknowledge receipt of the notification on the day of receipt and, for purpose of transparency, an online calendar should be posted on social media or kept by the local authorities; (d) notifications should be submitted not earlier than 45 days and no later than three days prior to an event; and (e) restrictions to be imposed on or prohibitions of assemblies must be decided by a court. The burden for proving the existence of grounds for forbidding an assembly should lie with the local government authorities (specifically, the *akimat*).

Additional submissions

From the State party

6. In a note verbale dated 30 July 2015, the State party stated that it had no further observations and referred to its initial submission. It reiterates that no violation of the author's rights has occurred and argues that the case should be declared inadmissible.

From the author

7.1 The author presented further comments in a letter dated 14 September 2015. He notes that, following the submission of the communication on his case to the Committee, in July and August 2015 he was subjected to administrative arrests of 15 and 20 days respectively, for having conducted other unauthorized meetings.

7.2 The author reiterates that the fact that the situation regarding freedom of assembly in the State party is quite poor was recorded in 2015 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association. In his report, the Special Rapporteur noted, among other things, that, although the Constitution guarantees the right to peaceful assembly, the authorities' approach to regulating freedom of association deprives the right of meaning. Under the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, the organizers of a meeting must receive authorization from the local authorities no later than 10 days prior to the date of the planned event.

7.3 In addition, a prohibition on holding peaceful assemblies in all but one location constitutes, in the author's opinion, a violation of international human rights law.

7.4 The author notes that the authorities have recognized that the provisions of the law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations contradict international law. In 2007, the Commission on Human Rights, a consultative organ in the Executive Office of the President, concluded that the law did not meet international standards. In 2010, in the framework of the universal periodic review, Kazakhstan accepted recommendations on adopting a new, less restrictive law on mass events. That intention was confirmed by the authorities in 2014 in the framework of the universal periodic review.³

³ The author suggests that the following elements be taken into consideration when elaborating the new law: (a) public discussions should be held regarding the draft law; (b) parliamentary hearings should be held regarding the draft law; (c) the draft law should be placed on the parliamentary agenda; and (d) law enforcement officials should be trained, including on alternative uses of power and fire arms, the peaceful resolution of conflicts, understanding how to control crowds, methods of persuasion, negotiations and mediation and the use of technical means aimed at limiting the use of power and fire arms when assuring the public order in the framework of peaceful assemblies. The Committee notes that, in March 2020, the State party amended its law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations and that the law as amended was endorsed by the President on 25 May 2020.

From the State party

8. In a note verbale dated 4 December 2015, the State party noted that it had no further observations. It reiterates its previous position and emphasizes that the communication should be declared inadmissible.

From the author

9. In a letter dated 31 January 2016, the author reiterates in extenso his previous comments.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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.

10.2 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.

10.3 The Committee notes that the State party challenges the admissibility of the communication, as the author has not applied directly to the Prosecutor General under the supervisory review proceedings before the Supreme Court against the refusal of the deputy Prosecutor General to request a review of the case. In that regard, the Committee notes the author's assertion that, on 20 November 2013, he applied to the Office of the Prosecutor of Almaty and then to the Office of the Prosecutor General under the supervisory review proceedings. The first appeal was rejected by the Office of the Prosecutor and the second one by the Deputy Prosecutor General. The Committee recalls its jurisprudence according to which a petition for supervisory review to a prosecutor's office, dependent on the discretionary power of the prosecutor, 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.⁴ Accordingly, in the circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

10.4 The author has merely claimed a violation of his rights under article 14 of the Covenant. He claims, in particular, that: (a) he was not notified of the date of the examination of his appeal; (b) the presiding judge did not take into consideration the fact that his guilt was never established; (c) witnesses were not interrogated; (d) he was treated as an offender from the beginning of the trial; and (e) he was not assigned a lawyer. The Committee notes, however, the State party's statement that the author's allegations of a breach of fair trial guarantees were considered in court and declared to be groundless, that his guilt was fully established based on the record of the administrative offence, the author's deposition, witnesses' testimonies and other evidence on file, and that the author was duly notified of the date of the examination of his appeal. In the absence of any further information or other details in support of the allegations and in the light of the State party's explanation, the Committee considers that the author has failed to sufficiently substantiate this part of his claim for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

10.5 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21 of the Covenant for the purposes of admissibility. It therefore declares them admissible and proceeds with its examination of the merits.

⁴ 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.

Consideration of the merits

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

11.2 The Committee notes the author's claims that his right to freedom of assembly, protected under article 21 of the Covenant, has been violated by the imposition of a fine for having assisted in the handing over of a petition to the United Nations office in Almaty on 30 September 2013, and that neither the police nor the courts have made an attempt to justify the restrictions imposed on his rights based upon any of the legitimate aims set out in article 21 of the Covenant.

11.3 The Committee recalls that the right to peaceful assembly is a fundamental human right that is essential for the public expression of one's views and opinions and indispensable in a democratic society.⁵ The right to peaceful assembly entails the possibility of participating in a peaceful assembly with the intent to support or disapprove of one or another particular cause. The fundamental human right to peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right to peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.⁶ The restriction of the right is only permissible if it is in conformity with the law and necessary in a democratic society, 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.

11.4 The Committee recalls that, while the right to peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions.⁷ The authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions set out in article 21, as discussed below. Where this onus is not met, article 21 has been violated.⁸ The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it.⁹

11.5 The Committee also recalls that, under article 21, any restrictions must be necessary in a democratic society. They must also be the least intrusive among the measures that might serve the relevant protective function.¹⁰ Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.¹¹

11.6 Furthermore, the Committee observes that, when a State imposes a restriction on the rights guaranteed under the Covenant, it is obliged to demonstrate that the restriction was necessary in the case in question. Any restrictions to the rights under article 21 of the Covenant must conform to strict tests of necessity and proportionality and 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.¹²

11.7 The Committee takes note of the State party's argument that the conduct of a spontaneous, unauthorized action in unsuitable places, where there is a high volume of traffic or where the expression of opinion, as in the present case, may provoke violent reactions from other members of the society and has the potential to violate the calm and safety of the

⁵ *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010), para. 7.4. See also general comment No. 37 (2020), para. 1.

⁶ General comment No. 37 (2020), para. 1.

⁷ *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), para. 13.4.

⁸ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

⁹ *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 7.4.

¹⁰ *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

¹¹ General comment No. 37 (2020), para. 40.

¹² General comment No. 34 (2011), para. 22. See also general comment No. 37 (2020), paras. 36 ff.

surroundings and the normal functioning of transport and infrastructure facilities. In this regard, the Committee notes that the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly.¹³ States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner.¹⁴

11.8 The Committee notes that neither the State party nor the domestic courts have invoked any specific grounds, as required under article 21 of the Covenant, to support the necessity of the restrictions imposed on the author.¹⁵ In particular, the State party has not explained why, in the circumstances of the case, obtaining a formal prior authorization from the local authorities before handing a petition together with five or six other people was necessary for the protection of national security, public order, public health or morals, or for the respect of the rights or reputation of others. In this regard, the Committee notes that having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.¹⁶ Notification systems requiring those who intend to organize a peaceful assembly to inform the authorities in advance and provide certain salient details are permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others.¹⁷ Neither has the State party demonstrated that the measure taken, i.e., finding the author guilty and imposing on him a fine under article 373 (1) of the Code of Administrative Offences was the least intrusive in nature or proportionate to the interest it sought to protect.¹⁸ The Committee considers that, in the circumstances of the present case, the restrictions imposed on the author were not shown to be justified by a legitimate aim or necessary and proportional to any such aim pursuant to the conditions set out in article 21 of the Covenant. It therefore concludes that the author's rights under article 21 of the Covenant have been violated.

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

11.10 The Committee notes that sanctioning the author for expressing his views by participating in the delivery of a petition in protest interfered with his right to impart information and ideas of any kind, as protected under article 19 (2) of the Covenant. It recalls that article 19 (3) of the Covenant allows certain restrictions, but only if they are provided by law and are necessary to protect the rights or reputations of others or for the protection of national security, public order, public health or morals. In its general comment No. 34 (2011), the Committee stated that these freedoms were indispensable conditions for the full development of the person and were essential for any society. These freedoms constitute the foundation stone for every free and democratic society. Any restriction on the exercise of those freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they were predicated. The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 were both necessary and proportionate.¹⁹

¹³ See also the Guidelines on Freedom of Association and Assembly in Africa, para. 70 (a).

¹⁴ General comment No. 37 (2020), paras. 27 and 52.

¹⁵ See, inter alia, *Sviridov v. Kazakhstan* (CCPR/C/120/D/2158/2012), para 10.4, and *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5. See also general comment No. 37 (2020), para. 38 (any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants).

¹⁶ CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, para. 41; and Guidelines on Freedom of Association and Assembly in Africa, para. 71.

¹⁷ *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 9.2. See also the Guidelines on Freedom of Association and Assembly in Africa, para. 72.

¹⁸ *Toregozhina v. Kazakhstan*, para. 7.5. See also general comment No. 37 (2020), para. 37.

¹⁹ See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; and *Olechkevitch v. Belarus*, para. 8.5.

11.11 Regarding the restriction on the author's freedom of expression, the Committee recalls that political speech enjoys a heightened level of accommodation and protection as a form of expression.²⁰ The Committee notes the author's claim that he was sanctioned for having participated in the handing over of a petition to the United Nations office in Almaty protesting against the use, by the Russian Federation, of heptyl to fuel missiles launched from Baikonur, Kazakhstan. In the absence of any pertinent information from the State party explaining how the restriction imposed was in line with the provisions of article 19 (3) of the Covenant, the Committee concludes that the author's rights under article 19 (2) of the Covenant have been violated.

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

13. In accordance with 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 obliged, *inter alia*, to take appropriate steps to provide the author with adequate compensation and reimbursement of the fine imposed on him and any legal costs incurred by him. The State party is also under an obligation to prevent similar violations 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 and practice, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.²¹

14. 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 and enforceable remedy should a violation have been established, 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 Committee's Views and to have them translated in the official languages of the State party and widely disseminated.

²⁰ General comment No. 34 (2011), paras. 34, 37–38 and 42–43.

²¹ *Ibid.*, para. 9.