



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 Nos. 2538/2015, 2539/2015, 2544/2015, 2549/2015 and 2550/2015*, **

<i>Communications submitted by:</i>	Georgiy Arkhangelskiy, Bakhtiyar Albani, Ruslan Dzhumanbayev, Zhan Kenzhegulov, Zhanar Sekerbayeva (all represented by the non-governmental organization Ar.Rukh.Khak)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Kazakhstan
<i>Date of communications:</i>	2 September 2014 for all communications (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 21 January 2015 (communications 2538/2015 and 2539/2015); 22 January 2015 (communication 2544/2015); 23 January 2015 (communications 2549/2015 and 2550/2015) (not issued in document form)
<i>Date of adoption of Views:</i>	10 March 2023
<i>Subject matter:</i>	Sanction of the authors for participating in a peaceful assembly
<i>Procedural issues:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	14 (3) (d) and (g), 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communications: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Chongrok, Tijana Šurlan, Kobajjah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



1.1 The authors of the communications are Georgiy Arkhangelskiy, Bakhtiyar Albani, Ruslan Dzhumanbayev, Zhan Kenzhegulov and Zhanar Sekerbayeva, all nationals of Kazakhstan, born in 1947, 1957, 1974, 1968 and 1982, respectively. They claim that the State party has violated their rights under articles 14 (3) (d) and (g) and 21 of the Covenant. Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva also claim that the State party has violated their rights under article 19 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The authors are all represented by the same non-governmental organization.

1.2 On 10 March 2023, pursuant to rule 97 (3) of its rules of procedure, the Committee decided to join communications 2538/2015, 2539/2015, 2544/2015, 2549/2015 and 2550/2015, which had been submitted by the same non-governmental organization on behalf of five different authors, for a joint decision, in view of their substantial factual and legal similarity.

Facts as submitted by the authors

2.1 On 11 February 2014, the Government of Kazakhstan announced that the national currency would be devalued by 30 per cent. The announcement came as an unexpected surprise for many citizens of Kazakhstan because, previously, various government officials had publicly stated that no such devaluation would take place. After the announcement, a post appeared on Facebook indicating that there would be a gathering in Almaty city centre on 15 February to peacefully protest against the devaluation measures.

2.2 On 15 February 2014, Messrs. Arkhangelskiy and Albani decided to join the protest and went to the designated place in the city centre. Messrs. Dzhumanbayev and Kenzhegulov were passing by the area and saw the protesters; upon learning why they were gathered, they decided to join the protest. Ms. Sekerbayeva, a journalist at the *Biznes i vlast* (Business and Power) newspaper, went to the city centre to cover the protest for the newspaper. Because the designated area was fenced off and guarded by the police, the demonstration moved to Republic Square, where the authors – including Ms. Sekerbayeva, who was carrying her journalist identity card – were detained by the police.

2.3 On the same day, the Specialized Inter-District Administrative Court of Almaty found the authors guilty of an administrative offence under article 373.1 of the Code of Administrative Violations (violation of the legislation on organizing and holding peaceful assemblies).

2.4 The authors were fined in the amounts indicated below:

(a) Mr. Arkhangelskiy was fined 1,852 tenge (approximately 8 EUR). He appealed to the Almaty City Court; however, his appeal was denied on 6 March 2014. He submitted appeals for supervisory review to the Almaty City Prosecutor on 31 March 2014, and to the Prosecutor General's Office on 5 May 2014; however, both appeals were dismissed on 11 April 2014 and 6 June 2014, respectively (the latter by the Deputy Prosecutor General);

(b) Mr. Albani was fined 12,964 tenge (approximately 56 EUR). He appealed to the Almaty City Court; however, his appeal was denied on 6 March 2014. He submitted appeals for supervisory review to the Almaty City Prosecutor on 9 April 2014, and to the Prosecutor General's Office on 5 May 2014; however, both appeals were dismissed on 16 April 2014 and 10 June 2014, respectively (the latter by the Deputy Prosecutor General);

(c) Mr. Dzhumanbayev was fined 5,556 tenge (approximately 24 EUR). He appealed to the Almaty City Court; however, his appeal was denied on 4 March 2014. He submitted appeals for supervisory review to the Almaty City Prosecutor on 31 March 2014, and to the Prosecutor General's Office on 5 May 2014; however, both appeals were dismissed on 11 April 2014 and 10 June 2014, respectively (the latter by the Deputy Prosecutor General);

(d) Mr. Kenzhegulov was fined 9,260 tenge (approximately 40 EUR). He appealed to the Almaty City Court; however, his appeal was denied on 4 March 2014. He submitted appeals for supervisory review to the Almaty City Prosecutor on 31 March 2014, and to the Prosecutor General's Office on 26 May 2014; however, both appeals were dismissed on 4 April 2014 and 14 July 2014, respectively (the latter by the Deputy Prosecutor General);

(e) Ms. Sekerbayeva was fined 5,556 tenge (approximately 24 EUR). She appealed to the Almaty City Court; however her appeal was denied on 4 March 2014. She submitted appeals for supervisory review to the Almaty City Prosecutor on 31 March 2014, and to the Prosecutor General's Office on 26 May 2014; however, both appeals were dismissed on 4 April 2014 and 17 July 2014, respectively (the latter by the Deputy Prosecutor General).

2.5 The authors contend that they have exhausted all available domestic remedies.

Complaint

3.1 The authors claim that, by imposing fines on them, the State party violated their right of peaceful assembly under article 21 of the Covenant. They argue that the State party has failed to provide any justification as to why it was necessary to restrict their right.

3.2 Three of the authors, Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva, claim that the State party violated their right to freedom of expression under article 19 of the Covenant. In her communication, Ms. Sekerbayeva also claims that the State party violated her right to impart information as a journalist.

3.3 All the authors claim that the State party violated their rights under article 14 (3) (d) and (g) of the Covenant because the police and the Specialized Inter-District Administrative Court of Almaty refused to provide them with counsel and to allow journalists to attend their court hearings.

3.4 The authors request that the Committee recommend that the State party: (a) bring to justice those responsible for the violation of their rights; (b) provide them with compensation, including legal costs; (c) take measures to lift the existing restrictions on the right of peaceful assembly and the right to a fair trial in the legislation of Kazakhstan that are contrary to articles 14 and 21 of the Covenant, respectively; and (d) ensure that conducting peaceful protests does not entail unwarranted interference by authorities or persecution of organizers and participants.

State party's observations on admissibility

4.1 In notes verbales dated 16 and 25 March and 1 April 2015, the State party submitted its observations on the admissibility of the communications. The State party deems that the authors have failed to sufficiently substantiate their claims and that their communications should therefore be declared inadmissible. The State party notes that, between noon and 4 p.m. approximately on 15 February 2014, the authors, in a group with other people, took an active part in an unsanctioned public gathering at the corner of Abay and Dostyk streets in Almaty, and proceeded to march towards the Almaty *akimat*¹ protesting against the devaluation of the tenge, the national currency. The participants in the protest loudly chanted slogans and called for bystanders to join them, disturbing the peace of other people. Several participants, including Ms. Sekerbayeva, tried to move the turnstiles installed for landscaping work near the Abay monument and proceeded to the nearby square. The police warned the protesters that their actions violated the Law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, and asked them to end the protest, to no avail. As a result, the police detained the authors and charged them with violating article 373.1 of the Code of Administrative Violations.

4.2 The State party notes that the Specialized Inter-District Administrative Court of Almaty found the authors guilty of the above-mentioned offence and sentenced them to fines. Their sentences were later upheld by the Almaty City Court.

4.3 According to the State party, the authors did not request access to legal counsel or for their representatives to participate in the court proceedings, even though they had the right to do so.

4.4 The State party also notes that the authors do not deny that they took part in an unauthorized gathering on 15 February 2014, but that they argue that their actions did not

¹ Office of the local executive body, equivalent to a mayor's office.

violate the law owing to the spontaneous nature of the event, as a result of which, they could not submit authorization requests to the Almaty *akimat* in a timely manner.

4.5 The State party submits that article 19 (2) of the Covenant guarantees freedom of expression, which includes the freedom to seek, receive and impart information. At the same time, article 19 (3) allows for certain restrictions as provided by law and necessary for respect of the rights and reputations of others and for the protection of national security or of public order or of public health or morals. Similarly, article 21 of the Covenant protects the right of peaceful assembly, which cannot be restricted unless the restrictions are imposed in conformity with the 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. The State party submits that the provisions of articles 19 and 21 of the Covenant are fully reflected in the domestic legislation of Kazakhstan. The right of peaceful assembly is guaranteed by article 32 of the Constitution, and restrictions may only be placed on that right in the interests of national security, public order, the protection of public health or the protection of the rights and freedoms of others. The State party notes that, in accordance with article 2 of the Law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, an authorization must be obtained from a designated State body prior to conducting such events. Furthermore, in accordance with article 9 of the above-mentioned law, persons who violate the prescribed procedure bear responsibility under the law.

4.6 The State party recognizes that freedom of assembly is a democratic exercise of political activism and states that the Constitution of Kazakhstan guarantees the realization and protection of this inalienable right. However, it notes that the realization of rights by some must not lead to the violation of the rights of others. It refers to the *Guidelines on Freedom of Peaceful Assembly*, issued by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), in which the necessity of restrictions on and exceptions to the exercise of the right of peaceful assembly is recognized. The State party notes that all developed democratic countries restrict the right of peaceful assembly through laws that provide specific conditions for its realization. It also notes that, in recent years, European countries have incurred billion-dollar losses owing to parts of society exercising their right of peaceful assembly, which had resulted in, among other things, riots, destruction of public and private property and stoppage of factories. Thus, to ensure the rights and freedoms of others, public safety, the normal functioning of transport and the preservation of infrastructure, local governments in Kazakhstan have identified designated areas where non-State public events can be held.

4.7 According to the State party, conducting spontaneous unauthorized public assemblies and loudly chanting slogans in places frequented by the public or used as busy motorways may provoke active unlawful actions by other members of the public while disturbing the peace and safety of others. The State party submits that the public gathering in which the authors participated could have led to massive violations of public order and jeopardized the health and safety of participants and other members of the public. However, owing to their timely intervention, the police were able to halt the unlawful actions of the authors and to prevent the possibility of grave consequences.

4.8 The State party adds that it has studied the practices in several other countries and has found that the restrictions on public events in some countries are more stringent than in Kazakhstan. In New York City, for example, it is necessary to request permission 45 days prior to an event and to indicate the route or location of the event. The city authorities have the right to move the event if its location is not acceptable. Some countries, such as Sweden, have a blacklist of organizers of previously prohibited or dispersed demonstrations. In France, local authorities have the right to prohibit demonstrations of any kind. In the United Kingdom of Great Britain and Northern Ireland, the authorities have the right to introduce temporary bans, and street events are only allowed after permission has been received from the police. In Germany, the holding of any mass event, meeting or demonstration, inside or outside, must be permitted by the authorities. The State party therefore concludes that its regulation of peaceful assemblies is in line with international law and the practice of other democratic countries.

4.9 The State party notes that, contrary to what is being claimed by the authors before the Committee, they were held responsible under the administrative procedure not for exercising their rights to freedom of expression and of peaceful assembly, but rather for violating the requirements established in national legislation for the exercise of these rights. The State party rejects the claim by Ms. Sekerbayeva that she was attending the protest as a journalist. It notes that she was detained while trying to move turnstiles installed for landscaping work near the Abay monument, so that participants could continue with their unauthorized protest.

4.10 With regard to the authors' claim that the police and the Specialized Inter-District Administrative Court of Almaty refused to provide them with counsel, the State party reiterates that the authors were apprised of their procedural rights by the court in writing, including the right to have counsel, and none of them chose to avail themselves of that right. The State party notes that article 589 of the Code of Administrative Violations provides for mandatory participation of a counsel in certain administrative proceedings, however the authors' cases did not fall under such a category, thus the absence of counsel did not prevent the proceedings from continuing. At the same time, the State party notes that the authors' case files do not contain information about any motions submitted by the authors requesting the participation of their representatives or trial monitors or journalists.

4.11 Lastly, the State party challenges the admissibility of the communications owing to non-exhaustion of available domestic legal remedies. The State party notes that, after the authors' requests for supervisory review were rejected by the Deputy Prosecutor General of Kazakhstan, they were entitled to submit another request for a supervisory review to the Prosecutor General. Therefore, the State party considers that the authors have not exhausted all available domestic legal remedies and that their communications should be found inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

Authors' comments on the State party's observations on admissibility

5.1 On 3, 8 and 13 April 2015, the authors submitted that, in the context of the present communications, the State party's authorities have violated the following six guiding principles contained in the *Guidelines on Freedom of Peaceful Assembly* issued by the OSCE Office for Democratic Institutions and Human Rights, which were adopted by Kazakhstan along with the other OSCE participating States: (a) presumption in favour of holding assemblies; (b) the State's positive obligation to facilitate and protect peaceful assembly; (c) legality; (d) necessity and proportionality; (e) good administration; and (f) non-discrimination. They submit that, although article 10 of the Law on organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations allows local authorities to regulate the procedure of a peaceful assembly, it does not give them the power to decide where an assembly can take place, and especially to limit them to just one location.

5.2 The authors refer to decision No. 167 adopted by the *Maslikhat*² of Almaty on 29 July 2005. Pursuant to this decision, all public events organized and run by the State, as well as events of a non-political nature (e.g. sports events, competitions, concerts, business events and fairs), can be held on any suitable square, garden, park or street. However, public events "of a social and political nature", organized by non-State actors can only be held in the square behind the Sary Arka cinema. Events relating to the local and national governments and organized by a State body, as well as events involving the participation of high-level State and city officials, are to be held in Republic Square. The authors argue that authorization by the State party's authorities to organize public events "of a social and political nature" in only one specially designated place, while authorizing State-run and non-political public events in other locations, is politically motivated and discriminatory.

5.3 In her communication, Ms. Sekerbayeva notes that she initially intended to cover the gathering as a journalist; however, after witnessing how the protesters were being treated by the police, she started actively protesting against the actions of the police and the authorities.

² The equivalent of a city council; more precisely, an elected, local representative body (local government) in the regions and districts of Kazakhstan.

5.4 As regards the State party's argument that the authors have failed to exhaust domestic remedies, the authors submit that recourse to the Prosecutor's Office is not an effective remedy that needs to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. Nevertheless, they filed requests with the Almaty City Prosecutor and the Prosecutor General's Office to initiate supervisory review proceedings in their administrative cases, but those requests were rejected. Therefore, all available and effective domestic remedies have been exhausted.

State party's additional observations

6.1 In a note verbale dated 21 September 2022, the State party submitted additional observations. It reiterates that local legislation does not limit the rights of citizens to express their opinions but has established conditions for holding peaceful assemblies in order to ensure public order and the safety of all members of the public. The State party argues that the authors' rights under articles 19 and 21 of the Covenant were not violated since they did not have permission from the local executive body (*akim*) to hold the event and their actions violated the law. The State party notes that the authors' actions could have led to mass violations of public order and endangered the health and safety of participants and the public.

6.2 With regard to the authors' claims under article 14 of the Covenant, the State party reiterates that, neither at the time of the issuance of the administrative orders by the police nor during the court hearings, did the authors request the presence of legal counsel or their representatives. The State party notes that the verdicts of the Specialized Inter-District Administrative Court of Almaty that the authors were guilty of violating the law were later upheld by the Almaty City Court. At the same time, in the light of the amendments to article 851 of the Code of Administrative Violations dated 11 July 2017, judicial decisions that have entered into force can be reviewed by appeal in cassation filed with the Chairperson of the Supreme Court and the Chairperson of the Judicial Board of the Supreme Court. The State party notes that the authors have not submitted cassation appeals to the Supreme Court, therefore they have not exhausted all available domestic legal remedies.

6.3 The State party also notes that the new Law on the procedure for organizing and holding peaceful assemblies in Kazakhstan entered into force on 6 June 2020. It was adopted taking into consideration the recommendations of civil society, including on the notification procedure relating to the holding of public assemblies, whereby the local executive bodies must render their decision on public assembly requests within three working days. The State party further notes that the new Law provides a general presumption in favour of holding peaceful assemblies; it also provides for up to two hours for single picketing and a shorter time frame within which the local executive body should consider and respond to a notification of a public assembly. The new Law also sets out an exhaustive list of grounds on which local executive bodies may refuse to authorize the holding of an assembly.

6.4 The State party concludes that all communications submitted by the authors should be found inadmissible owing to the non-exhaustion of available domestic remedies. The State party also argues that the communications were submitted in violation of rule 99 (b) of the Committee's rules of procedure, which requires that communications be submitted personally by individuals or by their representatives when the individual in question is unable to submit the communication personally.

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 the State party's argument that the authors failed to file a request for supervisory review with the Prosecutor General. The Committee also notes that, on various dates, the authors did submit requests to initiate supervisory review proceedings to the Almaty City Prosecutor and to the General Prosecutor's Office, respectively, and that they were all dismissed. The Committee recalls its jurisprudence, according to which petition to a prosecutor's office and depending on the discretionary power of the prosecutor for supervisory 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.³ The Committee further notes that the legislative amendments to article 851 of the Code of Administrative Violations, dated 11 July 2017, which provides for the filing of cassation appeals with the Supreme Court, came into force on 21 July 2017, that is, 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 notes the State party's submission that the authors' communications were submitted to the Committee by a third party instead of by the authors themselves. 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. In the present cases, the Committee notes that the alleged victims duly issued powers of attorney authorizing the non-governmental organization Ar.Rukh. Khak to represent them before the Committee. Accordingly, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the present communications.

7.5 The Committee notes the authors' claims that the State party has violated their rights under article 14 (3) (d) and (g) of the Covenant because the police and the Specialized Inter-District Administrative Court of Almaty refused to provide them with counsel and to allow journalists to attend their court hearings. The Committee also notes the State party's submission that the authors' case files do not contain information about any motions submitted by the authors requesting the participation of counsel, representatives, trial monitors or journalists, and that the authors were not prevented from requesting their participation. In the absence of any other pertinent information on file in that respect, the Committee considers that the authors have failed to sufficiently substantiate those allegations for the purposes of admissibility. Accordingly, it declares this part of the communications inadmissible under article 2 of the Optional Protocol.

7.6 The Committee considers that the authors have sufficiently substantiated the remaining claims which raise issues under article 21 of the Covenant in respect of all the authors, and under article 19 of the Covenant in respect of Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva for the purposes of admissibility. It therefore declares this part of the communications admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

8.2 The Committee notes the authors' claims that the State party has violated their right of peaceful assembly under article 21 of the Covenant by detaining them and sentencing them to fines on 15 February 2014 for participating in a peaceful protest against the national currency devaluation measures. The Committee also notes the claims by Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva that the State party has violated their right to freedom of expression under article 19 of the Covenant. The authors do not consider that the restrictions imposed on their rights are necessary, nor that they fall within the permissible restrictions enshrined in articles 19 and 21 of the Covenant. The Committee further notes that

³ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 12.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3.

the State party acknowledges that the authors' rights under articles 19 and 21 of the Covenant were restricted but considers that the restrictions were compatible with the Covenant.

8.3 The Committee refers to its general comment No. 37 (2020) on the right of peaceful assembly and recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society. 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.⁴ 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*), 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 to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.⁵ The State party is thus under the obligation to justify the restriction of the right protected by article 21 of the Covenant, and to demonstrate that such restriction does not serve as a disproportionate obstacle to the exercise of the right.⁶

8.4 The Committee observes that authorization regimes that require individuals wishing to assemble or participate in an assembly to apply for permission (or a permit) from the authorities prior to doing so, undercut the notion that peaceful assembly is a basic right.⁷ Where such regimes exist, 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.⁸ Such systems should not be overly bureaucratic;⁹ and notification regimes, for their part, must not in practice function as authorization systems.¹⁰

8.5 The Committee notes that the State party invokes the provisions of the Law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, which require application to be made and authorization by the local executive authorities to be received prior to the intended event, which constitute restrictions to the right of peaceful assembly. The Committee recalls that the right of peaceful assembly is a right, not a privilege. Restrictions on this right, even if authorized by law, must also meet the criteria set out in the second sentence of article 21 of the Covenant in order to comply therewith. In this connection, the Committee observes that restrictions imposed for the protection of "the rights and freedoms of others" may relate to the protection of Covenant rights and other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.¹¹ The Committee also observes that "public order" refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entail respect for human rights, including the right of peaceful assembly.¹² States parties should not rely on a vague definition of "public order" to justify overbroad restrictions on the right of peaceful assembly.¹³ Peaceful assemblies can in some cases be inherently or

⁴ General comment No. 37 (2020), para. 6.

⁵ *Ibid.*, para. 36.

⁶ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

⁷ CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, para. 41; and African Commission on Human and Peoples' Rights, "Guidelines on freedom of association and assembly in Africa", para. 71.

⁸ General comment No. 37 (2020), para. 73.

⁹ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

¹⁰ General comment No. 37 (2020), para. 73; and CCPR/C/JOR/CO/5, para. 32.

¹¹ *Sambetbai v. Kazakhstan* (CCPR/C/130/D/2418/2014), para. 12.5; *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; and *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8.

¹² General comment No. 37 (2020), para. 44.

¹³ CCPR/C/KAZ/CO/1, para. 26; and CCPR/C/DZA/CO/4, para. 45.

deliberately disruptive and require a significant degree of toleration. “Public order” and “law and order” are not synonyms, and the prohibition of “public disorder” in domestic law should not be used unduly to restrict peaceful assemblies.¹⁴ However, the Committee also notes that the State party has not provided any specific information as to the nature of the disturbance occasioned by the assembly in question, except that some participants tried to move the turnstiles installed for landscaping work near the Abay monument in order to proceed to a nearby square; nor any information as to how such peaceful assembly crossed the threshold of a permissible disruption to be tolerated.

8.6 The Committee recalls that article 21 of the Covenant provides that any restrictions to the right of peaceful assembly must be “necessary in a democratic society”, meaning that they must be both necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.¹⁵ Such restrictions must be appropriate responses to a pressing social need, related to one of the permissible grounds in article 21 of the Covenant. They must also be the least intrusive among the measures that might serve the relevant protective function.¹⁶ 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.¹⁷ If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible. The Committee observes that the State party has not demonstrated that sanctioning the authors with fines for participating in a peaceful assembly was necessary in a democratic society to pursue a legitimate aim or was proportionate to such an aim in accordance with the requirements of article 21 of the Covenant. The Committee also recalls that any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate.¹⁸ For these reasons, the Committee concludes that the State party has failed to justify the restriction on the authors’ right of peaceful assembly and has thus violated article 21 of the Covenant.

8.7 The Committee notes the claims made by Messrs. Arkhangelskiy and Albani that the State party has violated their right to freedom of expression under article 19 of the Covenant. The Committee also notes the claim made by Ms. Sekerbayeva that the State party has violated her right to impart information as a journalist. Although the State party disputes that Ms. Sekerbayeva was attending the protest as a journalist, the Committee finds it unnecessary to evaluate these factual allegations, because her claims can be considered on the assumption that the challenged restrictions were motivated by concern for public safety and public order, similar to the claims made by the other authors as submitted by the State party. The Committee must therefore decide whether the restrictions imposed on Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva are allowed under any of the permissible restrictions laid out in article 19 (3) of the Covenant.

8.8 The Committee notes that sanctioning the authors for expressing their views through participation in a public event interfered with their right to impart information and ideas of any kind, as protected under article 19 (2) of the Covenant. The Committee recalls that article 19 (3) of the Covenant allows certain restrictions, but these are only such as are provided by law and necessary for respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*) or of public health or morals. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it states that those freedoms are indispensable conditions for the full development of the person and essential for any society. They constitute the foundation stone for every free and democratic society (para. 2). Any restriction on the exercise of these 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

¹⁴ General comment No. 37 (2020), para. 44.

¹⁵ *Ibid.*, para. 40.

¹⁶ *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

¹⁷ General comment No. 37 (2020), para. 40.

¹⁸ *Ibid.*, para. 38.

related to the specific need on which they were predicated (para. 22). The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the authors' rights under article 19 were necessary and proportionate.¹⁹

8.9 The Committee observes that sentencing Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva to fines 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 authors' rights under article 19 of the Covenant. The Committee also 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.²⁰ Nor did the State party demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the cases, the restrictions imposed on Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. The Committee therefore concludes that their rights under article 19 of the Covenant have been violated.²¹

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of all the authors under article 21 of the Covenant, and of the rights of Messrs. Arkhangelskiy and Albani and Ms. Sekerbayeva under article 19 (2) of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide all the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the authors with adequate compensation and reimbursement of the imposed fines and any legal costs incurred by them. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.

¹⁹ *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; *Sambetbai v. Kazakhstan*, para. 12.8; *Kurtinbaeva v. Kazakhstan* (CCPR/C/130/D/2540/2015), para. 9.9; *Nurlanuly v. Kazakhstan* (CCPR/C/130/D/2546/2015), para. 9.9; and *Kulumbetov v. Kazakhstan* (CCPR/C/130/D/2547/2015), para. 8.9.

²⁰ *Toregozhina v. Kazakhstan*, para. 7.5; and *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

²¹ *Svetik v. Belarus*, para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.