



International Covenant on Civil and Political Rights

Distr.: General
22 May 2023

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2545/2015*, **

<i>Communication submitted by:</i>	Dina Baydildayeva (represented by the non-governmental organization Ar.Rukh.Khak)
<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 22 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	10 March 2023
<i>Subject matter:</i>	Sanction of the author for single-person picket
<i>Procedural issues:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issue:</i>	Freedom of expression
<i>Articles of the Covenant:</i>	19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communications is Dina Baydildayeva, a national of Kazakhstan, born in 1990. She claims that the State party has violated her rights under articles 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by a non-governmental organization.

Facts as submitted by the author

2.1 The author is a journalist and a blogger. On 8 February 2014, she held a single-person picket in Republic Square in Almaty by holding a poster demanding the release of her colleagues, who had been arrested for covering the work of the Almaty *akim* (mayor), who happened to be the nephew of the President of Kazakhstan. The author had also expressed

* 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 communication: 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.



her criticism of the *akim* for not having formally allocated time in his schedule for meetings with the public. Her protest was peaceful and lasted for 15 minutes. She was detained by the police and charged with violating article 373.1 of the Code of Administrative Violations.

2.2 On 21 February 2014, the Specialized Inter-District Administrative Court of Almaty found the author 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) and served her an administrative penalty in the form of a warning.

2.3 On an unspecified date, the author appealed to the Almaty City Court. Her appeal was denied on 11 March 2014.

2.4 The author 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 14 July 2014, respectively (the latter by the Deputy Prosecutor General).

2.5 The author submits that she has exhausted all available domestic remedies.

Complaint

3.1 The author alleges that her rights were violated under articles 19 (2) and 21 of the Covenant. She claims that, according to domestic law, a single-person picket does not require the authorization of the authorities.

3.2 The author requests that the Committee recommend that the State party: (a) bring to justice those responsible for the violation of her rights; (b) provide her with compensation, including legal costs; (c) take measures to lift the existing restrictions on the right to freedom of expression and the right of peaceful assembly in the legislation of Kazakhstan that are contrary to articles 19 and 21 of the Covenant; 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 a note verbale dated 7 April 2015, the State party submitted its observations on the admissibility of the communication. The State party deems that the author has failed to sufficiently substantiate her claims and that, therefore, the communication should be declared inadmissible. The State party notes that, at approximately noon on 8 February 2014, the author, an editor for Radio Azattyk, without receiving prior authorization and in order to attract the attention of others, held a single-person public protest against the arrest of several bloggers by holding a poster and shouting slogans.

4.2 The State party notes that the Specialized Inter-District Administrative Court of Almaty found the author guilty of violating article 373.1 of the Code of Administrative Violations and sanctioned her with an administrative penalty in the form of a warning. The sentence was later upheld by the Almaty City Court. The author's requests for supervisory review were dismissed by the Almaty City Prosecutor and by the Deputy Prosecutor General.

4.3 The State party also notes that the author does not deny that she held an unauthorized single-person picket on 8 February 2014, but that she argues that her actions did not violate the law because she was not required to obtain an authorization for such a picket and that, in a similar case on 4 February 2014, against another person, the Astana City Court had dismissed all charges against the defendant.

4.4 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 a 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, 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.

4.5 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. 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.

4.6 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 author's actions 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 author and prevent the possibility of grave consequences.

4.7 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 the 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.

4.8 The State party notes that, contrary to what is being claimed by the author before the Committee, she was held responsible under the administrative procedure not for exercising her right to freedom of expression, but rather for violating the requirements established in national legislation for holding a picket. The State party rejects the author's claim that in another similar case all charges against the defendant were dismissed. According to the State party, on 13 January 2014, the Specialized Inter-District Administrative Court of Astana sentenced N.M. to a fine for a single-person picket. On 4 February 2014, the Astana City Court quashed the decision of the first instance court for lack of *corpus delicti* in the actions of the defendant. However, on 27 August 2014, the judicial collegium on civil and administrative cases of the Supreme Court, on appeal from the Prosecutor General's Office, reversed the decision of the Astana City Court and confirmed the ruling of the Specialized Inter-District Administrative Court of Astana. Therefore, the Supreme Court concluded that single-person pickets require prior authorization from the local authorities.

4.9 The State party also rejects the author's argument that, according to domestic law, a single-person picket does not require authorization by the authorities. It notes that, according

to article 1 of the Law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations, picketing is considered a form of protest and an expression of public and private interests. Furthermore, article 373 of the Code of Administrative Violations provides for the legal responsibility of any individual who violates the legislation on organizing and holding peaceful assemblies. Therefore, the number of participants in a picket does not affect the need to comply with the legal requirements governing the conduct of protests, which include single-person pickets. The State party also notes that the legislation does not distinguish between a single-person picket and a gathering, meeting, march, picket or demonstration.

4.10 Lastly, the State party challenges the admissibility of the communication owing to non-exhaustion of available domestic legal remedies. The State party notes that, after the author's request for supervisory review was rejected by the Deputy Prosecutor General, she was entitled to submit another request for supervisory review to the Prosecutor General. Therefore, the State party considers that the author has not exhausted all available domestic legal remedies and that her communication should be found inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

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

5.1 On 13 April 2015, the author submitted her comments on the State party's observations. She argues that single-person pickets are not regulated by the Law on the procedure for organizing and holding peaceful assemblies, meetings, marches, pickets and demonstrations because, according to article 2 of the Law, requests to hold peaceful assemblies must be submitted by authorized representatives of workers or groups of people, indicating that such a request is not necessary in the case of a single-person picket. The author submits that the State party's actions are an attempt to suppress any display of civic engagement in the country.

5.2 The author notes that 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, identify the right of peaceful assembly as one of the fundamental rights that does not require permission as there should be a presumption in favour of holding assemblies. States have a positive obligation to facilitate and protect peaceful assembly, and any restriction to this right must be proportional; dispersing a peaceful assembly should be a measure of last resort.

5.3 The author also notes that, in Almaty, for example, public events "of a social and political nature" organized by non-State actors can only be held in one place – in the square behind the Sary Arka cinema, while all 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 ground.

5.4 As regards the State party's argument that the author has failed to exhaust domestic remedies, she submits 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, she filed requests with the Almaty City Prosecutor and the Prosecutor General's Office to initiate supervisory review proceedings in her administrative case, but those requests were rejected. Therefore, all available and effective domestic remedies have been exhausted.

State party's additional observations

6. In a note verbale dated 15 December 2022, the State party reiterated its observations from 7 April 2015.

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 author failed to file a request for supervisory review with the Prosecutor General. The Committee also notes that, on 9 April 2014 and 5 May 2014, the author did submit requests to initiate supervisory review proceedings to the Almaty City Prosecutor and to the General Prosecutor's Office, respectively, and that both were 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 to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.¹ Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.4 The Committee notes the author's allegation that her right to freedom of assembly under article 21 of the Covenant was restricted arbitrarily, since she was sanctioned for holding an unauthorized picket. However, the Committee observes, in this respect, that the author was the only participant in the picket. The Committee also notes that while the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19.² Indeed, according to the Committee's jurisprudence,³ one-person pickets normally do not fall under article 21 of the Covenant, which deals with the right of peaceful assembly, but instead are protected by article 19 of the Covenant. Consequently, the Committee concludes that the author has not sufficiently substantiated her claim under article 21 of the Covenant for the purposes of admissibility, and therefore finds it inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

7.5 The Committee considers that the author has sufficiently substantiated her claim raising issues under article 19 of the Covenant for the purposes of admissibility. It therefore declares the communication 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 author's claim that her right to freedom of expression was restricted unlawfully because she was found guilty of an administrative offence and sanctioned for participating in an alleged public event, while, as a journalist and a blogger, she was simply demanding the release of her colleagues who had been arrested for carrying out their professional activities, and expressing her criticism of the work of the Almaty *akim* for not having formally allocated time in his schedule for meetings with the public. The issue before the Committee is therefore to determine whether the sanction imposed on the author by the local authorities amounts to a violation of her rights under article 19 of the Covenant.

8.3 The Committee recalls its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated, inter alia, that freedom of expression was essential for any society and constituted one of the foundation stones 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, but only to the extent that those restrictions are provided for by law and if they are necessary: (a) for respect of the rights and reputations of others; and (b) for the protection of national security or of public order (*ordre public*) or of public health or morals. Any restriction on the exercise of the freedom of expression must not be overbroad in nature – that is, it must be the least intrusive instrument among the measures that might achieve the relevant protective function, and proportionate to the interest being protected. The principle of proportionality has to be

¹ *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.

² General comment No. 37 (2020), para. 13.

³ *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7.

respected, not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.⁴ When a State party invokes a legitimate ground for restricting freedom of expression, it must demonstrate in a specific and individualized fashion the precise nature of the threat to any of the grounds listed in article 19 (3) of the Covenant that is causing it to restrict freedom of expression, as well as the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁵ 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.⁶

8.4 The Committee notes the State party's submission that the author was held responsible under the administrative procedure not for exercising her right to freedom of expression, but rather for violating the requirements established in national legislation for holding a picket, and that, similar to other forms of public protests, single-person pickets need prior authorization from local authorities. In this regard, the Committee observes that, detaining the author, trying her in court and ultimately sanctioning her, even if with a warning, for simply criticizing the work of a public official and demanding the release of her colleagues who had been arrested for carrying out their professional activities, 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 also observes that, regardless of the obligation for single-person pickets to receive prior authorization from local authorities, the State party has failed to invoke and justify any specific grounds to support the necessity of such restriction, as required under article 19 (3) of the Covenant.⁷ The State party has also not demonstrated that the measures taken 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 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 (2) of the Covenant have been violated.⁸

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 19 (2) of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation and reimbursement of any legal costs incurred by her. The State party is also under an obligation to take all steps necessary to prevent the occurrence of similar violations 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, and to adopt measures that can give effect to the rights recognized in article 19.

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.

⁴ General comment No. 34 (2011), para. 34.

⁵ Ibid., paras. 35–36.

⁶ *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

⁷ *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

⁸ *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.