



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. 2452/2014*, **

<i>Communication submitted by:</i>	Kanat Ibragimov (represented by counsel, Bakhytzhan Toregozhina)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	21 November 2012 (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 19 August 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	24 March 2021
<i>Subject matter:</i>	Holding the author responsible under the administrative procedure and sanctioning him with administrative detention for participating in an unauthorized peaceful assembly
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly
<i>Articles of the Covenant:</i>	19 (2) and 21
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Kanat Ibragimov, a national of Kazakhstan born in 1964. He claims that the State party has violated his rights under articles 19 (2) and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel.

* Adopted by the Committee at its 131st session (1–26 March 2021).

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



Facts as submitted by the author

2.1 The author is a painter and a civic activist. On 24 March 2012, he took part in a peaceful rally¹ to commemorate 100 days since the shooting of people in Zhanaozen, which had taken place in the park area of the Kazakhstan Hotel. Shortly afterwards, the author was detained by police officers, along with the other participants in the commemoration ceremony, and was found guilty on the same day by the Specialized Inter-District Administrative Court of Almaty of an administrative offence under article 373 (3) of the Code of Administrative Offences. The Court established that the author had repeatedly² taken part in unauthorized meetings within the space of a year and sanctioned him with 15 days of administrative detention. As a protest against that violation of his freedom of expression, the author began a hunger strike while in detention, which significantly undermined his health and necessitated a long period of recovery afterwards.

2.2 Another peaceful “rally of dissent”³ was planned for 28 April 2012 at the monument to Abai Qunanbaiuli in Almaty. Although an application requesting authorization to hold a peaceful “rally of dissent” was submitted by a group of individuals to the Akimat⁴ of Almaty,⁵ the author himself could not take part in that application process, since he was serving his term of administrative detention when the preparations for the rally were being made and also due to his poor health. Nevertheless, on 22 April 2012 the author received a phone call from an employee of the Akimat of Almaty, K.D., who “offered” for the author to come to the Akimat of Almaty in person the same day to discuss the upcoming “rally of dissent” with the Deputy Head of the Department of Internal Policy in the Akimat of Almaty, R.D. The author politely declined that offer and he suggested that he should speak with R.D. by phone instead. The author then received a phone call from R.D., who insisted that the author was in fact an organizer of the upcoming “rally of dissent”, and suggested changing the venue of the upcoming “rally of dissent” to an indoor location. The author explained that he was not involved in organizing the “rally of dissent” and suggested to R.D. that he verify that information in the application for authorization to hold a peaceful assembly on 28 April 2012. R.D. responded that it was the author who had publicly announced the date of the next rally and that, therefore, he would be detained again in any case, regardless of whether the author actually took part in the “rally of dissent” or not.

2.3 On 25 April 2012, one of the online national newspapers, *Vremya*, published an article entitled “Taking part in a meeting is not the same as painting”, in which it referred to “the campaign of exerting pressure by force and intimidation” against the author.⁶ The article in question contained an interview with R.D., in which he confirmed the information presented by the author in his communication to the Committee (see para. 2.2 above). In the interview, R.D. also named three individuals who had applied for authorization to hold the “rally of dissent” on 28 April 2012, linking one of them to the unregistered opposition party *Alga!* (Go Ahead!) and its alleged plot to organize a terrorist attack in Almaty. After being prompted by a journalist, R.D. stated that even if the organizers had requested authorization to hold the “rally of dissent” in the only officially authorized location for all non-governmental public events or meetings “of a social and political nature”, on the square

¹ Pursuant to the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, anyone organizing a peaceful assembly should submit an application to the local executive body requesting authorization to hold such an assembly at least 10 days prior to the intended event. Once written authorization is received by the organizers, the event is considered “authorized”. All peaceful assemblies held without written authorization are considered “unauthorized”, and their organizers and participants are held responsible under the administrative procedure.

² On 1 February 2012, the Specialized Inter-District Administrative Court of Almaty found the author guilty of committing an administrative offence under article 373 (1) of the Code of Administrative Offences and fined him 20 monthly notional units.

³ The rally participants were demanding that the trial of the protesters in Zhanaozen and Shetpe be stopped.

⁴ A municipal, district or provincial government (equivalent to a mayor’s office).

⁵ According to the information available on file, the application was submitted to the Akimat of Almaty on 10 April 2012. It was rejected by the Akimat of Almaty on 20 April 2012.

⁶ The article can be accessed at <https://time.kz/news/archive/2012/04/25/mitingovat---ne-risovat>.

behind the Sary Arka cinema, their request would have been denied in any case, because “the application had been submitted with violations”.

2.4 Between May and July 2012, the author brought a number of lawsuits, under civil proceedings, before Bostandyk District Court in Almaty, requesting it to recognize the actions of officials of the Akimat of Almaty towards him as unlawful and to compensate him for the non-pecuniary damage sustained as a result of their actions. In decisions dated 1 June 2012, 25 June 2012 and 12 July 2012, a Bostandyk District Court judge repeatedly refused to accept the author’s lawsuit for consideration. The author’s lawsuit of 17 July 2012, which was initially accepted by Bostandyk District Court, was dismissed by the Court shortly afterwards. In its decision of 14 August 2012, the Court concluded that officials of the Akimat of Almaty had not committed any unlawful actions against the author. Bostandyk District Court also determined that the author had failed to provide any evidence, such as an audio recording of his phone call with R.D. (see para. 2.2 above) or medical certificates, in support of his claims that he had received threats from a public official or that his health had been adversely affected as a result of their actions.

2.5 On 28 April 2012, the author attended⁷ the “rally of dissent” in defiance of the personal threats received from officials of the Akimat of Almaty and despite his ill-health in order to exercise his right to freedom of expression guaranteed by the Constitution of Kazakhstan and the Covenant. As soon as the rally ended, the author was detained by police officers, with the use of force, and was brought to the Specialized Inter-District Administrative Court of Almaty, against his will. He was subjected to beatings and his arms were twisted by police officers. On the same day, the author submitted a written request for an order that a medical examination of him be carried out, addressed to a judge of the Specialized Inter-District Administrative Court of Almaty, as well as a complaint to the Prosecutor’s Office about the unlawful actions of police officers of Almaty District in Almaty. On an unspecified date, the author’s complaint was transmitted by the Prosecutor’s Office of Almaty District to the Internal Security Division of the Department of Internal Affairs in Almaty. On 1 June 2012, the Internal Security Division dismissed the author’s complaint, concluding that there were no grounds to initiate either disciplinary or criminal proceedings against the police officers who had detained the author on 28 April 2012.

2.6 On 28 April 2012, the author was found guilty of an administrative offence under article 373 (3) of the Code of Administrative Offences. The Specialized Inter-District Administrative Court of Almaty determined that the author had violated the procedure for the organization of a peaceful meeting and had repeatedly taken part in an unauthorized meetings within the space of a year. He was again sanctioned with 15 days of administrative detention. The author, however, was not provided with a copy of the decision of the Specialized Inter-District Administrative Court of Almaty, and the administration of the detention facility where the author was serving his administrative detention prevented all contacts with his lay defender and his counsel. On 3 May 2012, the author, who was still in detention, and had no access to his legal representatives, submitted an appeal against the decision of the Specialized Inter-District Administrative Court of Almaty to Almaty City Court. His appeal was rejected by Almaty City Court on 4 May 2012. On 18 May 2012, the author submitted a request to the Office of the Prosecutor General to review the decision of the Specialized Inter-District Administrative Court of Almaty of 28 April 2012. On 15 August 2012, the author was informed by the Office of the Prosecutor General that his request required an additional verification, and on 27 August 2012, the author’s request was transmitted to the Prosecutor’s Office of Almaty for that purpose. On 25 September 2012, the author was informed by the Prosecutor’s Office of Almaty that there were no grounds for initiating a review of the court decisions made in his regard that had already become executory. The author submits, therefore, that he has exhausted all available and effective domestic remedies.

⁷ According to the administrative offence report of 28 April 2012, the author actively participated in the rally and “acted as its organizer”.

Complaint

3.1 The author claims that by repeatedly detaining him and holding him responsible under the administrative procedure for mere participation in peaceful meetings aimed at expressing his civic position, the State party's authorities and courts have violated his right to freedom of expression and his right of peaceful assembly, guaranteed under articles 19 (2) and 21 of the Covenant. He adds that the restrictions of these rights provided by domestic law are so broad and imprecise that they leave a wide margin for abuse by executive and law enforcement authorities, and that the judiciary is not independent and impartial as regards its consideration of complaints related to the abusive use of restrictions of the aforementioned rights.

3.2 In the light of the foregoing, the author specifically asks the Committee to request the State party to repeal the existing restrictions on the exercise of the right of peaceful assembly in its domestic law, which run counter to the State party's obligations under article 21 of the Covenant and international standards.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 20 October 2014, the State party recalls the facts on which the present communication is based, and submits that on 24 March 2012 and 28 April 2012 the author participated in the unauthorized rallies and was subsequently held responsible under the administrative procedure. The State party also adds that the author pleaded not guilty on both occasions.

4.2 The State party argues that the present communication should be declared inadmissible by the Committee as being manifestly unfounded. The State party submits that article 32 of the Constitution guarantees the right of citizens to gather peacefully and to hold meetings, rallies, demonstrations, street processions and pickets. The realization of this right, however, may be restricted by law in the interests of State security, public order, and protection of the health, rights and freedoms of others. The format and the manner of the expression of societal, group or personal interests in public places, as well as certain limitations on the above, are established in the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. Article 7 of this law gives the local executive bodies authority to prohibit the holding of public events if, inter alia, these events threaten "public order and the security of citizens". Pursuant to article 10 of the same law, the local executive bodies may also establish additional requirements for the holding of public events, which are adapted to local conditions and based in law.

4.3 The State party argues that the holding of peaceful assemblies, meetings, processions and demonstrations is not prohibited on its territory. However, pursuant to the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, organizers should obtain authorization from the local executive body prior to holding such a public event and be cognizant that such authorization could be refused in certain circumstances.

4.4 The State party submits that the Guidelines on Freedom of Peaceful Assembly, of the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights,⁸ also recognize the necessity of establishing certain restrictions and limitations on the exercise of the right to freedom of assembly. The State party adds that it has studied 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 in United States of America, for example, it is necessary to request permission 45 days before the event itself and to indicate the route of the event. The city authorities have the right to move the event if its location is not acceptable. Other countries, such as Sweden, have a blacklist of organizers of previously prohibited or dispersed demonstrations. In France, local authorities have the right to prohibit any demonstrations. In the United Kingdom of Great Britain and Northern Ireland, the authorities have the right to introduce temporary bans. Also in the United Kingdom, street events are only allowed after receiving permission from

⁸ Available at www.osce.org/files/f/documents/4/0/73405.pdf.

the police. In Germany, any mass event, meeting or demonstration, inside or outside, must be permitted by the authorities.

4.5 In order to protect the rights and freedoms of others, public order, and the transportation system and other infrastructure, the State party's authorities have designated special locations for non-governmental public events. Currently, almost all regional capitals, as well as some districts, have such designated areas, based on the decisions of local executive bodies.

4.6 The State party therefore considers that its domestic laws and regulations are in accordance with the requirements of applicable international law and the practices of other countries, and that its domestic authorities and courts complied with the requirements of articles 19 and 21 of the Covenant in holding the author responsible under the administrative procedure.

4.7 The State party submits that the author also failed to exhaust domestic remedies. It recalls that the author's request for a supervisory review of the administrative proceedings on the basis of which he was held responsible under the administrative procedure for having participated in an unauthorized rally on 28 April 2012 was rejected by the Deputy Prosecutor General. The State party further submits that chapter 40 of the Code of Administrative Offences provides for an exceptional procedure under which the author could have requested the Prosecutor General to initiate supervisory review proceedings in his administrative case before the Supreme Court.⁹ Since the author has failed to file such a request, his communication before the Committee should be declared inadmissible under article 5 (2) (b) of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 11 November 2014, the author provided comments on the State party's observations. He recalls the State party's argument that he has twice been held responsible under the administrative procedure in accordance with the law for participating in two unauthorized rallies. The author submits, in this regard, that in fact the State party has violated his right to peaceful assembly, by holding him responsible under the administrative procedure for mere participation in two peaceful rallies. The author adds that the Specialized Inter-District Administrative Court of Almaty did not explain why the restriction of his right of peaceful assembly was "necessary" for the protection of one of the legitimate purposes, such as the protection of national security or public order, public health or morals, or the rights and freedoms of others. Therefore, the only justification provided by the Specialized Inter-District Administrative Court of Almaty for sanctioning the author with 15 days of administrative detention was that he had participated in an unauthorized public event.

5.2 The author also submits that, contrary to what was claimed by the State party in its observations, the provisions of article 32 of the Constitution and of articles 19 and 21 of the Covenant are not being complied with in Kazakhstan in practice. The author also argues that, unlike in Kazakhstan, where one needs authorization from the authorities prior to organizing a peaceful public event, most peaceful assemblies in other counties, including the United States, are conducted pursuant to a notification procedure.

5.3 The author also claims to have exhausted all available domestic remedies, including submitting a request to the Office of the Prosecutor General to initiate a supervisory review before the Supreme Court. The Office of the Prosecutor General could have initiated a supervisory review in his administrative case but it has not done so. Therefore, the author filing another request to the Prosecutor General to initiate a supervisory review would not have resulted in a different outcome.

5.4 The author requests the State party's authorities to make a public apology for the violation of his rights and to pay him compensation for the legal and medical costs resulting from their unlawful actions, as well as for moral damages. He adds that his health has significantly deteriorated as a result of 30 days of administrative detention in substandard conditions, two hunger strikes initiated by him as a protest against his unlawful detention,

⁹ The State party also refers to art. 676 of the Code of Administrative Offences.

and the three years of stress and depression that followed. The author also requests the State party to repeal the “draconian” Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, of 1995, and to adopt a new progressive law instead.

State party’s additional observations

6.1 In a note verbale dated 26 February 2015, the State party reiterates its earlier position, that the present communication should be declared inadmissible by the Committee as being manifestly unfounded.

6.2 The State party submits that articles 19 and 21 of the Covenant provide for certain restrictions in the exercise of the right to freedom of expression and the right of peaceful assembly and that these provisions of international law have been reflected in the national legislation of Kazakhstan. The State party refers in particular to articles 20 and 32 of the Constitution. The State party recalls that the exercise of the rights to freedom of expression and of peaceful assembly carries with it special duties and responsibilities for rights holders. This is the reason why the national legislation of Kazakhstan provides for a number of substantive requirements, as far as the procedure for the holding of public events “of a social and political nature” is concerned. It does not mean, however, that the holding of peaceful assemblies, meetings, processions and demonstrations is prohibited on the territory of Kazakhstan. Once the requirements established in the national legislation have been complied with, there are no impediments to the holding of public events. The State party argues that the right to peaceful assembly is restricted by law in nearly all developed democratic countries, which establish specific requirements for the exercise thereof. Furthermore, it recalls that the Guidelines on Freedom of Peaceful Assembly, of the OSCE Office for Democratic Institutions and Human Rights, also recognize the necessity of establishing certain restrictions and limitations on the exercise of the right to freedom of assembly (see para. 4.4 above).

6.3 The State party argues that the author has repeatedly disregarded the requirements established in the national legislation of Kazakhstan, by actively participating in the unauthorized rallies of 24 March 2012 and 28 April 2012. Therefore, contrary to what is being claimed by the author before the Committee, he was held responsible under the administrative procedure not for exercising his rights to freedom of expression and peaceful assembly but rather for violating the requirements established in the national legislation for the exercise of these rights.

6.4 The State party also reiterates its position that the author’s communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol since he has failed to file a request to initiate supervisory review proceedings in his administrative case directly with the Prosecutor General by attaching a copy of the reply received by him from the Deputy Prosecutor General.

Author’s comments on the State party’s additional observations

7.1 On 21 April 2015, the author provided comments on the State party’s additional observations. He draws the Committee’s attention to the fact that the State party has not explained in its observations why the author and other participants in the peaceful rallies held on 24 March 2012 and 28 April 2012 have not been given the opportunity to show their solidarity with oil workers in Zhanaozen and to express their disagreement with how the State party’s authorities reacted to the tragic events in Zhanaozen if, by their actions, persons participating in these peaceful rallies did not pose any threat to national security, public order, or public health or morals.

7.2 The author also argues in great detail that, in the context of the present communication, the State party’s authorities have violated the following six guiding principles contained in the Guidelines on Freedom of Peaceful Assembly, of the OSCE Office for Democratic Institutions and Human Rights, which were adopted by Kazakhstan along with the other OSCE participating States: (a) the presumption in favour of holding assemblies; (b) the State’s positive obligation to facilitate and protect peaceful assembly; (c) legality; (d) proportionality; (e) good administration; and (f) non-discrimination. The author submits, in

particular, that the State party's authorities took "preventative measures" to dissuade him from participating in the "rally of dissent" on 28 April 2012 under the threat of punitive actions (see para. 2.2 above), and that repeatedly holding him responsible under the administrative procedure for mere participation in peaceful assemblies was disproportionate and not "necessary" within the meaning of articles 19 (3) and 21 of the Covenant.

7.3 The author also refers to decision No. 167 adopted by the Maslikhat of Almaty¹⁰ on 29 July 2005, which authorizes non-governmental public events "of a social and political nature" to be held only on the square behind the Sary Arka cinema. Pursuant to the same decision of the Maslikhat of Almaty, official events at the local and national levels organized by the relevant State bodies, as well as other events with the participation of high-level State and city officials, are to be held on Republic Square. Other squares and gardens are to be used for holding official, cultural and entertainment activities, in accordance with their architectural and functional purposes. The author argues that the decision of the Maslikhat of Almaty effectively divided all public events held in Almaty into State-run and non-governmental events and, according to their content, divided the latter category further into events "of a social and political nature" and events of another nature. Consequently, pursuant to the decision of the Maslikhat of Almaty, 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 square, garden, park or street. All events "of a social and political nature", however, are to be held solely on the square behind the Sary Arka cinema. Therefore, the authorization by the State party's authorities to organize public events "of a social and political nature" only in one specially designated place, while authorizing State-run and non-political public events in other locations, is politically motivated and discriminatory.

7.4 As to the State party's argument that he has failed to exhaust domestic remedies (see paras. 4.7 and 6.4 above), the author 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, he filed requests with the Prosecutor's Office of Almaty and the Office of the Prosecutor General to initiate supervisory review proceedings in his administrative case, but those requests were rejected. Therefore, all available and effective domestic remedies have been exhausted.

Further submissions from the State party and the author

8. In a note verbale dated 2 July 2015, the State party reiterates its earlier position that the present communication should be declared inadmissible by the Committee and that there were no violations of the author's rights guaranteed under the Covenant.

9. On 14 September 2015, the author provided comments on the State party's further submission of 2 July 2015, reiterating his initial claims that the State party has violated his rights under articles 19 (2) and 21 of the Covenant. The author also draws the Committee's attention to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Kazakhstan (19–27 January 2015).¹¹ He also puts forward a number of provisions to be included in the new law on peaceful assemblies. Furthermore, the author submits that the State party has so far failed to implement the Committee's Views in communication No. 2137/2012, *Toregozhina v. Kazakhstan*,¹² which is similar in substance to the present communication. The author adds that in the aforementioned communication, the Committee specifically stated that State party was under an obligation to prevent similar violations in the future. To this end, the State party should review its legislation, in particular the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, as it has been applied in that communication, with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.¹³

¹⁰ The equivalent of a city council, or more precisely, an elected, local representative body (a local government) in the regions and districts of Kazakhstan.

¹¹ A/HRC/29/25/Add.2. Reference is made to paras. 52, 59, 60 and 62–66.

¹² CCPR/C/112/D/2137/2012.

¹³ *Ibid.*, para. 9.

10. In a note verbale dated 5 November 2015, the State party reiterated its initial observations of 20 October 2014 and additional observations of 26 February 2015, arguing that the present communication should be declared inadmissible by the Committee as being manifestly unfounded.

11. On 18 November 2015, the author provided comments on the State party's further submission of 5 November 2015, recalling that in Kazakhstan one needs authorization from the authorities prior to organizing a peaceful public event, and that in Almaty such authorizations are being issued for one location only: the square behind the Sary Arka cinema (see para. 7.3 above). He also argues that nothing prevents the Office of the Prosecutor General from initiating a supervisory review in his administrative case before the Supreme Court pursuant to chapter 40 of the Code of Administrative Offences.¹⁴ The author further recalls that he already filed a request to the Prosecutor General to initiate a supervisory review in his administrative case, which was rejected by the Deputy Prosecutor General. Therefore, his filing of another request to the Prosecutor General to initiate a supervisory review would not have resulted in a different outcome.

Issues and proceedings before the Committee

Consideration of admissibility

12.1 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.

12.2 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.

12.3 The Committee notes the State party's argument that the author has failed to exhaust all domestic remedies available to him, by not submitting a request to the Prosecutor General to initiate a supervisory review in his administrative case before the Supreme Court. 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.¹⁵ The Committee also notes that the author submitted a request to the Office of the Prosecutor General to initiate a supervisory review in his administrative case before the Supreme Court and that his request was rejected as unfounded by the Deputy Prosecutor General. Accordingly, in these circumstances, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

12.4 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his claims under articles 19 (2) and 21 of the Covenant. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

¹⁴ The author refers to the precedent in the case of A.F., where the Office of the Prosecutor General initiated a supervisory review before the Supreme Court, on the basis of which the Supreme Court quashed decisions of the lower courts. He notes, however, that the Supreme Court did not address in its decision the issues of rehabilitation and effective remedy for A.F. and of bringing those responsible to justice.

¹⁵ 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; *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3; *Sambetbai v. Kazakhstan* (CCPR/C/130/D/2418/2014), para. 11.3; *Kurtinbaeva v. Kazakhstan* (CCPR/C/130/D/2540/2015), para. 8.3; *Nurlanuly v. Kazakhstan* (CCPR/C/130/D/2546/2015), para. 8.3; and *Kulumbetov v. Kazakhstan* (CCPR/C/130/D/2547/2015), para. 7.3.

Consideration of the merits

13.1 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.

13.2 The Committee notes the author's claim that by holding him responsible under the administrative procedure for mere participation in peaceful rallies, the State party has violated his right of peaceful assembly. The author recalls in this regard that he was twice detained by police officers immediately after the peaceful rallies. The State party argues that in fact the author was detained and held responsible under the administrative procedure for participating in unauthorized public events. The Committee recalls that the right of peaceful assembly, as guaranteed in 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 is indispensable in a democratic society.¹⁶ Given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within "sight and sound" of the target audience,¹⁷ and no restriction on that right is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions.¹⁸ 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 enumerated in article 21 of the Covenant. Where this onus is not met, article 21 is violated.¹⁹ The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it.²⁰ Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.²¹

13.3 The Committee observes that authorization regimes, where those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, undercut the idea that peaceful assembly is a basic right.²² Where such requirements 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. Such systems should also not be overly bureaucratic.²³ Notification regimes, for their part, must not in practice function as authorization systems.²⁴

13.4 The Committee notes the author's claim that the State party's authorities or courts have not provided any justification as to why it was necessary to hold him responsible under the administrative procedure for mere participation in peaceful, albeit unauthorized, public events. The Committee also notes the State party's submission that the restriction was imposed on the author in conformity with the Code of Administrative Offences and the provisions of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. The Committee also notes the State party's argument that the requirement to submit an application to the local executive

¹⁶ Human Rights Committee, general comment No. 37 (2020), para. 1.

¹⁷ *Strizhak v. Belarus* (CCPR/C/124/D/2260/2013), para. 6.5; *Sambetbai v. Kazakhstan*, para. 12.2; *Kurtinbaeva v. Kazakhstan*, para. 9.2; *Nurlanuly v. Kazakhstan*, para. 9.2; and *Kulumbetov v. Kazakhstan*, para. 8.2.

¹⁸ *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), para. 13.4; *Sambetbai v. Kazakhstan*, para. 12.2; *Kurtinbaeva v. Kazakhstan*, para. 9.2; *Nurlanuly v. Kazakhstan*, para. 9.2; and *Kulumbetov v. Kazakhstan*, para. 8.2.

¹⁹ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3; *Sambetbai v. Kazakhstan*, para. 12.2; *Kurtinbaeva v. Kazakhstan*, para. 9.2; *Nurlanuly v. Kazakhstan*, para. 9.2; and *Kulumbetov v. Kazakhstan*, para. 8.2.

²⁰ *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 7.4; *Sambetbai v. Kazakhstan*, para. 12.2; *Kurtinbaeva v. Kazakhstan*, para. 9.2; *Nurlanuly v. Kazakhstan*, para. 9.2; and *Kulumbetov v. Kazakhstan*, para. 8.2.

²¹ Human Rights Committee, general comment No. 37 (2020), para. 36.

²² 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.

²³ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

²⁴ Human Rights Committee, general comment No. 37 (2020), para. 73; and CCPR/C/JOR/CO/5, para. 32.

body requesting authorization to hold a peaceful assembly is aimed at protecting public order, as well as the rights and freedoms of other citizens. The Committee further notes, however, the author's claim that although the restriction may have been lawful under national legislation, his detention and holding him responsible under the administrative procedure were unnecessary in a democratic society for the pursuance of the legitimate aims invoked by the State party. The author further argues that the rallies, which were in response to important issues – commemoration of the shooting of protesters in Zhanaozen and expression of disagreement with how the State party's authorities reacted to the tragic events in Zhanaozen – were peaceful and did not harm or endanger anyone or anything.

13.5 The Committee notes that the State party relied on the provisions of the Law on the Procedure for the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, which requires an application to be made at least 10 days prior to the intended event and authorization by the local executive authorities to be received, thus constituting 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 under the second sentence of article 21 of the Covenant, in order to comply with the Covenant. 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 or 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.²⁵ 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 entails respect for human rights, including the right of peaceful assembly.²⁶ States parties should not rely on a vague definition of “public order” to justify overbroad restrictions on the right of peaceful assembly.²⁷ Peaceful assemblies can in some cases be inherently or 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.²⁸ However, the Committee notes that the State party has not provided any specifics as to the nature of the disturbance occasioned by the assemblies in question, nor any information as to how it crossed the threshold of permissible disruption to be tolerated.

13.6 The Committee recalls that article 21 of the Covenant provides that any restrictions must be “necessary in a democratic society”. Restrictions must therefore be *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.²⁹ Such restrictions must be appropriate responses to a pressing social need, related to one of the permissible grounds in article 21. They must also be the least intrusive among the measures that might serve the relevant protective function.³⁰ Moreover, they have to 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.³¹ If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible. The Committee further observes that the State party has not demonstrated that the author's repeated sanctioning with 15 days of administrative detention for participating in peaceful rallies was necessary in a democratic society to pursue a legitimate aim or was proportionate to such an aim in accordance with the strict requirements under the second sentence 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.

²⁵ *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.

²⁶ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, para. 22.

²⁷ CCPR/C/KAZ/CO/1, para. 26; and CCPR/C/DZA/CO/4, para. 45.

²⁸ Human Rights Committee, general comment No. 37 (2020), para. 44.

²⁹ *Ibid.*, para. 40.

³⁰ *Toregozhina v. Kazakhstan*, para. 7.4.

³¹ Human Rights Committee, general comment No. 37 (2020), para. 40.

Blanket restrictions on peaceful assemblies are presumptively disproportionate.³² For these reasons, the Committee concludes that the State party failed to justify the restriction of the author's right to peaceful assembly and thus violated article 21 of the Covenant.

13.7 The Committee also notes the author's claim that his right to freedom of expression under article 19 of the Covenant was 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.

13.8 The Committee notes that sanctioning the author for expressing his views through participation in public events interfered with his 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 are 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 are 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 necessary and proportionate.³³

13.9 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.³⁴ The Committee notes the author's claim that the peaceful rallies were held to commemorate the shooting of protesters in Zhanaozen and to express the participants' disagreement with how the State party's authorities reacted to the tragic events in Zhanaozen. In the absence of any pertinent information from the State party explaining how the restriction 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.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under articles 19 (2) and 21 of the Covenant.

15. 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 him. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under articles 19 (2) and 21 of the Covenant, including organizing and conducting peaceful assemblies, meetings, processions, pickets and demonstrations, may be fully enjoyed in the State party.

16. 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

³² *Ibid.*, para. 38.

³³ See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; and *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5; *Sambetbai v. Kazakhstan*, para. 12.8; *Kurtinbaeva v. Kazakhstan*, para. 9.9; *Nurlanuly v. Kazakhstan*, para. 9.9; and *Kulumbetov v. Kazakhstan*, para. 8.9.

³⁴ Human Rights Committee, general comment No. 34 (2011), paras. 34, 37, 38, 42 and 43.

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.
