The Committee recommends Kazakhstan to review its legislation to comply with the right to freedom of expression and peaceful assembly under article 19 and 21 of the ICCPR.

**Facts**

The author is a Kazakhstan national who claims to be a victim of violations by Kazakhstan of her rights under articles 9(1), 12(1), 19 and 21 of the ICCPR.

On the 11th of March 2010, the author organised as head of the non-governmental organization “Ar. Rukh. Khak”, an art-mob event to commemorate Civil Disobedience Day. The purpose of the demonstration was to draw the attention of the public to the issue of moral leadership and promote the values of humanism, democracy, social justice and morality. During the event, the authorities did not intervene. However, on the 16th of March 2010, 20 police officers entered the author’s office and arrested her. The Specialized Inter-regional Administrative Court of Almaty found her guilty for the unauthorized organization of a public event and ordered her to pay a fine. The author appealed the first instance decision before the Appellate Court, which rejected her appeal. The author filed a petition to the Office of the General Prosecutor, asking it to initiate a supervisory review of the decision, which was also rejected. The author maintains that her arrest and conviction for organizing an art-mob event violated her constitutional rights and her rights under articles 9, paragraph 1; 12, paragraph 1; 19; and 21 of the Covenant. The author submits that, by organizing the art-mob event, she was expressing her opinion, which is her right under article 19 of the Covenant. She maintains that freedom of expression includes the right of individuals to criticize openly and publicly their Governments without fear of interference or punishment.
Committee’s View

Consideration on admissibility
The Committee notes the author’s claim that her rights under article 12(1) of the Covenant had been violated by her arrest on charges of committing an administrative violation. In the absence of any other pertinent information in that respect, the Committee considers that the author has failed to sufficiently substantiate that claim and concludes that this part of the communication is inadmissible.

On the other hand, regarding the author’s claim that her rights under article 9(1) of the Covenant had been violated by her arrest, the Committee notes the State party’s submission that the arrest was lawful under article 618 of the Code of Administrative Violations. The Committee notes, however, that this raises the issue of the arbitrariness of the author’s arrest. It therefore considers that the author’s claim under article 9(1) has been sufficiently substantiated and declares it admissible. Moreover, the Committee also considers that the author has sufficiently substantiated her claims under articles 19 and 21 for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of merits
Regarding the author’s claim under article 9, the Committee recalls that, in order for an arrest to be in compliance with article 9(1), it must not only be lawful, but also reasonable and necessary in all circumstances. The Committee observes that the State party has not provided any justification as to why the arrest of the author was reasonable and necessary. In these circumstances, the Committee finds that the author’s detention was unreasonable and constituted a violation of article 9(1).

With regard to the author’s claim under article 19 of the Covenant, the Committee assessed whether the restrictions imposed on the author’s freedom to impart information and ideas are justified under any of the criteria set out in article 19(3). The Committee recalls its General Comment 34, in which it stated that freedom of expression is essential for any society and a foundation stone for every free and democratic society. It notes that article 19(3) allows restrictions only to the extent that they are provided by law and only if they are necessary (a) for respect of the rights and reputation of others; or (b) for the protection of national security or public order or of public health or morals. The Committee observes that the detention of the author and the imposition of a significant fine raise serious doubt as to the necessity and proportionality of the restrictions imposed on the author’s rights. The Committee further observes that the State party has failed to invoke any specific ground to support the necessity of the restrictions imposed. Moreover, the State party did not demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest it sought to protect. The Committee considers that, in the circumstances of the case, the limitations on the author, although imposed on the basis
of domestic law, were not shown to be justified and proportional pursuant to the conditions set out in article 19(3). It therefore concludes that the author’s rights under article 19(2) of the Covenant have been violated.

Regarding the author’s claim under article 21 of the Covenant, the Committee similarly considers that the State party has failed to demonstrate that the restrictions imposed on the author’s rights, namely, the detention of the author and the imposition on her of a significant fine, were necessary in the interest 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. Accordingly, the Committee concludes that the facts before it resulted also in a violation of the author’s rights under article 21 of the Covenant

**Recommendation**

The Human Rights Committee recommends the State party to:

1. Provide the author with an effective remedy, including review of her conviction and to an adequate compensation, including reimbursement of the legal costs incurred.
2. Take steps to prevent similar violations in the future.
3. Review its legislation in particular the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations

**Deadline to Submit the Report on the Implementation of the Recommendations**

180 days from the adoption of the views: March 21st, 2015.