



International Covenant on Civil and Political Rights

Distr.: General
15 December 2021

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2509/2014*, **

<i>Communication submitted by:</i>	Sharip Kurakbaev and Raikhan Sabdikenova (represented by counsel, Bakhytzhan Toregozhina)
<i>Alleged victim:</i>	Sharip Kurakbaev
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	6 May 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 17 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2021
<i>Subject matter:</i>	Holding the editor-in-chief of a newspaper responsible under the administrative procedure for violating the Law on Mass Media
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to a fair hearing by an independent and impartial tribunal; freedom of expression; right to the equal protection of the law without any discrimination
<i>Articles of the Covenant:</i>	14, 19 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The initial author of the communication was Sharip Kurakbaev, a national of Kazakhstan born in 1961. At the time of submission of the communication, he claimed that the State party had violated his rights under articles 14, 19 and 26 of the Covenant. After his death on 14 August 2018, Mr. Kurakbaev's wife, Raikhan Sabdikenova, a national of Kazakhstan born in 1961, confirmed in writing on 17 May 2021 her wish to pursue the

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

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



proceedings before the Committee in the present communication.¹ The Optional Protocol entered into force for the State party on 30 September 2009. Both authors are represented by counsel.²

1.2 On 19 February 2015, pursuant to rule 93 (1) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 1 May 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to grant the State party's request.

Factual background³

2.1 The author was editor-in-chief of the newspaper *Pravda Kazakhstana*, which was owned by a public association, the Communist Party of Kazakhstan. Pursuant to the established procedure, on 8 February 2007 the owner of *Pravda Kazakhstana* obtained a registration number from the Ministry of Culture and Information of Kazakhstan. When the editor-in-chief of *Pravda Kazakhstana* changed in the course of 2007, an application for a new registration number was duly submitted on 25 August 2007 to the Ministry of Culture and Information. At that time, however, the author was not yet editor-in-chief of *Pravda Kazakhstana*. At the time, it was usual for all new certificates with their registration numbers to be transmitted by the Ministry of Culture and Information to the *akimats*,⁴ which would in turn notify the relevant print media about the issuance of the new certificates. The *akimats* would also hand over the new certificates to print media in exchange for the old ones.

2.2 In the absence of any response from the Ministry of Culture and Information to its application for a new registration number, *Pravda Kazakhstana* continued to carry the old registration number in all editions. In the meantime, the requirement to apply for a new registration number was abolished.

2.3 On 9 September 2013, an administrative offence report in relation to the author was prepared by the Department of Internal Policy in the *akimat* of Almaty. According to the report, the author was accused of having committed an administrative offence by indicating the old registration number in *Pravda Kazakhstana*,⁵ despite having been issued with a new registration number by the Ministry of Culture and Information on 25 August 2007. He was charged with an administrative offence under article 350 (2) of the Code of Administrative Offences (publication of an edition with an unclear or deliberately false imprint). According to the same report, on 9 August 2013 the Specialized Interdistrict Administrative Court of Almaty found the author guilty of having committed an administrative offence under article 350 (1) of the Code of Administrative Offences⁶ and fined him five monthly notional units, but without seizing any editions of *Pravda Kazakhstana*. According to the report, the author

¹ In order to reflect the facts at the time of the initial submission and the submissions made in 2015 and 2016, references to "the author" in paras. 2.1–12 below refer to Mr. Kurakbaev. Nevertheless, at the time of the consideration of the present communication, in July 2021, only Ms. Sabdikenova could be regarded as having the status of author before the Committee.

² On 17 May 2021, Ms. Sabdikenova submitted a power of attorney authorizing Mr. Kurakbaev's counsel to represent her before the Committee.

³ The facts on which the present communication is based have been reconstructed on the basis of the author's own incomplete account, the decisions of the Specialized Interdistrict Administrative Court of Almaty, dated 26 September 2013, the Appeals Board on Civil and Administrative Cases of Almaty City Court, dated 24 October 2013, and other supporting documents available on file.

⁴ Equivalent to a mayor's office (a municipal, district or provincial government).

⁵ Reference is made in particular, to the edition of 4 September 2013 of *Pravda Kazakhstana*.

⁶ According to the decision of the Specialized Interdistrict Administrative Court of Almaty adopted on 9 August 2013, the Communist Party of Kazakhstan, in its capacity as the owner of *Pravda Kazakhstana*, was found guilty of having committed an administrative offence under article 350 (1) of the Code of Administrative Offences by indicating an incorrect press run in the seven editions published between 19 June 2013 and 31 July 2013: it had indicated that there were 8,000 copies in the press run, whereas in fact it had printed only 7,000 copies. Under the same decision, "The Communist Party of Kazakhstan" was fined 20 monthly notional units, i.e., 34,620 tenge (approximately 140 euros) and the editions of *Pravda Kazakhstana* published between 19 June 2013 and 31 July 2013 were seized.

had therefore repeatedly committed the same administrative offence within a year of being held responsible under the administrative procedure.

2.4 During the hearing of his administrative case by the Specialized Interdistrict Administrative Court of Almaty, the author argued that he was not aware that the Ministry of Culture and Information had issued a new registration number on 25 August 2007. He explained that all editions of *Pravda Kazakhstana* carried the last known registration number, indicated in the registration certificate issued by the Ministry of Culture and Information on 8 February 2007. The author also stated that the original registration certificate was in the possession of the editorial board of *Pravda Kazakhstana* and that, to the best of his knowledge, no response had been received from the Ministry of Culture and Information to the application for a new registration number, which was submitted on 25 August 2007.

2.5 On 26 September 2013, the author was found guilty by the Specialized Interdistrict Administrative Court of Almaty of an administrative offence under article 350 (2) of the Code of Administrative Offences. The Court established that, contrary to the requirements of article 15 (1) of the Law on Mass Media, the author, in his capacity as the editor-in-chief of *Pravda Kazakhstana*, repeatedly published editions of the paper carrying the old registration number,⁷ despite a new one having been issued. The author was fined 10 monthly notional units (17,310 tenge, which is approximately 70 euros).

2.6 By a separate decision, also adopted by the Interdistrict Administrative Court of Almaty on 26 September 2013, the Communist Party of Kazakhstan in its capacity as the owner of *Pravda Kazakhstana*, was found guilty of committing an administrative offence under article 350 (2) of the Code of Administrative Offences by indicating the old registration number in the edition of the paper published on 11 September 2013, despite having been issued with a new registration number by the Ministry of Culture and Information on 25 August 2007. Under the same decision, the Interdistrict Administrative Court of Almaty imposed a three-month suspension of the publication of *Pravda Kazakhstana* on the Communist Party of Kazakhstan.⁸

2.7 On 11 October 2013, the author submitted an appeal against the decision of the Specialized Interdistrict Administrative Court of Almaty at the Almaty City Court. In his appeal, he argued, inter alia, that there was no objective necessity for the Department of Internal Policy in the *akimat* of Almaty to check the activities of *Pravda Kazakhstana* twice in less than a year and that such scrutiny was a way for the authorities to put political pressure on the independent and opposition mass media, in violation of article 20 of the Constitution of Kazakhstan and article 19 of the Covenant. The author also stated that the old registration number had been indicated in all editions of *Pravda Kazakhstana* over the previous six years (from 2007 to 2013), including the time before he became editor-in-chief. With reference to articles 69 (1) and 580 (1) and (5) of the Code of Administrative Offences, the author argued that the administrative proceedings against him should be terminated, since the limitation period of two months for the administrative offences imputed to him had already expired. The author's appeal was rejected by the Appeals Board on Civil and Administrative Cases of the Almaty City Court on 24 October 2013.

2.8 On an unspecified date, the author submitted a request to the Office of the Prosecutor of Almaty for a review of the decisions of the Specialized Interdistrict Administrative Court of Almaty and the Appeals Board of the Almaty City Court. On 9 December 2013, the Deputy Prosecutor of Almaty replied to the author that there were no grounds for initiating a review of the court decisions that had already come into force. On 17 January 2014, the author submitted a similar request to the Office of the Prosecutor General of Kazakhstan. On 21 February 2014, the Deputy Prosecutor General of Kazakhstan determined that there were no

⁷ Reference is made in particular, to the edition published on 11 September 2013.

⁸ According to the decision of the Specialized Interdistrict Administrative Court of Almaty, adopted on 21 February 2013, the Communist Party of Kazakhstan, in its capacity as the owner of *Pravda Kazakhstana*, was found guilty of having committed an administrative offence under article 342 (4) of the Code of Administrative Offences by not complying with the periodicity of publication (once a week) specified in the registration application. Under the same decision, the Communist Party of Kazakhstan was fined 150 monthly notional units (259,650 tenge, which is approximately 700 euros) and a three-month suspension of the publication of *Pravda Kazakhstana* was imposed.

grounds for initiating a review of the court decisions made with regard to the author and rejected his request on that basis. The author therefore submitted that he had exhausted all available and effective domestic remedies.

Complaint

3.1 At the time of submission of the communication, the author claimed that by holding him responsible under the administrative procedure, ordering him to pay administrative fines and imposing a three-month suspension of *Pravda Kazakhstan*, merely for having indicated the last known registration number in editions of the newspaper, the State party's authorities and courts had subjected him to unjustified restrictions on his right to freedom of expression and thus violated his rights guaranteed under article 19 of the Covenant. The author also submitted that neither the Department of Internal Policy in the *akimat* of Almaty nor the courts had established whose rights had been infringed by editions of *Pravda Kazakhstan* carrying the old registration number and what actions attributable to him had resulted in the alleged violations.

3.2 The author also claimed that in his case the State party courts had taken an accusatory approach from the very beginning of the administrative proceedings and had disregarded his arguments, in violation of article 14 of the Covenant.

3.3 Furthermore, the author claimed that there was no objective necessity for the Department of Internal Policy in the *akimat* of Almaty to check the activities of *Pravda Kazakhstan* twice in less than a year and that such scrutiny was a way for the authorities to put political pressure on the independent and opposition mass media, in violation of article 26 of the Covenant. In addition, the author argued that undue interference by the State party's authorities in the activities of *Pravda Kazakhstan* was a clear example of an attempt to silence independent and opposition mass media in Kazakhstan.

State party's observations on admissibility

4.1 In a note verbale dated 19 February 2015, the State party submitted its observations on the admissibility of the communication and recalled the facts on which the present communication is based. It noted, in particular, that on 25 August 2007, the Ministry of Culture and Information had issued a new registration number for *Pravda Kazakhstan* on the basis of the application submitted by its owner on 25 August 2007. Despite having been issued with a new registration number, *Pravda Kazakhstan* continued to carry the old registration number, issued on 8 February 2007. The State party specifically refers to the edition of *Pravda Kazakhstan* published on 11 September 2013.

4.2 The State party submits that, pursuant to article 69 (3) of the Code of Administrative Offences, in the case of a continuing administrative offence that infringes on public and State interests protected by law, a person can no longer be held responsible under the administrative procedure two months after the discovery of the administrative offence in question. An administrative offence is deemed to be continuing if it is characterized by the continuous implementation of a single corpus delicti of a certain prohibited conduct and it has not been completed by the time of its discovery.⁹ Since the author, in his capacity as editor-in-chief of *Pravda Kazakhstan*, continued to show the old registration number from when the new registration number was issued until the publication of the edition of 11 September 2013, the limitation period for holding the author responsible under the administrative procedure should be calculated from the date on which the most recent edition of *Pravda Kazakhstan* was published, namely from 11 September 2013. At the time of preparation of the administrative offence report in relation to the author by the Department of Internal Policy in the *akimat* of Almaty (see para. 2.3 above), the limitation period of two months for holding him responsible under the administrative procedure had not yet expired.

4.3 The State party recalls that on 26 September 2013, the author was found guilty by the Specialized Interdistrict Administrative Court of Almaty of an administrative offence under article 350 (2) of the Code of Administrative Offences and given a fine of 10 monthly notional units, but without editions of *Pravda Kazakhstan* and equipment used for the

⁹ Reference is made to the Special Part of the Code of Administrative Offences.

production and distribution of media outputs being seized. The decision of the first instance court was upheld by the Almaty City Court on 24 October 2013. Although the suspension period pursuant to the decision of the Specialized Interdistrict Administrative Court of Almaty (see para. 2.6 above) expired on 26 December 2013, at the initiative of the owner *Pravda Kazakhstan* has not resumed publication since that date. In fact, every three months the competent authorities of the State party have received notifications from the owner of the newspaper of suspension of its publication for a further three months.

4.4 As to the author's argument that he was not the editor-in-chief of *Pravda Kazakhstan* at the time he was held responsible under the administrative procedure, the State party submits that his claim is without merit, since the editions published on 11 and 18 September 2013¹⁰ mention him as the editor-in-chief. The State party adds that this specific argument has not been raised by the author at the domestic level.

4.5 The State party further recalls that the right to freedom of expression carries with it special duties and responsibilities and therefore can be subject to certain restrictions provided for in article 19 (3) of the Covenant. It adds that article 20 (1) of the Constitution of Kazakhstan guarantees freedom of speech and artistic freedom, and prohibits censorship. Under article 20 (3) of the Constitution, it is not permitted to promote or campaign for forcible changes to the constitutional system, violation of the integrity of the Republic and the undermining of State security, advocate war and social, racial, national, religious and clannish superiority, or promote a culture of cruelty and violence. The need to ensure compliance with these key principles enshrined in international law places a special responsibility on the mass media, since failure to comply with them could threaten national security and have other grave consequences. For that reason, the law establishes a number of substantive requirements for the mass media, including with regard to the information that needs to be indicated in their imprint.

4.6 The State party further submits that, pursuant to article 39 of the Constitution, individual rights and freedoms may only be restricted by law and only to the extent necessary for the protection of constitutional and public order, rights, freedoms, health and the morals of others. The requirements for the media are established specifically in the Law on Mass Media. Under article 15 (1) of that law, every print edition should contain the required data, including the number and date of issuance of the registration certificate and the name of the agency that issued it. Under article 25 (2) of the same law, the owner, distributor and editor-in-chief of a mass media outlet bear responsibility for violations of the legislation on mass media. Pursuant to article 13 of the Law on Mass Media, a recurring violation of the requirement to indicate the imprint data should be the basis for suspending the publication or distribution of a mass media outlet. The suspension of such activities can only be based on a decision of the courts or the owner of the mass media outlet in question.

4.7 The State party states that the author and the Communist Party of Kazakhstan, in its capacity as the owner of *Pravda Kazakhstan*, have violated the above-mentioned requirements of the Law on Mass Media and have therefore been held responsible under the administrative law. The decision of 26 September 2013 of the Specialized Interdistrict Administrative Court of Almaty taken in relation to the author has come into force and the legality of court decisions in his case has been examined by the Office of the Prosecutor of Almaty and the Office of the Prosecutor General of Kazakhstan on several occasions (see para. 2.8 above). The State party's authorities and courts have therefore complied with the requirements of articles 14, 19 and 26 of the Covenant, while holding the author responsible under the administrative procedure. In the light of the foregoing, the Committee should declare the present communication unfounded and inadmissible.

4.8 The State party submits that the author also failed to exhaust domestic remedies. It recalls that his request for a supervisory review of the administrative proceedings on the basis of which he was held responsible under the administrative procedure was rejected by the Deputy Prosecutor General of Kazakhstan. The State party further submits that the Code of

¹⁰ *Pravda Kazakhstan* continued to be published until the adoption by the Interdistrict Administrative Court of Almaty on 26 September 2013 of a decision imposing a three-month suspension of its publication.

Administrative Offences provides for an exceptional procedure under which the author could have filed a request to initiate supervisory review proceedings in his administrative case before the Supreme Court directly with the Prosecutor General of Kazakhstan by attaching a copy of the reply received by him from the Deputy Prosecutor General. 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 on admissibility

5.1 On 21 April 2015, the author provided comments on the State party's observations on admissibility. He recalled the State party's argument that, despite having been issued with a new registration number on 25 August 2007, *Pravda Kazakhstana* continued to carry the old registration number, issued on 8 February 2007 (see para. 4.1 above). The author submitted in that regard that if a new registration certificate had been issued to *Pravda Kazakhstana*, then, according to the rules, the old one should have been withdrawn by the relevant authorities and its number removed from the register of records and registrations, which had not been done in the present case. If he was still in possession of the original of the old registration certificate, it should therefore be the fault of the Ministry of Culture and Information and the Department of Internal Policy in the *akimat* of Almaty and not his (see para. 2.1 above). Since *Pravda Kazakhstana* continued to carry the registration number contained in the registration certificate that the author had in his possession, it was unjustified and unfair to find him guilty of an administrative offence and to close down the newspaper.

5.2 As to the State party's argument that the author was found guilty of having committed a continuing administrative offence and was held responsible under the administrative procedure within the limitation period of two months established in the domestic law for this type of offence (see para. 4.2 above), the author reiterated his earlier argument that the alleged offence was committed in 2007 before he was editor-in-chief of *Pravda Kazakhstana* (see para. 2.1 above) and he could not therefore be held responsible for acts that he did not commit.

5.3 With reference to the State party's observations (see para. 4.5 above), the author also maintained that the motive for holding him responsible for committing an administrative offence was of a political nature. He argued, in particular, that the State party's authorities did not want its population to have access to independent and opposition mass media and that such "undesirable" mass media were therefore being closed down, in violation of article 20 of the Constitution and article 19 of the Covenant, in order to keep the population in the dark. The author argued that everyone, including in the present case *Pravda Kazakhstana*, had the right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of its choice.

5.4 The author also submitted that the administrative penalty should be just and commensurate with the nature of the offence and the circumstances in which it was committed. Any restrictions should be proportionate and in pursuing a legitimate aim the State party's authorities should endeavour to minimize their interference in the development of entrepreneurship. Furthermore, the restrictions set out under the law should not be applied automatically and without due regard to the particular circumstances of each case. The author stated in that regard that in his case the courts had taken an accusatory approach from the very beginning of the administrative proceedings and had disregarded his arguments, in violation of article 14 of the Covenant.

5.5 As to the State party's argument that the author had failed to exhaust domestic remedies (see para. 4.8 above), the author submitted that recourse to the Office of the Prosecutor was not an effective remedy that had to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. Nevertheless, he had filed requests with the Office of the Prosecutor of Almaty and the Office of the Prosecutor General of Kazakhstan to initiate supervisory review proceedings in his administrative case, but those requests had been rejected. Therefore, all available and effective domestic remedies had been exhausted.

State party's observations on the merits

6. In a note verbale dated 30 July 2015, the State party reiterated 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.

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

7.1 On 15 September 2015, the author provided comments on the State party's observations on the merits, reiterating his initial claims that the State party had violated his rights under articles 14, 19 and 26 of the Covenant. The author also recalled that he was editor-in-chief of *Pravda Kazakhstan*, owned by the Communist Party of Kazakhstan, and that the newspaper had been closed down on the basis of a court decision. He added that, by holding him responsible for an administrative offence, the State party's authorities had effectively started a discriminatory campaign against all communists in Kazakhstan based on their political opinion.

7.2 With reference to article 14 of the Constitution, which guarantees equality and protection against discrimination, the author also submitted that the editors-in-chief of other independent mass media outlets continued to be unjustly fined on the basis of administrative offence reports filed by the *akimats* on far-fetched grounds and that the activities of those mass media outlets were being suspended for three months.

Additional submission from the State party

8. In a note verbale dated 4 December 2015, the State party reiterated 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.

Additional submission from the author

9. On 31 January 2016, the author informed the Committee that he maintained his initial claims and that he had no further comments on the State party's submission of 4 December 2015.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee notes at the outset that the initial author, Sharip Kurakbaev, died on 14 August 2018 and that on 17 May 2021, his widow, Raikhan Sabdikenova, expressed her wish to pursue the proceedings before the Committee in his stead. The State party did not dispute the standing of the author's widow to pursue the communication.¹¹

10.4 In that context, the Committee observes that, when the author of a communication dies in the course of the proceedings, the next of kin or heir may in principle pursue the communication, provided that he or she has a legitimate interest in it. In view of the above and having regard to the content of the claims made by Mr. Kurakbaev, the Committee accepts that Raikhan Sabdikenova, as Mr. Kurakbaev's next of kin, has a legitimate interest in pursuing the present communication in her late husband's stead.

10.5 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

¹¹ Raikhan Sabdikenova's submission of 17 May 2021 was transmitted to the State party, for information, on 25 May 2021.

of Kazakhstan 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.¹² 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 of Kazakhstan. 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.

10.6 The Committee also notes the author's claim under article 26 of the Covenant that the State party's authorities discriminated against him on the basis of his political opinion, since he was editor-in-chief of the independent, opposition newspaper *Pravda Kazakhstana*, one of the "undesirable" mass media that were closed down in Kazakhstan in order to keep the population in the dark. The Committee further notes that the State party has not responded to this specific claim. However, in the absence of further detailed information, explanations or evidence in support of this claim on file, the Committee finds that it is insufficiently substantiated for the purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

10.7 The Committee further notes the author's claims that, by holding him responsible, in his capacity as editor-in-chief of *Pravda Kazakhstana*, under the administrative procedure, ordering him to pay administrative fines and imposing on the owner of the newspaper a three-month suspension of its publication merely for having indicated the last known registration number in published editions of the paper, the State party's authorities and courts have subjected him to an unjustified restriction of his right to freedom of expression in the course of court proceedings that have not met the requirements of fairness and independence, and thus violated his rights guaranteed under articles 14 and 19 of the Covenant.

10.8 According to the author, the particular scrutiny of the activities of *Pravda Kazakhstana* and its editor-in-chief by the State party's authorities was politically motivated, since the newspaper positioned itself as an independent, opposition mass media outlet. The Committee also notes the State party's arguments that the author was held responsible under article 320 (2) of the Code of Administrative Offences for failing to ensure that *Pravda Kazakhstana* complied with the requirements of the Law on Mass Media, and that after the three-month suspension of publication of the newspaper had expired, the decision not to resume publication was taken by the Communist Party of Kazakhstan in its capacity as the owner of the newspaper (see para. 4.3 above). The Committee further notes that the author and the State party disagree as to whether the limitation period under article 69 (3) of the Code of Administrative Offences was applicable to the administrative offences imputed to him.

10.9 The Committee observes in this regard that the author's claims under article 14 of the Covenant refer primarily to the appraisal of evidence adduced during the court proceedings and the application of domestic legislation, matters falling in principle to the national courts, unless the evaluation of evidence was clearly arbitrary or amounted to a manifest error or denial of justice, or the court otherwise violated its obligation of independence and impartiality.¹³ In the present case, the Committee is of the view that the author has failed to demonstrate, for the purposes of admissibility, that the conduct of the proceedings in his case was clearly arbitrary or amounted to a manifest error or denial of justice, or provided evidence

¹² 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; *Kurimbaeva 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.

¹³ See the Committee's general comment No. 32 (2007), para. 26. See also, inter alia, *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 6.3; *Cuartero Casado v. Spain* (CCPR/C/84/D/1399/2005), para. 4.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 9.5.

that the courts otherwise violated their obligation of independence and impartiality. The Committee consequently considers that this part of the communication has not been sufficiently substantiated and thus finds it inadmissible under article 2 of the Optional Protocol.

10.10 The Committee considers, however, that the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 19 of the Covenant. Accordingly, it declares this part of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

11.1 The Committee notes the author's claim that the administrative fines imposed on him and the three-month suspension of the publication of *Pravda Kazakhstan* imposed on the newspaper's owner amounted to a restriction of his right to impart information and ideas in print which was incompatible with article 19 (3) of the Covenant. The Committee takes note of the author's claims that any restrictions should be proportionate and pursue a legitimate aim. Furthermore, the restrictions provided under the law should not be applied automatically and without due regard to the particular circumstances of each case. The Committee takes note of the State party's arguments that the sanctions were imposed on the author by the competent courts in accordance with domestic law and that the provisions of its Constitution and the Law on Mass Media on permissible restrictions are compatible with article 19 (3) of the Covenant. The Committee must therefore determine whether the sanctions imposed on the author and on *Pravda Kazakhstan*, which constituted a restriction on the author's right to freedom of expression, can be justified under article 19 (3) of the Covenant.

11.2 The Committee refers to its general comment No. 34 (2011), according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). According to article 19 (3) of the Covenant, the right to freedom of expression may be subject to certain restrictions, but only such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. All restrictions imposed on freedom of expression must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of article 19 (3); and they must conform to the strict tests of necessity and proportionality. The principle of proportionality has to be respected, not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.¹⁴ When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat to any of the elements listed in article 19 (3) that has caused it to restrict freedom of expression, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁵

11.3 The Committee recalls that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights, and constitutes one of the cornerstones of a democratic society.¹⁶ The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.¹⁷ States parties should ensure that the legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of article 19 (3) of the Covenant. It is incompatible with article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of the provisions of article 19 (3). Such circumstances may never include a ban on a particular publication unless

¹⁴ General comment No. 34 (2011), para. 34.

¹⁵ *Ibid.*, paras. 35–36.

¹⁶ *Ibid.*, para. 13.

¹⁷ *Ibid.*, paras. 13 and 20.

specific content, that is not severable, can be legitimately prohibited under article 19 (3).¹⁸ The penalization of a media outlet, publishers or journalists solely for being critical of a government or the political social system espoused by that government can never be considered to be a necessary restriction of freedom of expression.¹⁹

11.4 The Committee notes that, while claiming in a general manner that the restrictions on the freedom of expression authorized by its Constitution and the Law on Mass Media are consistent with the wording of article 19 (3) of the Covenant and that the sanctions imposed on the author were provided by domestic law, the State party has not advanced any arguments as to the compatibility of the legal provisions which served as a basis for restricting the author's freedom of expression with the criteria of necessity and proportionality under article 19 (3) of the Covenant.²⁰ Nor does the State party explain how these criteria were taken into account by the administrative and judicial authorities in the case at hand. The Committee therefore finds that the State party has failed to justify the multiple and severe sanctions imposed on the author and on *Pravda Kazakhstan* as being necessary and proportionate to the legitimate aim pursued, as set out in article 19 (3) of the Covenant, especially in the light of the technical and, at times, trivial nature of the infractions for which the author was ultimately punished. The Committee concludes, therefore, that the author's rights under article 19 (2) of the Covenant have been violated.

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

13. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide 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 provide Ms. Sabdikenova with adequate compensation, including reimbursement for any legal costs and administrative fines incurred by Mr. Kurakbaev. 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 article 19 (2) of the Covenant, including the right to impart information and ideas in print, may be fully enjoyed in the State party.

14. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory 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 have them widely disseminated in the official languages of the State party.

¹⁸ Ibid., para. 39.

¹⁹ Ibid., para. 42.

²⁰ *Mavlonov and Sa'di v. Uzbekistan* (CCPR/C/95/D/1334/2004), para. 8.4; and *Ismagulova and Taukina v. Kazakhstan* (CCPR/C/130/D/2664/2015), para. 11.4.