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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2503/2014[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

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| *Communication submitted by:* | Bakhytzhan Toregozhina |
| *Alleged victim:* | The author |
| *State party:* | Kazakhstan  |
| *Date of communication:* | 13 June 2014 (initial submission) |
| *Document references:* | Special Rapporteur’s rule 97 decision, transmitted to the State party on 11 December 2014 (not issued in document form) |
| *Date of adoption of Views:* | 23 July 2020 |
| *Subject matter:* | Refusal of authorization to hold a peaceful assembly |
| *Procedural issues:* | Exhaustion of domestic remedies; substantiation of claims. |
| *Substantive issues:* | Freedom of association |
| *Articles of the Covenant:* | 19, 21 |
| *Articles of the Optional Protocol:* | 2 and 5 |

1. The author is Ms. Bakhytzhan Toregozhina[[3]](#footnote-4), a Kazakh national born in 1962. She claims that Kazakhstan has violated her rights under article 21 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Kazakhstan on 30 June 2009. The author is not represented by counsel.

 The facts as presented by the author

2.1 The author is head of the non-governmental organization “Ar. Rukh. Khak”. On 1 March 2012, she applied to the Akimat[[4]](#footnote-5) of Almaty, with a request for an authorization to hold a peaceful assembly (meeting)[[5]](#footnote-6) entitled “100 Days after the Shooting of People in Zhanaozen”, to take place on 24 March 2012, on the square in front of the Palace of the Republic, organised by the Monument to Abai Qunanbaiuli. In her application, the author provided a list of twenty nine alternative locations in Almaty, should the Akimat decide that it would not be possible to organize the meeting on the square in front of the Palace of the Republic.

2.2 On 19 March 2012, the author received a refusal from the Akimat of Almaty to authorize the meeting in any of the 30 proposed locations.[[6]](#footnote-7) The Akimat based its refusal on the Almaty Maslikhat[[7]](#footnote-8) Decision No 167 of 29 July 2005 (hereinafter Decision No 167) which recommends the organization of all non-governmental public events of a “social and political nature” solely on the square behind the cinema “Sary Arka”. Pursuant to the same decision of the Maslikhat of Almaty, official events of the national and local levels organized by relevant state bodies, as well as other events with the participation of high-level state officials and leadership of Almaty, are to be held on the Republic Square. Other squares and garden squares are to be used for holding official, cultural and entertainment activities in accordance with their architectural and functional purposes. According to the author, the Decision No 167 is always used by the Akimat as a ground for refusal for all gatherings which are not carried out at the cinema “Sary Arka”.

2.3 Because the remote location offered by the Akimat was not suitable for the purpose of the gathering, the author decided to carry it out in a different location, which she considered suitable. As a result, she was fined for having committed an administrative offence for holding an unauthorized gathering. According to the author, this submission to the Committee does not relate to this particular gathering and sanctions imposed in relation to it but to the Decision No 167. The gathering is given as an example of the general effect of this Decision.

2.4 On 10 August 2012, the author applied to the Almalinsk District Court of Almaty with a request to repeal the Decision No 167 as it breaches the Constitution and international standards on freedom of peaceful assembly.[[8]](#footnote-9) The author claimed that this decision is not registered in the judicial authorities; thus, it is not a binding legal document. On 5 September 2012, the Almalinsk District Court of Almaty rejected the author’s request saying that the complaint was time barred. At the same time, the Court found that the Decision No 167 was adopted in accordance with the law and does not violate the rights of individuals. The Court found groundless the arguments of the author about breaches of the international standards, saying that the local authorities have the right to impose additional regulations on the organization of public gatherings.

2.5 On 17 September 2012, the author appealed to the Almaty City Court arguing that the Almalinsk District Court of Almaty failed to consider her complaint in substance and asking to refer her case for a new hearing. On 23 October 2012, the Almaty City Court confirmed the regional court’s judgment.

2.6 On 29 March 2013, the author submitted a cassation appeal to the Almaty City Court, which was rejected on 22 April 2013.

2.7 On 13 May 2013, the author submitted a request for a supervisory review to the Supreme Court of Kazakhstan. On 12 September 2013, having found no breach of material or procedural provisions by the lower courts, the Supreme Court rejected the author’s request for a supervisory review.

 The complaint

3. The author affirms that the Decision No 167 violates her rights under article 21 of the Covenant because it limits her right to hold a mass event in the venue of her choice on the basis of the aims of mass events, the target group, etc. without explaining the aim of this limitation; the sanctions applied to her directly stem from the Decision No 167; and it has discriminatory nature since it identified only one venue for non-state mass events in comparison with all squares and public gardens for state mass events.

 State party’s submissions on admissibility and merits

4.1 On 19 October 2015, the State party presented its observations on the admissibility of the communication and requested the Committee to declare it inadmissible as unsubstantiated.

4.2 The State party recalls the facts of the case and observes that the courts considered and rejected the arguments of the author that Decision No 167 contradicted national and international human rights standards. The legality of the courts’ decisions was verified by the Office of Prosecutors of Almaty and the Prosecutor General’s Office.

4.3 Article 32 of the Kazakh 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, protection of 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 of the above, are established by Law No. 2126 of 17 March 1995 on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. Article 10 of the law allows the local executive bodies to regulate the order of organisation of public events based on the local conditions’ requirements.

4.4 The State party submits that pursuant to the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations, organizers should obtain from local executive bodies an authorization prior to holding a public event. According to the article 5 of the Law, mass events should be hold in a designated venue.

4.5 The State party submits that in order to guarantee the protection the rights and freedoms of others and public safety, normal functioning of public transport and infrastructure, and protection of green plantings and architectural objects, the Decision No 167 recommended the organization of all non-governmental public events of “social and political nature” on the square behind the cinema “Sary Arka”.

4.6 The Decision No 167 was taken by an authorised body, within its competence, in accordance to the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations on the basis of national legislation and international norms in order to protect rights of others based on the will of the majority population of Almaty.

4.7 The State party observes that the author refused to hold the mass event in the designated venue.

4.8 The State party recalls that international human rights law allows imposition of limitations on freedom of assembly. In order to protect the rights and freedoms of others, public order, as well as the transportation system and other infrastructure in the Republic of Kazakhstan, the State party’s authorities have designated special locations for non-governmental public events. Currently, almost each regional capital, and some districts have such designated areas, based on decisions of local executive bodies.

4.9 The State party further submits that it studied the practice of several other countries and found that the restrictions on public events in some countries were more stringent than in Kazakhstan. In New York, for example, it is necessary to request permission 45 days before the event planned, and to indicate the route of the event. The city authorities have a right to move the location of the event. Other countries, such as Sweden, have a “black list” of organizers of previously prohibited or dispersed demonstrations. In France, local authorities have a right to prohibit any demonstration, and in the United Kingdom, the authorities have a right to introduce “temporary bans”. Also in the United Kingdom, street events are allowed only after receiving permission from police authorities. In Germany, any “mass event, meeting, or a demonstration” inside or outside must be permitted by the authorities.

4.10 The State party submits that the communication is unsubstantiated.

 Author’s comments on the State party’s observations on admissibility and merits

5.1 On 24 November 2016, the author provided comments to the State party’s observations. She submits that the Decision No 167 limits her realisation of the freedom of assembly and expression, and violates her rights under articles 19[[9]](#footnote-10) and 21 of the Covenant. All applications for a mass event not in the square behind the cinema “Sary Arka” are systematically rejected.

5.2 The author claims that as a consequence of the Decision No 167, she has to hold assemblies without an authorisation that results in the imposition of administrative sanctions on her. The Decision, providing for a single location for mass events, also discriminates the non-state initiatives.

5.3 The author submits that the freedom of assembly is a right, not a privilege. Its implementation cannot depend on the authorisation of the Akimat. She believes that the government should introduce a notification system for mass events organization to assist implementation of the freedom of assembly. There should be a possibility to hold spontaneous mass events without prior authorisation.

 State party’s additional information

6.1 On 12 January 2017, The State party submitted additional information.

6.2 It observes that the imposed limitation to the freedom of assembly in particular relating to the venue of the mass evens is compliant with the provisions on the Covenant. The Decision No 167 was adopted by a legitimate body, within its competence.

6.3 The State party submits that the Decision No 167 does not discriminate based on political grounds. The decision only recommends the venues for mass events. So, the Akimat can identify the venue - the square behind the cinema “Sary Arka” – for official and all other events depending on the circumstances.

6.4 The State party also contests the author’s arguments that the realisation of freedom of expression and assembly is limited in Kazakhstan. It notes that during the period 2012-2016, 140 different mass events were conducted; and the requirements of the law were observed by the organizers. Thus, the author is not prevented from organising a mass event, provided that she respects the law.

 Issues and proceedings before the Committee

 Consideration of admissibility

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

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

7.3 The Committee notes that the State party has not contested that the domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) from examining the present communication.

7.4 The Committee notes that the author’s claims that her rights under articles 19 and 21 have been violated, as the Decision No 167 limits her right to hold a mass event on the venue of her choice. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares them admissible and proceeds with their examination of the merits.

 Consideration of the merits

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

8.2 The Committee has taken note of the author’s claim of a violation of her right under article 21 of the Covenant by the adoption and implementation of the Decision No 167, in particular, in the case of the author’s application for an assembly entitled “100 Days after the Shooting of People in Zhanaozen” in the venue of her choice, which was planned to take place on 24 March 2012.

8.3 The Committee recalls that the right to peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual’s views and opinions and indispensable in a democratic society.[[10]](#footnote-11) The Committee further note that 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. When a State party imposes restrictions with the aim of reconciling an individual’s right of peaceful assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.[[11]](#footnote-12) The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant and to demonstrate that it does not serve as a disproportionate obstacle to the exercise of the right.[[12]](#footnote-13)

8.4 In the present case, the Committee observes that both the State party and the author agree that the Decision No 167 imposes limitations to the freedom of assembly, but the parties disagree as to whether the limitation in question was permissible.

8.5 The Committee notes the State Party’s observation that the Law No. 2126 of 17 March 1995 on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan, in its article 10, allows the local executive bodies to regulate the organization of public events based on the local conditions requirements. The Committee also notes the State party explanation that Decision No 167 was adopted in order to guarantee the protection the rights and freedoms of others and public safety, normal functioning of public transport and infrastructure, and protection of green plantings and architectural objects; that is why the square behind the cinema “Sary Arka” was identified as venue for all non-governmental public events of a “social and political nature”.

8.6 The Committee considers that peaceful assemblies may in principle be conducted in all places to which the public has access or should have access by virtue of article 12 of the Covenant and other related rights, such as public squares and streets. The Committee also notes that participants in an assembly should, as far as possible, be allowed to assemble “within sight and sound” of their target audience.[[13]](#footnote-14) Location, like timing, is often central to the expressive rationale of assemblies. Participants may not be relegated to remote areas where they cannot capture the attention of those who are being addressed or the general public.[[14]](#footnote-15) General prohibitions on assemblies across the entire capital,[[15]](#footnote-16) any public location except a single specified place, either in a city,[[16]](#footnote-17) or outside the city centre,[[17]](#footnote-18) or more general prohibitions such as “the streets”, may not be imposed.

8.7 The Committee further considers that it is in the nature of assemblies that they sometime disrupt the daily exercise of rights such as freedom of movement. This has to be tolerated, unless it imposes a disproportionate burden, in which case detailed grounds for limitations must be provided. Claims that an assembly will result in the undue disruption of traffic and the movement of pedestrians must be substantiated to allow a full assessment.[[18]](#footnote-19)

8.8 The Committee, however, considers that the State party did not sufficiently explain why the prohibition of the public events of “social and political nature” except in the square behind the cinema “Sary Arka” was necessary for the purpose that the Law No. 2126 envisaged and to what extent such a measure imposed on the event the author had planned to hold was proportionate to that purpose. The Committee accordingly considers that in this case, the State party failed to demonstrate the necessity and proportionality of the imposed limitations to the author’s freedom of assembly. The State party did not indicate also which other official events of national and local levels organized by relevant state bodies were conducted in the square behind the cinema “Sary Arka” (see para. 6.3)

8.9 The Committee notes the author’s claim that the Decision No 167 has discriminatory nature since it assigned only one venue for non-state mass events in comparison with all squares and public gardens for state mass events. The Committee notes the State party’s argument that the Decision No 167 does not discriminate based on political grounds, and that the venue recommended - the square behind the cinema “Sary Arka”- can be also used for the official events of the national and local levels organized by relevant state bodies, as well as other events with the participation of high-level state officials and leadership of Almaty.

8.10 The Committee recalls that participants should freely determine the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. The Committee notes that the restrictions must not be discriminatory and the regulation of the time, place and manner of assemblies is generally content neutral, and that if there is more scope for limitations that affect these elements, the onus remains on the authorities to justify any such restriction.[[19]](#footnote-20) The Committee, however, considers that in this case, the State party’s applied restrictions to the author’s right to assembly directly related to the nature of public event, namely, official event organized by relevant state body or socio-political event organized by non-state subject.

8.11 In the absence of any explanations from the State party to justify the different treatment, the Committee considers that the State party has failed to establish that the restriction imposed on the author’s right to peaceful assembly was based on reasonable and objective criteria and in pursuit of an aim that is legitimate under the Covenant, and that the adoption and implementation of the decision No 167 therefore amounted to a violation of the author’s rights under article 21 of the Covenant.

8.12 Having a found a violation of Article 21 of the Covenant, the Committee decides not to examine the claim under Article 19.

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

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly the State party is obligated, *inter alia*, to provide the author with adequate compensation and reimbursement of her court expenses. 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 21 of the Covenant, including organizing and conducting peaceful assemblies, meetings, processions, pickets and demonstrations, may be fully enjoyed in the State party.

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

1. \* Adopted by the Committee at its 129th session (29 June –24 July 2020). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. [↑](#footnote-ref-3)
3. The author is a civil society activist. [↑](#footnote-ref-4)
4. Equivalent of a mayor’s office (municipal, district or provincial government). [↑](#footnote-ref-5)
5. Pursuant to the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan of 17 March 1995, an organizer of a peaceful assembly should submit an application to a local executive body, requesting authorization to hold such an assembly, at least 10 days prior to the intended event. Once the organizer receives a written authorization to hold the peaceful assembly, it is considered as an “authorized” one. All peaceful assemblies organized in the absence of a written authorization are considered as “unauthorized” and their organizers and participants are systematically brought to administrative responsibility. [↑](#footnote-ref-6)
6. As transpires from the decision of the Second Almalinsk Region Court of Almaty of 19 June 2012, the author organized the so-called unauthorised meeting on 24 March 2012 to commemorate the shooting of people in Zhanaozen. She was subsequently brought to administrative responsibility for having violated the legislation on organizing and holding peaceful assemblies. [↑](#footnote-ref-7)
7. Equivalent of the city council, i.e. an elected, local representative body (a local government) in regions and districts of Kazakhstan. [↑](#footnote-ref-8)
8. The author’s request was of a general character and was not directly linked to the fine imposed on her for the gathering referred to in para 2.3. [↑](#footnote-ref-9)
9. The author did not invoke article 19 in her initial complaint. [↑](#footnote-ref-10)
10. See, for example, *Korol v.* Belarus (CCPR/C/117/D/2089/2011), para. 7.5. [↑](#footnote-ref-11)
11. Ibid. [↑](#footnote-ref-12)
12. See Poplavny *v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4. [↑](#footnote-ref-13)
13. *Turchenyak et al. v. Belarus*, para. 7.4. [↑](#footnote-ref-14)
14. Ibid.; CCPR/C/KAZ/CO/1, para. 26. [↑](#footnote-ref-15)
15. CCPR/C/DZA/CO/4, para. 45. [↑](#footnote-ref-16)
16. *Turchenyak et al. v. Belarus*, para. 7.5. [↑](#footnote-ref-17)
17. *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5. [↑](#footnote-ref-18)
18. *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8. [↑](#footnote-ref-19)
19. OSCE, *Guidelines on* *Freedom of Peaceful Assembly*, para. 70. [↑](#footnote-ref-20)