



# International Covenant on Civil and Political Rights

Distr.: General  
1 September 2022

Original: English

## Human Rights Committee

### Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2698/2015\*, \*\*

<i>Communication submitted by:</i>	R.A. (not represented by counsel)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	4 December 2015 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 7 December 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	24 March 2022
<i>Subject matter:</i>	Inhuman and degrading treatment; freedom of expression; right of peaceful assembly; right to an effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies, substantiation of claims
<i>Substantive issue:</i>	Cruel, inhuman or degrading treatment; freedom of expression; right of peaceful assembly; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3) (a), 7, 19 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the communication is R. A., a Kazakh national born in 1949. She claims that Kazakhstan violated her rights under articles 2 (3) (a), 7, 19 and 21 of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is not represented by counsel.

1.2 On 12 February 2016, the State party submitted a request that the admissibility of the communication be examined separately from the merits. On 30 December 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the request.

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

\*\* 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, Carlos Gómez Martínez, Marcia V.J. Kran, 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 For several years, the author and a group of supporters gathered on the thirtieth day of every month on a square in Almaty to protest against corruption and violations of human rights.<sup>1</sup> On 30 August 2013, seeing no responses to their complaints, the author and her supporters gave notice to the authorities that they were planning a march to the residence of the President of Kazakhstan.

2.2 On 4 October 2013, the author and her supporters decided to march to the President's residence and request a meeting with him. On their way to the residence, they were stopped by a group of police officers, who told them that they were not allowed to approach the residence. They were asked by the staff of city administration (*akimat*) to go the city administration building to talk to the mayor (*akim*).

2.3 At the city administration, the author and her supporters demanded to meet with the mayor, or at least be given an appointment with an exact date and time. They were met by police officers guarding the city administration, who asked them to leave the building. In response to their indignation, a group of police officers, who had just arrived in the building, grabbed the author, twisted her arms behind her back, pushed her into a police van and took her (and others) to a police station.

2.4 The author was not informed of the reasons for her apprehension. Furthermore, the report on her arrest was written only three hours after the actual apprehension. Later that same day, she was taken to court, where she was charged with and convicted of a violation of article 355 (2) of the Code of Administrative Offences<sup>2</sup> and sentenced to a fine of 86,550 tenge.<sup>3</sup> The author submits that the presiding judge ignored her request that the court watch video footage of her arrest. When she complained that the fine was 2.5 times more than her monthly pension, the judge told her to file an appeal.

2.5 The author's appeal of 11 October 2013 was rejected on 22 October 2013. In her appeal complaint, the author requested that the court decision of 4 October 2013 be overturned, stating, among other things, that she had been subjected to a disproportionate use of force by the police and was prevented from meeting with the mayor, even though she had a right to take part in the conduct of public affairs and file appeals. In its decision, the appeal court reiterated the reasoning of the first instance court's decision, without even considering the author's claims.<sup>4</sup> The author then complained to the district prosecutor's office, but her complaint was rejected on 9 January 2014. She also filed appeals to the Prosecutor General's Office, which were rejected on 29 April and 6 June 2014. The author claims to have exhausted all available domestic remedies.

**Complaint**

3.1 The author submits that her treatment by police officers in the city administration, namely that they twisted her arms behind her back, forced her to leave the building and pushed her into a police van, and took her (and others) to a police station amounted to a violation of article 7 by the State party.

3.2 The author submits that keeping her administratively liable for the intention to receive information in the response to their requests amounted to violation of article 19 (2) by the State party.

3.3 The author submits her request to have a meeting with a mayor did not constitute a threat to national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others and thus there was a violation of article 21 of the Covenant.

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<sup>1</sup> The author does not provide any further details about these protests.

<sup>2</sup> Paragraph 2 deals with the wilful disregard of lawful order of the law enforcement officer, or insulting law enforcement officers while they are on duty.

<sup>3</sup> Approximately 412 euros at the time.

<sup>4</sup> The decision also states that it cannot be appealed, other than by a prosecutor's protest.

### **State party's observations on admissibility**

4.1 By note verbale of 12 February 2016, the State party challenged the admissibility of the communication based on article 3 of the Optional Protocol and rule 99 (b) and (d) of the Committee's rules of procedure. It argued that the author's communication was incompatible with the provisions of the Covenant because it concerned an alleged violation of a right that was not among those protected under the Covenant: namely, the author was held administratively liable under article 355 (2) of the Code of Administrative Offences for having grossly disregarded the lawful demands of the officers of the Ministry of Interior, which had nothing to do with the restrictions of her rights under articles 7, 19 and 21 of the Covenant.

4.2 The State party submits that, in response to the lawful demands of the police officers to make an appointment with the mayor or to leave her appeal with the secretariat and leave the building, the author refused to comply, waved her arms, pushed the police officers and tried to escape from them. The State party states that the author unreasonably claims a violation of article 7 of the Covenant during her apprehension, because she was not subjected to any inhuman or degrading treatment. Moreover, the author could have filed a complaint against such police actions to a court or to a prosecutor, but she did not do so.

4.3 The State party submits that the fact of administrative liability under article 355 (2) of the Code of Administrative Offence did not limit the author's rights to freedom of expression and of assembly. In this case, the author's actions were not considered to be "an organization and conduct of peaceful assemblies, meetings, marches, pickets and demonstrations".

### **Author's further submission**

5. On 1 March 2016, the author informed the Committee that her flat had been seized by bailiffs because she was not able to pay the fine imposed on her under article 355 (2) of the Code of Administrative Offence; however, thanks to the financial help of other pensioners she had paid the fine.

### **State party's further submissions**

6.1 By note verbale of 27 June 2016, the State party transmitted additional information indicating that the Deputy Prosecutor General of Kazakhstan accepted the author's case for a supervisory review with the possibility of appealing against the court decision of 4 October 2013 to the Supreme Court.

6.2 By note verbale of 19 July 2016, the State party reported that the Office of the Prosecutor General had appealed the court decision of 4 October 2013 to the Supreme Court on 1 July 2016.

### **Author's comments on the State party's observations on admissibility and further submissions**

7.1 On 1 October 2016, the author stated that on 21 July 2016, the Supreme Court had satisfied the prosecutor's appeal and issued a decision to overturn the court decisions of 4 and 22 October 2013.

7.2 The author claims the Supreme Court decision of 21 July 2016 did not concretely name the people who had violated her rights. The author named the people she considers responsible for the violation of her rights. She also stated that she did not participate in the Supreme Court hearings since she was afraid to go there, so she could not present her arguments and claims to the court.

7.3 On 2 February 2017, the author informed the Committee that the State party had not provided her with any remedy, as is foreseen in article 2 (3) (a) of the Covenant. The author therefore filed applications to the President of Kazakhstan, to the Prosecutor General<sup>5</sup> and to

<sup>5</sup> In the application to the Prosecutor General of 26 October 2016 the author stated inhuman and degrading treatment against her was not considered and no responsible were brought to justice. She informed that the fine she paid was returned to her. Finally, she informed that she was planning to file appeals to receive compensation for moral and financial damage she suffered.

the Head of the Supreme Court, requesting they give a legal assessment of the actions of the responsible State officials. The responses she received were just formalities.<sup>6</sup>

### **State party's further submission**

8. By note verbale of 7 February 2017, the State party reported that on 21 July 2016, the Supreme Court had overturned the court decisions of 4 and 22 October 2013 for lack of *corpus delicti* owing to the absence of an administrative offence.

### **Issues and proceedings before the Committee**

#### *Considerations of admissibility*

9.1 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.

9.2 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.

9.3 The Committee notes the State party's claim that the communication is inadmissible under article 3 of the Optional Protocol and rule 99 (b) and (d) of its rules of procedure because it concerns an alleged violation of a right which is not among those protected under the Covenant: namely that the author was held administratively liable under article 355 (2) of the Code of Administrative Offences for having grossly disregarded the lawful demands of the officers of the Ministry of Interior, which had nothing to do with the restrictions on her rights under articles 7, 19 and 21 of the Covenant. The Committee notes the author's explicit claims under articles 2 (3) (a), 7, 19 and 21 of the Covenant, and that no other rights which are not set forth in the Covenant were mentioned.

9.4 The Committee notes the author's additional claim of 2 February 2017 that the State party did not provide her with a remedy as is foreseen in article 2 (3) (a) of the Covenant. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>7</sup> Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

9.5 The Committee notes the author's claim that keeping her administratively liable for intending to receive information in the response to her requests amounted to a violation of article 19 (2) by the State party and her claim that her rights under article 21 of the Covenant have been violated, as her request to have a meeting with the mayor did not constitute any threat to national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee also notes the State party's position that holding the author administratively liable under article 355 (2) of the Code of Administrative Offence did not limit her rights to freedom of expression and of peaceful assembly. The Committee also notes the submissions by the State party and the author that on 21 July 2016, the Supreme Court overturned the court decisions of 4 and 22 October 2013 for lack of *corpus delicti*. The Committee recalls that authors must demonstrate in their communications that they have exhausted all domestic remedies. The Committee observes that, in the present case, the author has not demonstrated that she has raised her claims under articles 19 and 21 of the Covenant before the domestic authorities, nor has she provided sufficient information to substantiate her claims that her rights to freedom of expression and of assembly were violated. In the circumstances of the present case, the

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<sup>6</sup> On 5 December 2016, the Prosecutor of Almaty informed the author that her appeal in relation to the unlawful actions of the police had been examined. Based on the results of the revision, the Prosecutor requested that steps be taken to eliminate violations of laws in future.

<sup>7</sup> See, for example, *Castañeda v. Mexico* (CCPR/C/108/DR/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

Committee concludes that the author's claims under articles 19 and 21 are inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

9.6 The Committee notes the author's claim that she was subjected to inhuman and degrading treatment, which amounts to a violation of article 7 of the Covenant, when upon apprehension by police officers in the city administration they twisted her arms behind her back, forced her to leave the building and pushed her into a police van, and took her (and others) to a police station. The Committee notes the State party's position that the author unreasonably claims violation of article 7 of the Covenant because she was not subjected to any inhuman or degrading treatment, but instead in response to the lawful demands of the police officers to make an appointment with the mayor or to leave her appeal in the secretariat and leave the building, she refused to comply, waved her arms, pushed the police officers and tried to escape from them. On the basis of the material on file, the Committee considers that the author has failed to sufficiently substantiate her claims, in particular she has failed to present any evidence that the treatment she suffered even prima facie reached the required threshold to constitute treatment in violation of article 7; and in any case, she did not respond to the State party's explanation of her own conduct during her apprehension. Accordingly, the Committee declares the author's claims under article 7 inadmissible under article 2 of the Optional Protocol.

10. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That the decision shall be communicated to the State party and to the author.

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