



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. 2827/2016*, **

<i>Communication submitted by:</i>	Maksat Nurybaev (represented by the non-governmental organization Ar.Rukh.Khak)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	23 April 2016 (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 Oct 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2022
<i>Subject matter:</i>	Freedom of expression; freedom of assembly; fair trial
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Freedom of expression; freedom of assembly; right to a fair trial
<i>Articles of the Covenant:</i>	14 (3) (d), 19 and 21
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Maksat Nurybaev, a national of Kazakhstan born in 1973. He claims that the State party has violated his rights under articles 14 (3) (d), 19 and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by the non-governmental organization Ar.Rukh.Khak.

Facts as submitted by the author

2.1 The author is a lawyer and an activist for the anti-unsymmetrical dimethylhydrazine (UDMH) movement in Almaty. On 13 January 2014, he conducted a one-person protest against the use of UDMH and dinitrogen tetroxide in the Proton rocket fuel at the Baikonur Cosmodrome. After some 10 minutes of protest, the author was detained by the police and

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, 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, Kobayuh Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



accused of carrying out an unauthorized assembly. On the same day, the Specialized Inter-district Administrative Court of Astana found the author guilty of violating article 373 (3) of the Code of Administrative Violations by carrying out an unauthorized protest. The author was fined 37,040 tenge.¹

2.2 The author appealed the decision to the panel of the Astana Court of Appeal on 23 January 2014. The court of appeal repealed the decision of the first instance court on 5 February 2014.² However, on 28 July 2014, the Office of the Prosecutor General of Astana submitted an appeal under the supervisory review proceedings to the Supreme Court against the decision of the court of appeal. Without informing the author or his counsel about the appeal by the Office of the Prosecutor General or about the hearing, on 27 August 2014, the Supreme Court re-examined the case and upheld the decision of the first instance court, repealing the decision of the court of appeal.³

Complaint

3.1 The author argues that, by imposing sanctions for a one-person protest, the State party violated articles 19 and 21 of the Covenant.

3.2 The author claims that his rights under article 14 (3) (d) of the Covenant were violated because he was not notified about the appeal submitted by the Office of the Prosecutor General to the Supreme Court and about the examination of the appeal by the court.

State party's observations on admissibility and merits

4.1 In a note verbale dated 20 April 2017, the State party recalled the facts of the case. It observes that, on 13 January 2014, the author was found administratively liable under article 373 (3) of the Code of Administrative Violations and was fined 37,040 tenge. On 5 February 2014, the court of appeal repealed the decision of the first instance court.

4.2 The State party submits that, on 28 July 2014, the Office of the Prosecutor General sent a letter to the author informing him of the appeal to the Supreme Court under the supervisory review proceedings.

4.3 The State party notes that, although the author had been informed, on 30 September 2013, of the legal requirements for staging a picket under the Code of Administrative Violations, he continued to ignore the requirements of the law and committed the offence knowingly and intentionally.

4.4 The State party recalls that the rights enshrined in articles 19 and 21 of the Covenant are subject to certain restrictions. While stating that the right of peaceful assembly is not prohibited in Kazakhstan, the State party explains that a certain procedure has to be followed to organize an assembly.

4.5 The State party also recalls that article 32 of the Constitution of Kazakhstan 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 or the protection of the health, rights and freedoms of others. The format and manner of the expression of societal, group or personal interests in public places, as well as certain restrictions on them, 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.

4.6 The State party refers to articles 1 and 2 of Law No. 2126 and specifies that the main condition for an event to fall within the scope of the Law is not the number of participants, but its public nature. Any mass or one-person protest in public is subject to that law; the

¹ Approximately 98 euros.

² According to the author, it was the first court decision in Kazakhstan in which it was recognized that no authorization was necessary to carry out a one-person protest.

³ The author has not appealed the failure to notify him of the appeal of the Office of the Prosecutor General and the hearing in domestic proceedings. It was explained that the only remedy available to the author in such a situation was to complain through civil proceedings. There was no remedy available to him within administrative proceedings.

organizers should therefore request an authorization from the local executive authorities to hold an assembly. According to article 9 of the law, failure to comply with such procedural requirements entails liability.

4.7 The State party submits that the legislation on administrative violations plays a crucial role in the protection of rights, freedoms and legal interests of a person and in the prevention of administrative offences in Kazakhstan. Article 373 of the Code of Administrative Violations of Kazakhstan⁴ covers administrative responsibility for violations of the legislation on mass events.

4.8 The State party also submits that the citizens of Kazakhstan actively exercise their constitutional right of freedom of expression by means of peaceful assemblies in designated places. It notes that, in 2014, 16 different mass events were conducted, and the requirements of the law were observed by the organizers. Therefore, the author was not prevented from organizing a picket, as long as he respected the law.

4.9 The State party further submits that the author was convicted and given an administrative fine for an administrative offence under article 373, paragraph 3, of the Code of Administrative Violations of Kazakhstan. However, the State party submits that the author was found liable not for expressing his opinion, but for violating the order of organization and conduct of peaceful assemblies, meetings, processions, pickets and demonstrations. Therefore, the allegation that the State party did not let the author realize his right to peaceful assembly and freedom of expression is groundless.

4.10 The State party submits that all norms of international⁵ and national legislation⁶ in relation to the guarantees of fair trial were observed in the case of the author.

4.11 The State party also submits that, according to articles 2, 3 and 5 of the Optional Protocol, the complaint should be rejected as inadmissible.

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

5.1 On 5 June 2017, the author submitted his comments on the State party's observations. The author refers to the report of the mission to Kazakhstan of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in which it is stated that, although the right to peacefully assemble and hold meetings, rallies and demonstrations, street processions and pickets is guaranteed by the Constitution, in practice, the Government's approach to regulating assemblies renders that right meaningless. The 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations requires that representatives of labour collectives, public associations or separate groups of citizens of Kazakhstan who have reached the age of 18 seek prior permission from local authorities at least 10 days before the date of the gathering.⁷

5.2 Those requirements do not comply with international standards, which provide that no authorization should be required to assemble peacefully and that everyone has the right of peaceful assembly and of association.⁸ The author submits that the State party failed to implement the views adopted by the Committee in relation to violation of article 19 and 21 of the Covenant in a similar case.⁹

5.3 The author submits that, although, according to the State party, the rights under articles 19 and 21 of the Covenant are guaranteed in Kazakhstan and can be restricted only under certain circumstances, the State party did not explain why it was necessary to sanction him to an administrative fine.

5.4 He claims that, according to the State party's international obligations, any restrictions on the right of peaceful assembly should be proportionate and applied depending on the specific circumstances of each case, that the involvement of the authorities in the process of

⁴ Article 488 of the Code of Administrative Violations in the new edition.

⁵ Human Rights Committee, general comment No. 32 (2007), para. 25.

⁶ Code of Administrative Violations.

⁷ [A/HRC/29/25/Add.2](#), para. 52.

⁸ Human Rights Council resolution 15/21.

⁹ *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012).

organization of public events should be reduced to a minimum and that the forceful ending of assemblies should be a measure of last resort. The author alleges that the State party ignored and violated these principles.

5.5 The author submits that the information supplied by the State party shows its unwillingness to consider violations of his rights and that he was a victim of violations of the rights under articles 14, 19 and 21 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee notes the author's claim that his rights under article 14 (3) (d) of the Covenant were violated because he was not notified about the appeal lodged by the Office of the Prosecutor General to the Supreme Court and about the examination of the appeal by the court. The Committee also notes the State party's information that, on 28 July 2014, the Office of the Prosecutor General sent a letter to the author informing him about the appeal under the supervisory review proceedings to the Supreme Court. The Committee therefore considers that the information contained in the case file does not allow it to reach a conclusion on this allegation by the author. Accordingly, the Committee declares this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.4 The Committee takes note of the author's claim under article 21 of the Covenant that, by imposing sanctions for a one-person protest, the State party violated his right to assembly. The Committee notes that, while the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19. The Committee recalls its jurisprudence,¹⁰ according to which, one-person pickets do not normally fall under article 21 of the Convention, on the right of peaceful assembly, but instead are protected by article 19. The Committee considers, in the light of its general comment No. 37 (2020),¹¹ that the facts as presented by the author relate to article 19 instead of article 21 of the Covenant. Consequently, the Committee concludes that the author has not sufficiently substantiated this claim under article 21 of the Covenant for the purposes of admissibility, and therefore finds it inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated his claims under article 19 of the Covenant for the purposes of admissibility and proceeds with its consideration of the merits.

Considerations of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the State party violated his right to freedom of expression under articles 19 of the Covenant by fining him on 13 January 2014 for conducting a one-person protest against the use of UDMH and of dinitrogen tetroxide in the Proton rocket fuel at the Baikonur Cosmodrome. The Committee also notes that the author does not consider the restrictions imposed on his rights to be necessary or to fall within the permissible restrictions enshrined in article 19 of the Covenant. The Committee further notes the State party's arguments that the right to pose restrictions on the freedom of

¹⁰ See, for example, *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 7.7.

¹¹ Paras. 12 and 13.

assembly is well within the purview of the local authorities and that they were acting in accordance with the law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations. The Committee notes the State party's claims that the restrictions as imposed by local authorities are intended to protect State security, public order and the health, rights and freedoms of others (see para. 4.5 above).

7.3 The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression, in which it stated, *inter alia*, that freedom of expression is essential for any society and constitutes a foundation stone for every free and democratic society.¹² It notes that article 19 (3) of the Covenant allows for certain restrictions on the freedom of expression, including the freedom to impart information and ideas, only to the extent that those restrictions are provided for by law and only if they are necessary for respect of the rights or reputation of others or for the protection of national security or public order (*ordre public*) or of public health or morals. Finally, any restriction on freedom of expression must not be overbroad in nature – that is, it must be the least intrusive among the measures that might achieve the relevant protective function and proportionate to the interest being protected.¹³ The Committee recalls that the onus is on the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.¹⁴

7.4 The Committee notes that the author was sanctioned for participating in a peaceful one-person event with an expressive purpose, which was conducted without obtaining prior authorization from local authorities of the State party. The Committee considers that, similarly to its approach in cases concerning the right to peaceful assembly,¹⁵ the authorization regime under domestic law envisaging a requirement to apply for permission from the authorities to conduct a one-person protest is generally incompatible with article 19 of the Covenant. Consequently, the administrative sanction imposed on the author raises serious doubts as to the necessity and proportionality of the restrictions on the author's rights. The Committee observes in this regard that the State party failed to invoke any specific grounds to support the necessity of such restrictions as required under article 19 (3) of the Covenant.¹⁶ The State party also failed to demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considers that, in the circumstances of the case, the restrictions imposed on the author, although based on domestic law, were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It therefore concludes that the author's rights under article 19 (2) of the Covenant have been violated.¹⁷

8. 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.

9. 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, including reimbursement of the fine and any legal costs incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. To that end, the State party should revise its normative framework on public events, in accordance with its obligation under article 2 (2) of the Covenant, with a view to ensuring that the rights under articles 19 of the Covenant may be fully enjoyed in the State party.

10. 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

¹² Para. 2.

¹³ General comment No. 34 (2011), para. 34.

¹⁴ See, for example, *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.

¹⁵ General comment No. 37 (2020), paras. 70–73.

¹⁶ See, for example, *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), para. 10.5.

¹⁷ See, for example, *Svetik v. Belarus* (CCPR/C/81/D/927/2000), para. 7.3; and *Shchetko and Shchetko v. Belarus* (CCPR/C/87/D/1009/2001), para. 7.5.

rights recognized in the Covenant and to provide an effective and enforceable 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.
