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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3079/2017*, **

Communication submitted by:	A.Z. (represented by counsel, Elena Merkulova)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	21 August 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 18 December 2017 (not issued in document form)
Date of adoption of decision:	19 July 2024
Subject matter:	Eviction from State-provided housing
Procedural issue:	None
Substantive issues:	Unlawful and arbitrary interference with one's home; fair trial; right to life
Articles of the Covenant:	6, 14 (1) and 17
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is A.Z., a national of Kazakhstan born in 1955. He claims that the State party has violated his rights under articles 6, 14 (1) and 17 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel.

Facts as submitted by the author

2.1 In 2002, the author was discharged from the military due to an illness contracted during his 16-year service. On 4 February 2004, the Ministry of Defence of Kazakhstan signed a lease agreement with the author, providing him with a State-owned service apartment in Gvardeyskiy, a closed military town in Zhambyl Province, where he lived with his family until 2014.

2.2 In 2006, the author filed a lawsuit against the Ministry of Defence requesting monetary compensation in the amount equalling the cost of his service apartment in order to

* Adopted by the Committee at its 141st session (1–23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

buy his own home in a different location. On 20 January 2006, the Almaty District Court awarded the author 325,920 tenge.[1] The money was paid out in 2007. However, the author subsequently returned the money to the Ministry of Defence because he could not buy any housing for the amount he had been awarded.[2]

2.3 In 2013, the Ministry of Defence filed a lawsuit against the author requesting termination of the lease agreement for the author's service apartment, without providing him with alternative housing. The Ministry claimed that: (a) since the lease agreement did not have an expiration date, it could be unilaterally terminated by one of the parties; and (b) in 2007, the Ministry of Defence had already paid out monetary compensation to the author so that he could acquire alternative housing. The author contested the termination of the lease agreement, arguing that service housing was regulated by the Law on housing relations and that, in accordance with article 103 (1) of the law, a lease agreement for service housing could be terminated only for the reasons specifically prescribed in that law. Moreover, article 8 (2) of that law provided that eviction from service housing could be carried out only in accordance with its provisions. Since the grounds raised by the Ministry of Defence were not prescribed by the relevant provisions of the law, the author asked for the lawsuit to be dismissed.

2.4 On 7 October 2013, the Military Court of the Almaty Garrison terminated the author's lease agreement and ordered him and his family to move out of the service apartment. The decision was based on various provisions of the Civil Code of Kazakhstan and the Law on housing relations. The court ruled that the Ministry of Defence had fulfilled its obligations towards the author, as the author had already been awarded monetary compensation as a result of his 2006 lawsuit. The court held that, since the lease agreement had been signed between the parties for an indefinite period, the Ministry of Defence had the right to terminate it unilaterally and to evict the author.

2.5 The author appealed the decision to the appellate chamber of the Military Court of Kazakhstan. On 24 December 2013, the appellate court upheld the decision of the first instance court.

2.6 On an unspecified date, the author appealed the appellate court's decision to the cassation chamber of the Military Court of Kazakhstan. On 18 April 2014, the cassation court confirmed the decisions of the first instance and appellate courts.

2.7 On an unspecified date, the author filed an appeal for a supervisory review to the Supreme Court of Kazakhstan. On 23 April 2015, the Supreme Court rejected the author's appeal.

2.8 On 4 June 2014, the author and his family were evicted from their service apartment. One year after their eviction and, in the author's opinion, upon learning that he was preparing to submit a communication to the Human Rights Committee, the Ministry of Defence offered the author temporary housing, also in Gvardeyskiy, but in a run-down building that was unfit for human habitation. Despite the fact that the building was not safe, was seismically dangerous and had been recommended for demolition, the author and his family were forced to move into it for lack of other options.

Complaint

3.1 According to the author, in order to fulfil its obligation under article 17 of the Covenant, the State party has put in place legislative protection in the form of specific grounds, which can be used to terminate tenants' rights in service housing. The exhaustive list of grounds is enshrined in the Law on housing relations. At the same time, article 404 of the Civil Code, which was used by the courts to justify the termination of the author's lease, allows for unilateral termination of an indefinite lease unless otherwise provided by the law or agreed upon by the parties. The author argues that, by disregarding *lex specialis* that protects his rights as a lessee of service housing and evicting him, the State party has violated his rights under article 17 of the Covenant.

[1] About $2,000–2,500.

[2] The author does not specify when the money was returned.

3.2 Furthermore, the author claims that the national courts failed to provide him with an independent and impartial hearing, as proved by the fact that the court decisions do not contain many of his arguments, including those referring to the violation of articles 14 and 17 of the Covenant. Therefore, the State party has violated his rights under article 14 (1) of the Covenant.

3.3 The author claims that the State party has violated his rights under article 6 of the Covenant because he and his family now have to live in an unsafe building that is recommended for demolition, thus putting their lives at risk.

State party's observations on the merits

4. On 14 August 2018, the State party submitted its observations on the merits of the communication. The State party notes that the author's lease was terminated by a judicial authority and that decision was later upheld by the appellate court and the court of supervisory instance. The State party submits that, according to article 1 of the Constitutional law on the judicial system and the status of judges in Kazakhstan, appeals and complaints from individuals and legal entities that are subject to judicial proceedings cannot be resolved by any other State bodies or officials.

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

5. On 1 March 2019, the author provided his comments on the State party's observations on the merits. The author submits that the State party's reference to the Constitutional law on the judicial system and the status of judges in Kazakhstan implies a refusal to recognize the competence of the Committee to receive and consider individual communications under the Covenant. He notes that this refusal does not comply with articles 1 and 2 of the Optional Protocol to the Covenant, to which the State party has been a party since 30 October 2009.

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 he and his family were forced to move into a building that was recommended for demolition, thus putting their lives at risk. However, the Committee notes that the author never complained about the state of the housing to the national courts. The Committee therefore considers that it is precluded from examining the author's claim under article 6 of the Covenant for failure to exhaust domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the author's claim that the domestic courts failed to provide him with an independent and impartial hearing in his eviction case in violation of his rights under article 14 (1) of the Covenant, which also resulted in violation of his rights under article 17 of the Covenant. The Committee notes, in particular, the author's claim that the violations manifested themselves in: (a) the failure of the domestic courts to implement the appropriate provisions of the Law on housing relations, which provide for an exhaustive list of grounds for termination of a service housing lease; and (b) the arbitrary application by the domestic courts of provisions of the Civil Code to terminate his lease. The Committee notes that the author's claims relate essentially to the evaluation of facts and evidence and the application of domestic law by the domestic courts of the State party, with implications for the author's rights under article 17 of the Covenant. The Committee, however, recalls that it is not a final instance entity competent to re-evaluate findings of fact or the application of domestic legislation. It is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of

justice, or that the court otherwise violated its obligation of independence and impartiality.[3] On the basis of the information before it, the Committee cannot conclude that the author sufficiently substantiated his assertion that the domestic courts failed to provide him with an independent and impartial hearing or that their application of the law was clearly arbitrary or manifestly erroneous and amounted to a denial of justice. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further notes the author's claim that, by disregarding the *lex specialis* that protects his rights as a lessee of service housing and evicting him, the State party has violated his rights under article 17 of the Covenant. The Committee is of the view that the violation complained of by the author is the result of the outcome of the judicial proceedings in which he was involved. Since the author has not provided any other information that would lead the Committee to conclude that the interference with his privacy, family and home was arbitrary, the Committee considers that his claim under article 17 is not sufficiently substantiated and finds it inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

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

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

[3] Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26; *G.A.P. v. Romania* (CCPR/C/137/D/3662/2019), para. 8.5; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; and *M.S. v. Netherlands* (CCPR/C/127/D/2739/2016), para. 6.6.