



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9895 • FAX: +41 22 917 9008 • E-MAIL: petitions@ohchr.org

REFERENCE: G/SO 215/51 KGZ (15) (22)
MT/DA/ma 2257/2013& 2334/2014

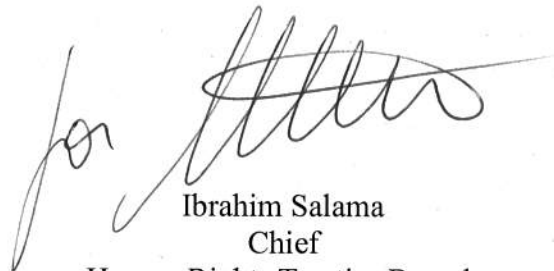
10 May 2019

Dear Ms. Toregozhina and Ms. Smirnova,

I have the honour to transmit to you herewith, the (advance unedited) text of the Views, adopted by the Human Rights Committee on 15 October 2018, concerning communication Nos. 2257/2013 and 2334/2014, which you submitted to the Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

In accordance with the established practice, the text of the Views will be made public. The text of the Views in Russian will be sent to you as soon as it is available.

Yours sincerely,



Ibrahim Salama
Chief
Human Rights Treaties Branch

Ms. Bakhytzhan Toregozhna
ul.Djandarbekova 109,Kv.40
050009 Almaty
Kyrgyzstan



**International Covenant on
Civil and Political Rights**
Advance unedited version

Distr.: General.
10 May 2019

Original: English
English, French and Spanish only

Human Rights Committee

**Views adopted by the Committee under article 5 (4) of
the Optional Protocol, concerning communication Nos.
2257/2013 and 2334/2014 *,****

<i>Communication submitted by:</i>	Bakhytzhan Toregozhina (not represented by counsel in communication No. 2257/2013, and represented by counsel, Anna Smirnova, in communication No. 2334/2014)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Republic of Kazakhstan
<i>Date of communication:</i>	7 November 2012 (2257/2013) and 25 September 2013 (2334/2014) (initial submissions)
<i>Document references:</i>	Decisions taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 14 June 2013 (2257/2013) and 15 January 2014 (2334/2014) (not issued in document form)
<i>Date of adoption of Views:</i>	15 October 2018
<i>Subject matter:</i>	Preventing the author from participating in peaceful protests
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Freedom of expression, freedom of assembly, discrimination
<i>Articles of the Covenant:</i>	19, 21, and 26
<i>Articles of the Optional Protocol:</i>	5(2)(b)

* Adopted by the Committee at its 124th session (8 October – 2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Phoyini Pazartzis, Mauro Politi, José Manuel Santos País, Yuval Shany, Margo Waterval and Andreas B. Zimmermann.

1.1 The author of the communications is Bakhytzhana Toregozhina, a citizen of Kazakhstan, born in 1962. She claims that the State party violated her rights under articles 19, 21, and 26 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is not represented in communication No. 2257/2013, and represented by counsel in communication No. 2334/2014.

1.2 On 15 October 2018, pursuant to rule 94, paragraph 2, of the Committee's rules of procedure, the Committee decided to join communications No. 2257/2013 and 2334/2014, submitted by the same author, for decision, in view of substantial factual and legal similarity.

The facts as submitted by the author

2257/2013 (events of 28 April 2012)

2.1 On 28 April 2012, at around 11 a.m., the author was arrested for organizing an unauthorised public protest, which was to take place on the same day. The author was planning to voice her protest against allegedly unfair court trials of 37 oil workers in Zhanozen, and of 12 persons in Shetpe. She also planned to demand the release of all prisoners of conscience in Kazakhstan. Upon arrest, the author was taken to a police station in the city of Almaty, making it impossible for her to take part in the actual protest.

2.2 On the same day, the Specialized Inter-District Administrative Court of Almaty found the author guilty of an administrative offence and sentenced her to 15 days in prison. The court in its decision stated that the author applied for permission to organize an event, but that on 20 April 2012, the local authorities refused the permission. Despite this refusal, the author called for a public protest to be held near Abai monument on 28 April 2012. The author submits that she had been previously subjected to administrative fines for organizing and participating in unauthorised protests on 17 January 2012, 25 February 2012 and 24 March 2012. During one of these protests, the author made a speech contesting the results of parliamentary elections of 15 January 2012.

2.3 The author claims that she was not timely provided with a copy of the court decision sentencing her to 15 days in prison, which created difficulties in appealing the decision. On 2 May 2012, while still in detention, the author managed to file an appeal against the decision to the Almaty City Court. She claims that she could not consult her lawyers for the appeal as they were not allowed to visit her in the detention centre.

2.4 In her appeal, the author claimed that the protest of 28 April 2012 was a peaceful protest that did not cause threat to the public order, security, health or morals. On 4 May 2012, the Almaty City Court upheld the decision of the administrative court. The author then appealed her sentence to the Office of the Prosecutor General. In her appeal, she argued that the witness statements used as a basis for her conviction were unconvincing and did not prove her guilt.

2.5 The author adds that the Administrative Court wrongly charged her as the organizer of the protest, while, in fact, the organizer was one Mr M., who applied to the Almaty city authorities for a permission to organize the protest in the first place. The author claims that she only expressed her support for the protest in her speech on 17 April 2012. She claims that at the time of her speech, there was no response from the city authorities yet. Therefore, she could not have called the public to take part in an "unauthorized" protest. According to the court decision, she encouraged the public to participate in the protest via internet, which is not true and the court did not provide any evidence in reaching this conclusion. Although she was arrested at 11 a.m., the term of her sentence started at 7 p.m. on 28 April 2012, eight hours later, contradicting the national law, which prescribes that the administrative detention should count from the moment of arrest.

2.6 On 29 May 2012, the General Prosecutor's office forwarded her appeal to the Almaty City Prosecutor's Office, which dismissed her appeal on 13 June 2012.

2334/2014 (events concerning 30 July 2012)

2.7 On 19 July 2012, the author submitted a request to the Almaty city authorities for an authorization of a one-person picket on 30 July 2012, from 11:00 to 12:00, on the Republic square, near the Monument of Independence. The author was planning to voice her support for the "International Friendship Day". On 24 July 2012, the author received a refusal from

city authorities. The decision referred to the previous decision, dated 29 July 2005, adopted by Almaty city council (“maslikhat”) to allow the organization of all non-governmental public events or meetings of “social and political nature” to be held at the square behind the “Sary Arka” cinema.

2.8 On 20 August 2012, the author submitted a claim to the District Court of Almaty under article 27 of the Civil Procedure Code of the Republic of Kazakhstan and asked the court to find the refusal to grant permission of 24 July 2012 as inconsistent with the Covenant and international practice concerning the rights to peaceful assembly.

2.9 On 2 October 2012, the District Court of Almaty agreed with the Almaty city authorities. The court stated in its decision that the authorities did not refuse a one-person picket, but offered an alternative location. On 17 October 2012, the author appealed that decision to the Almaty City Court as being contrary to the Constitution of the Republic of Kazakhstan and the Covenant. On 29 November 2012, the appeals court dismissed the author’s claims as unfounded.

2.10 On 4 April 2013, the author submitted a cassation appeal to the Almaty City Court challenging the decisions of the District Court and the Almaty City Court. The author argued, *inter alia*, that the court decisions contradict international standards on the right of peaceful assembly and the right to freedom of expression. On 2 May 2013, the cassation appeals chamber of the City Court of Almaty upheld the decisions of the lower court and dismissed the author’s complaint. On 20 June 2013, the author submitted petition to the Supreme Court of Kazakhstan for a supervisory review of the earlier court decisions, which was rejected on 8 August 2013.

The complaint

2257/2013 (events of 28 April 2012)

3.1 The author claims that by arresting on 28 April 2012 and sending her to 15 days in administrative detention, the State party violated her rights under articles 19 and 21 of the Covenant. The decisions taken against the author violated the provisions of the Kazakh Constitution as well. The author has taken no actions that would threaten public order and justify actions by the law enforcement authorities.

2334/2014 (events concerning 30 July 2012)

3.2 The author claims that the prohibition on organizing the one-person picket amounts to violation of her rights under article 21 of the Covenant. Referring to the findings of the Committee in *Kivenmaa v. Finland*, the author submits that the requirement to notify may be compatible with permitted limitations laid down in article 21 of the Covenant insofar as it “would normally be for the reasons of national security or public safety, public order, the protection of public health or morals or the rights and freedoms of others”. The author claims that since her one-person picket did not represent any above threat, its prohibition along with the general requirement to organize it only in one place is contrary to article 21 of the Covenant.

3.3 The author further claims that remoteness of the proposed location from the busy streets would render conducting of the picket meaningless. She therefore claims that by “designating only one place in outskirts of the town Almaty (square behind the cinema Sary-Arka) for peaceful assemblies”, the State party violates her right under article 21 of the Covenant.

3.4 The author asserts that the one-person picket should not be considered as an assembly by the Kazakhstan authorities and should not require permission, since the person exercises his/her right individually. Referring to the communication *Mukong v. Cameroon*, where the Committee considered that “while the State party indicated that the restrictions on the author’s freedom of expression were provided by law, it must still be determined whether the measures taken against the author were necessary for the safeguard of national security and/or public order”, the author claims that the restrictions to exercise her right of freedom of expression in one-person picket were not necessary and therefore contrary to article 19 (2) of the Covenant.

3.5 Moreover, the author submits that the authorization to organize a non-governmental “social or political meetings only at one specially designated place, while authorizing governmental and non-political meetings in other locations, is politically motivated and discriminatory, and amounts to a violation of article 26 of the Covenant.

State party’s observations on admissibility and the merits

4.1 Responding to the author’s claims in communication No. 2257/2013, the State party asked the Committee to declare the complaint as inadmissible. On 10 April 2012, a group of citizens indeed requested to hold a public event on 28 April 2012, near Abai Kunanbaev monument. This permission was not granted. The author nevertheless kept calling for people to gather at this location. The author was therefore charged and found guilty of violating article 373(3) of the Code of Administrative Offences, and was sentenced to 15 days of administrative arrest. The author’s appeal was rejected on 4 May 2012 by the Almaty City Court. The author further asked the prosecutor’s office of Almaty to bring a complaint, which it refused to do on 13 June and 4 October 2012.

4.2 According to article 676 of the Code of Administrative Offences, however, the author has a right to request the Office of the Prosecutor General to bring a supervisory review to the Supreme Court, on behalf of the author. The Office of the Prosecutor General never received this request. The State party therefore considers that the author failed to exhaust all available domestic remedies, in violation of article 5(2)(b) of the Optional Protocol to the Covenant.

4.3 Regarding the merits of the communication No. 2257/2013, the State party confirms that the only location for holding such events was defined to be a square behind a “Sary Arka” cinema. The court decision shows that the author organized an unauthorized event, and actively called on people to participate in it.

4.4 Article 19(2) of the Covenant gives everyone freedom of expression, which includes freedom to seek, receive and impart information of any form through any media. According to article 19(3), however, this freedom also imposes “certain obligations and responsibility”. There can be restrictions that are imposed by law and are necessary to respect rights and reputations of others, or for the protection of national security, public order, public health, or morals. Similarly, article 21 gives a right to freedom of assembly, and imposes similar restrictions.

4.5 Article 32 of the Constitution of Kazakhstan further gives a right to citizen to gather peacefully and hold public events. This right, again, can be limited in the interest of state security, public order, protection of health and rights and freedoms of others. The order of holding public events in public places is regulated by a law No. 2126 “On order of organizing and holding peaceful meetings, pickets and demonstrations” dated 17 March 1995. Article 7 of this law forbids holding public events if these events threaten “public order or security of citizens”. The courts examined the record and events on 28 April 2012 and found the author guilty of violating article 373(3) of the Code of Administrative Offences.

4.6 Responding to both communication Nos. 2257/2013 and 2334/2014, the State party reiterates its position, and additionally submits that it studied the practice of several other countries and found that the restrictions on public events in some countries are more formidable than in Kazakhstan. In the City of New York, for example, it is necessary to request permission 45 days before the event itself, and to indicate the route of the event. The city authorities have a right to move the location of the event, if the requested location is not acceptable. Other authorities, e.g. Sweden, have “black lists” of previously banned organizations. In France, local authorities have a right to prohibit any demonstrations, and in the UK, the authorities have a right to introduce “temporary bans”. 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 authorities. In general, during recent years, the European countries have been losing “billions” in damages to public and private property during “multiple pogroms” so that the rights of certain groups to hold mass events can be implemented. Moreover, the work of private, state and transportation networks had to be disrupted as a result.

4.7 The State party authorities, to protect rights and freedoms of others, public order, as well as transportation system and other infrastructure, have designated special locations for

non-government public events. Currently, almost each regional capital, and some districts have such designated areas, based on decisions of local councils.

4.8 The State party therefore considers that its laws and regulations are in line with requirements of the established international law, and practice of other countries. At the same time, the author systematically violates the national laws and regulations by organizing, or participating in unauthorized public events. During 2011-2013, the author participated in five "unauthorized" events. As a result, she has been found guilty of administrative violations, e.g. on 19 January 2012 and fined, but continued to commit similar violations. During 2012 alone, the author was found guilty four times under article 373(3) of the Code of Administrative Offences.

4.9 The State party analysed these actions, and submits that the author does not have a "true desire" to hold a public event. It has been ascertained, for example, that the author submitted requests to hold public events to authorities of several regions, such as Akmola, South Kazakhstan, West Kazakhstan, Aktyube, Karaganda, Kostanai, and cities of Astana and Almaty. The requests were to hold a "flash-mob", on the same date – 26 June 2014 – at the same time, from 11:00 a.m. to 1:00 p.m. But the author did not hold any events as she requested, as the organizers did not show up at the locations requested from the authorities, or at alternative locations as suggested by the local authorities. Therefore, it can be concluded that in absolute majority of these cases, the author simply "imitated" being active as a human rights defender.

4.10 Regarding communication No. 2334/2014, the State party reiterates its position on articles 19 and 21, and adds the following. The State party confirms that the Almaty city authorities were indeed asked for a permission to hold a one-person picket near Independence Monument on 30 July 2012, stating that there is only one location for such events, which is located behind "Sary Arka" cinema. The author did not make use of this opportunity, and instead, filed a complaint with courts. The final decision of the Supreme Court of Kazakhstan was issued in this case on 8 August 2013. The court concluded that the decision by the city authorities to assign one location to non-government public events did not violate the author's rights.

4.11 The State party further submits that the author also failed to exhaust domestic remedies in this communication as well. It is true that the Deputy Prosecutor General rejected the author's request to file a supervisory review on 22 October 2013. According to articles 384 and 385 of the Civil Procedure Code, the author had the right to request the Prosecutor General to file a supervisory review (protest) before the Supreme Court of Kazakhstan. The author failed to file such a complaint, and her communication before the Committee should therefore be considered inadmissible under 5(2)(b) of the Optional Protocol.

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

5.1 On the events of 28 April 2012, the author disputes the State party's assertion that she failed to exhaust domestic remedies by not asking the Prosecutor's Office to file a supervisory complaint. On 8 November 2012, she filed such a request, which was rejected on 7 February 2013.

5.2 The author's actions never threatened public order or security of others. It is clear that the author was sanctioned because her message does not coincide with public opinion of the authorities. The location that was offered by the authorities, cannot serve as a venue for public events, since it is located far from the centre, which is hard to reach for the citizens. Moreover, during that time, the area around the cinema was being renovated and closed off for access to public.

5.3 Any limitation placed on freedom of assembly must also be proportionate. By following the law, the State party must nevertheless choose restrictions that are less intrusive and would still allow holding an event. The restrictions in conformity with law must not be applied automatically, but consider individual circumstances of each event. Banning the protest or an event must be a measure of last resort, if no other restrictions are available. The State party violated all these principles. By arresting and sentencing the author to 15 days of imprisonment, the State party authorities showed once again that the international obligations of Kazakhstan are not taken seriously.

5.4 On 28 April 2012, the author did not even get the chance to participate in the event. She was arrested when she was leaving her apartment. The event itself was carried out without her, and was held peacefully, which shows once again that it was not necessary to arrest and imprison the author. In any case, the freedom of assembly is considered to be one of the fundamental rights, and the potential participants of such events should not have to ask for permission from authorities to participate. The law on mass events, article 10, does foresee local authorities further regulating the conduct of such events, but the law does not allow the authorities to limit the location of events only to one place.

5.5 Instead of responding on substance, the State party authorities accused the author of repeatedly violating Kazakh laws. The author confirms that she has been charged and sentenced five times for violating article 373(3) of the Code of Administrative Offences for exercising her right to peaceful assembly, and asks the Committee to consider this fact when adopting its decision.

5.6 The State party further list some countries, which have a “notification system”, as opposed to the “permission system” in Kazakhstan. In October 2012, the author went to the United States, where she held a small protest in front of the White House in Washington, D.C., along with a Kazakh journalist, Mr. L.A. They did not seek any permissions, were allowed to protest and did not face an administrative fine or arrest. In Warsaw, Poland, the author also participated in several protests of about ten people, which did not require permission.

5.7 The State party also attempted to insult the author by stating that instead of being a human rights defender, she “imitates” activity. The author confirms filing 30 requests for public events, but for all these requests, she received a refusal. She did not want to be jailed for 15 days again, so she did not participate in these events. In addition to the present communications, the author filed three separate complaints with the UN Special Rapporteur on freedom of assembly.¹

5.8 Regarding the prohibition on holding a one-person picket (communication 2334/2014), the author submits that it also did not threaten public order, or rights and freedoms of other persons. Therefore, the refusal by the State party to allow the event was a violation of the author’s rights under article 21. According to the Committee’s general comment No. 10, while the authorities can impose certain restrictions, these limitations cannot threaten the very right of freedom of assembly, must be narrowly tailored to serve its purpose, and must be in conformity with law. In its decision, the local council, when identifying a location where non-government public events were allowed, did not indicate a reason why it was necessary to hold events at that location, behind “Sary Arka” cinema.

5.9 Furthermore, the law on mass events also requires pickets and demonstrations to consist of two persons – one person as an organizer, and the second person as “responsible for safety”. According to this law itself, a one-person picket is not a public event, and does not require a permission from authorities.

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 article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 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.

6.3 The Committee notes the State party’s contention that the author failed to exhaust all domestic remedies available to her, concerning her present claims, by not filing a supervisory review appeal request to the Prosecutor General’s Office. The Committee recalls its jurisprudence, according to which the filing of requests to a court, or to a prosecutor’s office,

¹ The author attached copies of the complaints to the Special rapporteur, which concern events different from the two present communications.

for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge or a prosecutor constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.² The State party has not shown, however, whether and in how many cases petitions under supervisory review procedures were applied successfully in cases concerning freedom of expression and assembly. In addition, the Committee notes that the author, on 8 November 2012, did file a supervisory review request, which was rejected on 7 February 2013. In those circumstances, the Committee considers that it is not precluded by article 5(2)(b) of the Optional Protocol from examining the present communication.³

6.4 The Committee takes note of the author's allegations that her rights under article 21 were violated when the local authorities refused to issue permission for her to hold a one-person picket on 30 July 2012. The Committee considers⁴ that it is more appropriate to review these issues as a prohibition of an exercise of freedom of expression, under article 19 of the Covenant. It therefore finds the author's allegations concerning violations of her rights under article 21 of the Covenant, related to the planned protest on 30 July 2012 as insufficiently substantiated, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also takes note of the allegations that the author's rights under article 26 of the Covenant were violated. It notes that the State party has not responded to those allegations. However, in the absence of further detailed information, explanations or evidence in support of those claims on file, the Committee finds these allegations insufficiently substantiated for the purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under article 19, and under article 21 (with respect to the events of 28 April 2012) of the Covenant, declares them admissible and proceeds with their consideration on the merits.

Consideration of the merits

7.1 The Committee has considered these cases 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, by arresting her on 28 April 2012 and sentencing her to 15 days of administrative arrest (communication 2257/2013), the State party violated her right to freedom of assembly. On 28 April 2012, the author was intending to hold a peaceful protest that did not intend to threaten public order, or the rights and freedoms of others. The State party argues that the author was arrested on 28 April 2012 and sentenced to administrative detention for organizing a public event without obtaining permission from the local authorities, and that these authorities have designated a special location for such events in Almaty, behind the "Sary Arka" cinema.

7.3 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

² See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, paragraph 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, paragraph 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2; No. 2021/2010, *E.Z. v. Kazakhstan*, decision of inadmissibility adopted on 1 April 2015, para. 7.3; No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; No. 2041/2011, *Dorofeev v. Russian Federation*, Views adopted on 11 July 2014, para. 9.6.

³ See also communication No. 2141/2012, *Kostenko v. Russian Federation*, Views adopted on 23 October 2015, para 6.3.

⁴ See *Coleman v. Australia*, (CCPR/C/87/D/1157/2003), para. 6.4., and *Levinov v. Belarus*, (CCPR/C/123/D/2235/2013), para 5.7.

of an individual's views and opinions and indispensable in a democratic society.⁵ That right entails the possibility of organizing and participating in a peaceful assembly in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to 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*), protection of public health or morals or 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.⁶ The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.⁷

7.4 The Committee notes that the State party submits that the restriction was imposed in conformity with the Code of Administrative Offences, and other relevant laws, "to protect rights and freedoms of others, public order, as well as transportation system and other infrastructure" (see para. 4.7 above). The author contends, however, that the planned event were going to be peaceful and would not harm or endanger anyone or anything. The Committee therefore considers, based on the material before it, that the State party has failed to demonstrate that the author's arrest, conviction and 15-day sentence for planning to organize a peaceful public protest were necessary in a democratic society and were proportionate to the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, as required by article 21 of the Covenant. For those reasons, the Committee concludes that, with respect to the events of 28 April 2012, the State party has violated article 21 of the Covenant.

7.5 Similarly, in the Committee's opinion, the actions of the authorities in both communications amounted to a limitation of the author's rights to impart information and ideas of any kind, under article 19(2), of the Covenant. The Committee must therefore decide whether these limitations are allowed under one of the restrictions laid out in articles 19(3). The Committee refers to its general comment No. 34 (2011) on the freedom of opinion and expression, according to which freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. Such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19(3) of the Covenant allows certain restrictions only as provided by law and necessary: (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁸ The Committee recalls that any restriction on the 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 whose protection is sought. The Committee further recalls that it is up to the State party to demonstrate that the restrictions on the rights under article 19 are necessary and proportionate.⁹ The State party contends that the author violated a procedure for obtaining a permission for planned events, but does not otherwise respond to the author's allegations. In particular, the State party does not attempt to demonstrate in either case that the author's arrest, detention, and subsequent prosecution and proportionate to a legitimate government aim. The Committee considers that, in the circumstances, the prohibitions imposed on the author were not justified by the State party pursuant to the conditions set out in article 19(3)

⁵ See, for example, *Margarita Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

⁶ *Ibid.*

⁷ See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

⁸ See general comment No. 34 (2011), para. 22.

⁹ See, for example, communications No. 1830/2008, *Pivonos v. Belarus*, Views adopted on 29 October 2012, para. 9.3; No. 1785/2008, *Olechkevitch v. Belarus*, Views adopted on 18 March 2013, para. 8.5; and No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para. 7.3.

of the Covenant. It therefore concludes that the the author's rights under article 19(2) of the Covenant have been violated.¹⁰

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) (concerning both events) and article 21 of the Covenant (concerning the events of 28 April 2012).

9. In accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated 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 the fine and any legal costs incurred by her. 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, in particular the law on the organization and conduct of peaceful assemblies, meetings, processions, pickets and demonstrations, as it has been applied in the present case, with a view to ensuring that the rights under articles 19 and 21 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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.

¹⁰ See general comment No. 34 (2011), para. 34.

