



# 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. 2431/2014\*, \*\*

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| <i>Communication submitted by:</i>       | Aydos Sadykov (not represented by counsel)   |
| <i>Alleged victim:</i>                   | The author   |
| <i>State party:</i>                      | Kazakhstan   |
| <i>Date of communication:</i>            | 8 February 2013 (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 20 June 2014 (not issued in document form) |
| <i>Date of adoption of Views:</i>        | 6 November 2019  |
| <i>Subject matter:</i>                   | Arbitrary detention; inhuman treatment   |
| <i>Procedural issues:</i>                | None   |
| <i>Substantive issues:</i>               | Inhuman and degrading treatment; arbitrary arrest and detention; right to a fair trial, presumption of innocence and legal assistance; discrimination  |
| <i>Articles of the Covenant:</i>         | 7, 9 (1)–(2) and (5), 14 (1), (2, read alone and in conjunction with 2 (3)), (3) (b) and (d)–(e) and 26  |
| <i>Article of the Optional Protocol:</i> | 2  |

1. The author of the communication is Aydos Sadykov, a national of Kazakhstan born in 1968. He claims that the State party has violated his rights under articles 7, 9 (1)–(2) and (5), 14 (1), (2, read alone and in conjunction with article 2 (3)), (3) (b) and (d)–(e) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is not represented by counsel.

\* Adopted by the Committee at its 127th session (14 October–8 November 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christoph Heyns, Bamariam Koita, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.



**The facts as submitted by the author**

2.1 The author submits that he is a journalist and an opposition activist. He has managed the regional offices of several political parties, such as “Nastoyashy Ak zhol” and “Azat”. He has also served as the leader of two trade unions that conducted frequent mass gatherings with a view to ensuring the realization of human rights in Kazakhstan. In May 2010, the author founded a non-governmental organization called “Gastat”, which conducted training sessions to teach members of trade unions to peacefully fight for their political and civil rights.

2.2 On 27 May 2010, at around 10 a.m., the author was attacked on his way from a sports club by four unknown men, later identified as M.M. and three policemen. They knocked him to the ground, kicked him and then handcuffed his hands behind his back. In a video recording of the incident broadcast on a television channel,<sup>1</sup> the policemen explained to journalists that they had witnessed a fight between the author and M.M. M.M. had been lying on the ground and the author had been sitting on him and beating him. When the policemen had attempted to stop the fight, the author had resisted the arrest so violently that his elbows, chest and back had been injured. Due to his resistance, the author had been handcuffed.

2.3 At around noon on 27 May 2010, the author and M.M. were taken to a hospital to have their injuries examined. The author claims that at the hospital injuries to his elbows, chest and the back were noted, whereas no injuries whatsoever were found with respect to M.M.<sup>2</sup> After the medical examination, the author was taken to a police station and remained there until 5 p.m., without access to a lawyer. His arrest was not formally recorded, despite his requests.

2.4 On 27 May 2010, a criminal case against the author was opened under article 257 (1) of the Criminal Code (hooliganism). On 28 May 2010, he was requested not to leave the country. On the same date, G.E., an investigator from the Ministry of Internal Affairs of Kazakhstan, took up the investigation of the case. The author requested the Prosecutor’s Office of the Aktobe Region to appoint another investigator as, according to the author, G.E. lacked impartiality and independence. For instance, G.E. had drafted the transcript of the cross-examination of one of the witnesses before it was conducted and had dictated to other witnesses what they had to say in their testimony. The author’s request to appoint another investigator was rejected on 8 June 2010.

2.5 On 8 June 2010, the author requested the Prosecutor’s Office of the Aktobe Region to institute criminal proceedings against the three policemen and M.M. for the beatings and provocation that they had inflicted on him. On 10 June 2010, the same investigator, G.E., was entrusted to deal with this complaint as well. On 15 June 2010, G.E. and the Ministry of Internal Affairs refused to open an investigation into the author’s allegations. Furthermore, on 15 August 2010, the Ministry refused to initiate criminal proceedings due to the absence of a corpus delicti. On 15 September 2010, the Prosecutor’s Office of the Aktobe Region reversed the decision of 15 August 2010 and remitted the case to the Ministry of Internal Affairs for additional examination. The outcome of the investigation is unclear.

2.6 The author claims that, as a result of his complaint against the policemen, he was charged with more serious crimes, under article 257 (2) (b) of the Criminal Code (aggravated hooliganism, punishable by up to five years of imprisonment), as compared with the initial charges under article 257 (1) of the Criminal Code, punishable by up to two years of imprisonment.

2.7 On 16 July 2010, Aktobe Court No. 2 found the author guilty of aggravated hooliganism, under article 257 (2) (b) of the Criminal Code, and sentenced him to two years of imprisonment. On 24 August 2010, Aktobe Regional Court upheld the sentence on

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<sup>1</sup> Despite this claim, the recording shows only the aftermath of the attack, when the author is already handcuffed.

<sup>2</sup> According to the medical report contained in the appeal court decision of 24 August 2010, submitted to the Committee, light bodily injuries were inflicted on M.M., including scratches on the nose, right arm, chest and legs.

appeal. On 6 December 2010, the Supreme Court rejected the author's application for a supervisory review. The author was not informed about this and therefore could not attend the hearings of 24 August and 6 December 2010. The author served his prison term from 16 July 2010 to 13 April 2012.

### The complaint

3.1 The author claims that he was arrested in violation of article 9 (2) of the Covenant, as he was not informed of the reasons for his arrest. Furthermore, in violation of article 9 (1) of the Covenant, his arrest was not recorded and he had no access to a lawyer. He argues that the duration of his arrest was excessive, as he was held from about 10.30 a.m. to 5 p.m., that is, about 6.5 hours. The Committee has previously held that the excessive duration of detention can lead to an otherwise lawful detention becoming an arbitrary detention or arrest.<sup>3</sup> He maintains that he was subjected to arbitrary detention and claims compensation, with reference to article 9 (5) of the Covenant.

3.2 The author claims that by using disproportionate force against him and by handcuffing him, the policemen aimed to humiliate him and breach his human dignity, in violation of article 7 of the Covenant.

3.3 The author submits that he was deprived of a public hearing, in violation of his right under article 14 (1) of the Covenant. To start with, his request for the video recording of the court proceedings was rejected by the presiding judge without providing any reasons. The limitations on the public nature of the court hearings must be explained by the State party under one of the exceptions listed in article 14 (1) of the Covenant, and the court did not engage in this analysis.

3.4 The author also submits that his right to presumption of innocence under article 14 (2) was violated, since during the trial the presiding judge publicly stated that "the complainant and his lawyers will present their objections in their points of appeal". One of the most important aspects of the fair trial is equality of arms, which the trial court failed to observe. For example, it refused to call witnesses on behalf of the defence. The author also claims that the investigator, G.E., was biased, particularly due to his involvement in both the investigation into the criminal case against the author and the investigation into the author's complaint against the policemen. The author submits that the refusal to carry out an investigation against the policemen predetermined the outcome of the proceedings against him.

3.5 The author further submits that the criminal proceedings against him were unfair. He claims that he was deprived of the opportunity to have additional expert examinations conducted, in violation of article 14 (3) (b) of the Covenant.<sup>4</sup>

3.6 Furthermore, the author was informed neither of the appeal hearing nor of the hearing concerning his comments and complaints regarding the accuracy of the trial record. As a result, those hearings were held in absentia,<sup>5</sup> in violation of article 14 (2) and (3) (d) of the Covenant. The courts provided no explanation as to why it was necessary to restrict the author's right to a public hearing. He also claims that the judges lacked independence and impartiality, especially as they rejected his requests,<sup>6</sup> and erred in the assessment of evidence.

<sup>3</sup> The author refers to the Committee's decision in *Spakmo v. Norway* (CCPR/C/67/D/631/1995).

<sup>4</sup> In particular, he claims that material evidence in the case was returned to their owners, which deprived him of any opportunity to examine it and request additional expert acts in that connection. For instance, he was deprived of the opportunity to request an additional expert examination of a mobile phone, which could have proven the absence of his fingerprints thereon and therefore could have invalidated the testimonies of M.M. and other prosecution witnesses and could have resulted in the termination of the criminal proceedings against the author.

<sup>5</sup> As transpires from the material on file, his lawyer attended the appeal hearing. In accordance with article 408 (3) of the Code of Criminal Procedure of Kazakhstan, the presence of the convicted person in the appeal court is necessary only in the event that new evidence is examined.

<sup>6</sup> For instance, the court discarded his request to declare inadmissible evidence proving his guilt, such as a damaged shirt of one of the policemen and the expert conclusion of 11 June 2010. The author

3.7 The author also claims that the appeal court rejected his motion to re-examine the witnesses K. and H.Y., in violation of article 14 (3) (e) of the Covenant.

3.8 Finally, with reference to article 26 of the Covenant, the author claims that the facts as submitted reveal that he was subjected to political persecution due to his active participation in the social and political life of Kazakhstan.

#### **State party's observations on admissibility and the merits**

4.1 In notes verbales dated 7 January and 2 June 2015, the State party provided its observations on admissibility and the merits. The State party submits that the author is a member of the "Azat" party and that he organized a hunger strike with five other people in October 2009 and an unauthorized public protest in the city of Aktobe on 30 January 2010. For the latter, the author was sentenced to 10 days of administrative arrest, for violation of the order regarding the organization of public events. According to the information received from a neuropsychiatric clinic in Aktobe dated 4 June 2010, the author underwent treatment in that clinic in 1998.<sup>7</sup> In 2003, the author was charged in a criminal case, but was declared to be "insane"<sup>8</sup> at the time. In 2010, the author underwent another examination and was declared to be sane.

4.2 The State party submits that the author has exhausted all available domestic remedies. The author complains to the Committee that the police officers acted unlawfully during the arrest, causing him to suffer bruises and abrasions. The author also seems to disagree with the court verdict and sentence of two years of imprisonment imposed on him by Aktobe Court No. 2 on 16 July 2010. The author's complaint can be deemed admissible, but it should be considered without merit. The author was sentenced according to a lawful court order.

4.3 On 27 May 2010, while the author was walking in the city of Aktobe, he and M.M. bumped shoulders. Due to this insignificant incident, the author grabbed M.M.'s mobile phone and hit him in the face, causing him light bodily injury. The author kept striking M.M. Police arrived at the scene and tried to arrest the author, who resisted the lawful actions of the officers. In the process, the author hit one of the officers in the face and damaged another officer's shirt.

4.4 On 27 May 2010, the author was charged under article 257 (1) (hooliganism) of the Criminal Code. Later on, the article under which the charges were laid was changed to article 257 (2) (b) (aggravated hooliganism using violence), due to the fact that the author resisted arrest. The police officers testified that they tried to stop the author, but he actively resisted and attempted "to hurt himself" and started shouting "that he was being beaten by police officers". Other witnesses, such as the resident of a nearby apartment block, H.Y., confirmed the testimony of the victim, M.M. Specifically, H.Y. testified that he was home on 27 May 2010 and that, when he walked onto his balcony, he heard someone crying for help. He saw the author handcuffed and resisting arrest by police officers. At some point, he observed that the author had calmed down and was smoking a cigarette. Police officers conducted themselves politely.

4.5 The author refused to testify and to sign any documents during the investigation. He requested that the investigator, G.E. be removed from the case, claiming that the latter was biased against him. G.E. himself testified that he never instructed any witnesses to testify in a particular way. The author was provided with legal assistance in a timely fashion. The author's request to remove G.E. from the case was rejected as he failed to provide sufficient

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claims that these pieces of evidence were obtained in violation of the law. Furthermore, the court rejected his request for an additional examination of the crime scene (the courtyard), by the court; the author claimed that the investigation had examined it only partially and that the examination of the entire courtyard could have proven that one of the policemen could not have seen the fight from the spot he had indicated. The court also discarded the author's request to review the video recording of the incident, showing that M.M. had no injuries, that the policeman's shirt was not damaged and that the author was the only person injured in the video.

<sup>7</sup> No further details are provided.

<sup>8</sup> No further details are provided – what the charges were, whether they were dropped, etc.

reasons to consider that the investigator was biased in the outcome of the case. Later on the author also filed a complaint against the arresting police officers and the victim, M.M., claiming that they beat him up and attempted to put a mobile phone in his pocket to incriminate him. The complaint was examined and was concluded on 15 August 2014, when the police decided not to initiate a criminal case against the police officers.

4.6 On 16 July 2010, the author was found guilty as charged and sentenced to two years of imprisonment. The author's appeal was rejected by Aktobe Regional Court on 24 August 2010, and his supervisory appeal request was denied on 6 December 2010 by the Supreme Court of Kazakhstan.

4.7 During the trial, the author claims that his rights to a public hearing were violated. According to the minutes of the court hearings, some journalists were actually present during the trial, and audio and video recordings were made of the proceedings. On 13 July 2010, it was ascertained that the audio recording of the hearings had not been stored due to a malfunction of the audio-recording equipment. At the same time, the records indicate that the author's lawyers were able to study the minutes of the court hearings. The author himself studied the case materials as well, but refused to sign a document confirming that fact. The author filed several requests regarding the minutes of the court hearings. The requests were considered and rejected by the court, without the author being present, which is allowed under the Criminal Procedure Code. Furthermore, the author asked the presiding judge, K.U. be removed, and this request was rejected by another judge, S.A., since she saw no reasons to approve the motion.

4.8 During the appeal, the author motioned the court to allow his wife to defend him, to provide for the author's participation during the hearings, to question two witnesses and to study video and audio recordings of the trial. Those requests were rejected on 24 August 2010. The two witnesses that the author had requested had already been questioned during the trial, and since the author did not question those statements in court, there was no need to repeat their testimony during the appellate procedure.

4.9 Additionally, in accordance with the provisions of the Criminal Procedure Code of Kazakhstan, it was not necessary for the author to participate in the appeal hearings, since there was no risk that the author would receive a harsher sentence as a result of the appeal, and the prosecution was not planning to introduce any new evidence. The appellate court also rejected the author's request to remove judge K.O.S. from the bench. The author's supervisory appeal was also rejected, and the Supreme Court of Kazakhstan fully confirmed the findings of the two lower courts.

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

5.1 On 10 April 2015, the author submitted that the State party had failed to respond to several of his claims. For example, the investigation failed to identify all the witnesses that could have testified regarding the events of 27 May 2010. They could, inter alia, have confirmed the testimony of a witness, O.Z., who stated that during the time and date in question there were a lot of people around the area where the incident had taken place. During the cross-examinations of witnesses, the investigator, G.E., told them repeatedly how to testify. Furthermore, the minutes taken during the questioning were inaccurate. No criminal charges were brought against the police officers who assaulted the author.

5.2 During the author's initial apprehension, the police officers failed to inform him about the reasons for his arrest and the rights he was entitled to. They also did not formalize a detention report, which would have indicated the precise beginning and end of the period of detention. The author was not able to receive "quality" legal assistance from the moment of apprehension or during his detention. The author's right to be free from degrading treatment was also violated when the author was subjected to physical force, including handcuffing him. The State party never explained the lawfulness, necessity and proportionality of such measures. The State party was also never able to explain the statement of the witness, H.Y., who said that the author had not resisted the police officers. While the State party claims that there was an audio recording of the court hearing, it also admits that the recording was damaged and was not available. The video recording was not provided to the author, without the presiding judge giving any reasons.

5.3 The State party also violated the author's right to equality of arms during the trial. The court rejected a range of motions and requests from the defence, including a request to re-examine the alleged crime scene and to include as evidence a video that was aired by "Sedmoi telekanal" television station that shows that the author was not resisting police officers and did not hit M.M.

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

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it 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 takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee takes note of the author's allegations under articles 7, 9 (1)–(2) and (5), 14 (1), (2, read alone and in conjunction with 2 (3)), (3) (b) and (e) and 26 of the Covenant. The Committee notes, however, that the author did not provide pertinent explanations or detailed information regarding these claims and that, for example, his allegations against the investigator and the judge are general in nature. In the circumstances of the present case, the Committee therefore considers that the author failed to substantiate the claims above for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.5 The Committee is of the view that, for the purposes of admissibility, the author has provided sufficient information regarding his claims under article 14 (3) (d) as far as they relate to his right to be present during the appeal hearings. Accordingly, the Committee declares this part of the claim admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

7.2 The Committee takes note of the author's allegations that his right to a defence under article 14 (3) (d) of the Covenant was violated during his appeal hearing, because he was not able to participate in the proceedings despite his request. The Committee finds that article 14 (3) (d) applies to the present case as the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence. The Committee recalls that article 14 (3) (d) provides that accused persons are entitled to be present during their trial and that proceedings in the absence of the accused are only permissible if this is in the interest of the proper administration of justice, that is, when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present.<sup>9</sup> The Committee notes the author's allegation that he had submitted a written request to be allowed to participate in person in the appeal hearing, but that those requests were ignored. The Committee also notes the author's allegation that he was not able to participate in the hearings challenging the accuracy of the trial court transcript. In the light of the above considerations, the Committee finds that the facts before it reveal a violation of article 14 (3) (d) of the Covenant.

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<sup>9</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 36.

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 article 14 (3) (d) 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 for the violation suffered. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

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 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.

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