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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2920/2016*, **

<i>Communication submitted by:</i>	Zinaida Mukhortova (represented by counsel, Anara Ibrayeva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	23 October 2015 (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 10 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2019
<i>Subject matter:</i>	Unlawful and arbitrary detention; inhuman and degrading treatment; freedom of expression
<i>Procedural issue:</i>	Substantiation
<i>Substantive issues:</i>	Unlawful and arbitrary detention; inhuman and degrading treatment; freedom of expression
<i>Articles of the Covenant:</i>	7, 9 and 14, read alone and in conjunction with article 2, and 18 and 19
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Zinaida Mukhortova, a national of Kazakhstan born in 1957. She claims that the State party has violated her rights under articles 7, 9 and 14, read alone and in conjunction with article 2, and articles 18 and 19, of the Covenant.¹ The Optional Protocol entered into force for the State party on 30 June 2009. The author is 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, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

¹ The author was inconsistent in claiming a violation of article 2 of the Covenant.



The facts as submitted by the author

2.1 The author is a lawyer and a human rights defender. In the interest of a client she represented in a lawsuit, she appealed to the President of Kazakhstan, claiming that the other party in the lawsuit was being protected by the deputy of the majlis (lower chamber) of the parliament of Kazakhstan, Yerlan Nigmatulin. Following a complaint by Mr. Nigmatulin, the author was charged on 25 September 2009 with “knowingly false denunciation” under article 351 of the Criminal Code.

2.2 The author was subjected to a preventive measure in the form of a travel ban. On 9 February 2010, the Balkhash city prosecutor’s office asked the court to replace the travel ban with an order for the author’s arrest. On 12 February 2010, the author was arrested based on the ruling of the Balkhash city court. On the same day, she lodged a complaint with the Karaganda regional court against the Balkhash city court’s arrest order.² On 16 February 2010, her complaint was dismissed on the grounds that the arrest ruling could not be appealed according to article 403 (2) of the Criminal Procedure Code.³ On 20 April 2010, the author appealed to the President of the Supreme Court, but received a reply that, as the ruling had not been appealed, the Supreme Court could not consider her complaint.

Episode 1 of forced hospitalization

2.3 Despite the author’s objection, on 26 February 2010, the Balkhash city court ordered that she undergo a compulsory psychiatric examination. On 2 April 2010 and 7 July 2010,⁴ psychiatric experts concluded that the author suffered from “chronic delusional disorder”. On 5 August 2010, the Balkhash city court found the author “mentally unfit”⁵ to stand trial and ordered her forced hospitalization and inpatient treatment. On 2 November 2010, the Karaganda regional court confirmed this decision on appeal. The author was kept in a closed psychiatric hospital in Aktas from 12 January to 22 September 2011.

2.4 Based on the decision of the Talgar district court⁶ of 6 September 2011, the author was released from the hospital and registered in the Balkhash psychiatric centre for compulsory “dynamic monitoring”⁷ and outpatient treatment as of 27 September 2011.

Episode 2 of forced hospitalization

2.5 Following a visit to the Balkhash psychiatric centre with her sister on 12 December 2011, a medical commission decided to have the author forcibly hospitalized and treated since she had not taken the medication prescribed to her, her mental health had deteriorated and the commission held that she could constitute a threat to others. The author was kept in the psychiatric facility for two weeks and was released on 29 December 2011. On 4 January 2012, the author lodged a complaint with the Balkhash city prosecutor’s office against the Deputy Chief Medical Officer, claiming that he had forced her to write a statement that she had stayed voluntarily in the psychiatric facility for treatment. The author appealed her forced psychiatric hospitalization to the Balkhash city court, but to no avail. Further appeals remained unsuccessful.

Episode 3 of forced hospitalization

2.6 On 31 January 2012, within the supervisory review proceedings, the Supreme Court quashed the Balkhash city court’s decision of 5 August 2010 and the Karaganda regional

² The court decision states that this decision can be appealed within three days.

³ According to the author, this norm was excluded from the Criminal Procedure Code on 10 December 2009.

⁴ Following the psychiatric examination of 2 April 2010, it was recommended to conduct regular inpatient psychiatric examinations. A second examination was conducted on 7 July 2010.

⁵ The Committee takes note of the terminology used by the Committee on the Rights of Persons with Disabilities, which refers rather to intellectual or psychosocial disability, but here and elsewhere the Human Rights Committee cites the wording used by the author and the State party in their submissions (indicated by quotation marks).

⁶ The procedure was initiated by the Chief Medical Officer of the prison mental hospital in Aktas.

⁷ Dynamic monitoring is defined in the Public Health and Health-Care Code as the systematic monitoring of the state of public health, as well as the provision of necessary medical care based on the results of that observation. See also para. 4.6 below.

court's decision of 2 November 2010, stating, inter alia, that the author had not committed violent acts and did not constitute a threat to herself or to others, and ordered a review of the case.

2.7 From 8 May to 6 June 2012, the author was subjected to another forced hospitalization for compulsory inpatient psychiatric examination in Almaty, according to the decision of the Balkhash city court of 27 March 2012. The medical experts concluded that the author suffered from chronic delusional disorder, but that she did not constitute a threat to herself or to others.

2.8 On 26 July 2012, the Balkhash city court released the author of criminal responsibility on the charges under article 351 (2) of the Criminal Code and cancelled the order for her forced psychiatric treatment. The court noted that the law had been violated in the conduct of the previous examination,⁸ and that the court had subsequently taken an unlawful decision about the necessity of the author's hospitalization. On 3 August 2012, the author appealed against the Balkhash city court decision of 26 July 2012, requesting a new decision on the termination of the proceedings to be issued, stipulating the lack of evidence and of a corpus delicti and the recognition of the right to rehabilitation. On 16 October 2012, on appeal, the Karaganda regional court amended the decision of 26 July 2012, having taken into consideration the author's arguments. The prosecutor of the Karaganda Region lodged a cassation appeal against the revised court decision. On 25 December 2012, on cassation, the Karaganda regional court found for the prosecution on appeal, and amended the decision of 16 October 2012 to indicate that the author's actions constituted a crime. On 27 May 2013, the Supreme Court rejected the request to initiate supervisory review proceedings.

2.9 On 13 September 2012, on the cassation appeal of the author, the Almaty regional court quashed the decision of the Talgar district court of 6 September 2011 concerning the author's forced psychiatric observation and treatment, as the decision of the Balkhash city court of 26 July 2012 had entered into force. On 27 September 2012, the author requested that her name be taken off the register of the Balkhash psychiatric centre, but to no avail.

2.10 On 5 June 2013, the author lodged an appeal with the Balkhash city prosecutor against her forced psychiatric hospitalization, since the measures of compulsory treatment had been lifted on 13 September 2012.⁹

Episode 4 of forced hospitalization

2.11 On 9 August 2013, the author was forcefully taken by two male nurses and two police officers¹⁰ to a clinic in Balkhash where she was subjected to medical treatment. In this context, the author was hit in the leg and head. The author's neighbours saw her being forced, half-naked, into a car. Acting upon the Balkhash city prosecutor's request of 12 August 2013 made on the basis of the medical expert commission's opinion of 9 August 2013, on 20 August 2013 the Balkhash city court ordered the author's forced psychiatric hospitalization and treatment. On 17 September 2013, the author was forced to undergo another compulsory psychiatric examination. On 19 September 2013, the Balkhash city prosecutor ordered another compulsory psychiatric examination.¹¹ The author lodged complaints of torture and inhuman and degrading treatment with the courts and the prosecutors, but to no avail.¹² The 20 August 2013 Balkhash city court ruling was upheld by the Karaganda regional court on 3 December 2013 on appeal and on 14 February 2014 on cassation. On 22 May 2014, the Supreme Court rejected the author's request to initiate supervisory review proceedings concerning her forced psychiatric hospitalization of 9 August 2013. The applications of the author's counsel requesting the author's presence in

⁸ On 26 July 2012, the Balkhash city court issued a specific ruling concerning the experts that had examined the author in 2010, finding that they had engaged in incorrect behaviour and violations of the law during the examination.

⁹ The author did not provide any information about the result of that appeal.

¹⁰ In another part of the communication the author states that four police officers, two male nurses, two female nurses and one doctor broke into her flat.

¹¹ The examination resulted in the compulsory psychiatric examination report of 1 November 2013. According to the information received from the author, the order for the examination came two days after the examination took place.

¹² The author did not provide more information in this regard.

the courtroom were rejected by all instances. The author was released from the clinic on 1 November 2013.

2.12 The author submits that, on 2 September 2013, as a result of a complaint lodged on her behalf, an unscheduled inspection of the Medical and Pharmaceutical Oversight Committee had established that she was not in need of forced psychiatric treatment.

Episode 5 of forced hospitalization

2.13 On 2 July 2014, the author was forcefully taken from her home by six men in civilian clothes who acted aggressively towards her and her two grandchildren. Concerned about her whereabouts, the author's relatives had to seek information from the Balkhash city prosecutor's office. The relatives were informed that the author had been hospitalized in a psychiatric medical facility in Balkhash city. On 1 August 2014, the medical commission of the psychiatric facility took a decision about the author's continued hospitalization. The author was subjected to intensive treatment. The author's sister lodged a complaint with the prosecutor on her behalf, alleging torture and inhuman and degrading treatment, but the complaint was rejected as no acts of torture were established. The author was released on 16 December 2014. She did not appeal her forced hospitalization as she was threatened with continued hospitalization if she complained.¹³

2.14 From the moment of her release on 16 December 2014, the author remained under an obligation to visit the hospital on a daily basis for check-ups. The author claims that all of her forced psychiatric hospitalizations were unlawful and, on two occasions, in May 2012 and in August 2013, she had not been allowed to see her lawyer when she was in the psychiatric facility. Every time the author complained about her forced hospitalization, her internment in the psychiatric facility was extended.

2.15 In total, the author was involuntarily interned in a psychiatric facility and forced to undergo psychiatric treatment for an alleged "delusional disorder" on five occasions: from 12 January to 22 September 2011 (eight months and 10 days); from 12 to 29 December 2011 (17 days); from 8 May to 6 June 2012 (30 days); from 9 August to 1 November 2013 (two months and 22 days); and from 2 July to 16 December 2014 (five months and 14 days). On two occasions, visits to the author were prohibited and she could not receive the parcels sent to her. Also, the author was repeatedly pursued by the medical personnel through undesired phone calls and visits to her home.

2.16 The author notes that, in total, six medical expert opinions were conducted with the aim of verifying her mental health. This includes two independent psychiatric examinations¹⁴ initiated by the author, undertaken from 25 to 27 September 2012 and on 30 November 2013, which revealed that she was "mentally fit" and that she had been subjected to torture and degrading treatment. However, these independent expert opinions were ignored by the courts.

2.17 The author appealed the conclusions of the psychiatric experts' reports. However, the courts refused to consider these complaints, citing different reasons each time.

The complaint

3.1 The author claims that the State party has violated her rights under articles 7, 9 and 14, read alone and in conjunction with article 2, and articles 18 and 19, of the Covenant. She contends that her forced internment in a psychiatric hospital and treatment there on five occasions, aimed at preventing her from submitting complaints and also to punish her for appealing to the President and for defending herself; the humiliating and cruel treatment she received during her apprehension in her home; the physical violence inflicted upon her on 9 August 2013 and on 2 July 2014; the prohibition of visits and on the delivery of parcels while she was in the psychiatric facility; the threats and pressure she was subjected to by

¹³ On 22 August 2014, the author's sister appealed to the Balkhash city prosecutor to open criminal proceedings for torture and unlawful commitment to a psychiatric facility. On 4 September 2014, the prosecutor's office forwarded the application to the director of the Ministry of Health's Medical and Pharmaceutical Oversight Committee for the Karaganda Region. On 10 September 2014, the prosecutor rejected the application due to a lack of grounds to initiate a criminal case.

¹⁴ The examinations of the author were conducted by the independent psychiatrists, Professor K.A. Idrisov and "candidate of medical science" S.N. Molchanov.

the medical personnel of the psychiatric facilities; and the refusal to allow her to put on record her injuries after her forced apprehension in her home,¹⁵ amount to violations under article 7 of the Covenant.

3.2 The author claims that she could not appeal her arrest in 2010, that she was kept in detention for five months (12 August 2010–12 January 2011) without the sanction of a court and that she was forcefully hospitalized for 11 days (9–20 August 2013) without being brought promptly before a judge, in violation of article 9 of the Covenant. Furthermore, she contends that her unlawful apprehension on 9 August 2013 and her forced internment in a psychiatric facility and treatment there on five occasions, with the aim of punishing her for protecting her rights and for having appealed to the President of Kazakhstan, amount to a violation of her rights under article 9 of the Covenant.

3.3 The author also claims that her fair trial and due process guarantees and rights under article 14 (1) of the Covenant were violated, among other things, due to the fact that the wife of the presiding judge appeared as a prosecutor's witness in the criminal proceeding against her, but the judge did not recuse himself; that the author did not receive a new indictment act when the charges against her were changed from article 351 (1) to article 351 (2); that the court did not take into account two independent psychiatric experts' reports on the author's "mental" state; and that the court did not allow her to have her trial videorecorded as a guarantee of a fair and public hearing. The author's forced psychiatric hospitalization was also in breach of her right to be presumed innocent under article 14 (2). The author was forced to abandon her own defence and on two occasions her counsel was not allowed to assist her, in breach of article 14 (3) (d).

3.4 The impossibility of appeal against her unlawful arrest, the arbitrary denial of access to cassation appeal and supervisory review of the unlawful acts of the Deputy Chief Medical Officer and the impossibility of appeal against the actions of the medical experts and the diagnosis of chronic delusional disorder amount to a violation of the author's rights under article 14, read in conjunction with article 2 of the Covenant.

3.5 The author further claims that her rights under articles 18 and 19 of the Covenant were violated, since she was forcibly interned in psychiatric facilities in order to silence her and to prohibit her from defending her rights and those of other people.

3.6 The author requests the Committee to urge the State party to ensure her freedom and security; to ensure that the decisions of the Karaganda regional court of 25 December and 16 October 2012 and the decision of the Almaty city court of 1 February 2012¹⁶ are reconsidered; to ensure that she receives fair compensation and rehabilitation; to ensure that the State party conducts a full investigation of all her torture allegations; to ensure that all people can enjoy their rights enshrined in articles 2, 7, 9, 14, 18 and 19 of the Covenant; and to ensure that forced hospitalization on a discriminatory and arbitrary basis is prohibited.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 3 July 2017, the State party submitted its observations on admissibility and the merits and requested that the communication be declared inadmissible as unsubstantiated.

4.2 The State party reiterates the facts of the criminal prosecution against the author and submits that the author was charged with "knowingly false denunciation" under article 351 (2) of the Criminal Code. On 12 February 2010, the court decided to replace the ban against the author's leaving the city with an order for her arrest, as the author was obstructing the criminal proceedings, she refused to provide the court with her identity papers, she disrespected the court by threatening to start a hunger strike and riot, and she exerted a negative influence on the other participants of the proceedings.

4.3 The State party notes that the court ordered a compulsory psychiatric examination of the author on 26 February 2010. According to the psychiatric experts' report of 2 April 2010, in order to respond to all the questions put before the experts, it was recommended to

¹⁵ The author did not provide more information about the arrest in her home and the injuries received.

¹⁶ The author cites the date of the Almaty city court decision as 1 February 2012, although in other parts of the complaint she mentions a date of 1 February 2013.

hold an inpatient forensic psychiatric observation in the psychiatric facility in Almaty. On 7 May 2010, the court ordered the author's inpatient forensic psychiatric examination. In the report of the examination of 7 July 2010, experts concluded that the author was suffering from a chronic "mental disease", identified as chronic delusional disorder,¹⁷ and recommended compulsory psychiatric treatment. On 5 August 2010, the Balkhash city court found the author "mentally unfit" to stand trial and ordered her forced psychiatric hospitalization and treatment. On 2 November 2010, the Karaganda regional court confirmed this decision on appeal. On 6 September 2011, the Talgar regional court replaced the order for the author's compulsory psychiatric treatment with compulsory outpatient supervision and treatment at her place of residence, Balkhash city. This court decision was not appealed.

4.4 On 27 September 2011, the author was registered in the psychiatric medical centre in the city of Balkhash for regular medical observation and treatment. However, only on 12 December 2011 did the author go for the first time to the psychiatric medical centre for a review. The medical commission, consisting of four doctors, concluded that the state of the author's mental health had deteriorated and that compulsory hospitalization was necessary.¹⁸ The State party submits that the legality of the author's internment at the psychiatric facility was reviewed by the Ministry of Health's Medical and Pharmaceutical Oversight Committee for the Karaganda Region,¹⁹ and no violations were revealed. On 5 January 2012, the author was released from the psychiatric facility with consequent outpatient observation and treatment by a local psychiatrist. The author visited the psychiatrist three times (on 17 and 27 January and 7 February 2012).

4.5 The State party notes that, on 12 October 2012, the Balkhash city court rejected the author's complaint against the Deputy Chief Medical Officer regarding her forced hospitalization from 12 to 29 December 2011. Both appeal and cassation complaints were also rejected on the grounds that the author's hospitalization had been lawful and medically necessary, and that the Deputy Chief Medical Officer had acted according to the law.

4.6 The State party submits that, according to article 124 of the Public Health and Health-Care Code (Health-Care Code), "dynamic monitoring" may be ordered without the consent of a person with a "mental disorder", and includes monitoring of the person's mental health by means of regular examinations by a psychiatrist and provision of necessary medical and social assistance. Taking into account the author's diagnosis, the psychiatric medical centre kept a register of her scheduled regular visits to a psychiatrist and for treatment. However, since 7 February 2012, the author has not complied with those requirements.

4.7 The State party relates that, after numerous attempts to contact the author by the psychiatric facility personnel, it was assumed that her state had worsened, so the decision to bring the author to the psychiatric facility was taken. On 9 August 2013, the author was brought to the psychiatric facility for examination by personnel of the facility, with the assistance of two police officers.²⁰ The medical commission took a decision that the author needed to be hospitalized because she had persecutory delusions and engaged in unceasing complaint and litigation activities. The State party submits that, according to article 125 (1.1) of the Health-Care Code, forced internment in a psychiatric facility before a court decision is only possible in relation to people having severe "mental diseases".²¹ In such cases, the psychiatric facility is required to inform a prosecutor within 48 hours from the moment of a person's forced internment. The Balkhash city prosecutor's office was informed on 9 August 2013; later on, a request for the forced hospitalization of the author was filed with the Balkhash city court, which approved the request on 20 August 2013. All the author's appeals were rejected by the courts. In addition, upon the request of the

¹⁷ The State party claims that according to the International Classification of Diseases chronic ("persistent") delusional disorder is a part of the bigger group "schizophrenia", and is considered to be a severe psychological disease.

¹⁸ The State party notes that article 94 (providing medical care without consent) of the health code provides for medical care to be provided without consent, inter alia, when a person suffers from a severe mental disorder or from a mental disorder and has committed a socially dangerous act.

¹⁹ The review took place from 27 to 30 December 2011.

²⁰ According to article 127 of the Health-Care Code, the police must assist medical personnel in cases of forced psychiatric examination and hospitalization.

²¹ See Health-Care Code, art. 94 (1.2)–(1.4).

author's sister, the Ministry of Health's Medical and Pharmaceutical Oversight Committee for the Karaganda Region conducted a review of the internment and concluded that the author's hospitalization was lawful.²² Also, within the review by the Balkhash city prosecutor's office on 19 September 2013, another forensic psychiatric examination with the participation of a psychologist of the medical centre for mental health in Astana was ordered to assess the lawfulness of the author's hospitalization. In their report of 1 November 2013, the experts concluded that the forced hospitalization had been necessary and lawful. On 5 November 2013, the author was released from the psychiatric facility in Astana, but did not return to the psychiatric medical centre in Balkhash for further outpatient treatment.

4.8 In spite of the decision of the Balkhash city court of 20 August 2013 regarding her compulsory hospitalization and treatment, the State party submits that the author went into hiding and did not fulfil the obligations of her compulsory treatment. On 2 July 2014, she was taken to a psychiatric facility by its personnel and police officers. On the same date, the author was subjected to a psychiatric examination without her consent, in accordance with article 123 (5) (3) of the Health-Care Code.²³ A decision on the author's forced hospitalization was subsequently taken in accordance with article 125 (1-1) of the Health-Care Code.

4.9 The State party claims that, in response to the numerous requests from the author and several public associations, the Ministry of Health's Medical and Pharmaceutical Oversight Committee for the Karaganda Region, in addition to an independent expert, N.A. Negay, and the institutional experts, conducted a review of the author's hospitalization at the psychiatric facility in Balkhash city and concluded that it had been lawful.²⁴

4.10 In relation to the alleged violation of article 7 of the Covenant, the State party notes that, according to article 41 (2) of the Law on Forensic Expertise,²⁵ the parties to a trial cannot participate in the forensic psychiatric expert evaluation of a living person, as the expert procedure must be conducted confidentially. Accordingly, the representatives of the author were not allowed to be present during the forensic psychiatric expert procedure according to law.

4.11 The State party submits that the inpatient comprehensive forensic psychiatric examinations of 7 July 2010, 5 June 2012 and 1 November 2013 were conducted according to the law with the aim of clarifying and monitoring the author's mental state and diagnosis.

4.12 The State party claims that the opinions of two independent experts provided by the author (opinions of K.A. Idrisov of 27 September 2012 and S.N. Molchanov of 30 November 2013) were examined by all the relevant courts; however, the courts found that the photocopies of the expert opinions were misleading evidence, since the expert evaluation had been conducted by one expert and not an expert commission. Also, Mr. Molchanov's credentials as an expert in the field of psychiatry had not been proven.

4.13 The State party submits that the author's allegations that she was forcibly and violently taken from her home by two male nurses and two police officers on 9 August 2013 were investigated by the police of Balkhash city, and no reasons for the initiation of a criminal case were found. The allegations were also considered within the civil case initiated by the Balkhash city prosecutor's office. The author made no statement regarding the violence against her from the male nurses or the police officers; it was the author's sister who claimed the acts of violence against her sister. However, the author's sister had not seen the event and was not present at the time of the arrest. Thus, the author's allegations in that regard are not substantiated.

²² Review report of 19 September 2013.

²³ Psychiatric examination of a person may be conducted without a person's consent or without the consent of a person's legal representative when the actions of the examined person give reason to believe that he or she has a severe "mental disorder (disease)", which will cause substantial harm to his or her health if left without mental health care.

²⁴ Another review was conducted by the Ministry of Health's Medical and Pharmaceutical Oversight Committee for Karaganda Region during the period from 23 September to 15 October 2016 and the same conclusion was reached.

²⁵ This law was in force until 10 February 2017.

4.14 The State party explains that the court decision of 12 February 2010 replacing the travel ban imposed on the author with an arrest was not considered by the appeal court.

4.15 On 5 August 2010, the criminal charges against the author were lifted by the Balkhash city court and she was released from arrest. At the same time, the court ordered her hospitalization and inpatient treatment, and she remained hospitalized until 22 September 2011. On 6 September 2011, the Talgar district court replaced the forced treatment in the psychiatric facility with compulsory outpatient observation in Balkhash city. This decision was not appealed and entered into force. According to it, on 27 September 2011, the author was registered in the Balkhash psychiatric centre for compulsory observation and treatment. The State party claims that all subsequent compulsory medical examinations and hospitalization were conducted according to the Health-Care Code and the courts' decisions.

4.16 The State party submits that the author did not substantiate her claim that Judge Bashanov had no right to consider her case since his wife was a prosecution witness. Moreover, if that were the case, the author could have asked for the judge to recuse himself, but she had not done so.

4.17 The State party states that the author's claim that she could not appeal the actions of the Deputy Chief Medical Officer to the court of cassation are not substantiated since, on 27 September 2013, the Karaganda regional court considered the cassation appeal of the author against the Deputy Chief Medical Officer. The court agreed with the decisions of the first instance court and the court of appeal and rejected the complaint.

4.18 In relation to the author's claim that she could not appeal the medical experts' actions, the State party submits that all the expert forensic psychiatric reports were assessed by the courts. In addition, the Ministry of Health's Medical and Pharmaceutical Oversight Committee for the Karaganda Region reviewed the expert examination of the author.

4.19 Regarding the alleged violations of the author's rights under articles 18 and 19 of the Covenant, the State party notes that all citizens of Kazakhstan enjoy their rights equally, including human rights defenders. According to the available information, the author does not conduct any public, human rights or advocate activity. She is a civil law lawyer. Thus, her claims that she was subjected to compulsory treatment because of her human rights activities are unsubstantiated. She was subjected to compulsory hospitalization and treatment based on the medical experts' conclusion and the courts' decisions. Thus, the State party claims that the author's communication is not substantiated.

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

5.1 On 14 September 2017, the author provided comments to the State party's observations. The author recalls the facts of the criminal case against her.

5.2 She claims that chronic delusional disorder does not belong to the group "schizophrenia" and that is why her diagnosis is dubious. She also claims that people having such severe diseases receive a disability status, which is not her case. She also submits that she was not able to obtain a medical commission's decision about her registration for observation and treatment in the Balkhash psychiatric centre; thus, she could not appeal this decision.

5.3 The author states that she did not appeal the Talgar district court decision of 6 September 2011 because she had no decision on hand. However, she filed a cassation complaint. The Almaty regional court quashed the decision since another decision of the Balkhash city court of 26 July 2012 had entered into force. This decision cancelled the order for the author's compulsory treatment; however, in spite of this, she was subjected to compulsory hospitalization in 2013 and 2014. The author recalls that her further hospitalization and treatment were compulsory even though there were court decisions that she did not pose a danger to herself or to others.

5.4 The author claims that, during the hearing on 20 August 2013, she brought before the Balkhash city court her claims regarding the violence committed against her on 9 August 2013. She further disagrees with the statement of the State party that there was an investigative review of the event of 9 August 2013, since the review in question was conducted in reference to a complaint initiated by another person.

5.5 The author also claims that she sought the recusal of Judge Bashanov, but that her motion was simply ignored.²⁶

5.6 The author submits that she could not challenge the manner in which the psychiatric expert examination was carried out but only the result of the examination, namely her diagnosis. All her complaints were rejected.

5.7 The author claims that she is an advocate and a human rights defender, which is proved by her complaints.

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 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 that the State party has not contested that the domestic remedies have been exhausted. Accordingly, the Committee finds that it is not precluded by article 5 (2) (b) from examining the present communication.

6.4 The Committee notes the author's claim that her rights under article 7 of the Covenant have been violated, based on a number of elements, including that her lawyer was not allowed to visit her on two occasions and she was not permitted to receive parcels during her hospitalization in a psychiatric facility; that she was threatened and pressured by the medical personnel of psychiatric facilities; and her request to have her injuries recorded after her forced apprehension was refused. In the absence of any other pertinent information in respect of these particular allegations, however, the Committee considers the author has failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee also notes the author's claim that her rights under article 9 of the Covenant have been violated for a number of reasons, including the impossibility of appealing the decision to replace the travel ban with an arrest; the author's detention for five months (12 August 2010–12 January 2011) without the sanction of a court; and the author's forced hospitalization on 8 May 2012 and 2 July 2014. In the absence of corroborating evidence or further explanations, the Committee considers the author has failed to sufficiently substantiate these particular parts of the claim of a violation of article 9 for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee further notes the author's claim that her rights under article 14 of the Covenant have been violated because she could not appeal against her unlawful arrest; she was arbitrarily denied access to cassation appeal and supervisory review of the unlawful acts of the Deputy Chief Medical Officer; and she could not appeal the acts of the expert witnesses and her diagnosis of chronic delusional disorder. Furthermore, the Committee notes the author's claim that her rights under article 14 (1) of the Covenant have been violated because in one court hearing the wife of the judge was a witness for the prosecution and the judge did not recuse himself, despite her request; the courts did not take into account the independent experts' reports; the courts only satisfied the motions of the prosecution; and the court refused to videorecord the trial held in a psychiatric facility. In the light of the information available, the Committee considers that, in the present case, the author has failed to demonstrate that the alleged "lack of access to appeal", "bias" or "lack of equality of arms" reached the threshold for arbitrariness, or amounted to a denial of justice. In the absence of any other pertinent information in that respect, the Committee considers the author has failed to sufficiently substantiate that claims for purposes of

²⁶ The author refers to the court decision on the author's arrest of 12 September 2013, in which it was merely stated that the author made several "unsubstantiated claims and challenges".

admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes the author's claim that her rights under article 14 (3) (a) of the Covenant have been violated because she did not receive a new indictment act when the charges were changed from article 351 (1) to article 351 (2). The Committee also notes the author's claim that her rights under article 14 (3) (d) of the Covenant have been violated because she was prevented from presenting her own defence; and that, on two occasions, her counsel was not allowed to take part during the medical examination of the author and to visit the author in the psychiatric facility. The Committee finds that the communication does not contain sufficient factual evidence and legal arguments to support these claims. In the absence of any other pertinent information in that respect, the Committee considers the author has failed to sufficiently substantiate these claims for the purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes the author's claim that her rights under article 14 (2) of the Covenant have been violated because she was forcefully hospitalized when the fact that she had committed a crime was not proven. The Committee finds that claim incompatible with the provisions of the Covenant, since it does not fall within the scope of article 14 (2) and the facts as described by the author raise substantive issues under article 9 of the Covenant. Accordingly, it concludes that this part of the communication is inadmissible under article 3 of the Optional Protocol.

6.9 The Committee notes the author's claim that her rights under articles 18 and 19 of the Covenant have been violated because she was forcibly hospitalized and treated to stop her from enjoying her rights under these provisions. In the absence of any other pertinent information on file in that respect, however, the Committee considers the author has failed to sufficiently substantiate these claims for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.10 The Committee takes note of the author's submission that the State party violated its obligations under articles 7 and 9, read alone and in conjunction with article 2, of the Covenant. The Committee considers that the provisions of article 2 cannot be invoked in a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.²⁷ However, the author failed to exhibit the direct interrelation between the violation of her rights under articles 7 and 9, and the lack of observation of article 2 of the Covenant. In the absence of any other pertinent information in that respect, the Committee considers the author has failed to sufficiently substantiate these claims for purposes of admissibility. Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.11 The Committee considers that the author has sufficiently substantiated her remaining claims raising issues under articles 7 and 9 of the Covenant for the purposes of admissibility, in particular, the author's involuntary apprehension, committal to a psychiatric hospital and forced medical treatment from 12 January to 22 September 2011, from 12 to 29 December 2011 and from 9 August to 1 November 2013. Accordingly, it declares these claims admissible and proceeds with a consideration of the merits.

Consideration of the merits

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

²⁷ See *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Juan Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4. See also *Poliakov v. Belarus* (CCPR/C/111/D/2103/2011), para. 7.4.

7.2 The Committee notes the author's claims that her forced hospitalization and detention in a psychiatric hospital on three occasions (on 12 January 2011, on 12 December 2011 and on 9 August 2013) violated her rights under article 9 of the Covenant.

7.3 The Committee recalls that commitment to and treatment in a psychiatric institution against the will of a patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant.²⁸ It further recalls that article 9 (1) requires that deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, that is, deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests and detentions may be both arbitrary and unlawful.²⁹ Furthermore, it recalls that the notion of arbitrariness is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.³⁰

7.4 While acknowledging that States may deem an individual's mental health to be impaired to such an extent that, in order to avoid harm to the individual or others, the issuance of a committal order is unavoidable,³¹ the Committee considers that involuntary hospitalization can only be applied, if at all, as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law.³² The procedures should ensure respect for the views of the individual and should ensure that any representative genuinely represents and defends the wishes and interests of the individual.³³

7.5 The Committee notes the author's allegations that she was involuntarily apprehended and hospitalized (three times for more than 15 months in total) in order to punish her for protecting her rights and the appeal to the President of Kazakhstan, in violation of the national legislation and without a court order.

7.6 The Committee observes the author's submissions that, on 25 September 2009, she was charged with "knowingly false denunciation" under article 351 of the Criminal Code. Subsequently, despite the author's objections, two compulsory psychiatric examinations were ordered by the Balkhash city court, which resulted in the conclusion that the author suffered from chronic delusional disorder. The Committee notes that, on 5 August 2010, the Balkhash city court found the author "mentally unfit" to stand trial and ordered her forced psychiatric inpatient hospitalization and treatment. On 2 November 2010, the Karaganda regional court confirmed that decision on appeal.

7.7 The Committee observes the author's submissions that, on 31 January 2012, the Supreme Court quashed the above-mentioned court decisions as the courts had violated the law regulating the application of the compulsory medical measures to the author and had sent the case back for reconsideration. In the context of its reconsideration of the case, the Balkhash city court ordered a new psychiatric examination of the author, which confirmed the previous diagnosis and found her unfit to stand trial but did not find that the author had committed violent acts and constituted a threat to herself or others. On 26 July 2012, the Balkhash city court concluded that the expert examination of 7 July 2010 had been conducted in a manner that violated the law and it did not include any conclusion that the author constituted a threat to herself or others. Thus, the court found the author unfit to stand trial based on her diagnosis but decided not to apply the compulsory medical measures.

7.8 The Committee also notes the State party's observation that the Balkhash city court took a decision to order the author's compulsory treatment in a psychiatric institution based on the results of the conclusions of two expert psychiatric examinations. However, on 31

²⁸ See, for example, *A. v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.2; and *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), para. 8.2.

²⁹ See the Committee's general comment No. 35 (2014) on liberty and security of person, paras. 10–11.

³⁰ *Ibid.*, para. 12. See also, for example, *M.G.C. v. Australia* (CCPR/C/113/D/1875/2009), para. 11.5.

³¹ See *Fijalkowska v. Poland*, para. 8.3.

³² See general comment No. 35, para. 19. See also *Fijalkowska v. Poland*, para. 8.3.

³³ See general comment No. 35, para. 19; and CCPR/C/CZE/CO/2, para. 14. See also Committee on the Rights of the Child, general comment No. 9 (2006) on the rights of children with disabilities, para. 48.

January 2012, that decision was quashed by the Supreme Court and, on 26 July 2012, the Balkhash city court, during a new hearing of the author's case, while it found the author unfit to stand trial based on the new psychiatric expert examination, had also decided against compulsory medical measures.

7.9 The Committee observes the author's submissions that, on 12 December 2011, when she went to the Balkhash psychiatric facility to speak with them, she was apprehended and forcefully hospitalized based on the conclusion of the medical commission that she constituted a threat to others. She was subsequently kept in the clinic for two weeks without any court decision in this regard.

7.10 The Committee also notes the State party's response that the author's forced hospitalization and treatment during the period 12 December 2011 to 5 January 2012³⁴ was based on the court's decision of 6 September 2011 on forced outpatient compulsory treatment and the results of the medical commission's assessment of the author's state of mental health. When the author's state improved, she was released from the psychiatric facility.

7.11 The Committee further notes the author's submissions that, on 9 August 2013, she was violently taken from her home and forcefully hospitalized. The hospitalization was later approved by the Balkhash city court on 20 August 2013. The author appealed that decision, but to no avail.

7.12 The Committee notes the State party's observation that, while the author was under an order for "dynamic monitoring", she did not visit her doctor or take the prescribed treatment. Suspecting that the state of the author had deteriorated, the author was taken by force for a medical examination during which it was concluded that she needed to be hospitalized. All the requirements of the Health-Care Code were allegedly met and the prosecutor was informed accordingly. On 20 August 2013, the court satisfied the request of the prosecutor to subject the author to a forced hospitalization. This decision was upheld on appeal and cassation. Another psychiatric expert examination, of 1 November 2013, also confirmed the author's diagnosis. On 5 November 2013,³⁵ the author was discharged from the psychiatric facility.

7.13 The Committee notes that the author challenges the validity of her medical diagnosis, while the State party upholds its correctness. The Committee observes, however, that the State party has failed to present sufficient evidence in the present case to show that all the involuntary hospitalizations of the author were necessary for the purpose of protecting her from serious harm or preventing injury to others. It also observes that, even if the State party's diagnosis of the author were accepted, the existence of an intellectual and psychosocial disability may not in itself justify a deprivation of liberty. Rather, any deprivation of liberty in States parties that resort to involuntary hospitalization must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others.³⁶

7.14 In the light of the above, the Committee notes that the information and evidence submitted by the parties does not attest that the author constituted a threat to herself or to others. Furthermore, the Committee is concerned that the author was admitted to a psychiatric hospital several times even though she did not pose any danger whatsoever to herself or others and that, although this fact was established by the Balkhash court decision of 26 July 2012, the author was involuntarily hospitalized once again. The Committee notes that even though the right to liberty is not absolute,³⁷ detention of an individual is such a serious measure that it can be justified only where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest, which might require that the person concerned be detained.³⁸ For these reasons, the Committee finds that the authors' committal to the psychiatric hospital from 12 January to 22

³⁴ According to the author, she was released on 29 December 2011.

³⁵ According to the author, she was released on 1 November 2013.

³⁶ See *T.V. and A.G. v. Uzbekistan* (CCPR/C/116/D/2044/2011), para. 7.7; *Fijalkowska v. Poland*, para. 8.3; and *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.3. See also CCPR/C/RUS/CO/6, para. 19; and the Convention on the Rights of Persons with Disabilities, art. 14 (1) (b).

³⁷ See general comment No. 35, para. 10.

³⁸ See *T.V. and A.G. v. Uzbekistan*, para. 7.8.

September 2011, from 12 to 29 December 2011 and from 9 August to 1 November 2013, and her internment there for more than 15 months in total, was arbitrary under article 9 of the Covenant.

7.15 As regards the author's claim under article 7, the Committee has to evaluate whether the apprehension and forced hospitalizations amounted to inhuman and degrading treatment or punishment. The Committee observes that, while involuntary hospitalization may be applied as a measure of last resort and, at times, may be justified to protect the life and health of individuals, illegal and arbitrary committal to a hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment, within the meaning of article 7 of the Covenant.

7.16 The Committee notes the State party's submission in the present case that the author's committals to psychiatric hospitals were the result of the author's delusional ideas of persecution and litigation activities that reflected the deterioration of the author's health, and that she could constitute a threat to others, and the author's refusal to undergo outpatient medical treatment, which she did not agree with. The Committee also notes the undisputed fact that the author submitted numerous complaints and the author's claim that her forced psychiatric treatment was a form of punishment for this legal activity. The Committee further notes the decision of Balkhash city court of 26 July 2012, which found that the author was not dangerous to herself or to others and ordered that the author not be subject to any involuntary medical measures. The Committee here reiterates its conclusion that the author's three committals to psychiatric hospitals (on 12 January 2011, on 12 December 2011 and on 9 August 2013) were the result of arbitrary decisions and had no proper medical justification (see paras. 7.13–7.14 above). On the basis of the information available, the Committee also concludes that the decisions to commit the author to psychiatric hospitals several times, with forced apprehension from her home, caused her substantial anguish and mental suffering, including on the basis of persistent fear for her health and freedom.³⁹

7.17 Accordingly, the Committee is of the view that, in the present case, the author's involuntary apprehensions and hospitalizations for a total of more than 15 months and the subjection of the author to medical treatment despite her opposition, in view of the fact that she posed no risk of harm to herself or others, amounted to inhuman and degrading treatment or punishment, within the meaning of article 7 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 7 and 9 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors 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 take appropriate steps to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take all steps necessary 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 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 to have them widely disseminated in the official languages of the State party.

³⁹ Ibid, para. 7.12.