



# 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. 3252/2018\*, \*\*

<i>Communication submitted by:</i>	Dina Maslova (represented by counsels, Akmat Alagushev and Altnai Isaeva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kyrgyzstan
<i>Date of communication:</i>	30 August 2018 (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 26 December 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	13 October 2023
<i>Subject matter:</i>	Freedom of expression
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Restriction of freedom of expression
<i>Article of the Covenant:</i>	19 (2)
<i>Article of the Optional Protocol:</i>	None

1. The author of the communication is Dina Maslova, a national of Kyrgyzstan born in 1984. She claims that the State party has violated her rights under article 19 of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsels.

#### Facts as presented by the author

2.1 The author is a co-founder of the public foundation, ProMedia, and editor-in-chief of an Internet news portal *Zanoza*. On 30 March 2017, *Zanoza* published an article about a speech delivered by Ms. D., a human rights activist and former deputy of the Kyrgyz parliament, at a public round-table event on the theme of the right to peaceful assembly and freedom of speech. The article, entitled "Ms. D.: time to reprimand a person with manic tendencies", partially reproduced Ms. D.'s speech, in which she criticized the then President of Kyrgyzstan, Almazbek Atambaev. Ms. D. stated that the President was abusing the law to

\* Adopted by the Committee at its 139th session (9 October–3 November 2023).

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



unfairly target the media and cited instances of violence against protesters, torture and other human rights violations. The article both paraphrased and directly quoted Ms. D.'s speech, referring to the "flagrant and systematic violations of human rights in the country", the need to stop an individual with "manic tendencies" and an assertion that "the mass media [had become] hostage to a person who has a desire to take revenge". The article did not contain the opinions of or editorial remarks by journalists.

2.2 On 20 April 2017, the Prosecutor General, relying on the provisions of article 4 of the Act on the Guarantees of Activities of the President of Kyrgyzstan and article 18 of the Civil Code, which guarantees protection of a person's honour, dignity and professional reputation, filed a civil suit for the protection of the honour and dignity of the President. The suit was filed against Ms. D., ProMedia and its founders, Mr. I. and the author. In his submission, the Prosecutor General relied on the findings of a linguistics expert to the effect that Ms. D.'s statements were offensive, portrayed the President in a negative light and contained defamatory content that "violated his honour and dignity". The expert did not examine the actual article published on the *Zanoza* website but based the analysis solely on a transcript and video recording of Ms. D.'s speech. The Prosecutor further alleged that Ms. D. had accused the President of breaking the law and committing a crime of abuse of authority by stating that he facilitated persecution of journalists and the media, and had alleged that the President "forced" the new Constitution on the citizens, even though it had been adopted through a lawful procedure. As for the article, the prosecutor claimed that *Zanoza* knowingly spread unverified information to countless Internet users, aiming to defame the President.

2.3 On 26 April 2017, the Oktyabrsky District Court issued an injunction ordering ProMedia to remove the article from the *Zanoza* website and prohibiting the author from leaving the country. On 18 May 2017, the author appealed against the order, but on an unspecified date her appeal was rejected.<sup>1</sup>

2.4 On 30 June 2017, the Oktyabrsky District Court granted the Prosecutor General's request, based on the findings of the linguistics expert, and found that the title and content of the *Zanoza* article were untrue and discredited the honour, dignity and professional reputation of the President. The District Court further noted that the act on the mass media obliges journalists to ensure the accuracy of the information that is disseminated. If there are violations of the act, the responsibility extends to the founder of the media outlet, the editor and person sharing information. The District Court did not further elaborate on how the *Zanoza* article violated the above-mentioned provisions. The court ordered ProMedia to remove the article from the *Zanoza* website and the author and other defendants to pay non-pecuniary damages in the amount of 3 million soms each (approximately 38,000 euros on the day of the judgment).

2.5 On 17 August 2017, the Bishkek City Court upheld the decision of the district court on appeal. The City Court concluded that the expert's findings were sufficient to establish the defamatory nature of Ms. D.'s statements. The court also noted that the article distorted some parts of Ms. D.'s speech, in particular the title of the article and one phrase: "A person with manic tendencies cannot terrorize six million people like this. He is dragging us into a civil war. Maniacs should be warned that he is one and we are many". In addition, the defendants could not prove that the statements in question were true, while it was their duty to verify the credibility of the information. Since the author of the article was unknown, the founders of ProMedia should be held liable for its publication on the *Zanoza* website. On 30 November 2017, the Supreme Court of Kyrgyzstan rejected the author's cassation appeal.

### **Complaint**

3.1 The author claims that the proceedings in the domestic courts were unfair and that their decisions constituted a restriction of her right to freedom of expression, guaranteed by article 19 of the Covenant. She further claims that the restriction was not provided by law and was neither necessary in a democratic society, nor proportionate to the aim pursued.

3.2 First, the author argues that any prosecution of a journalist for facilitating the dissemination of statements made by another person would seriously reduce the contribution

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<sup>1</sup> The author did not provide the text of the appeal or the date of the court decision.

of the press to discussion of the public interest and should be reserved for exceptional situations. Article 26 of the act on the mass media provides for an exemption of the mass media from liability for disseminating untrue information, “if such information is a verbatim reproduction of a public speech”. The author alleges that since the domestic courts failed to apply that provision, the restriction on her right to freedom of expression was not provided for by law.

3.3 Furthermore, the author claims that the courts have failed to consider her case in the light of the standards applicable to freedom of expression, to conduct a balancing exercise between protection of the rights of a public figure and the right to freedom of expression through the right to share information of public interest. In particular, the courts did not consider that public figures, especially heads of State, should be subject to the highest level of scrutiny.<sup>2</sup> Additionally, the courts have disregarded the fact that the article was a contribution to a public debate and concerned matters of public interest. Thus, the restriction of her rights was not necessary in a democratic society. The author also claims that the amount of non-pecuniary damages imposed on her was excessive and thus the restriction was not proportionate to the legitimate aim pursued.

3.4 The author also emphasizes that the present communication should be viewed within the broader context of a significantly deteriorating situation for the right to freedom of expression in Kyrgyzstan, and in the light of the widespread application of restrictive legislation on the right to freedom of expression. A number of other journalists and editors-in-chief were sued by the Prosecutor General under the Act on the Guarantees of Activities of the President of Kyrgyzstan for several thousand dollars in non-pecuniary damages in favour of the then President.<sup>3</sup> The author also refers to numerous reports stating that the independent media, human rights defenders and civil society in Kyrgyzstan are facing serious consequences for exercising the right to freedom of expression.<sup>4</sup>

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

4.1 In a note verbale, dated 26 February 2019, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party confirms the author’s description of the events but underscores certain aspects. As to the application of the injunctive measures, the State party asserts that they were provided by law and, as the author’s job implies a lot of travelling, it was deemed appropriate to impose a travel ban for the duration of the court proceedings.

4.3 The State party further submits that the examination by the linguistics expert of the videotape and transcript of Ms. D.’s speech revealed that the speech contained emotionally expressive elements, irony and sarcasm. According to the expert’s report, by characterizing the President’s ethical and moral standards negatively, Ms. D. had undermined his status and tarnished his professional reputation and public image, degrading his honour and dignity. Furthermore, the State party points out that while the author argues that the article focused on issues of public interest, journalists bear a responsibility to verify information and its sources. The article distorted certain parts of Ms. D.’s speech and misrepresented some phrases as direct quotations, while they were not part of the speech. In particular, the State party refers to the title of the article and several phrases, including “A person with manic tendencies cannot terrorize 6 million people like this. He is dragging us into a civil war. Maniacs should be warned that he is one and we are many”.

<sup>2</sup> The author refers to European Court of Human Rights, *Bodrozoc and Vujan v. Serbia*, Application No. 38435/05, Judgment, 23 June 2009.

<sup>3</sup> The author refers to the 2015 report of the Organisation for Economic Co-operation and Development (OECD) and the Anti-Corruption Network for Eastern Europe and Central Asia on anti-corruption reforms in Kyrgyzstan, in which they recommended that the duty of the Prosecutor General to protect the honour and dignity of the President be abolished. Available from <https://www.oecd.org/corruption/anti-corruption-reforms-in-kyrgyzstan.htm>.

<sup>4</sup> The author refers to a number of reports, including one on the freedom of the press in Kyrgyzstan in 2017 and “Nations in transit 2017, Kyrgyzstan” issued by Freedom House; Reporters Without Borders, “Hour of truth for media freedom in Kyrgyzstan” (accessed on 16 January 2024); and Amnesty International *Report 2017/2018. The State of the World’s Human Rights*, pp. 231 and 232.

4.4 The State party concludes that the author's right to freedom of expression has been lawfully restricted, as it interfered with the former President's right to honour and reputation. Moreover, the State party notes that in 2018 the former President waived part of his claim for non-pecuniary damages.

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

5.1 On 8 and 11 July 2019, the author submitted comments on the State party's observations.

5.2 First, the author reiterates that the linguistics expert focused the examination on Ms. D.'s speech, not on the text of the article. The author argues that since the article only presented a partial and edited version of Ms. D.'s speech, the analysis of the speech cannot be directly extrapolated to cover the entirety of the text of the article. Furthermore, as the domestic courts relied extensively on the conclusions of the expert examination, it is apparent that the key legal findings as to the degrading and offensive nature of the speech were, in fact, made by the expert and were then merely reproduced in the judicial decisions.

5.3 Second, the author states that the article published on the *Zanoza* website did not replicate Ms. D.'s speech verbatim, but nor did it distort her statements. The author refers to paragraph 15 of the resolution of the Plenum of the Supreme Court of Kyrgyzstan "on judicial practice for the resolution of disputes on protection of honour, dignity and business reputation", pursuant to which a verbatim reproduction of public speeches may include quotations that differ slightly from the original statement, while retaining the content thereof. In addition, some of the phrases that were part of Ms. D.'s speech, which were considered problematic by the domestic courts and were also mentioned in the State party's observations, were not reproduced in the article. Furthermore, the domestic courts never assessed the accuracy of the content of the article in relation to the original speech.

5.4 Third, the author reiterates that the text of the article concerned a matter of public importance, namely open public debate on the human rights situation in Kyrgyzstan and legitimate criticism of the former President in connection with his official duties. The article was based on factual material, such as the information from a public round table on human rights and quotes from a public figure, Ms. D., who made statements during the round table. The factual nature of the material was not disputed and the prosecutor's claims focused mainly on the negative assessment of the former President's performance of his official duties.

5.5 The author notes that although the article contained statements by Ms. D. that were harsh, perhaps even shocking, they represented her analytical value judgment and being clearly subjective and evaluative, did not require verification. In any event, there was a sufficient factual basis for the contested allegations and a value judgment supported by facts cannot be considered excessive.<sup>5</sup> Furthermore, the article did not discuss the former President's physical or psychological condition, but rather a type of behaviour adopted by him to resolve conflicts and disputes with the media, thus assessing his professional qualities.<sup>6</sup> The author also notes that the article in question was a reporter's description of a public figure's speech at an official event. News portal *Zanoza* could not ask questions for clarification and therefore obtain a less emotional assessment, and its aim was to convey the position of the public figure to the audience, thus contributing to the public debate.

5.6 Finally, the author emphasizes that the State party did not address the proportionality of the injunctive measures imposed on her by the domestic courts. She argues that the travel ban had an unjustified deterrent effect on her ability to carry out her professional activities, preventing her from participating in international information exchanges and thereby negatively affecting her ability to carry out her journalistic duties.

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<sup>5</sup> The author refers to European Court of Human Rights, *De Haes and Gijssels v. Belgium*, Application No. 19983/92, Judgment, 24 February 1997.

<sup>6</sup> The author refers to European Court of Human Rights, *Chemodurov v. Russia*, Application No. 72683/01, Judgment, 31 July 2007.

### **State party's additional observations**

6.1 On 17 March 2020, the State party submitted additional observations on the author's comments.

6.2 The State party argues that the author's allegation that the domestic courts had failed to conduct a thorough first-hand examination of the case materials is not supported by the texts of the judgments. The State party acknowledges that the courts indeed relied on the findings of the expert examination in making their decisions. As regards the injunction measures, the State party argues that the author failed to provide any examples of how the measures interfered with her professional activities. Furthermore, the State party points out that the former President waived his claim for non-pecuniary damages. That led to other defendants lodging complaints for a supervisory review, which resulted in the revision of the judgments in their cases in regard to that specific aspect. Thus, the State party suggests that there are no lingering adverse legal consequences for the author arising from the court judgments.

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

#### *Consideration of admissibility*

7.1 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.

7.2 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.

7.3 The Committee notes the author has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that regard, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee considers that the author has sufficiently substantiated her claims under article 19 of the Covenant for the purposes of admissibility. The Committee therefore declares the communication admissible and proceeds to consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the decisions of the domestic courts ordering the ProMedia foundation to remove the article from the *Zanoza* website and the author to pay non-pecuniary damages in the amount of approximately 38,000 euros, as well as the travel ban imposed on the author for the duration of the domestic proceedings, constituted a restriction on the author's right to freedom of expression, as guaranteed by article 19 (2) of the Covenant. The Committee must therefore examine whether the imposed restriction was justified under the criteria provided by article 19 (3) of the Covenant.

8.3 The Committee refers to its general comment No. 34 (2011), according to which freedom of opinion and expression are essential for any society and constitute the foundation stone of every free and democratic society (para. 2). According to article 19 (3) of the Covenant, the right to freedom of expression can be subject to certain restrictions, but only such as are provided by law and are necessary: (a) for respect for the rights or reputations of others; or (b) for the protection of national security or public order, or of public health or morals (para. 28). All restrictions imposed on freedom of expression must be provided by law. They may only be imposed on the grounds set out in subparagraphs (a) and (b) of article 19 (3) and they must conform to the strict tests of necessity and proportionality. Furthermore, the Committee recalls that a free, uncensored and unhindered press or other media, including internet news portals, as in this case, is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. That implies a free press and other media able to comment on public issues without censorship or restraint

and to inform public opinion. It constitutes one of the cornerstones of a democratic society (para. 13).

8.4 Turning to the circumstances of the present case, the Committee notes the State party's argument that the judgments of the domestic courts were based on the relevant provisions of Kyrgyz legislation, and their application pursued the legitimate aim of the protection of the reputation or rights of others, namely the then President. The Committee also notes that according to the author, the restriction imposed on her was not provided for by law and was neither necessary in a democratic society, nor proportionate to the aim pursued. Even assuming the restriction was provided for by law, as argued by the State party, the Committee would have to decide whether the restriction on the author's right to freedom of expression was necessary and proportionate.

8.5 In circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. All public figures, including those exercising the highest political authority such as heads of State, are legitimately subject to criticism and political opposition.<sup>7</sup> In the present case, however, the domestic courts relied extensively on the negative portrayal of the President in the article to justify the restriction on the author's rights. According to the author, that conclusion was drawn entirely from the findings of the linguistics expert, which focused mainly on Ms. D.'s speech, but did not evaluate the content of the article itself. It is also apparent that the courts did not attempt to conduct their own legal analysis of the article in question. In particular, their judgments did not specify which passages of the article were deemed problematic or how they affected the President's honour and reputation. Although the courts reproduced the expert assessment that Ms. D.'s speech contained expressions degrading to the President's honour, they did not quote any such expressions from the article.

8.6 Furthermore, the Committee observes that the courts failed to consider thoroughly all the circumstances of the case and to give due weight to the respective status of the former President and the author, as well as to the content of the publication. First, the author as a journalist was sanctioned for disseminating the statements of another person, including with edits.<sup>8</sup> Although the appellate court noted that some statements had been distorted, it did not specify how they had been modified or whether the modifications had changed their original meaning. Notwithstanding this, it transpires from the judgments that the courts proceeded from the fact that the article merely disseminated the statements by Ms. D. that the court found untrue and offensive. The domestic courts did not, however, adduce any reasons for taking adverse actions<sup>9</sup> against a journalist for reporting on matters of public interest by disseminating the statements of another person.<sup>10</sup> At the same time, the courts failed to assess the context of the publication, its nature and wording, its contribution to the public debate<sup>11</sup> and the fact that a head of State should tolerate higher levels of criticism than a private individual.<sup>12</sup> Furthermore, the courts did not evaluate the impact on the author of the imposed restrictions, the hefty amount of non-pecuniary damages imposed by the court and the obligation to remove the article from the website, thus failing to weigh the rights of the author against those of the plaintiff.

8.7 Lastly, the Committee disagrees with the State party's objection that the waiver of non-pecuniary damages by the former President rendered the decisions of the domestic courts devoid of any legal consequences. Even though the proceedings against the author were formally civil, the hefty amount of non-pecuniary damages clearly indicates the punitive nature of the measure applied. In that regard the Committee notes that in 2011, Kyrgyz legislators decriminalized libel, aligning the Criminal Code with the Constitution, which

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<sup>7</sup> *Marques de Morais v. Angola*. (CCPR/C/83/D/1128/2002), para. 6.8, and European Court of Human Rights, *Lingens v. Austria*, Application No.9815/82, Judgment, 8 July 1986, para. 42.

<sup>8</sup> European Court of Human Rights, *Index.hu Zrt v. Hungary*, Application No. 77940/17, Judgment, 7 September 2023, para. 26.

<sup>9</sup> General comment No 34 (2011), para. 45.

<sup>10</sup> See, mutatis mutandis, European Court of Human Rights, *Jersild v. Denmark*, Application No. 15890/89, Judgment, 23 September 1994, para. 35.

<sup>11</sup> General comment No 34 (2011), para. 47.

<sup>12</sup> *Ibid.*, para. 38.

prohibits criminal liability as a punishment for disseminating information that tarnishes an individual's reputation and dignity. The Committee observes that the now-repealed article 127 of the Criminal Code punished libel in public speeches or on mass media by a fine of up to a maximum of 100,000 soms. However, in the present case, the author was ordered to pay an amount of 3,000,000 soms, which is 30 times greater than what she would have paid if she had been criminally convicted under the former provision on libel in the Criminal Code. The court's judgment became final and enforceable, and the sole reason for which the compensation part of the judgments was not claimed was a personal decision of the plaintiff, which was an unpredictable factor, rather than as a result of a regular legal procedure. Given that the author was sued for defaming the then head of State and for exercising professional journalistic activities while reporting on issues that were undoubtedly matters of public interest, it is evident that the judgment of the domestic courts had a chilling effect on the author's right to freedom of expression.<sup>13</sup>

9. In view of the above, the Committee concludes that the restriction imposed on the author's right to freedom of expression was neither necessary nor proportionate. Therefore, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of article 19 of the Covenant.

10. In accordance with 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 to refund the court expenses paid by the author and provide her with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the 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 disseminate them broadly in the official languages of the State party.

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<sup>13</sup> See, *mutatis mutandis*, *Kankanamge v. Sri Lanka* (CCPR/C/81/D/909/2000), para. 9.4.