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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 Altynai Isaeva)
<i>Alleged victims:</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 97 of the Committee's rules of procedure (now rule 92), 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>Articles of the Covenant:</i>	19 (2)
<i>Articles 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 an 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 Kyrgyz Parliament, at a public roundtable event "The Right to Peaceful Assembly and Freedom of Speech". The article, titled "Ms. D.: Time to reprimand a person with manic tendencies",

* 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, Laurence R. Helfer, Teraya Koji, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja and Imeru Tamerat Yigezu.

partially reproduced Ms. D.'s speech, in which she criticized the then President of Kyrgyzstan, Mr. Almazbek Atambaev. Ms. D. stated that the President was abusing the law to unfairly target the media and brought attention to the 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", as well as an assertion that "the mass media became hostage to a person who has a desire to take revenge". The article did not contain opinions or editorial remarks from the journalists.

2.2 On 20 April 2017, the Prosecutor General, relying on the provisions of article 4 of the Law "On the Guarantees of Activities of the President of Kyrgyzstan" and article 18 of the Civil Code, that 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., the Public Foundation "ProMedia", and its founders, Mr. I. and the author. In his submissions the Prosecutor 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 *Zanoza's* website but based their analysis solely on a transcript and video recording of Ms. D.'s speech. The Prosecutor further alleged that Ms. D. accused the President of breaking the law and committing a crime of abuse of authority by stating that he facilitated persecution of journalists and media and alleged that the President "enforced" the new Constitution on the citizens, while it was 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 *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.¹

2.4 On 30 June 2017, the Oktyabrsky District Court granted the prosecutor's request based on the expert's findings and found that the title and the content of the article were untrue and discredited the honour, dignity, and professional reputation of the President. The District Court further noted that the Law "On Mass Media" obliges the journalist to ensure the accuracy of the disseminated information. In case of violations the responsibility extends to the founder of the media outlet, the editor, and the informant. The District Court did not further elaborate on how the article violated the abovementioned provisions. The court ordered the "ProMedia" foundation to remove the article from its website and the author and other defendants each pay non-pecuniary damages in the amount of three million Kyrgyzstani Soms (KGS) (approximately EUR 37,984 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 mentioned that the article distorted some parts of Ms. D.'s speech, in particular the title of the article and a 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...". Additionally, 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 it was unknown who was the author of the article, the founders of the "ProMedia" should be held liable for its publication on *Zanoza's* 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.

¹ The author did not provide the text of the appeal or of the respective court's decision.

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 of the press to the discussion of a public interest and should be reserved for exceptional situations. Article 26 of the Law “On Mass Media” provides for an exemption of 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 had failed to apply that provision, the restriction of her right to freedom of expression was thus 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 rights of a public figure, heightened level of protection afforded to matters of public interest, defence of reasonable publication, etc. In particular, the courts did not consider that public figures, especially heads of states, should be subject to the highest level of scrutiny.² Additionally, the courts have disregarded the fact that the article contributed to a public debate and concerned matters of a public interest. Thus, the restriction of her rights was not necessary in a democratic society. The author also claims that amount of non-pecuniary damages imposed on her was excessive, and thus the restriction was also not proportionate to the legitimate aim pursued.

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

State party’s observations on admissibility and 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 lots of traveling, it was deemed appropriate to establish a travel ban for the duration of the proceedings.

4.3 The State party further submits that the expert examination of the videotape and transcript of Ms. D.’s speech revealed that the speech contained emotionally expressive elements, irony, and sarcasm. As provided by 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. However, 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. The State party refers to, in particular, the title of the article, a 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...”, and several others.

² The author refers to the ECtHR, *Bodrozoc and Vujin v. Serbia*, no. 38435/05, 23 June 2009.

³ The Law has also been a subject of international criticism. The author refers to the 2015 report of the Organisation for Economic Cooperation and Development (OECD) on anti-corruption reforms in Kyrgyzstan that recommended “[the] duty of the Prosecutor General to protect [the] honour and dignity of the President [be abolished].”

⁴ The author refers to the reports issued by the Freedom House “Freedom of the Press 2017, Kyrgyzstan” and “Nations in Transit 2017, Kyrgyzstan”; Reporters Without Borders, “Hour of truth for media freedom in Kyrgyzstan”; Amnesty International “Kyrgyzstan 2017/2018”.

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

Author's comments on the State party's observations

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 expert examination it focused on Ms. D's speech but 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 article's text. Moreover, as the domestic courts extensively relied on the conclusions of the 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 experts, which were then merely reproduced in the judicial decisions.

5.3 Second, the author admits that the article published on *Zanoza's* website did not replicate Ms. D.'s speech *verbatim*, but it did not distort her statements either. She refers to Resolution of the Plenum of the Supreme Court of Kyrgyzstan,⁵ pursuant to which a *verbatim* reproduction of public speeches includes quotations that may differ slightly from the original statement, while retaining the content thereof. In addition, some of the phrases that were considered problematic by the domestic courts and were also mentioned in the State party's observations while being part of Ms. D's speech, were not reproduced in the article. Moreover, the domestic courts never assessed the accuracy of the article's content in relation to the original speech.

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

5.5 The author notes that although the article contained Ms. D.'s statements 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.⁶ Furthermore, the article did not discuss the 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.⁷ The author also notes 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 clarifying questions and 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 Lastly, the author highlights that the State party did not address the proportionality of 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 exchange, thereby negatively affecting her ability to carry out her journalistic duties.

Additional comments by the State party

⁵ 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".

⁶ The author refers to the ECtHR, *De Haes and Gijssels v. Belgium*, no. 19983/92, 24 February 1997.

⁷ The author refers to the ECtHR, *Chemodurov v. Russia*, no. 72683/01, 31 July 2007.

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

6.2 First, 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 had failed to provide any examples of how the measures interfered with her professional activities. Furthermore, the State party brings attention to the fact that the ex-President waived a claim for the non-pecuniary damages. This led to other defendants lodging complaints for a supervisory review, which resulted in the revision of their judgments in 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 the 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 its website and the author to pay non-pecuniary damages in the amount of approximately EUR 37,984, as well as the travel ban imposed on her for the duration of the domestic proceedings, constituted a restriction of 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 freedom of expression are essential for any society and constitute the foundation stone for every free and democratic society.⁸ 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 of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals.⁹ 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, other media, and 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. This implies a free press and other

⁸ General comment No 34 (2011) on the freedoms of opinion and expression, para. 2.

⁹ Ibid., para 28.

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.¹⁰

8.4 Turning to the circumstances of the present case, the Committee notes the State Party's argument that the domestic court's judgments were based on the relevant provisions of the Kyrgyzstani legislation, and their application pursued the legitimate aim of the protection of the reputation or rights of others, namely the then President of Kyrgyzstan, Mr. Almazbek Atambaev. The Committee also notes that according to the author, the restriction imposed on her was not provided by the law, was neither necessary in a democratic society, nor proportionate to the aim pursued. Even assuming the restriction was provided by law, as argued by the State party, the Committee have to decide whether the restriction of 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.¹¹ In the present case, however, the domestic courts extensively relied on the article's negative portrayal of the President to justify the restriction of the author's rights. Moreover, according to the author, that conclusion was entirely drawn from the expert's findings, 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 experts' assessment that Ms. D.'s speech contained expressions degrading the President's honour, they did not quote any such expressions from the article.

8.6 Furthermore, the Committee observes that the courts had failed to thoroughly consider all the circumstances of the case and to give due weight to the statuses of the ex-President and the author, as well as the content of the publication. First of all, the author as a journalist was sanctioned for disseminating the statements of another person, including with edits.¹² Although the appellate court noted that some statements had been distorted, it did not specify how they had been modified and if it changed their original meaning. Notwithstanding this, it transpires from the judgments that the courts proceeded from the fact that the article merely disseminated Ms. D.'s statements that the court found untrue and offensive. However, the domestic courts did not adduce any reasons for taking adverse actions¹³ against a journalist for reporting on matters of public interest by disseminating the statements of another person.¹⁴ At the same time, the courts had failed to assess the context of the publication, its nature and wording, its contribution to the public debate¹⁵ and the fact that the head of State should tolerate higher levels of criticism than a private individual.¹⁶ Moreover, the courts did not evaluate the impact of the imposed restriction on the author, the hefty compensation, and the obligation to remove the article from the website on the author, thus failing to weigh her rights against the rights of the plaintiff.

8.7 Lastly, the Committee disagrees with the State party's objection that the waiver of the non-pecuniary damages by the ex-President rendered the domestic courts' decisions 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 Kyrgyzstani legislators decriminalised libel, aligning the Criminal Code with the Constitution, which prohibits criminal liability for disseminating information that tarnishes an individual's reputation and dignity. The Committee observes that the now-repealed article 127 of the Criminal Code

¹⁰ Ibid., para 13.

¹¹ See *Marques de Morais v. Angola*. (CCPR/C/83/D/1128/2002), para. 6.8, and ECtHR, *Lingens v. Austria*, no.9815/82, para. 42, 8 July 1986.

¹² ECtHR, *Index.hu Zrt v. Hungary*, no. 77940/17, para. 26, 7 September 2023.

¹³ General comment No 34 (2011) on the freedoms of opinion and expression, para. 45.

¹⁴ See, *mutatis mutandis*, ECtHR, *Jersild v. Denmark*, no. 15890/89, 23 September 1994, para. 35.

¹⁵ General comment No 34 (2011) on the freedoms of opinion and expression, para. 47.

¹⁶ Ibid., para. 38.

punished the libel within public speeches or mass media by a fine of up to a maximum of KGS 100,000. However, in the present case, the author was ordered to pay an amount of KGS 3,000,000, which is thirty times greater than what she would have paid if she was criminally convicted under the former provision on libel of 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 a result of a regular legal procedure. Given that the author was sued for defaming the then head of the State and for exercising professional journalist activities while reporting on issues that undoubtedly concerned matters of public interest, it is evident that the domestic courts' judgment had a chilling effect on her right to freedom of expression.¹⁷

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.

¹⁷ See, *mutatis mutandis*, *Kankanamge v. Sri Lanka* (CCPR/C/81/D/909/2000), para. 9.4.