United Nations CCPR/C/111/D/2009/2010

International Covenant on Civil and Political Rights

Distr.: General
4 September 2014

Original: English

Human Rights Committee

Communication No. 2009/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

Submitted by:	Timur Ilyasov (represented by counsel Anara Ibrayeva)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	21 July 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 December 2010 (not issued in document form)
Date of adoption of Views:	23 July 2014
Subject matter:	Refusal to enter the territory of the State party on the ground of threatening national security
Substantive issues:	Effective legal protection, freedom of movement and to choose residence, fair trial, right to seek information, right to family, non-discrimination
Procedural issues:	Non-exhaustion, no claim under the Covenant, *ratione temporis*
Articles of the Covenant:	2 (para. 3 (a)), 12, 14 (paras. 1, 2 and 3 (a)), 19 (para. 2), 23 and 26
Articles of the Optional Protocol:	3, 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)

concerning

Communication No. 2009/2010*

Submitted by:	Timur Ilyasov (represented by counsel Anara Ibrayeva)
Alleged victim:	The author
State party:	Kazakhstan
Date of communication:	21 July 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 July 2014,

Having concluded its consideration of communication No. 2009/2010, submitted to the Human Rights Committee by Timur Ilyasov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views pursuant to article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Timur Ilyasov, a national of the Russian Federation, of Chechen ethnicity, born in 1971. He claims to be a victim of violations by Kazakhstan of his rights under article 2, paragraph 3 (a), article 12, article 14, paragraphs 1, 2 and 3 (a), article 19, paragraph 2, and articles 23 and 26 of the International Covenant on Civil and Political Rights.[1] The Committee notes that the facts, as presented by the author,

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of a joint opinion by Committee members Gerald L. Neuman, Yuji Iwasawa and Walter Kälin (concurring) is appended to the present Views.
The text of an individual opinion by Committee member Anja Seibert-Fohr is appended to the present Views.
The text of an individual opinion by Committee member Yuval Shany is appended to the present Views.

[1] The Optional Protocol entered into force for Kazakhstan on 30 September 2009.

in relation to article 23 also appear to raise issues under article 17 of the Covenant. The author is represented by counsel.

The facts as presented by the author

2.1 The author arrived in Kazakhstan for the first time in 1994 and had been residing there ever since, originally with temporary residence permits and since 2000 with a permanent residence permit. On 25 February 2003, he married a Kazakh national and on 10 June 2003 they had a son, who is also a Kazakh national.

2.2 On 14 February 2008, the author, together with his son, went to the Russian Federation to visit his parents. On his return on 24 August 2008, at the checkpoint at the airport of Aktau, members of the border service of the National Security Committee (NSC) of Kazakhstan refused to allow him to enter the country without giving him any explanation. The author's wife had to travel more than 1,000 kilometres to collect their son, who afterwards remained with her in Kazakhstan. Later, the border police informed the author that his entry into Kazakhstan had been prohibited.

2.3 The author's wife requested assistance from the Kazakhstan International Bureau for Human Rights and Rule of Law. The Bureau wrote to the NSC enquiring about the grounds for denying the author entry into the country. On 23 September 2008, they received a reply from the Deputy Commander of the NSC

stating that the author is prohibited from entering the country in accordance with article 22 of the Law on Population Migration of 13 December 1997 in the interests of State security.

2.4 On 17 November 2008, the Bureau lodged a complaint on behalf of the author before the Astana City Court against the prohibition of entry into Kazakhstan. On 21 November 2008, the Court refused to hear the complaint, claiming that the Bureau representative did not have the required authorization from the author to lodge the complaint. The Bureau appealed that ruling before the Sarsk Regional Court, which granted the appeal and, by a decision of 13 January 2009, returned the case to the Astana City Court. On 27 February 2009, the Bureau supplemented the complaint, specifically claiming violations of the author's right to receive information on the reasons for being denied entry to the country, his freedom of movement and freedom to choose his residence, his rights to marriage and family, and the presumption of innocence.

2.5 On 2 March 2009, the Astana City Court rejected the complaint, stating that the contested actions of the authorities were in accordance with the law, that the NSC had acted within the competencies attributed to it by law and that the rights of the author had not been violated. The court referred to article 5, paragraph 2, of the Law on National Security Organs, according to which the rights of citizens can be limited in the interest of national security and gave as a reason the author's alleged involvement in illegal activities in the Russian Federation, without going into detail.

2.6 As the denial of entry was based on classified information, which had been provided to the NSC in May 2007 by the Russian Federation authorities, on 4 March 2009 the Bureau sent a request to the NSC to declassify the information and provide it to the author. The NSC replied that: "[…]information obtained from competent authorities of the Russian Federation regarding Timur Ilyasov is "stamped secret" in line with the regulatory legal acts of the Russian Federation".[2]

[2] National Security Council letter dated March 2009, numbered No. 3/3-1836, and signed by a Deputy Head of Department. Translation provided by the author.

2.7 On 16 March 2009, the Bureau submitted an appeal against the Astana City Court decision to the Sarsk Regional Court, which on 21 April 2009 rejected the appeal and confirmed the first instance decision. On 18 May 2009, the Bureau filed a supervisory review request before the supervisory appeals board of the Sarsk Regional Court, but it was rejected on 11 June 2009. The Bureau attempted to submit supervisory review requests to the Procurator-General of Kazakhstan (on 16 July 2009), and the Supreme Court (on 11 September 2009), which were rejected (respectively on 16 August 2009 and on 15 October 2009). The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims to be a victim of violations by Kazakhstan of his rights under article 2, paragraph 3 (a), article 12, article 14, paragraphs 1, 2 and 3, article 19, paragraph 2, article 23 and article 26 of the Covenant.

3.2 The author submits that he did not have any effective means of judicial protection given that none of the judicial instances that he addressed reviewed his case on the merits; which violates article 2, paragraph 3 (a), of the Covenant. He also submits that all judges are appointed by the President of Kazakhstan, which demonstrates the dependence of the judiciary on the executive power.

3.3 The author further submits that he had never violated the rules for residing in Kazakhstan and that there were no court judgments excluding him from that territory. He states that the State party violated his freedom of movement and his freedom to choose his residence by arbitrarily prohibiting him from entering the country, and using as a pretext the need to protect State security, without specifying which regulatory Act he had violated and what crime he had committed — which is in violation of article 12 of the Covenant. The author claims that the above is a continuous violation, since even though the prohibition happened in 2008, at the time of the submission he was still not being allowed to enter Kazakhstan. The author claims that the authorities used a blanket legislative norm to prohibit his entry into the country and failed to demonstrate why the prohibition was necessary in a democratic society. He also maintains that it is not clear exactly what interests are protected by the prohibition and that the limitation of his rights was disproportionate to the protected interests.

3.4 The author submits that he did not receive a fair court examination of his claims, in violation of article 14, paragraphs 1 and 3 (a) of the Covenant, because: the executive power plays a dominating role in the judicial system and heavily influences the process of the appointment of judges; the independence of the judges is undermined by the dominant role of the prosecutor's office in the entire legal process. He maintains that neither fairness, nor publicity were ensured in the court proceedings in his case, since the first instance hearing took place in "closed regime" to ensure the secrecy of the case materials; the judge who heard the case did not allow audio recording of some parts of the case; during the second instance trial the court also closed the hearing, while allowing a member of the NSC to remain there; and some of the materials presented by the NSC were "blacked out", which did not allow the author's lawyer to adequately prepare the defence.

3.5 The author submits that his right to information has been violated, because when he was refused entry to the country he was not given any explanation on the grounds for the prohibition. He maintains that subsequent attempts to obtain such information were also unsuccessful, since the letters from the NSC only stated that the prohibition was imposed in the interests of national security. Even during the court proceedings he could not obtain information regarding what illegal activities he was accused of, since his lawyer was denied access to "classified" case materials, in violation of article 20 of the Constitution of

Kazakhstan, article 20 of the Law "On the Procedure for Considering Appeals of Physical and Legal Entities" and of article 19 of the Covenant. The violation continues at present.

3.6 The author submits that the prohibition to enter Kazakhstan violated his right to a family life under article 23 of the Covenant, since it endangers his family life, by preventing him from living with his wife and son. The violation continues at present.

3.7 The author claims that he was denied entering to the country because of his Chechen ethnicity, his place of residence in the Russian Federation was Grozny city in the Chechen Republic and he was under unspecified suspicion of being involved in terrorist activity. He maintains that he was discriminated against based on his ethnicity, since he was denied the right to live in the country with his family based on his ethnic origin, in violation of article 26 of the Covenant.

State party's observations on admissibility and merits

4.1 On 2 February 2011, the State party submits that it has formed a "Special Working Group", including representatives of the Office of the Procurator-General, the Ministry of Foreign Affairs and other relevant authorities to consider complaints to the Human Rights Committee against Kazakhstan and to respond to such complaints in an "adequate manner".

4.2 On 6 May 2011, the State party submits its observations on the admissibility and the merits of the communication.

4.3 The State party submits that in May 2008, the NSC took a decision to refuse the author entry in its territory, based on classified information from the Russian Federation. It maintains that, owing to its international obligations, it may not disclose that information to third parties without the written consent of the Russian Federation. The State party further submits that the author did not state whether he had addressed the authorities of the Russian Federation to obtain that information. It points out that he did not employ legal remedies in the Russian Federation, which could have served as a ground for reviewing the Kazakh authorities' decision to refuse entry based on new information.

4.4 The State party further maintains that the author has failed to exhaust the domestic remedies in Kazakhstan in that he did not file an appeal in court against the decision to classify documents and the refusal to allow him access to these documents, in accordance with article 30, paragraph 3, of the Law on State Secrets.

4.5 The State party further submits that, on 14 March 2011, the NSC was informed that the author had abandoned his illegal activities. Accordingly, the author was allowed to re-enter Kazakhstan and, on 4 April 2011, the Office of the Procurator-General wrote to the author and his representative informing them of that. The State party submits that the above closes the incident and that the communication must be deemed inadmissible.

4.6 On the merits of the case, the State party submits that the author had been refused entry based on article 22 of the Law on Population Migration, which is in conformity with article 21 of the Constitution and with article 12, paragraph 3, of the Covenant. According to testimonies of NSC officers in May 2007, information was received from the law-enforcement authorities of the Russian Federation, in accordance with the international treaties in force between the two countries, that the author was involved in illegal activities "in the territory of the above State".

4.7 In accordance with article 13, paragraph 3, of the Law on the National Security Bodies, these bodies decide, together with other competent State bodies, when entry should be refused to individuals who create danger for or undermine the safety of the society and the State. According to the information received from the Russian Federation, the author presented such a danger for Kazakhstan and therefore the actions of the NSC were recognized by the courts as lawful and complied with the international treaties to which

Kazakhstan is party. If the information was the property of Kazakhstan, the competent bodies would have agreed to provide it to any person whose interests were concerned. In the present case, the NSC offered to give security clearance to the representative of the author and to allow her to review the information, but the author refused. However, according to treaties between the countries of the Commonwealth of Independent States, classified information may only be used with the permission of the State that owns it and, since the Russian Federation had not granted such permission, Kazakhstan did not have the right to disclose it.

4.8 Further, the State party maintains that the author has had every opportunity to defend his rights in the courts and that it was not preventing his reunification with his family because they had the unimpeded possibility of joining him in the Russian Federation.

4.9 Regarding the allegations of the author under article 2, paragraph 3, of the Covenant, the State party submits that article 3, paragraph 2, of its Constitution states that everyone shall have the right to judicial protection of his rights and freedoms and maintains that the author had access to all judicial instances, that he filed a cassation appeal and supervisory review requests and that his case was reviewed in accordance with the Covenant's standards and Kazakh domestic laws. The State party challenges the author's allegations that the executive power heavily influences the decisions of the courts, that the process is not transparent, just or impartial, and that the independence of the judges is influenced by the prosecution. It submits that the principles of independence and untouchability of the judiciary are enshrined in the Constitution, and that judges are subordinate to the Constitution alone.

4.10 The State party challenges the author's allegation that the higher instances failed to review the merits of his case. It submits that, according to articles 345 and 347 of the Civil Procedure Code, the appellate court verifies the legality of the decision of the first instance court and whether it is well grounded, based on the evidence presented to the first instance. In the author's case, the appellate court found that the first instance court had issued a lawful and well-grounded decision and accordingly rejected the author's appeal. The State party maintains that no violations of the author's right to a fair trial had taken place.

4.11 Regarding the author's claims that his right to a fair trial had been violated inter alia because the first instance hearings were closed to the public, the State party submits that most of the hearings were public and proceeds to explain in which cases the domestic legislation allows closed hearings. To the allegations of the author that during a closed hearing the judge asked an independent observer to leave, but allowed an NSC representative to stay, the State party responds that the NSC officer was representing the institution. The State party also submits that, under article 27 of the Criminal Procedure Code, even when cases were decided in a closed hearing, the court decisions are declared publicly.

4.12 To the allegation that the NSC representative could not name the source of the information on the basis of which the author had been refused entry because it was classified, the State party responds that the author had the opportunity to challenge the fact that the information was classified, in accordance with article 15, paragraph 4, of the Law on State Secrets. As he failed to do so, he has no right to contest whether the information in question was classified correctly. The State party further submits that the information regarding the author was classified legally, because its content is outside the scope of article 17 of the Law on State Secrets, which lists the types of data that may not be subject to classification. According to article 30 of that Law, information can be refused to individuals when "verification" revealed that their activities endanger national security. The State party maintains that, since the author's lawyer represented him, and there was

information that he engaged in illegal activities, the refusal to give her access to classified data was justified.

4.13 Regarding the alleged violation of the author's freedom of movement and freedom to choose residence, the State party submits that, according to article 16 of the Law on the Legal Situation of Foreigners and the Rules for Entry into and Exit from the Republic of Kazakhstan,[3] foreigners may move freely within Kazakhstan and choose their place of residence. Limitations on this freedom may be imposed by decrees of the Ministry of Internal Affairs and of the NSC when that is necessary to ensure State security, public order, health or morals of the population and the protection of the rights and lawful interests of citizens and other persons. The State party reiterates that the author was refused entry on the basis of information that he was engaged in illegal activities in the Russian Federation. The State party further makes reference to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex). It maintains that article 22 of the Law on Population Migration is in accordance with point 10 of those Principles, and that the information received from the Russian Federation was sufficient to justify the restriction of the author's freedom of movement in Kazakhstan under point 29 of the Principles.

4.14 Regarding the author's claims under article 19, paragraph 2, of the Covenant, the State party reiterates that it could not disclose to the author the information on the basis of which he was refused entry. It further details the content of its agreements with the Russian Federation on handling classified information.[4] It states that article 5 of the Agreement on Mutual Protection of Classified Information of 7 July 2004 foresees that the States parties are obliged inter alia to protect sensitive information transmitted by the other Party and/or formed in the process of cooperation between the Parties and not to provide to a third party access to the classified information without the prior written consent of the other Party. Access to classified information shall be granted only to persons having the appropriate level of security clearance. Further, article 10 (4) of the Law on State Secrets provides that the national security bodies must provide the protection of such information and article 29 of that Law requires citizens who want to access such information to obtain appropriate clearance. All of this had been explained to the author. The author failed to request the NSC to seek the permission of the Russian Federation to disclose the information.

4.15 The State party submits that the author, through his representative, submitted a written request to the NSC to receive access to information and received a written reply. The State party maintains that receiving the above reply fulfilled his right under article 19, paragraph 2, despite the author's allegation that the information was incomplete, since article 19, paragraph 3 allows certain restrictions of the freedom to access information if these are provided by law and are necessary for the protection of national security.

4.16 Regarding the author's claims under article 23 of the Covenant, the State party submits that the author is a Russian citizen, that his right to marry a Kazakh citizen was not violated because his marriage was registered in Kazakhstan. It maintains that the author's

[3] Adopted by Governmental Decree No. 136, dated 28 January 2000.

[4] The State party refers to the following: Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001, art. 13, para. 2; Agreement on Exchange of Information in the Sphere of Combating Crime of 22 May 2009, art.6; Agreement on Exchange of Information on Issues Related to the Defence of the External Borders of the Commonwealth of Independent States' Member States of 12 April 1996, art. 8; and Agreement on Ensuring the Protection of Classified Information in the Framework of the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization of 17 June 2004.

wife and son, as Kazakh citizens, according to Kazakh legislation could freely leave Kazakhstan and join him in the Russian Federation.

4.17 Regarding the author's claims under article 26 of the Covenant, the State party submits that the prohibition of discrimination is guaranteed by article 14 of its Constitution, articles 13 and 21 of the Civil Procedure Code, article 11 of the Code of Administrative Violations and article 7 of the Labour Code. Article 54 of the Criminal Code states that discrimination is an aggravating circumstance and is considered as such for numerous crimes. It further submits that the author did not complain about discrimination against him before the Kazakh courts. Thus, the State party considers that the author's allegations of violations of his rights are unsubstantiated.

Author's comments on the State party's observations

5.1 On 2 July 2011, the author reiterates his initial submission and provides comments on the State party's submission.

5.2 Regarding the State party's argument that the author failed to initiate legal proceedings in the Russian Federation, the author submits that he was refused entry into Kazakhstan, without any indication of the reasons and accordingly he submitted a communication against Kazakhstan. The decision to refuse him entry was taken in November 2007, but the author only learned about it on 24 August 2008, when he was returning from a visit to his parents and when he was refused entry. It was the State party that classified the information on his case and accordingly the author requested information from the NSC and filed requests that the information be declassified to the domestic courts. The author contests the State party's assertion that he did not file an appeal under article 30 of the Law on State Secrets and maintains that he requested access to the case file and asked that the information it contained be declassified in all his appeals to the NSC and to the courts. He maintains that in the present case the access to the case file is equivalent to the access to the classified information. The author maintains that in all his appeals he pointed out that the information against him was classified and that he needed to access it in order to defend himself, because he did not know on what grounds his entry was refused.

5.3 The author submits that between 24 August 2008 and 26 February 2009, he only had the information that he was refused entry in the interest of national security. On 26 February 2009, however, during a hearing of the first instance court, an officer of the NSC testified that the reason for the refusal was the author's involvement in illegal activities in the Russian Federation. The court decision — which is a public document accessible to all — states that the author was refused entry because he was involved in illegal activities. In the absence of a verdict against the author, the above violates the presumption of innocence. The author stresses that there were no verdicts against him either in Kazakhstan or in the Russian Federation and that no criminal proceeding against him had been initiated in either country.

5.4 The author maintains that, even though the State party allowed his entry into its territory, after he submitted a communication to the Committee, it could easily refuse him entry again because: its domestic legislation was not in compliance with the Covenant; the Covenant is not being applied by the national courts and by other State organs; and there are no effective legal remedies within the State party.

5.5 The author submits that articles 21 and 39 (1) of the Constitution of the State party contradict each other. He further submits that, according to the Siracusa Principles, national security may indeed be a ground for limiting certain freedoms, but the limitations should correspond to the principle of necessity, to pursue a legitimate aim, to be proportionate to that aim. He says that the reasons for the limitations should be stated clearly and should not be interpreted so as to jeopardize the essence of the right concerned. The author further

refers to paragraphs 11 to 13 of the Committee's general comment No. 27, Freedom of movement,[5] and maintains that even though article 22 of the Law on Population Migration provides for restrictions on freedom of movement in the interest of national security, it fails to establish the conditions under which the rights may be limited. He further maintains that the NSC officers have unfettered discretion in applying that Law since it does not establish clear criteria for applying the restrictions. He recalls that already in May 2007 the NSC knew that he was on the list of individuals who are forbidden to enter Kazakhstan, but did not inform him and did not conduct any investigation to verify whether he was genuinely involved in illegal activities, nor did it attempt to charge him with any crime or to extradite him to the Russian Federation. He maintains that the restrictions were applied in an arbitrary manner, that they were inappropriate and disproportionate, and that they could be reimposed on him at any moment.

5.6 He further submits that no effective remedies for any violations of rights exist under the Covenant because the courts apply only the domestic legislation. He submits that the fact that he was allowed to re-enter the country did not "close the incident", since there is no effective remedy for the violations of his rights under the Covenant. He reiterates that none of the court instances reviewed his allegations of violations of his rights on their merits, that the latest decision of the Supreme Court — refusing to conduct a supervisory review — was dated 15 October 2009, after the entry into force of the Covenant for Kazakhstan, and refers to the Committee's Views in the case 921/2000, *Dergachev* v. *Belarus*,[6] in which the Committee found a violation of article 19 of the Covenant even after the State party had revoked the guilty verdict.

5.7 The author submits that, according to the State party's own submission, Kazakhstan gives priority to its obligations under the bilateral treaty with the Russian Federation over its obligations under the Covenant. He refers to article 26 of the Vienna Convention and maintains that the State party should give priority to its obligations under the Covenant.

5.8 The author contests the State party's submission that his representative did not want to request security clearance. On 23 February 2009, during a preliminary court hearing, the judge requested the NSC within three days to provide an attestation whether the representative of the author had security clearance. The NSC failed to provide the document. The main first instance court hearings took place on 26 and 27 February 2009 and the court decision was made public on 2 March 2009. Within that short period of time there was no time for the representative of the author to request or receive security clearance. On 4 March 2009, the author through his representative requested that the information be declassified, but the request was denied.

5.9 Regarding the situation of his family, the author submits that, even though there are no visa requirements for the Russian Federation, Kazakh citizens can stay in the Russian Federation for a maximum of three months. Further, the State party was suggesting that his family should join him in Chechnya, where to date serious violations of human rights are documented. The author further submits that when spouses live separately, in particular in different countries, there is a high probability of dissolution of the marriage. He also maintains that the State party discriminated against his son, who has the right to live with both his parents and who should enjoy the same rights as children whose parents are Kazakh nationals.[7]

5.10 The author reiterates that the judicial system in Kazakhstan is not independent, that the lower level courts are dependent on the higher level courts and the latter are dependent

[5] General comment No. 27, 2 November 1999.

[6] Communication No. 921/2000, *Dergachev* v. *Belarus*, Views adopted on 2 April 2002, para. 7.2.

[7] The author refers to the Committee's general comment No. 15, para. 7.

on the executive. He notes the existing practice of the higher courts to send circular letters to the lower courts directing how cases of particular categories should be decided.

5.11 In relation to the State party's arguments that he failed to exhaust domestic remedies, the author submits that the State party on the one hand maintains that he had failed to appeal the fact that the information regarding him was classified and on the other hand maintains that that information was classified lawfully under article 17 of the Law on State Secrets. The author also recalls the State party's submission that his representative was refused access to the classified data because the author was a foreign citizen and there was information that he had been engaged in illegal activities. The author maintains that the above proves that any appeal would have been futile. The author further maintains that in his appeal to the second instance court he made an explicit reference to a violation of his rights under article 26 of the Covenant, stating that he was being discriminated against as a person of Chechen ethnicity. He also maintains that the domestic legislation does not directly prohibit discrimination.

5.12 The author maintains that when trying to justify the limiting of his freedom of movement, the State party has failed to take into account the proportionality of the limitations, which was excessive.

5.13 The author maintains that the fact that the court decision was announced publicly was not sufficient to satisfy the requirement of publicity in his case, because: the first instance court hearings were closed; in the middle of the proceedings in the second instance the court removed an independent observer from the court room; and the case was based on classified materials.

5.14 The author reiterates that he was never convicted of any crimes either in Kazakhstan or in the Russian Federation and that the certificate of a clean criminal record issued by the Ministry of Internal Affairs of the Chechen Republic testifies to that. The author presented that certificate to the second instance court, but the latter did not take it into consideration.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that, in violation of article 2 of the Covenant, he did not have any effective means of judicial protection for his rights given that the courts did not address the merits of his complaints and the judges were not independent. The Committee recalls that the provisions of article 2 of the Covenant, which lay down general obligations for State parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol.[8] The Committee considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

6.4 The Committee notes the author's allegation that his rights under article 14, paragraph 1, of the Covenant had been violated, but observes that the court proceedings in question took place between 17 November 2008 and 21 April 2009, before the entry into

[8] See, inter alia, communication No. 316/1988, *C.E.A.* v. *Finland*, decision of 10 July 1991, para. 6.2.

force of the Optional Protocol for the State party. The Committee further notes that the above issues have not been raised by the author in his 11 September 2009 request for a supervisory review, which was decided by the Supreme Court on 15 October 2009. The Committee therefore finds that the allegation is inadmissible *ratione temporis* in accordance with article 3 of the Optional Protocol.

6.5 The Committee noted the author's allegation that his rights under article 14, paragraphs 2 and 3 (a), of the Covenant, had been violated by the State party, but observes that he had never been charged with a criminal offence. Accordingly, the Committee considers that the above claims are inadmissible under article 3 of the Optional Protocol.

6.6 The Committee takes note of the author's claim that he was discriminated against based on his Chechen ethnicity, since Kazakh citizens are allowed to live in the country with their families and he was denied that right based on his ethnic origin in violation of article 26 of the Covenant. The Committee, however considers that the author's claim is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 and under article 5, paragraph 2 (b), of the Optional Protocol.

6.7 The Committee notes that the author alleges continuous violations of his rights under articles 12, 19, paragraph 2, and 23 of the Covenant. The Committee observes that while the event that gives rise to these claims, namely the refusal to allow the author to enter the country, took place on 24 August 2008, the author was not allowed to re-enter until 11 April 2011, more than a year and a half after the Optional Protocol entered into force for the State party. Moreover, the Committee notes that the above issues have been raised by the author in his request for supervisory review of 11 September 2009, which was conducted by the Supreme Court on 15 October 2009, i.e. after the entry into force of the Optional Protocol for the State party. The Committee concludes therefore that it is not precluded from examining these claims under article 3 of the Optional Protocol.

6.8 The Committee notes the State party's contention that the author was allowed to re-enter Kazakhstan in April 2011 and that the communication must be deemed inadmissible on that basis. In the Committee's opinion, the author has shown for purposes of admissibility that his rights had been affected by the State party's actions for a substantial period of time. The Committee also notes the author's allegation that the restrictions against him were applied in an arbitrary manner, that they were inappropriate and disproportionate and that they could be imposed on him again at any moment. Consequently, the Committee finds the communication admissible under article 1 of the Optional Protocol.

6.9 The Committee takes note of the State party's submission that the author had failed to exhaust the domestic remedies since he did not file an appeal in court against the refusal to allow him access to these documents and did not challenge the decision to classify the documents and that he had the possibility to do so in accordance with articles 15, paragraph 4 and 30, paragraph 3 of the Law "On State Secrets". The Committee observes that the author repeatedly requested to be given access to the information, both before the NSC and before the courts. The Committee further observes that the author did not want the information regarding him to be declassified for the public, but merely wished to be given access to it in order to defend his rights. The Committee notes that according to the State party's submission both its domestic law and the bilateral treaty it had concluded with the Russian Federation did not allow it to declassify the information without the permission of the Russian Federation's authorities. The Committee observes that the State party has failed to explain why, in the circumstances of the case, the author's requests to the courts to be given access to the relevant information instead of challenging the decision of the State party to classify it, would not constitute a measure sufficient for the purpose of protection of his rights, while recognizing the State party's international obligations in relation to the Russian Federation. Accordingly, the Committee concludes that it is not precluded from examining the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.10 The Committee considers that the author has sufficiently substantiated his claims under articles 12, 19, paragraph 2, and 23 of the Covenant, for purposes of admissibility and that the facts, as presented by the author, also raise issues under article 17 of the Covenant.

6.11 In the light of the above, the Committee declares the communication admissible insofar as it raises issues under articles 12, 17, 19, paragraph 2, and 23 of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the communications in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that the State party endangered his family life by arbitrarily preventing him from entering the country and living with his wife and son. The Committee recalls that article 23 of the International Covenant on Civil and Political Rights recognizes the family as the natural and fundamental group unit of society[9] and that article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with this right.[10] The Committee also recalls its jurisprudence that there may be cases in which a State party's refusal to allow one member of a family to remain on its territory would involve interference in that person's family life in violation of articles 17 and 23.[11] The Committee also observes that the mere fact that members of the family reside on the territory of a State party does not necessarily guarantee the right of the author to re-enter the territory of that state. The State party under its immigration rules may deny the right of re-entry in pursuit of a legitimate aim. That discretion is, however, not unlimited and may not be exercised arbitrarily. The Committee recalls that, in order to be permissible under article 17, any interference with the family must cumulatively meet several conditions set out in paragraph 1, i.e. it must be provided for by law, be in accordance with the provisions, aims and objectives of the Covenant and be reasonable in the particular circumstances of the case.[12]

7.3 The Committee observes that, the author had been residing lawfully in the territory of the State party since 1994 and that he had a permanent residence permit since 2000, which had never been revoked; that he is married to a national of the State party, his son is a national of the State party and that the author has developed private and family life in the State party over the course of 14 years before being refused entry. The Committee considers that the undisputed fact that the author was denied entry into the State party, where he had lived permanently together with wife and son, constitutes an interference with the family life of the author. The issue thus arises whether or not such interference would be arbitrary and contrary to articles 17 and 23 of the Covenant.

[9] General comment No. 19, para. 1.

[10] General comment No. 16, para. 1.

[11] See communications No. 1959/2010, *Warsame* v. *Canada*, Views adopted on 21 July 2011, para. 8.7; No. 930/2000, *Winata* v. *Australia*, Views adopted on 26 July 2001, para. 7.1; No. 1011/2001, *Madafferi* v. *Australia*, Views adopted on 26 July 2004, para. 9.7; No. 1222/2003, *Byahuranga* v. *Denmark*, Views adopted on 1 November 2004, para. 11.5; and No. 1792/2008, *Dauphin* v. *Canada*, Views adopted on 28 July 2009, para. 8.1.

[12] See general comment No. 16 (note 10 above), paras. 3-4; communications No. 930/2000, *Winata* v. *Australia*, Views adopted on 26 July 2001, para. 7.1; and No. 1246/2004, *Gonzalez* v. *Guyana*, Views of 25 March 2010, para. 14.3.

7.4 The Committee recalls that the notion of "arbitrariness" includes elements of inappropriateness, injustice, lack of predictability and due process of law.[13] In the present case the Committee has to evaluate whether the decision to deny the author the right to enter the territory of the State party was made on the basis of appropriate assessment of the circumstances and evaluation of a risks to the State party's national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.

7.5 The Committee observes that the State party has made numerous references to having information that the author had been involved in some unspecified "illegal activity", presumably in the territory of the Russian Federation, which had supplied the information, and that it proceeded to draw the conclusion that the above "illegal activity" made the author dangerous for the safety of the society and the State of Kazakhstan. The Committee takes note of the State party's assertion that the author's claims have been assessed by the Kazakh authorities. The Committee, however, observes that no evidence had been presented that either the NSC or the national courts had investigated the relevant circumstances, interviewed or questioned the author on the circumstances of the case. It appears that the decision to deny the entry was reached solely on the grounds of the information received from another State in the absence of any formal procedure of verification of the credibility of the information. The Committee notes that the author was not allowed to enter the territory of the State party for more than three years. He was neither informed of the specific reasons for this decision, nor was he given the possibility of accessing the information (case file) in order to challenge it. Moreover, the State party allowed the author to re-enter the country again based on intelligence information that he had renounced his illegal activities. The Committee further observes that no criminal investigation has ever been initiated against the author, neither in the State party, nor in the Russian Federation, and that his freedom of movement had been restricted solely on the basis of information that the State party had received from the intelligence services of another State.

7.6 The Committee takes note of the State party's submission that it was not preventing the author's family from joining him in the Russian Federation. The Committee also notes the uncontested submission from the author that his family may be allowed to enter the territory of the Russian Federation for only limited periods of time. The Committee recalls that the author had been residing lawfully in Kazakhstan since 1994 and his family life had developed there. Therefore, the possibility of a temporary relocation of the author's family to the Russian Federation, in this case, cannot be considered as a viable alternative.

7.7 The Committee observes that it has not been verified in any contested legal procedure that the author poses any threat to the State party's national security, public order (*ordre public*), public health or morals or the rights and freedoms of others. The Committee therefore considers that the State party has failed to justify its interference with the right of the author as protected by article 17 and 23, of the Covenant, and that the unjustified refusal to allow the author to enter the territory of the State party constitutes an arbitrary interference with the family, contrary to articles 17 and 23 of the Covenant in respect of the author.[14]

7.8 In the light of its finding that there has been a violation of articles 17 and 23 of the Covenant, the Committee will not pronounce itself on possible violations of articles 12 and 19 of the Covenant.

[13] See communications No. 1134/2002, *Gorji-Dinka* v. *Cameroon*, Views adopted on 17 March 2005, para. 5.1; No. 305/1988, *van Alphen* v. *Netherlands*, Views adopted on 23 July 1990, para. 5.8; and No. 1557/2007, *Nystrom* v. *Australia*, Views adopted on 18 July 2011, para. 7.6.

[14] See also *Winata* v. *Australia* (note 11 above), para. 7.3.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations by Kazakhstan of the author's rights under articles 17 and 23 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy if a violation has been established, 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 Committee's Views, to have them translated into the official languages of the State party and widely distributed.

Appendix

Joint opinion of Committee members Gerald L. Neuman, Yuji Iwasawa and Walter Kälin (concurring)

1. We concur entirely in the Committee's analysis and findings on the merits of this communication. We write to express disagreement with one aspect of the majority's rulings on admissibility. In paragraph 6.10, the majority states that the author has sufficiently substantiated his claim under article 12 for purposes of admissibility, and passes it on to the merits phase, whereas in paragraph 7.8, it declines to examine that claim on the merits. This is a technique that the Committee sometimes uses to avoid addressing a claim whose legal underpinnings are highly uncertain. We believe the Committee should have taken a clear position and held this claim inadmissible *ratione materiae*. The author's situation falls outside the scope of article 12, paragraph 4, because his allegations demonstrate that Kazakhstan is not "his own country".

2. The author asserts that he is a Russian national, born in 1971, who first arrived in the adjoining country of Kazakhstan in 1994, and was granted a permanent resident permit there in 2000. In 2008, he visited his relatives in his country of nationality for more than six months, and when he attempted to return to Kazakhstan he was denied re-entry. It is clear on these facts that "his own country" is the Russian Federation, not Kazakhstan, regardless of the nationality of his spouse and child.

3. Article 12, paragraph 4, is designed to extend extraordinarily strong protection — more than the usual proportionality standard — to the right of a State's own nationals to remain in their own country and to return to their own country after a trip abroad. The structure of article 12 indicates, and its *travaux préparatoires* confirm, that the article was carefully drafted so that the citizens' right would not be subject to the limitations on freedom of movement permitted by article 12, paragraph 3.[a] The *travaux préparatoires* also demonstrate that this provision was drafted in terms of one's "own country" rather than one's "country of nationality" in order to protect citizens against a two-stage process of first denationalizing them and then applying the procedures for expulsion of aliens contemplated by article 13 (A/C.3/SR.954, para. 35).

4. The Committee has read some additional situations into this precautionary margin. The Committee's general comment No. 27 gives as further examples "individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them," as well as possibly "stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence." (para. 20). But the Committee has never extended this extremely high level of protection to the vast numbers of foreign residents who already have a country of nationality and maintain ties with it.[b] Many of these foreign residents have a family member who possesses the

[a] See especially the summary records of the debate in the Third Committee, fourteenth session (1959), documents A/C.3/SR.954 – 959. Article 12, paragraph 3, subjects other aspects of freedom of movement to restrictions that "are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".

[b] In July 2011, a majority of the Committee applied article 12, paragraph 4, in two borderline cases involving non-nationals who had come to the respective countries as very young children and who had no ties to their formal country of nationality. One was a Somali national who had never been in Somalia, see communication No. 1959/2010, *Warsame* v. *Canada*, Views adopted on 21 July 2011, para. 8.5. The other had been brought to Australia as a baby, never left the country, and was unaware

nationality of the country of residence, including in countries where birth within the territory confers nationality. The multiple attachments of these foreign residents are protected against arbitrary interference by articles 17 and 23 of the Covenant through a proportionality analysis that gives due consideration both to their interests and to the traditional concerns including public order and national security that legitimately inform States parties' migration laws.

5. The Committee would have no legitimate basis for conferring on the author a de facto second nationality by bringing him within article 12, paragraph 4. Moreover, such a misreading of the provision would have counterproductive results for migrants — it would make States parties even less generous than they currently are in admitting foreign nationals to residence within their territories — which the Covenant does not require them to do in the first place.

6. Overextending article 12, paragraph 4, would also risk undermining the essential protection that this provision was designed to afford. The primary function of the right to enter one's own country is to impose an extremely high barrier against a State's exile of its own citizens, or blocking of their return.[c]

7. The author instead argues this case as if proportionality under article 12, paragraph 3, were the applicable standard, and the State party replies in kind, invoking the Siracusa Principles on Limitation and Derogation. Given the national security concerns insinuated by the State party, the author's concession is understandable, and the majority takes the reasonableness of the State party's actions into account in its usual analysis of whether the State party violated articles 17 and 23 by denying entry to a returning foreign resident. But that is not the analysis that the Committee should apply if the author were a Kazakhstan national, or assimilated to the status of a national.

8. For those truly entitled to the protection of article 12, paragraph 4, the Covenant envisages much stronger protection. The Committee observed in its general comment No. 27 that "there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable." Nationality is a fundamental institution of international law, whose importance is also recognized in article 24, paragraph 3, of the Covenant, and the right of nationals to return to their own country is nearly absolute.[d]

9. Extending the coverage of article 12, paragraph 4, to all foreign residents with permanent residence permits, or to foreign residents with families that include nationals, would inevitably lead to dilution of the protective standard. The question would become, as the author contends it is, whether the denial of entry was disproportionate in light of all the relevant circumstances. The author already gets the benefit of that inquiry under other

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that he lacked Australian nationality; he had been under the guardianship of the State since he was 13 years old, but it had never initiated a citizenship process on his behalf. See communication No. 1557/2007, *Nystrom* v. *Australia*, Views adopted on 18 July 2011, para. 7.5. Several Committee members dissented, some warning that the majority risked blurring the boundaries of article 12, paragraph 4, in a manner that was unsustainable and that would undermine the right. Even so, the special facts of those cases bear no resemblance to the situation of the present author.

[c] See, for example, communication No. 859/1999, *Jiménez Vaca* v. *Colombia*, Views adopted on 24 March 2002, para. 7.4 (finding that the State party had not ensured a national's right to enter his own country where it failed to protect him against death threats that drove him into involuntary exile); and the concluding observations on the second periodic report of the Syrian Arab Republic (CCPR/CO/71/SYR), para. 21 (2001) (expressing concern about denial of passports to Syrian citizens in exile abroad, depriving them of the right to return to their own country).

[d] Arguably this right should be absolute. But the drafters of the Covenant were unable to agree on an absolute prohibition on exile, and the language of article 12, paragraph 4, leaves room for certain denials.

articles of the Covenant. Dismantling the separate guarantee of article 12, paragraph 4, in order to extend it to persons in the situation of the author would be a setback for human rights.

Individual opinion by Committee member Anja Seibert-Fohr (concurring)

1. I write separately to explain why the author of this communication does not benefit from the protection of article 12, paragraph 4, and to dispel any misunderstandings which could arise from the Committee's admissibility decision.

2. The decision to declare the communication admissible insofar as it raised issues under article 12 was a procedural resolution that should not be interpreted as one of substance, much less as an affirmation of an overly broad interpretation of article 12, paragraph 4. When the Committee decided to pass the author's claim under article 12 on to the merits, it assumed that the determination of whether article 12, paragraph 4, was applicable to the author's situation required a substantive analysis of whether Kazakhstan could be regarded as the author's country within the meaning of this provision. On the merits, the Committee then refrained from addressing this claim in the light of its finding that there has been a violation of articles 17 and 23 of the Covenant (para. 7.8). Accordingly, the decision not to pronounce itself on the claimed violation of article 12 was not based on any finding to the effect that the author's permanent residence in the State party would be sufficient to protect the author under article 12, paragraph 4. It rather reflects the fact that the essential issues raised in this case related to articles 17 and 23.

3. If the Committee had chosen to take a substantive view on the author's claim under article 12, I would have taken the approach expressed by Messrs. Neuman, Iwasawa and Kälin in their individual opinion because the author's situation falls outside the scope of this provision. Though article 12 does not refer to nationality, the reference to everyone's right to enter "his own country" protects first and foremost a State's own nationals. The Committee has recognized in previous cases that the provision is not entirely restricted to nationals but may embrace specific categories of individuals, who, while not nationals in a formal sense, can be compared to nationals and who for particular reasons require the same degree of protection.[a] Accordingly it explains in its general comment No. 27 that this protection extends to cases in which a person lacks the protection of his or her nationality as he or she is deprived of any effective nationality.[b] It gives the examples of "nationals of a country who have there been stripped of their nationality in violation of international law", "individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them", and "stateless persons arbitrarily denied the right to acquire the nationality of the country of ... residence".[c]

4. None of the examples given in the general comment applies to the present case. Nor is there any doubt that the author has an effective nationality, namely, that of the Russian Federation. While the author had lived in Kazakhstan since 1994, he continued to be a national of the Russian Federation. His lawful long-term residence in Kazakhstan and his family ties in the State party do not make Kazakhstan "his own country" pursuant to article 12, paragraph 4. Therefore, when he tried to return to Kazakhstan after having visited his relatives in his country of nationality for six months he could not claim the protection under this provision.

[a] See communication No. 538/1993, *Stewart* v. *Canada*, Views adopted on 1 November 1996, para. 12.3.

[b] See the Committee's general comment No. 27, para. 20. For this reading see also individual opinion by Committee member Sir Nigel Rodley, in *Warsame* v. *Canada*, communication No. 1959/2010, and individual opinion of Committee members Sir Nigel Rodley, Helen Keller and Michael O'Flaherty (dissenting), in *Nystrom* v. *Australia*, Communication No. 1557/2007.

[c] See general comment No. 27 (note b above).

5. Nonetheless the author of the communication enjoyed the protection of the Covenant, as his personal and family ties were effectively protected under articles 17 and 23. This led the Committee to find a violation of these provisions in the present case. But for the reasons outlined above the Committee could not have gone beyond such a finding by overstretching the scope of article 12, paragraph 4, with a simple reference to the author's long-term residence and personal and family ties in the State party.

Individual opinion by Committee member Yuval Shany (concurring)

1. While I am in full agreement with the Views of the Committee, I wish to clarify that had the Committee decided to address the merits of the author's claims under article 12, I would have also supported a finding of a violation of paragraph 4 of that article for the reasons stated below.

2. Article 12, paragraph 4, of the Covenant provides that "No one shall be arbitrarily deprived of the right to enter his own country". The term "his own country" has always been understood by the Committee as encompassing not only one's country of nationality, but also a country to which an individual has "special ties to or claims".[a]

3. Although the two concurring opinions appended to the Views highlight the examples provided in paragraph 20 of general comment 27 for application of article 12, paragraph 4, to non-nationals, which appertain to unique circumstances involving individuals stripped of their nationality, individuals residing in countries incorporated into other States and stateless persons, these examples were never meant to be exhaustive in nature. To the contrary, the text of paragraph 20 specifically alludes to "other categories of long-term residents". Furthermore, the two concurring opinions downplay the importance of the overarching legal standard introduced in paragraph 20 of general comment 27 — that the term "his own country" embraces, "*at the very least*, an individual who, because of his special ties to or claims in relation to a given country, *cannot be considered to be a mere alien*" (emphasis added). Indeed, in the past, the Committee has taken the view that where an individual possesses close and enduring connections to a country,[b] he should not be arbitrarily deprived of the right of entry thereto.[c]

4. I also wish to note my disagreement, in this connection, with the reading of the relevant history of the Covenant offered in the concurring opinions, which implies that the interests of long-term permanent residents to re-enter their country of residence were not contemplated by the drafters as important interests worthy of protection under article 12, paragraph 4. To the contrary, there are strong indications in the *travaux préparatoires* that the original version of the text of the paragraph, which covered only nationals, was changed specifically with a view to accommodating the interests of certain permanent residents (E/2256–E/CN.4/669, para.195).[d]

5. Given the intensity of ties and claims held by some long-term permanent residents towards the country in which they normally exercise their human rights, their interest in re-entering their own country is worthy of a heightened level of protection similar to that afforded to nationals — i.e. that interferences with the right to enter one's own country

[a] The Committee's general comment No. 27 (1999), para. 20.

[b] See communication No. 1557/2007, *Nystrom* v. *Australia*, Views adopted on 18 July 2011, para. 7.4.

[c] While the absence of ties to another country may be a relevant factor in the analysis (see e.g. communication No. 1959/2010, *Warsame* v. *Canada*, Views adopted on 21 July 2011, para. 8.5, noting the author's strong ties to Canada and weak ties to Somalia), I am of the view that it is not impossible for a person to have special ties or claims to more than one country, for the purposes of invoking article 12, paragraph 4, in the same way in which a person holding dual nationality may invoke his rights not to be arbitrarily deprived of the right of entry against both of his countries of nationality.

[d] Covering "permanent home" besides nationality and citizenship. See also Manfred Nowak, *UN Covenant on Civil and Political Rights*: *CCPR Commentary (1993)* pp. 219-220; Hurst Hannum. *The Right to Leave and Return in International Law and Practice* (2981) pp. 56-59.

could be deemed non-arbitrary only upon invocation of the most weighty justification.[e] In fact, the interest of some long-term permanent residents in entering their own country may be more significant than that of certain nationals, who maintain only tenuous connections to their State of nationality, and such interests would consequently deserve at least as much protection against arbitrary interference in their right of re-entry as that afforded to nationals.[f]

6. While it is true that in some cases (such as in the present communication), articles 17 and 23 may provide long-term permanent residents with adequate protection and would render their protection under article 12, paragraph 4, redundant (the same would also be true for nationals), there would clearly be circumstances involving individuals without established family lives, where the protections under articles 17 and 23 would not suffice to uphold their legitimate interests.

7. In the present case, the author moved to Kazakhstan in 1994 and obtained permanent residency there in 2000. He married and had a child in Kazakhstan. Hence, in 2008, when he was denied re-entry into Kazakhstan after visiting his parents in the Russian Federation, he was already a long-term permanent resident in Kazakhstan with close and enduring connections to the country. I am therefore of the view that he cannot be regarded a "mere alien" in that country, and I would have had no difficulty in accepting the author's claim that Kazakhstan was his own country — a claim that was not contested by the State party.[g] Had the Committee decided to review the merits of this particular claim by the author, I would consequently, have applied the finding of the Committee in paragraph 7.7 of its Views that the State's interference with the author's rights was arbitrary in nature also with respect to the author's rights under article 12, paragraph 4.

[e] See communication No. 1557/2007, *Nystrom* v. *Australia*, Views adopted on 18 July 2011, para. 7.6. ("The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable").

[f] See communication No. 582/1993, *Stewart* v. *Canada*, Views adopted on 1 November 1996, dissenting opinion by Elizabeth Evatt et al., paras. 5–6.

[g] For example, Kazakhstan did not argue, unlike Canada in *Stewart* v. *Canada* that the author failed to apply for Kazakh nationality. Cf. *Stewart* v. *Canada* (note f above), para. 12.6.