



International Covenant on Civil and Political Rights

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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session, the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the Covenant. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 106, paragraph 3, of the Committee's rules of procedure. In the light of the high number of Views on which follow-up is required and the limited resources that the secretariat can devote to follow-up to Views, it has been and continues to be impossible to ensure systematic, timely and comprehensive follow-up to all cases, particularly given the applicable word limitations. The present report is therefore based exclusively on the information available, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. Under the current methodology, unless the Committee reaches the determination that its Views have been implemented satisfactorily and closes a case, the case remains under the active scrutiny of the Committee. In light of the small number of cases that have been closed and the growing number of cases the Committee has adopted, which thus require follow-up, the overall number of cases under the follow-up procedure continues to increase steadily. Therefore, in an attempt to rationalize the work on follow-up, the Special Rapporteur for follow-up on Views proposes adjusting the methodology for the preparation of the reports and the status of cases by establishing a list of priorities based on objective criteria. The Special Rapporteur thus proposes that, in principle, the Committee: (a) close cases in which it has determined that implementation has been satisfactory or partially satisfactory; (b) retain active those cases on which it needs to maintain dialogue; or (c) suspend cases for which no further information has been provided in the past five years either by the State party concerned or by the author(s) and/or counsel, moving them to a separate category of "cases without sufficient information on satisfactory implementation". The Committee would not be expected to ensure any proactive follow-up on such cases, unless one of the parties submitted an update. Priority and focus would be given to recent cases and cases on which one or both parties were regularly providing the Committee with information. The Special Rapporteur is hopeful that this adjustment would significantly reduce the number of cases for which proactive follow-up is required. In addition, the Special Rapporteur proposes developing a strategy to ensure coordination with the list of States parties that are due to attend Committee meetings during which their reports will be examined. When relevant, a country page on follow-up to Views would be prepared and posted on the Committee website. Those country pages would complement the global rolling list of cases subject to the active follow-up procedure. The global list and the country pages would be available on the Committee website and would be updated regularly.

3. At the end of its 126th session, the Committee had concluded that there had been a violation of the Covenant in 1,145 out of the 1,380 Views it had adopted since 1979.

* The Committee adopted the present document at its 129th session (29 June–24 July 2020), having postponed its consideration owing to circumstances beyond the Committee's control.



4. At its 109th session, the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.

5. At its 118th session (17 October–4 November 2016), the Committee decided to revise its assessment criteria.

Assessment criteria (as revised during the 118th session)

Assessment of replies:¹

A Reply/action largely satisfactory: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B Reply/action partially satisfactory: The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.

C Reply/action not satisfactory: A response has been received, but the action taken or information provided by the State party is not relevant or does not implement the recommendation.

D No cooperation with the Committee: No follow-up report has been received after the reminder(s).

E Information or measures taken are contrary to or reflect rejection of the recommendation.

6. At its 121st session, on 9 November 2017, the Committee decided to revise its methodology and procedure for monitoring follow-up on its Views.

Decisions taken:

Grading will no longer be applied in cases where the Views have been merely published and/or circulated;

Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views;

The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply by the State party and information provided by the author.

B. Follow-up information received and processed up until September 2019

1. Canada

Communication No. 2348/2014, *Toussaint*

Views adopted: 24 July 2018

Violation: Articles 6 and 26

Remedy: (a) Provide the author with adequate compensation for the harm she suffered; (b) take all steps necessary to prevent similar violations in the future, including reviewing national legislation to ensure that irregular migrants have access to essential health care to prevent a

¹ The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

reasonably foreseeable risk that can result in loss of life.

Subject matter: Denial of access to health insurance and health care and its consequences for author's life and health

Previous follow-up information: None

Submission from the State party: 1 February 2019²

The State party submits that it is unable to agree with the Committee's Views. It observes that the Committee apparently misunderstood and has not given sufficient consideration to the domestic court decisions adopted in the author's case. The Committee portrayed these decisions as having placed the author's life and health at significant risk by having denied the author publicly funded health-care coverage under the Interim Federal Health Program. The State party notes, however (as it had indicated in its previous submissions), that the Federal Court of Appeal had in fact disagreed with the Federal Court that the author's ineligibility for such coverage was the operative cause of any risk to her life and security and had found that the author had endangered her own life and health by remaining in Canada illegally for many years.

With respect to the Committee's findings on article 6, the State party submits that it cannot accept the broad scope given to article 6 in its Views.³ The State party claims that article 6 cannot extend so far as to impose a positive obligation on States to provide State-funded medical insurance to foreign nationals without legal status present in the territory of the State. The State party observes that the Committee conflates the right to life with the right to the highest attainable standard of health, an economic and social right protected under the International Covenant on Economic, Social and Cultural Rights.⁴ The State party submits that, while it recognizes the interdependence and interrelatedness of rights, those rights were developed separately and negotiating States clearly did not intend for economic and social rights, such as the right to the highest attainable standard of health, which should be realized progressively to the maximum of available resources, to be encompassed under the right to life or to be realized immediately in the framework of the International Covenant on Civil and Political Rights. The State party also disagrees with the Committee's assertion that the right to life includes a right to enjoy a life with dignity encompassing socioeconomic entitlements.⁵

Moreover, the State party submits that the Committee fails to distinguish between providing access to health care and providing State-funded health-care coverage. The State party notes that the author was in fact able to receive medical care in every important instance, despite not having State-funded medical insurance or the ability to pay for the care herself. The State party also notes that Canadian hospitals are prohibited from denying emergency medical care to anyone whose life is at risk, regardless of immigration status. It further notes that persons without legal status in the State party are also able to access non-emergency health services at their own expense or on a pro bono basis. Indeed, the author was able to receive emergency medical services and she was also able to access many non-emergency services and medications on a pro bono basis. Therefore, the State party observes that, while the author was denied publicly funded health insurance under the Interim Federal Health

² The submission was acknowledged to the State party and transmitted to the author for comments on 13 March 2019.

³ The State party notes that the Committee's Views are not supported by established rules of treaty interpretation: the ordinary meaning of the terms of article 6 read in their context and in the light of the Covenant's object and purpose; the negotiating history and the larger context in which the Covenant was adopted; and the practice of States parties to the Covenant.

⁴ See also the comments by the Government of Canada to the Human Rights Committee on draft general comment No. 36 on the right to life. Available from www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

⁵ The State party notes that several other States parties raised similar concerns regarding the Committee's expansive interpretation and this potential blending of economic and social rights with the right to life.

Program, a serious risk to the author's life was in no way a reasonably foreseeable or preventable outcome.

Regarding the violation of article 26, the State party argues that immigration status is not a ground for discrimination on the basis that legality of residence in a country does not come within the scope of "other status", as it is not a characteristic inherent to the person. In the light of the facts, the State party disagrees with the Committee's view that the differential treatment was not based on reasonable and objective criteria, as all migrants can access basic services, including emergency health care, regardless of migration status. Furthermore, public health insurance is a reciprocal scheme and it cannot be considered discriminatory to deny State-funded health insurance to persons who choose to remain in Canada without legal status.

With respect to the remedies included in the Committee's Views, namely, providing the author with adequate compensation and taking steps to prevent similar violations in the future, the State party submits that the proposed compensation to the author is unwarranted, given that she was always able to receive medical care in important instances. Moreover, the denial of Interim Federal Health Program coverage could not be said to be the operative cause of the risk to the author's life.

In relation to the proposed systemic changes, the State party reiterates its position that the provision of life-saving emergency medical services to irregular migrants at Canadian hospitals is sufficient to meet the obligations of Canada under the Covenant. In addition, since 2012, the Interim Federal Health Program has included a discretionary power for the Minister of Immigration, Refugees and Citizenship to grant persons without residency status, including undocumented migrants, with Program benefits in exceptional and compelling circumstances.⁶

In the light of the above, the State party concludes that it will not take any further measures to give effect to the Committee's Views. It has nevertheless published them on a government website.

Submission from the author: 13 May 2019⁷

The author claims that the State party's response to the Committee's Views fails to meet the standard of good faith under international law. By relying on interpretations of similar provisions in domestic law to justify its failure to comply with the Committee's Views, the State party undermines the object and purpose of the Covenant and its Optional Protocol.

Regarding the interpretation of the decision by the Federal Court of Appeal, the author argues that the "operative cause" analysis of the Court did not constitute a finding of fact, but merely a legal analysis. It notes that the Court found that the author "was exposed to a significant risk to her life and health, a risk significant enough to trigger a violation of her rights to life and security of the person". The author alleges that, if the Committee were to accept the State party's position in this case, irregular migrants would be deprived of any rights under the Covenant.

Concerning the link between access to essential health care and the right to life, the author argues that the State party's interpretation of article 6, narrowing its scope in order to maintain a rigid separation vis-à-vis the rights protected under the International Covenant on Economic, Social and Cultural Rights, is not compatible with its international obligations, domestic jurisprudence and earlier statements.⁸ The author also notes that the link between

⁶ Between 2012 and November 2018, the Minister received seven requests for Interim Federal Health Program coverage from undocumented migrants. Five of these requests were approved and one was under consideration as at 1 February 2019.

⁷ The submission was acknowledged to the author and transmitted to the State party for information on 17 September 2019.

⁸ The author cites jurisprudence under the Canadian Charter of Rights and Freedoms, such as *Canada (Attorney General) v. PHS Community Services Society*, 2011 Supreme Court of Canada, 44. The author also notes that, in the State party's response to the review of one of its periodic reports, it emphasized the relationship between the right to life and the protection of health or social well-being (CCPR/C/1/Add.62, p. 23).

access to essential health care and the right to life is recognized by most domestic and regional courts and human rights bodies, which was confirmed during the consultation process during the preparation of general comment No. 36 (2018) on the right to life, and proves that the State party's views are not authoritative.

The author argues that the unequal protection of the right to life based on socioeconomic status and the ability to pay for private health care is contrary to international human rights law as far as the right to the equal enjoyment of the right to life is concerned. The author also argues that the State party's contention that she was able to receive adequate medical care despite being denied access to the Interim Federal Health Program is incompatible with the findings of domestic courts and of the Committee. There was clear evidence that she could not afford the private health care necessary to adequately protect her life and long-term health, and that pro bono and emergency health care were insufficient to protect her right to life.⁹

Regarding the State party's response on article 26, the author argues that the Committee would not find it acceptable if irregular migrants were not protected from discrimination under the Covenant, and neither would the State party, since its position has been in favour of promoting the human rights of migrants and of international consensus on protecting migrants from discrimination. It follows from the Committee's Views that differential treatment resulting in risk to life and long-term health cannot be justified as reasonable on any objective criteria. Lastly, the existence of a level of discretion in the granting of the Interim Federal Health Program does not constitute a development in domestic law that takes into consideration the Committee's findings in its Views.

Committee's assessment:

- (a) Adequate compensation: E;
- (b) Non-repetition including review of national legislation: E.

Committee's decision: Follow-up dialogue ongoing.

2. Denmark

Communication No. 2001/2010, Q.

| | |
|---|--|
| Views adopted: | 1 April 2015 |
| Violation: | Article 26 |
| Remedy: | (a) Provide the author with compensation; (b) reconsider his request for exemption of the language skills requirement in the naturalization process; (c) avoid similar violations in the future. |
| Subject matter: | Refusal to grant nationality through naturalization |
| Previous follow-up information: | None |
| Submission from the State party: | 26 April 2017 ¹⁰ |

The State party notes that it consulted with Parliament on the future steps to be taken regarding the Committee's findings.

Concerning the exhaustion of domestic remedies, the State party submits that the Danish Supreme Court established in its judgment of 13 September 2013 that applicants who are not listed in the law on naturalization can request the courts to review whether the obligations of Denmark under international law have been breached and, if that is the case, whether the applicant has a claim for damages or compensation for that reason. By contrast,

⁹ CCPR/C/123/D/2348/2014, para. 7.2.

¹⁰ The submission was acknowledged to the State party and transmitted to the author for comments on 21 March 2019.

it is not possible to request a judicial review of a claim to the effect that the author be listed in the new draft law on naturalization or be granted nationality by statute.¹¹

The State party observes that the Ministry of Immigration and Integration has reopened the author's naturalization case based on new medical details about the author's condition. Should the author's application for naturalization be refused, the author would therefore have a right and an obligation, in order to exhaust all available domestic remedies, to bring the case before the Danish courts requesting them to make a judicial review of the matter to determine whether his human rights have been violated in this particular situation.

The State party notes that the Ministry of Foreign Affairs has made the Committee's Views publicly available on its website without providing a Danish translation, considering the prevalence of English language skills in Denmark.

The State party submits that it has no intention of taking any further action, considering that the author's application for naturalization has now been reopened and that the author must exhaust all available domestic remedies if his application is refused.

Submission from the author: 8 July 2019¹²

The author submits that the State party has failed to provide him with effective remedies. Although his application was reopened at his request on 8 September 2016, on the basis of medical information obtained at his own cost, no action has been taken and no information has been made available as to when any action can be expected in the matter. The reopening was thus not a reconsideration of the original application, as requested by the Committee, nor did it take place through a procedure that took into consideration the Committee's findings.

The author argues that the new development in Danish case law invoked by the Government does not allow an effective judicial review of the refusal of the request to be listed on a naturalization law. The author contends that the Supreme Court decision should not be applied retroactively in this case. The author notes that there has been neither compensation nor a reconsideration of his request for exemption of the language skills requirement through a procedure that takes into consideration the Committee's findings.

The author claims that the State party's submission follows two briefings of the Naturalization Committee of the Danish Parliament,¹³ in which the Government objected to admissibility on the ground of non-exhaustion of domestic remedies, based on the Supreme Court judgment, and insisted on the non-binding character of the Committee's Views. The author alleges that this would be in violation of articles 2 and 3 (2) (a) of the Covenant and of the unilateral obligation of Denmark to comply with treaty bodies findings, acknowledged in its own statements.¹⁴

The author reiterates that the State party's follow-up response does not demonstrate good faith and that the State party has failed to comply with the Committee's Views.

Committee's assessment:

- (a) Adequate compensation: C;
- (b) Reconsideration of the author's request for exemption of the language skills requirement: C;

¹¹ This development in Danish case law on the exhaustion of domestic remedies took place after the Government had submitted its observations on the communication on 17 May 2011.

¹² The submission was acknowledged to the author and transmitted to the State party for information on 2 September 2019.

¹³ The first consultation was held on 18 January 2015 and the second round of consultations took place after the Ministry issued a document on 28 April 2017 following the consideration of a similar case by the European Court for Human Rights (*H.P. v. Denmark*, Application No. 55607/09, Decision of 13 December 2016).

¹⁴ See A/61/742. On the question of whether the author can claim the rights provided under article 2, the author refers to the Committee's affirmative Views, such as *Faure v. Australia* (CCPR/C/85/D/1036/2001).

(c) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

3. Denmark

Communication No. 2753/2016, C.L. and Z.L.

| | |
|---|---|
| Views adopted: | 26 March 2018 |
| Violation: | Article 7 |
| Remedy: | (a) Proceed to a review of the decision to forcibly remove the author and his son to China; (b) refrain from expelling the author and his son while their request for asylum is being reconsidered. |
| Subject matter: | Deportation from Denmark to China |
| Previous follow-up information: | None |
| Submission from the State party: | 26 September 2018 ¹⁵ |

The State party informs the Committee that, on 16 April 2018, the Danish Refugee Appeals Board reopened the author's asylum case for a review at an oral hearing before a new panel in order to reconsider the application of the author and his son for asylum in the light of the Committee's Views. On 20 September 2018, the Board decided to grant the authors asylum after due reconsideration of the matter.¹⁶

As to the obligation to take steps to prevent similar violations in the future, the State party observes that, when exercising their powers under the Aliens Act, the Danish Immigration Service and the Refugee Appeals Board are legally obliged to take the international obligations of Denmark into account, including the case law of the Committee. The Views of the Committee in the present case will therefore also be taken into account in the future by these two bodies in their assessment of the international obligations of Denmark.

In this regard, the State party submits that all Views and decisions in cases against the State party involving the Refugee Appeals Board are published on the websites of both the Board and the Ministry of Foreign Affairs. Views that raise criticisms are also discussed by the Coordination Committee of the Board. As a rule, the Refugee Appeals Board reopens all cases in which criticism has been raised, based on the relevant Views or decisions. Furthermore, the Views of the Committee in cases against the State party involving the Board will be reported in the annual report of the Board, which is distributed to all Board members.

The State party therefore submits that it has taken the necessary and relevant steps to prevent similar violations in the future and that it complies with the Committee's request to publish the present Views and ensure their dissemination. In the light of the prevalence of English language skills in Denmark, the Government argues that it sees no reason for a full translation of the Committee's Views into Danish.

Submission from the authors: 23 October 2018¹⁷

The main author expresses his satisfaction and has no further comments regarding the present communication.

Committee's assessment:

(a) Review the decision of deportation: A;

¹⁵ The submission was acknowledged to the State party and transmitted to the authors for comments on 2 October 2018.

¹⁶ A translation into English of the decision was annexed to the State party's submission.

¹⁷ The submission was acknowledged to the authors and transmitted to the State party for information on 2 September 2019.

(b) Refrain from expelling the author and his son while their request for asylum is being reconsidered: A.

Committee's decision: Close the follow-up dialogue, with a note of satisfactory implementation of the Committee's recommendation.

4. France

Communications No. 2747/2016, *Yaker*, and No. 2807/2016, *Hebbadj*

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|---|--|
| Views adopted: | 17 July 2018 |
| Violation: | Articles 18 and 26 |
| Remedy: | (a) Provide the authors with appropriate measures of satisfaction and financial compensation for the injury suffered; (b) prevent similar violations in the future, including by reviewing Act No. 2010-1192 in the light of the State party's obligations under the Covenant, in particular articles 18 and 26. |
| Subject matter: | Right to freedom of religion; discriminatory treatment of a religion and of its members |
| Previous follow-up information: | None |
| Submission from the State party: | 18 April 2019 ¹⁸ |

As a preliminary remark, the State party points out that these Views were examined in the presence of only 13 out of the 18 members of the Committee and were the subject of two dissenting individual opinions. In addition, it draws attention to the fact that several articles commenting on the Committee's Views appeared in the press before its official notification to the Government. The State party regrets this breach of confidentiality. It draws the Committee's attention to the fact that such incidents are seriously prejudicial to the Government and may damage the reputation and credibility of the Committee's work.

With regard to the Committee's reasoning in its Views, the State party submits that the objectives of Act No. 2010-1192 of 11 October 2010 prohibiting the concealment of one's face in public places are the protection of security and public order and the preservation of the minimum requirements for living in society. The Act does not seek to prohibit a particular religious practice or manifestation.

The State party recalls that freedom of religion may be restricted and that the primary objective of the Act is to prevent practices tending to conceal one's face, which may constitute a danger to public security and which disregard the minimum requirements of living in society, and more specifically of "living together". The State party recalls that the terrorist threat environment in France, following the recent wave of attacks, requires the identification of individuals in public places. The State party draws the Committee's attention to two recent serious crimes committed by individuals who were wearing burkas.

The State party submits that the European Court of Human Rights held in *S.A.S. v. France* that "having regard in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, the Court finds that the ban imposed by the Law of 11 October 2010 can be regarded as proportionate to the aim pursued, namely the preservation of the conditions of 'living together' as an element of the 'protection of the rights and freedoms of others'".¹⁹ In this regard, the State party expresses its concern at the Committee's Views, which diverge from this regional court judgment, the execution of which is mandatory for States parties, and draws the Committee's attention to the risks of fragmentation of the international order.

¹⁸ The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 8 May 2019.

¹⁹ Application No. 43835/11, Judgment of 1 July 2014, para. 157.

Submission from the authors' counsel: 12 July 2019²⁰

The authors' counsel indicates that he has lost contact with the authors.

Committee's assessment:

- (a) Effective remedy, including financial compensation: No information;
- (b) Non-repetition: E.

Committee's decision: Close the case, with a note of unsatisfactory implementation of the Committee's Views.

5. Kyrgyzstan

Communication No. 1756/2008, Zhumabaeva

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|--|---|
| Views adopted: | 19 July 2011 |
| Violation: | Articles 6 (1) and 7, and article 2 (3), read in conjunction with articles 6 (1) and 7 |
| Remedy: | (a) Conduct an impartial, effective and thorough investigation into the circumstances of the author's son's death and prosecute those responsible; (b) provide full reparation, including appropriate compensation; (c) prevent similar violations in the future. |
| Subject matter: | Death in police custody |
| Previous follow-up information: | CCPR/C/121/3 |
| Submission from the State party: | 7 February 2017 ²¹ |
| Submission from the author's counsel: | 21 December 2017 ²² |

The author's counsel submits that, on 28 October 2017, Mr. Moidunov's sister received compensation in the amount of 200,000 soms (approximately €2,400). He notes that the State party's courts, including the Supreme Court, highlighted the obligation to compensate any moral injury caused to the victims of human rights violations and to the relatives of deceased victims. The courts have specifically referred to the Committee's Views, establishing the violation of Mr. Moidunov's rights.

The author's counsel considers, however, that the amount awarded by the domestic courts is inappropriate. He recalls the Committee's conclusion that the State party was responsible for the arbitrary deprivation of Mr. Moidunov's life, as well as for a violation of his right not to be subjected to torture, cruel, inhuman or degrading treatment, and that the State party has failed to conduct an effective investigation into the aforementioned violations. The author's counsel notes that the Pervomaisky District Court of Bishkek, in its decision of 29 April 2015, ruled that the Ministry of Finance should pay 500,000 soms (approximately €6,000) to Ms. Zhumabaeva. On 13 October 2015, the Judicial Division for Civil Cases of the Bishkek City Court (the appeal court), decreased the amount to 200,000 soms without providing any reasoning for its decision. On 11 January 2017, the Supreme Court confirmed the decision of the court of appeal, again with no reason given to justify how this amount was determined and what criteria were used. No interest was paid to account for a two-year delay of payment from the entry into force of the decision of the Judicial Division for Civil Cases of the Bishkek City Court and for the six-year delay in the payment of compensation, as

²⁰ The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 16 September 2019.

²¹ See CCPR/C/121/3, p. 25. The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 28 March 2017.

²² The submission was acknowledged to the author's counsel and transmitted to the State party for information on 4 September 2019.

requested by the Committee in its Views. The State party did not provide any other form of reparation or rehabilitation to the family, nor did it take any measures of satisfaction.

The author's counsel does not, nevertheless, oppose the closing of the follow-up procedure, since Mr. Moidunov's family does not see any reasonable prospect that the State party will take any future steps for the full implementation of the Committee's Views. He recalls that the State party has rejected the Committee's request to conduct an impartial, effective and thorough investigation of the case and to prosecute those responsible, arguing that there were no grounds to reopen the criminal proceedings. Despite the fact that at least one of the alleged perpetrators is known and named in the Committee's Views, the State party did not discharge him from police service.

The author's counsel submits that the State party did not address the need to prevent similar violations in the future and it did not describe any actions taken to this effect. The reforms introduced by the State party with the establishment of a national preventive mechanism, the mandatory medical form and training materials on torture investigation are insufficient and torture is still widespread. The author's counsel indicates that the State party has not yet published the Committee's Views.

In the light of the foregoing, the author's counsel requests the Committee, if it decides to close the follow-up procedure, to consider the State party's replies and actions as unsatisfactory.

Committee's assessment:

- (a) Investigation and prosecution: C;
- (b) Full reparation, including appropriate compensation: B;
- (c) Non-repetition: No information.

Committee's decision: Close the follow-up dialogue, with a note of partially satisfactory implementation of the Committee's Views.

6. Republic of Korea

Communication No. 2273/2013, *Vandom*

| | |
|---|---|
| Views adopted: | 12 July 2018 |
| Violation: | Articles 17 and 26 |
| Remedy: | (a) Provide the author with adequate compensation; (b) take steps to avoid similar violations in the future, including reviewing its legislation so that mandatory and other coercive forms of HIV/AIDS and drug testing are abolished and, if already abolished, not reintroduced. |
| Subject matter: | Mandatory in-country HIV and drug testing policy; discrimination on the grounds of nationality and race |
| Previous follow-up information: | None |
| Submission from the State party: | 28 January 2019 ²³ |

The State party submits that, according to domestic legislation on State compensation, the State will provide compensation when the victim has filed a case for State reparation and received a final ruling in his or her favour. If the author files a claim for damages in the

²³ The submission was acknowledged to the State party and transmitted to the author for comments on 17 May 2019.

domestic courts, the State party will consider taking appropriate action with reference to the court proceedings.

On non-repetition, the State party submits that in 2017, it abolished the mandatory HIV testing previously required of foreign language tutors holding an E-2 visa.²⁴ However, the State party also notes that foreign language tutors are still required to report their drug test results. The State party holds that this requirement is necessary and proportionate, considering that the use of certain drugs constitutes a criminal offence under domestic law, and that the State party needs to create a safe learning environment for students amid a rise in drug-related crimes committed by foreign nationals.

The State party indicates that it published Korean translations of the Committee's Views in Official Gazette No. 19392 dated 4 December 2018, in order to disseminate them to the general public.

Submission from the author: 17 July 2019²⁵

The author claims that the State party has failed to respect the most essential character of the individual complaint procedure, which ensures the right to an effective remedy. Having endured racial discrimination at the hands of the State party that resulted in the loss of her job and her home, the author has not received any private words of regret or public apology from the State party and there has been no attempt to provide her with due compensation. The State party has thus failed to provide the author with an effective remedy, in breach of its obligations under the Covenant.

The author argues that the abolition of the mandatory HIV testing is not an action taken as a result of the Committee's Views, but rather as a result of the opinion of the National Human Rights Commission of Korea in support of the Views of the Committee on the Elimination of Racial Discrimination in *L.G. v. Republic of Korea*.²⁶ Therefore, the State party has not taken any specific action with respect to the Views of the Committee in the present communication.

The author submits that the State party has failed to understand properly its obligations under the Covenant and the Optional Protocol when it commits to providing compensation according to domestic legislation once the author brings the case to the domestic courts.²⁷ Furthermore, in *L.G. v. Republic of Korea*, the author instituted court proceedings to seek reparation following the recommendation of the State party. In the present case, the author alleged that during the proceedings, the Government's lawyers aggressively defended the action of the State party and relitigated the entire issue using the same race-based arguments. She was forced to pay the legal fees for the lawyers' defence of the State party even before the decision was issued, as she is a foreigner with no residence in the State party.²⁸ The court proceedings, which have been ongoing for more than a year and a half without conclusion at the time of the present submission, have not led to the State party taking appropriate action. The response of the State party is thus incomplete.

The author notes a disturbing trend with regard to the State party's relationship with the Committee, especially in its persistent refusal to implement its Views. The author notes that the policy of mandatory drug testing for foreign language tutors does not concern teachers who are Korean citizens or those who are ethnic-Korean non-citizens, and that the arguments of the State party are a prima facie assertion to enforce race-based employment requirements that affect tens of thousands of foreign teachers residing in the Republic of Korea, in direct violation of the Covenant.

²⁴ According to the Ministry of Justice notification (No. 2017-116, in effect since 3 July 2017).

²⁵ The submission was acknowledged to the author and transmitted to the State party for comments on 3 September 2019.

²⁶ CERD/C/86/D/51/2012.

²⁷ Article 27 of the Vienna Convention on the Law of Treaties stipulates that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

²⁸ The legal fees would be normally be paid after the court has issued its decision. The fees amounted to 2.8 million won (€2,115).

Committee's assessment:

- (a) Adequate compensation: C;
- (b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

7. Tajikistan**Communication No. 2680/2015, Saidov**

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|------------------------|---|
| Views adopted: | 4 April 2018 |
| Violation: | Articles 9 (1), 14 (1), (2) and (3) (b) and (e), 19 (2) and 22 (1) |
| Remedy: | (a) Quash the victim's conviction, release him and, if necessary, conduct a new trial in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; (b) provide the victim with adequate compensation; (c) prevent similar violations from occurring in the future. |
| Subject matter: | Unlawful detention and unfair trial of a prominent politician |

Previous follow-up information: None

Submission from the State party: 12 September 2018²⁹

The State party expresses its disagreement with the findings of the Committee in its Views on the present communication.

The State party notes that, on 17 May 2013, the Deputy Prosecutor General initiated criminal proceedings against Mr. Saidov under article 319 (4) (c) of the Criminal Code (bribe-taking). On the same day, the Office of the Prosecutor General sent a request to waive the author's immunity as a deputy of Dushanbe City Council. Thus, there was no haste made in deciding on the question of the waiver of Mr. Saidov's immunity, and further procedural actions were taken in accordance with the legislation of the State party and its international human rights obligations. Contrary to the author's claim in the communication, Mr. Saidov was interrogated as a witness; he was not detained upon his arrival at the airport on 19 May 2013. It was only after the decision on the waiver of his immunity was received that Mr. Saidov was officially detained. On 21 May 2013, he was remanded in custody by Firdavsi District Court. Thus, he was not arbitrarily detained, as these measures were taken in conformity with the legislation of Tajikistan and in accordance with the provisions of the Covenant.

In relation to the Committee's finding that Mr. Saidov's right to a fair and public hearing under article 14 (1) of the Covenant has been violated, the State party recalls that he committed malfeasance while serving as Minister of Industry and had access to State secrets as part of his official functions. Therefore, the conduct of closed proceedings in Mr. Saidov's case was fully justified.

The State party submits that, contrary to the Committee's finding that Mr. Saidov's rights under article 14 (3) (b) of the Covenant have been violated, his lawyers were able to meet with him every time such a meeting was requested, from the beginning of his detention. Moreover, on 23 May 2013, during his meeting with the Commissioner for Human Rights (Ombudsperson), Mr. Saidov expressed satisfaction with his detention conditions and thanked the staff of the anti-corruption agency for the attitude they had shown towards him.

The State party rejects as unfounded Mr. Saidov's claim that he was denied the opportunity to obtain the attendance of witnesses on his behalf, in violation of article 14 (3)

²⁹ The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 17 July 2019.

(e) of the Covenant. It notes that Mr. Saidov and his lawyers could have also requested the court to obtain the attendance of witnesses that had been previously rejected by the authorities in charge of the investigation.

Contrary to what was claimed in the communication, the criminal prosecution against Mr. Saidov is unrelated to his enjoyment of the right to freedom of association, since the criminal charges against him were not politically motivated. The first criminal case against executive officers of the Ministry of Industry, including Mr. Saidov, was initiated by the Office of the Prosecutor General back in 2005. Therefore, criminal prosecution against Mr. Saidov was initiated well before he formed a political party.

Regarding effective remedies, the State party reiterates that Mr. Saidov was accused and found guilty of having committed a series of serious crimes and particularly serious crimes. As a result, he was sentenced to 29 years' imprisonment. The State party submits, therefore, that Mr. Saidov's conviction and sentence were well-founded.

Submission from the author's counsel: 16 September 2019³⁰

The author's counsel submits that, in its follow-up observations, the State party has inadequately addressed the claims contained in the initial communication submitted to the Committee and has incorrectly contended that Mr. Saidov's detention was justified and that his conviction was well-founded.

The author's counsel notes that, although the State party has claimed that Mr. Saidov was released after the preliminary interrogation as a witness on 19 May 2013, it did not provide any information as to whether Mr. Saidov was effectively released and for how long during the 35 hours prior to a court order on his remand. Furthermore, the State party ignored the Committee's reference in its Views to general comment No. 35 (2014) on liberty and security of person, according to which arrest within the meaning of article 9 of the Covenant need not involve a formal arrest as defined under domestic law.

The author's counsel submits that the State party failed to address the Committee's finding concerning article 14 (1) of the Covenant since it did not provide pertinent explanations for holding Mr. Saidov's trial in secret. He notes, in particular, that the State party did not reiterate in the follow-up observations its earlier argument that one of Mr. Saidov's alleged victims was a minor, and that the trial was thus closed for that individual's privacy.

Although the State party repeatedly argued that Mr. Saidov's right to be presumed innocent had not been violated, it acknowledged that State television had broadcast a programme documenting that Mr. Saidov had accepted a bribe in the form of a factory. The author's counsel notes that, perplexingly, the State party argued in its follow-up observations that "the broadcast of the video materials was not done in an accusatory manner", despite the fact that the programme was aired in the days immediately following Mr. Saidov's arrest, and well before the completion of his trial.

The author's counsel submits that the State party did not provide any evidence in support of its assertion that Mr. Saidov's lawyers had been able to meet with their client upon every request from the beginning of his detention. It also failed to comment on the documentary evidence submitted as part of the initial communication to the Committee, which demonstrated that several requests from Mr. Saidov's lawyers to meet with him remained unanswered by the State party's authorities. The State party is also unclear as to why Mr. Saidov was unable to call more than 11 witnesses in his defence. The author's counsel notes that the State party appears to explain that the authorities in charge of investigation did not approve additional witnesses, but the court had the ability to grant a request from Mr. Saidov's lawyers to call more witnesses.

In its follow-up observations, the State party claims that Mr. Saidov's right to freedom of association could not have been violated, since the criminal investigation was initiated by the Prosecutor General in 2005, that is, well before Mr. Saidov began to form a political party.

³⁰ The submission was acknowledged to the author's counsel and transmitted to the State party for information on 23 September 2019.

The author's counsel submits that this assertion contradicts the State party's earlier claims that the criminal case against Mr. Saidov was first opened on 11 May 2013, when he was charged with bigamy and/or polygamy. If that were the case, the State party's authorities allowed Mr. Saidov to serve as Minister of Industry for two years while he was under criminal investigation. The State party alluded to other government officials who were under investigation, but did not name them or state whether any officials, other than Mr. Saidov, were charged as a result of the investigation. Furthermore, the State party did not explain why the investigation took eight years to complete or why Mr. Saidov was charged less than a month after he launched a political party called "New Tajikistan".

The author's counsel submits that despite the Committee's Views, the State party's authorities continue to detain Mr. Saidov at great risk to his personal safety. Mr. Saidov is being held at the maximum security Kirpichniy Prison in Vahdat district. On 19 May 2019, according to the Ministry of Justice, 3 prison guards and 29 prisoners were killed in what was officially described as a riot. Reportedly, the riot began when members of Islamic State in Iraq and the Levant killed three guards and then specifically sought out other prisoners for execution. Mr. Saidov was targeted by members of that group, but was protected from harm by fellow prisoners. Mr. Saidov remains in Kirpichniy, despite the clear threat to his life.

Committee's assessment:

- (a) Quashing the victim's conviction, releasing him and, if necessary, conducting a new trial: E;
- (b) Adequate compensation: E;
- (c) Non-repetition: No information.

Committee's decision: Follow-up dialogue ongoing.

8. Tajikistan

Communication No. 2826/2016, Murodov

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| Views adopted: | 25 October 2018 |
| Violation: | Article 14 (1), read alone and in conjunction with article 2 (3) |
| Remedy: | (a) Fully enforce the court decision of 26 March 2004; (b) take into account all appropriate factors in updating the enforcement on the date of its execution, including the damages suffered by the author as a result of the undue delay in payment of compensation; (c) prevent similar violations occurring in the future. |
| Subject matter: | Nationalization of private company; compensation |
| Previous follow-up information: | None |
| Submission from the State party: | 15 February 2019 ³¹ |

The State party submits that the Office of the Prosecutor General has examined the letter of the Executive Secretariat of the President of Tajikistan dated 1 February 2019 concerning the Committee's Views in the present communication. Having established the facts on which the communication is based, the Office concluded that the court decisions adopted in the author's economic case were well-reasoned and fully complied with the legislation that was in force at the time of their adoption. The State party recalls that, in conformity with its legislation, the majority of health, cultural and public education institutions should remain under State ownership and that such institutions may be privatized based on a government decree only. On 20 May 1996, the Government of Tajikistan adopted a programme for the privatization of State-owned property for the period from 1996 to 1997.

³¹ The submission was acknowledged to the State party and transmitted to the author for comments on 27 February 2019.

However, it did not issue a decree on the privatization of Kharangon Rehabilitation Centre. Therefore, the sale of that Centre by auction by the State Committee for the Management of State Property was contrary to the aforementioned legislation, and the contract of sale concluded on 28 December 1996 was invalid. Furthermore, the charter of the Kharangon public joint-stock company was registered by the State notary office on 18 February 1997. The registration certificate of the charter was issued the same day; the Kharangon company thus obtained its legal capacity as a legal entity at that time. Consequently, the memorandum of association of 18 October 1996 and the contract of sale were concluded with an entity that did not legally exist. According to article 46 (1) of the 1963 Civil Code of Tajikistan (in force at the time), contracts that did not comply with the requirements of the relevant law were invalid. The State party recalls that other violations of the tendering and auction procedures concerning the acquisition of Kharangon Rehabilitation Centre by the author were established in the course of the domestic judicial proceedings.

The State party submits that, pursuant to article 231 (e) of the Civil Code, the statute of limitations does not apply to owners' demands to declare null and void decisions of State and local authorities resulting in violations of their rights to own, use and manage their property.

As for the non-execution of the decision of the Supreme Economic Court awarding compensation to the author in the amount of 50,891 somoni, the State party submits that the author was duly issued an enforcement order against the State Committee for the Management of State Property. Pursuant to the Economic Procedural Code of Tajikistan, if a debtor does not have sufficient means to pay off his or her debts, the claimant has a right to take legal action against the debtor in the courts in order to enforce the execution of a court decision. The State party notes, however, that the enforcement order issued against the State Committee for the Management of State Property in the author's favour has not been submitted to any court for the enforcement of the execution of the decision of the Supreme Economic Court.

Submissions from the author: 24 April 2019³² and 12 June 2019³³

The author claims that the Office of the Prosecutor General, which had been requested by the Executive Secretariat of the President of Tajikistan to provide its feedback on the Committee's Views in the present communication, is not an impartial State entity, since the Supreme Economic Court decided to annul the outcome of the auction for the sale of Kharangon Rehabilitation Centre precisely on the basis of the protest motion filed by the Office of the Prosecutor General back in 2004.

The author submits that he should not pay the price and bear the consequences of the decision of the State Committee for the Management of State Property to sell Kharangon Rehabilitation Centre by auction, thus paving the way for its privatization. He notes that the reference of the Office of the Prosecutor General to article 46 (1) of the 1963 Civil Code of Tajikistan as justification for declaring invalid the contract of sale concluded on 28 December 1996 is legally incorrect. The author argues that, prior to the registration of its charter by the State notary office on 18 February 1997, Kharangon Rehabilitation Centre and its labour collective had been acting as a legal entity for dozens of years and, in accordance with the law on the privatization of State-owned property, it was entitled to enter into contractual obligations. Moreover, the author points out that article 231 (e) of the Civil Code, referred to by Office of the Prosecutor General, did not exist at the time that the Centre was privatized and that that provision does not have retroactive effect. Furthermore, back in 2004, the Ministry of Health was not a proprietor of Kharangon Rehabilitation Centre. Therefore, the Office of the Prosecutor General has filed its protest motion on behalf of a legally inappropriate entity.

³² The submission was acknowledged to the author and transmitted to the State party for information on 29 April 2019.

³³ The submission was acknowledged to the author and transmitted to the State party for information on 1 July 2019.

The author submits that the State party should comply with the Committee's Views and pay him compensation in the amount equivalent to \$1,350,000.

Committee's assessment:

- (a) Enforcement of the court decision: C;
- (b) Taking into account all appropriate factors in updating the enforcement of the court decision on the date of its execution: C;
- (c) Non-repetition: No information.

Committee's decision: Follow-up dialogue ongoing.

9. Uzbekistan

Communication No. 2234/2013, M.T.

- Views adopted:** 23 July 2015
- Violation:** Articles 7, 9 (1), (2) and (4), 14 (1) and (3) (b) and (e), 19, 21, 22 and 26, and article 2 (3), read in conjunction with article 7
- Remedy:** (a) Carry out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment; (b) initiate criminal proceedings against those responsible; (c) provide the author with appropriate compensation; (d) prevent similar violations occurring in the future.
- Subject matter:** Human rights defender convicted on false criminal charges and tortured while in detention

Previous follow-up information: None

Submission from the State party: 2 October 2016³⁴

The State party expresses its disagreement with the findings of the Committee in its Views. The State party points out that it is impossible to provide information with regard to the author's allegations of ill-treatment and intimidation by police officers of the Kirgulin Region Police Department, since all the documents concerning the case were destroyed after the 10-year retention period required by the law on archives of 15 June 2010 and other domestic legislation.

Regarding the author's claim that she was assaulted by groups of women on 15 June and 20 August 2003 in connection with her picketing of the Regional Procurator's Office, the State party asserts that it has no means of carrying out an investigation in this regard, because the author failed to indicate in her complaint the specific district in which the assaults took place.

As to the author's claims that she was subjected to beatings and raped by unidentified individuals in the Bektemir District Department of Internal Affairs, the State party argues that, as she did not file a complaint with the Tashkent Procurator's Office, no investigative actions were carried out.

The State party recalls that, on 6 March 2006, the Tashkent Regional Court found the author guilty of 13 charges³⁵ and sentenced her to eight years' imprisonment. The author's

³⁴ The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 28 March 2017.

³⁵ The author was charged with extortion, theft by appropriation or embezzlement, fraud, tax evasion and evasion of other mandatory payments, violation of trade regulations and service provision rules, violation of the terms for using the soil and mineral resources or requirements for their protection, perjury, illegal organization of social associations or religious organizations, forgery of documents,

sentence was upheld by the appeal chamber of the criminal division of the Tashkent Regional Court on 30 May 2006. Her guilt was fully proven by the testimony of the victims and other evidence. The earlier decisions of the domestic courts were amended by the ruling of the Supreme Court of 2 June 2008, which reduced the author's sentence to a three-year suspended sentence.

The State party provides detailed information about the circumstances of the author's arrest and search of her house on 7 October 2005. The State party also explains in detail that her right to be represented by a lawyer of her choice was not violated. It submits that officers of the procurator's office did not commit any illegal acts, including applying psychological pressure or physical violence against the author during the pretrial investigation and that no violations of the Code of Criminal Procedure, invoked by the author in her communication, have been established.

The State party submits that the author did not file a complaint regarding the illegal actions of the officers of the Ministry of Internal Affairs with the Kuyi Chirchik District Procurator's Office, and consequently, no investigative action was taken in 2005 or 2006. With regard to the author's claims that she was denied the opportunity to speak privately to the lawyers of her choice and that she did not have enough time to review her case file before the start of the trial, the State party submits that all of her procedural motions were granted by the court and that her trial was observed, *inter alia*, by representatives of the embassies of France, Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The State party submits, therefore, that the author's trial was conducted in line with fair trial principles.

The State party submits that the author was never held in a psychiatric ward and that her claims in that regard are entirely unsubstantiated. When the author was admitted to a penal colony, she was initially placed in the admission ward³⁶ and underwent a comprehensive medical examination. Having been diagnosed with neurasthenia and hypotensive neurocirculatory asthenia, the author received inpatient and ambulatory treatment for her medical condition. At the end of the adaptation period in the admission ward, the author was transferred to the ordinary unit. Neither the author nor her lawyers submitted any complaints to the administration of the penal colony about her worsening state of health and there are no records establishing that the author fought with the medical personnel or that the personnel attempted to administer non-prescribed injections to her.

Contrary to the author's claims in her communication, she worked in the sewing shop of the penal colony's factory, where she worked seated. Due to the nature of the work, it could not be performed standing for seven hours. The State party submits that the administration of the penal colony has not established any instances of psychological or psychical pressure being put on the author and she never indicated that she was on hunger strike. It states that the author's claims in that regard are without merit, since she never complained about alleged ill-treatment by the administration of the penal colony and law students from Tashkent University did not visit the penal colony where the author was serving her sentence during the period concerned.

The State party submits that the author systematically violated the rules and regulations of the penal colony and, after repeated warnings and discussions between her and the personnel of the penal colony, she was placed in the disciplinary ward for 15 days. It adds that no violations of the author's rights were established to have occurred when disciplinary measures were taken against her.

As to the author's claim of forced sterilization, the State party asserts that she was informed of the need for the operation in a timely manner and that the surgical intervention could not have occurred without her consent. It adds that the surgery in question was carried out in civilian health-care facilities and the author was given sufficient time to recover there before being transferred back to the penal colony.

stamps, seals, letterheads, as well as their sale or use, arbitrariness, and the preparation, storage, distribution or display of materials containing a threat to public safety or public order.

³⁶ Reference is made to article 56 of the Correctional Code.

As to the author's claims about being subjected to ill-treatment by personnel of remand centres, the lack of medical care, the poor detention conditions, being required to stand guard at various posts within the colony, and being denied access to the administration of the penal colony and the prosecutor, the State party submits that no violations of the author's rights invoked in her communication to the Committee have been established.

Submission from the author's counsel: 3 July 2017³⁷

The author's counsel submits that the author has identified some of the perpetrators and institutions involved in the violations committed against her but, to the best of her knowledge, the State party has not taken any steps to investigate the named individuals or any members of the relevant institutions.

Furthermore, despite the clear requirement for compensation in the Committee's Views, the author has not received any compensation from the State party. The author's counsel submits that the following factors should be taken into account by the State party in determining what constitutes appropriate compensation in line with the Committee's Views: (a) the serious nature of the violations committed; (b) the severe consequences of the violations on the author's life, including her health, and the resulting costs for her past, current and future medical and psychological treatment; (c) the fact that the author was forced to leave Uzbekistan and start a new life abroad; (d) the author's loss of earnings and income; and (e) the damage to the author's reputation as a result of her persecution by the State party, as well as her unfair trial and wrongful conviction.

The author's counsel argues that the State party cannot avoid its responsibility by merely claiming that the documents in her criminal case file were destroyed after the expiry of the retention period. The author expresses her readiness to provide the State party with all the documents in her possession in order to facilitate the opening of a criminal investigation into the violations established by the Committee. The author's counsel states that the State party's submission contains some factual mistakes.³⁸ He recalls that the violations of the author's rights remain unpunished, including subjecting her to discrimination on the grounds of her gender and her status as a human rights defender. He adds that the author's family members and colleagues have also suffered from harassment and smear campaigns on the part of the authorities.

The author's counsel submits that, to the best of the author's knowledge, the State party has neither translated nor disseminated the Committee's Views. He recalls that the violations committed against the author were the result of institutional and legislative shortcomings, the effects of which have been aggravated by the impunity of the perpetrators. He provides a detailed list of measures that should be taken by the State party in order to prevent similar violations from occurring in the future.

Committee's assessment:

- (a) Carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment: C;
- (b) Initiating criminal proceedings against those responsible: C;
- (c) Providing the author with appropriate compensation: E;
- (d) Non-repetition: No information.

Committee's decision: Follow-up dialogue ongoing. The Committee will request a meeting with a representative of the State party during a future session of the Committee.

³⁷ The submission was acknowledged to the author's counsel and transmitted to the State party for information on 18 July 2019.

³⁸ In particular, the author has never been found guilty of having committed crimes under some of the articles of the Criminal Code that were mentioned in the State party's submission.