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11–29 October 2010

Follow-up Progress Report of the Human Rights Committee on Individual Communications

This report compiles information received since the 99th session of the Human Rights Committee, which took place from 12 to 30 July 2010.

State party	ALGERIA
Cases	Bousroual, 992/2001
Views adopted on	30 March 2006
Issues and violations found	Enforced disappearance, arbitrary detention, no access to counsel, failure to bring promptly before a judge, grave suffering - article 6, paragraph 1; articles 7 and 9, paragraphs 1, 3 and 4, in relation to the author's husband, as well as article 7 in relation to the author, violations in conjunction with article 2, paragraph 3.
Remedy recommended	A thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he is still alive, adequate information resulting from its investigation transmitted to the author, and appropriate levels of compensation for the violations suffered by the author's husband, the author and the family. The State party is also under a duty to prosecute criminally, try and punish those held responsible for such violations.
Due date for State party's response	1 July 2006
Date of State party's response	None
Author's comments	

On 27 July 2010, the author informed the Committee that the State party has taken no measures to date to implement the Committee's decision and in general has failed to follow up on any of the Committee's decisions against the State party on the pretext that it cannot do so under the *Charte pour la Paix et la Réconciliation Nationale*.

Further action taken or required

The Committee will recall that during the 97th session and in light of the State party's failure to provide follow-up information on any of the Committee's Views, the Secretariat, on behalf of the Rapporteur, requested a meeting with a representative of the Permanent Mission during the 93rd session of the Committee (7 and 25 July 2008). Despite a formal written request for a meeting, the State party did not respond. A meeting was eventually scheduled for the 94th session but did not take place.

The Committee decided that a further attempt to organize a follow-up meeting with the State party should be arranged.

The author's submission was sent to the State party on 9 August 2010 and the State party was reminded to provide comments on the follow-up to this case.

Proposed decision of the Committee The Committee considers the dialogue ongoing.

State party	BELARUS
Cases	Smantser, 1178/2003
Views adopted on	23 October 2008
Issues and violations found	Detention in custody - article 9, paragraph 3
Remedy recommended	An effective remedy, including compensation
Due date for State party's response	12 November 2009
Date of State party's response	31 August 2009
Date of author's comments	23 April 2010

State party's submission

The State party contests the Views and submits inter alia that the Courts acted with respect to the Belarusian Constitution, and Criminal Procedural Code, as well as the Covenant. It denies that the author's rights under the Covenant were violated.

Author's comments

On 23 April 2010, the author contested the State party's argument that he was detained in accordance with the Code of Criminal Procedure, that he was convicted for a particularly serious crime and that there was a risk that he might interfere with the investigation or abscond. He claims that the General Prosecutor's Office could not find any lawful grounds for his detention under section 210, part 4, of the Criminal Code. Thus, he was detained from 3 December 2002 to 31 May 2003 unlawfully. He submits that he is unaware of any action by Belarus to implement the Committee's Views on his case, which had not even been published at that point. Furthermore, he submits that he is currently abroad, as on 4 May 2006 the court of the Octyabr district annulled the decision of the same court of 7 June 2005 to replace the rest of his prison term with community service.

Further action taken or required

Given the State party's refusal to implement the Committee's Views on this case or indeed to provide any satisfactory response to any of the 16 findings of violations against it, the Committee decided during its 98th session that a meeting between

representatives of the State party and the Rapporteur on follow-up should be organized.

Proposed decision of the Committee The Committee considers the dialogue ongoing.

State party CAMEROON

Cases Engo, 1397/2005

Views adopted on 22 July 2009

Issues and violations found Right to challenge lawfulness of detention, arbitrary detention, inhuman treatment, right to counsel of own choosing, right to trial without delay, presumption of innocence - article 9, paragraphs 2 and 3, article 10, paragraph 1, and article 14, paragraphs 2 and 3 (a), (b), (c) and (d).

Remedy recommended Effective remedy leading to his immediate release and the provision of adequate ophthalmological treatment.

Due date for State party's response 1 February 2010

Date of State party's response No response received

Author's submission

On 20 July 2010, the author informed the Committee that the State party had taken no action to implement the Committee's decision but in fact he had been continually summoned before the Tribunal de Grande Instance relating to issues arising from the facts of his case considered by the Committee.

Further action taken or required

The author's submission was sent to the State party on 9 August 2010 with a reminder for comments.

Given that the State party has failed to provide information relating to the follow-up in four (458/1991, *Mukong*, 1134/2002, *Gorji-Dinka*, 1186/2003, *Titiahongo*, 1353/2005, *Afuson*, 1397/2005, *Engo*) out of the six cases in which the Committee found violations against it, the Secretariat should draw the attention of the next rapporteur to the need to meet with representatives of the State party as soon as possible.

Proposed decision of the Committee The Committee considers the dialogue ongoing.

State party CROATIA

Cases Vojnović, 1510/2006

Views adopted on 30 March 2009

Issues and violations found Unreasonable delay in proceedings for the determination of the author's specially protected tenancy, arbitrary decision not to hear witnesses, interference with the home - article 14, paragraph 1 in conjunction with article 2, paragraph 1; and article

17 also in conjunction with article 2, paragraph 1.

Remedy recommended	An effective remedy, including adequate compensation.
Due date for State party's response	7 October 2009
Date of State party's response	8 February 2010
Date of author's comments	15 March and 27 August 2010

State party's submission

The Committee will recall that in its submission of February 2010, and with respect to the violation of article 17, the State party informed the Committee that, by decision of 23 April 2009, the competent Ministry had allocated an apartment in Zagreb to the author which was fully comparable to his pre-war accommodation, thus, restoring de facto his pre-war position in respect of his housing situation. According to the State party, his newly granted status as a protected lessee and the rights arising therefrom were in essence identical to the status he had as a former holder of specially protected tenancy rights, including the rights of his family members. The State party thereby submitted that it had provided appropriate compensation as recommended by the Committee.

While respecting the Committee's decision, the State party made several remarks on the findings therein. It objected to the statement that the mere fact that the author is a member of the Serb minority is an argument in favour of a conclusion that the process undertaken by the relevant Croatian authorities was arbitrary. This assumption has neither been supported nor proven and is outside the scope of the Optional Protocol. Despite the fact that the Committee considered the author's claims on behalf of her son inadmissible, it took precisely the same facts relating to the son's dismissal from work as decisive for establishing that the author and his wife left Croatia under duress. On the conclusion that the author's non-participation in one stage of the national proceedings was arbitrary, the State party submitted that this fact was remedied in the national review proceedings where the author, his wife and witnesses were heard before the court and were represented by an attorney of their choice. It submitted that the Committee incorrectly took the view that the author had informed the State party of the reasons why he left while it is obvious from the author's comments and the Committee's wording in previous paragraphs that the author did not inform the government of Croatia but the Government of the Socialist Federal Republic of Yugoslavia about the reasons for his departure. On the issue of the failure to hear witnesses, the State party submitted that they were not heard as they were not accessible to the court and their appearance would have involved additional unnecessary costs. It acknowledged that the proceedings were excessive and refers to the remedy of a constitutional complaint system which has been approved as effective by the ECHR.

Author's Comments

In his submissions of 15 March and 27 August, the author expresses his dissatisfaction with the State party's efforts at providing a remedy for the violations found. He also reiterates detailed arguments on the admissibility and merits of the case. As to the remedy, he argues that, contrary to what the State party claims to be his new status as protected lessee, it is not identical to that which he had as a holder of specially protected tenancy rights: the Government of Croatia will remain the owner of the property; he cannot acquire a right of possession; and he and his family may only sublet the apartment from the State for the rest of their lives. In addition, he states that the new apartment is in no way comparable to the old one, which was in the centre of town,

rather than the outskirts, and which is worth almost double the market value. In the author's view, the appropriate remedy would be restitution of the property in question and compensation in the amount of 318,673 euros for pecuniary damage and 100,000 euros for non-pecuniary damage.

Proposed decision of the Committee Despite the author's dissatisfaction with the remedy provided by the State party, the Committee considers the efforts made by the State party to compensate the author as satisfactory and does not intend to consider this case any further under the follow-up procedure.

State party	NEPAL
Cases	Sharma, 1469/2006
Views adopted on	28 October 2008
Issues and violations found	Disappearance, failure to investigate – articles 7, 9, 10 and 2, paragraph 3, read together with articles 7, 9 and 10 with regard to the author's husband; and article 7, alone and read together with article 2, paragraph 3, with regard to the author herself.
Remedy recommended	An effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he is still alive, adequate information resulting from the State Party's investigation, and adequate compensation for the author and her family for the violations suffered by the author's husband and by themselves. While the Covenant does not give individuals the right to demand of a State the criminal prosecution of another person, the Committee nevertheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations.
Due date for State party's response	28 April 2009
Date of State party's response	28 July 2010 (had previously responded on 27 April 2009)
Date of author's comments	30 June 2009 and 11 March 2010
State party's comments	

The Committee will recall that in its response of 27 April 2009, the State party had submitted that Mrs. Yeshoda Sharma would be provided with the sum of 200,000 Nepalese rupees (approximately 1,896.67 euros) as an immediate remedy. With respect to an investigation, the case would be referred to the Independent Disappearance Commission to be constituted by the Government. A Bill had already been submitted to Parliament and once legislation had been enacted, the Commission would be constituted as a matter of priority.

Author's comments

The Committee will also recall that on 30 June 2009, the author commented on the State party's submission. She highlighted that it had been more than seven years since Mr. Sharma disappeared and that the State party is under an obligation to conduct a prompt investigation into his disappearance and to promptly prosecute all those suspected of being involved. As to the Independent Disappearances Commission, she argued that there was no clear timeline for the passing of the relevant legislation or for the establishment of the proposed Commission. Neither was it clear whether this Commission, if established, will actually examine the Sharma case specifically. In addition, such a Commission is by definition not a judicial body and does not therefore have the powers to impose the appropriate punishment on those found responsible for Mr. Sharma's disappearance. Even if it did have the power to refer cases of disappearances for prosecution, there is no guarantee that a prosecution would take place or that it would be prompt. Thus, in the author's view, the said Commission could not be considered an adequate avenue for investigation and prosecution in this case. The criminal justice system is the most appropriate avenue.

As to the prosecution, the author highlighted the State party's obligation to prosecute violations of human rights without undue delay. This obligation is clear when considering its contribution to deterring and preventing the recurrence of enforced disappearances in Nepal. In the author's view, in order to prevent such recurrences, the government should immediately suspend from duty any suspects involved in this case. If they remain in their official capacity, there is a risk that they will be able to intimidate witnesses in any criminal investigation. The author also suggested that an investigation to identify the whereabouts of Mr. Sharma's remains should also be initiated immediately.

On the issue of compensation and the State party's submission that the government has provided the author with "immediate relief" of 200,000 Nepalese rupees, the author stated that it would not amount to "adequate" compensation required by the Committee. She argued that she is entitled to a substantial amount to cover all pecuniary and non-pecuniary damage suffered.

Author's supplementary comments

On 11 March 2010, the author provided the following supplementary information. She stated that she had finally received the full amount of 200,000 rupees but that despite having been promised in a meeting with the Prime Minister's Secretary on 30 June 2009 that an investigation into her husband's death would be initiated, this had still not been undertaken. In mid-December 2009, she received information from the Secretary that the Army was objecting to a separate investigation, insisting that this case should be examined by the Independent Disappearances Commission, yet to be established.

State party's supplementary submission

On 28 July 2010, the State party provided a supplementary submission stating that although government policy contained a provision to distribute 100,000 rupees to the family of the deceased or disappeared during the conflict, the government had made a special decision in this case, in consideration of the Committee's Views, to give the author twice that amount. However, it highlights its view that this amount cannot compensate the family and is only considered to be interim relief. The State party informs the Committee that the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament. According to the State party, these Commissions shall in no way "substitute" or supersede the administration of the existing criminal law as perceived in the author's submission. The Disappearance Bill has been designed to establish enforced disappearance as a crime punishable by law; to establish truth by investigating the incidents that happened during

the armed conflict; to end impunity by paving the way for taking appropriate action against the perpetrators and to provide appropriate compensation and justice for the victims. The Truth and Reconciliation Bill stipulates that the individuals involved in acts of enforced disappearance shall not be granted amnesty under any circumstances. Due action shall be taken, in accordance with the prevailing law, against individuals found guilty after the investigations of the two commissions.

The State party denies that the Prime Minister's Secretary recommended that a separate investigation team be set up to investigate the case at issue as well as the claim that the army had "objected" to such a recommendation. According to the State party, it would not be feasible or practical from a financial, technical and managerial perspective to set up a separate commission to investigate the case at issue alone.

Further action taken or required

The Committee will recall that on 28 October 2009, the Special Rapporteur met with Mr. Bhattarai, the Ambassador, and Mr. Paudyal, First Secretary, of the Permanent Mission. The Rapporteur referred to the State party's response in this case, including the information that a Disappearance Commission would be set up, and asked the representatives whether, given the limitations of such a commission, "a factual investigation" could not be conducted immediately. The representatives responded that there were still reservations that the author had not exhausted domestic remedies and that this was just one of many similar cases which, for the sake of equality, would all have to be considered in the same way, i.e. through the Disappearance Commission and the Truth and Reconciliation Commission which would be set up shortly. They stated that the legislation was before Parliament, the functioning of which was currently being obstructed, but that the enactment of legislation in this regard was assured. They could give no deadline for its enactment. The representatives noted the Rapporteur's concerns and would report back to their headquarters. They highlighted throughout the discussion the fact that the State party was recovering from a civil war and that the path to democracy is a very slow one.

The State party's most recent submission, of 28 July 2010, was sent to the authors on 9 August 2010.

Proposed decision of the Committee The Committee considers the dialogue ongoing.

State party	PERU
Case	Poma Poma, 1457/2006
Views adopted on	27 March 2009
Issues and violations found	Right to enjoy own culture and lack of remedy - article 27 and article 2, paragraph 3 (a), read in conjunction with article 27.
Remedy recommended	An effective remedy and reparation measures that are commensurate with the harm sustained.
Due date for State party's response	6 January 2010
Date of State party's response	22 January 2010
Date of author's comments	2 July 2010

State party's submission

The Committee will recall that on 22 January 2010, the State Party provided general information on the running of the wells in question. It stated that, as a result of the dry season, characterized by intermittent rains, it was becoming mandatory to exploit the underground waters of the Ayro aquifer in order to satisfy the demands of the population in Tacna. Five wells were being exploited simultaneously to avoid shortages in water supply. Measures were taken to preserve the Community bogs, and to distribute water evenly among the Peasant Community of Ancomarca. The State party submitted that a Commission had visited the highest part of the basin where the wells are located, and verified the proper hydraulic allocations of each well to ensure its conformity with administrative resolutions issued recently.

On 31 March 2009, a Law on Water Resources was adopted with the aim of regulating the use and exploitation of water resources in a sustainable way. This new legal framework was explained across the country in several workshops, prioritizing peasant communities. Further complementary provisions of this law were being drafted to take into account feedback from civil society and rural communities. According to this law, access to water resources is a fundamental right and remains a priority even in times of shortage. The State shall take all measures necessary to apply this principle, and will do so by taking into account feedback from civil society. The State party shall respect the traditions of indigenous communities and their right to exploit the water resources in their lands. The State party thereby submits that further problems similar to those featured in this case will not arise.

Author's submission

On 2 July 2010, the author informed the Committee that the State party had not taken any measures to implement the Committee's Views. On the contrary, it had approved a budget of 17 million Peruvian nuevos soles to drill 17 new wells to draw the groundwater from the Ayro region. To implement this project, the Special Tacna Project (PET – Proyecto Especial Tacna) launched a public tender on 23 March 2010. The State party persists in drilling the territory of the Aymara community, to which the author belongs, despite the fact that the National Water Authority has not given permission to explore or exploit the groundwater of this region.

On 2 and 3 July 2010, the "Alto Perú" rural community, to which the author belongs, situated in the District of Palca, convened a meeting to ascertain the advancement of these new drilling projects. The community requested the attorney of the Ministry of Justice to supervise the implementation of the Committee's Views. However, no measures have been taken to prosecute those who took the decision to drill the new wells.

Further action taken/required

The author's submission was sent to the State party on 30 September 2010 for comments within two months. The new rapporteur should pay particular attention to this case and have direct contact with representatives of the State party with a view to ensuring that victims receive reparation and to preventing possible further violations.

Proposed decision of the Committee The follow-up dialogue is ongoing.

State party	PHILIPPINES
Case	Lumanog and Santos, 1466/2006

Views adopted on	20 March 2008
Issues and violations found	Trial without undue delay - articles 14, 3 (c)
Remedy recommended	An effective remedy, including the prompt review of their appeal before the Court of Appeals and compensation for the undue delay.
Due date for State party response	1 October 2008
Date of State party's response	29 July 2010 (had previously responded on 11 May 2009, 24 November 2009)
Date of author's comments	2 July 2009, 16 November 2009

State party's submission

The Committee will recall that on 11 May 2009 the State party explained what action had been taken since the case in question was brought before the Supreme Court. On 13 August 2008, following a request by the petitioners to declare unconstitutional the penalty of "*reclusion perpetua* without the benefit of parole", the 3rd division of the court transferred this case to the Court En Banc. On 19 January 2009, this Court requested the parties to submit their respective memoranda and has been waiting for compliance with this resolution since then.

Authors' comments

The Committee will also recall that on 2 July 2009, the author submitted that the State party had failed to publish the Views and had failed to address the issue of undue delay in the proceedings. It had given no indication so far of any review, refinement or improvement of those procedural rules for automatic intermediate review by the Court of Appeal of cases where the penalty imposed is *reclusion perpetua*, life imprisonment to death as embodied in the 2004 ruling in *People vs. Mateo*. With regard to the remedy, the State party had provided no information as to any measures it intends to take to prevent similar violations in the future with respect to undue delay at the appeal stage and there has been no compensation paid for the undue delay. This case remains before the Supreme Court.

On 16 November 2009, the authors submitted that their case, which had been ready for consideration by the Supreme Court since 5 May 2008, had now been delayed due to the same court's decision on 23 June 2009 to consider this case jointly with several others. As a result of this decision, upon which the authors had no opportunity to comment, the hearing of this case will be further delayed.

State party's further submission

The Committee will recall that on 24 November 2009, the State party informed the Committee that this case had been joined with other cases. With respect to the issue of compensation, the case will be reviewed and decided upon by the Court of Appeal, after which it may be appealed to the Supreme Court for a final judgement. The State party submits that it will comply with the final judgement of the Supreme Court.

On 29 July 2010, following a request by the Committee to respond specifically to the authors' arguments, in particular on the issue of the continued delay in their appeal, the State party submitted that the consolidation of the authors' appeals with other accused whose criminal liability arose from the same event might bring about delays but was a logical step. In this way, the High Court would only have to render one decision with respect to five accused. In addition, according to the State party, the authors have in fact

waived their objection to consolidation.

Further action taken/required

The State party's most recent submission was sent to the authors for comment.

Proposed decision of the Committee The Committee considers the dialogue ongoing.

State party	RUSSIAN FEDERATION
Case	Amirov, 1447/2006
Views adopted on	2 April 2009
Issues and violations found	Ill-treatment and failure to investigate - articles 6 and 7, read in conjunction with article 2, paragraph 3, of the Covenant, and a violation in respect of the author of article 7.
Remedy recommended	An effective remedy in the form, inter alia, of an impartial investigation into the circumstances of his wife's death, prosecution of those responsible, and adequate compensation.
Due date for State party response	19 November 2009
Date of State party's response	20 May 2010 (previous response 10 September 2009)
Date of author's comments	24 November 2009

State party's response

The Committee will recall that in its response of 10 September 2009, the State party submitted that, following the Committee's decision, the author's case was re-opened. The court considered that the decision to close the investigation had been unlawful as the statement of the victim's husband indicating where the victim was buried had not been verified and other acts which should have been carried out to determine how the victim had died had not been taken. On 13 July 2009, the Prosecutor of the Chechen Republic was instructed to take the Committee's decision into account and the General Prosecutor of the Federal Republic would ensure that the investigation would be re-opened. In addition, it stated that a claim made by the victim's husband that he had been ill-treated in 2004 while trying to establish the status of the investigation was sent to a district prosecutor in the Grozny district.

Author's comments

The Committee will recall that in his response of 24 November 2009, the author deplored the fact that the State party had not submitted copies of any documents it referred to in its submission, notably the decision of July 2009 to reopen the case. He was never informed of this decision despite an obligation to do so under article 46 of the Code of Criminal Procedure. On the issue of the exhumation of his wife's body, he submitted that he was contacted in about May/June 2009, but was merely asked if he objected to the exhumation. It remains unclear whether the authorities have in fact exhumed her body and he is critical about the investigative attempts to establish the cause of death without doing so. The author also referred to shortcomings pointed out by the Committee in its Views, which were not addressed in the decision of 8 July 2009. He expressed doubts about the

extent to which, if at all, any of the shortcomings of the domestic investigation, established in the decision of 8 July 2009 were remedied in the course of the new investigation. The author deplored the State party's failure to specify what kind of control the General Prosecutor's Office of the Russian Federation exercised in this case and the fact that it had also failed to indicate what specific measures had been taken to prevent similar violations in the future and whether the Views had been made public. The author had received no information on the checks that were supposed to have taken place with respect to his allegations of ill-treatment in 2004 and had never been contacted in this regard.

For all these reasons, the author submitted that he has not been provided with an effective remedy.

State party supplementary submission

On 20 May 2010, the State party submitted, inter alia, that on 29 April 2010, the investigation was resumed upon the request of the Prosecutor's Office of the Chechen Republic, because of the need to establish the location of Mrs. Amirova's grave and to exhume her body for forensic medical examination. However, according to the State party, Mr. Abubakar Amirov refused to indicate the location of Mrs. Amirova's body. The State party recalled that in the past Mr. Amirov had also failed to communicate the location of her grave and that Mrs. Amirova's sister, who was recognized as an injured party in the proceedings stated that she was also unaware of the grave's location and objected to the exhumation.

On 4 May 2010, the Prosecutor's Office of the Chechen Republic examined the investigation materials and decided to inspect the cemetery where they believe her body could have been buried.

The State party submits that the allegations about the authorities' failure to take necessary measures to identify the perpetrators are unfounded, as the examination of witnesses and other investigative actions are still ongoing. Due to the time that has passed since the crime in question was committed, it has not yet been possible to identify the perpetrators.

Further action taken/required

The State party's response was sent to the author on 24 September 2010 for comments within two months.

Proposed decision of the Committee The follow-up dialogue is ongoing.

Case	Babkin, 1310/2004
Views adopted on	3 April 2008
Issues and violations found	Tried and punished twice for the same crime, unfair trial - Article 14, paragraph 1, read in conjunction with article 14, paragraph 7.
Remedy recommended	Such appropriate forms of remedy as compensation and a retrial in relation to the author's murder charges.
Due date for State party response	17 October 2008

Date of State party's response 29 January 2009

Date of author's comments 1 March 2009

State party's submission

The Committee will recall the information provided by the State party that the Committee's Views were forwarded by the Supreme Court to the Supreme Courts of the Republics to ensure that this type of violation will not occur again. The Views had been widely published and the author had lodged another "petition" in the Supreme Court.

Author's comments

On 1 March 2009, the author submitted that the Views of the Committee should have determined that annulment of his acquittal was unfair and unfounded and contradicted the legislation. He requests the Committee to include this additional information in its Views. The author submits that his supervisory review complaint was rejected on 3 March 2009, which demonstrates that the Supreme Court is not aware of the Views of the Committee on his case, thus contradicting the State party's submission.

Further action taken/required

The author's submission was sent to the State party for comment on 10 July 2009.

Proposed decision of the Committee The follow-up dialogue is ongoing.

State party	SPAIN
Case	Gayoso, 1363/2005
Views adopted on	19 October 2009

Issues and violations found No review by higher court - Article 14, paragraph 5

Remedy recommended Effective remedy that will permit his conviction and sentence to be reviewed by a higher court.

Due date for State party response 1 May 2009

Date of State party's response None

Date of author's comments 19 July 2010

Author's comments

On 19 July 2010, counsel informed the Committee that, on the basis of the Views, he had asked the Supreme Court for leave to review the judgment by which the author was sentenced for various crimes without having benefitted from the guarantees contained in article 14, paragraph 5, of the Covenant. However, on 29 January 2010, the Court refused the leave.

Further action taken/required

On 30 September 2010, the author's submission was sent to the State party for comments with a request for information on the follow-up to the Views.

Proposed decision of the Committee The follow-up dialogue is ongoing.

Case	Morales Tornel, 1473/2006
Views adopted on	20 March 2009
Issues and violations found	Article 17, paragraph 1
Remedy recommended	Effective remedy, including appropriate compensation
Due date for State party response	1 October 2009
Date of State party's response	None
Date of author's comments	28 June 2010
Author's comments	
<p>On 28 June 2010, counsel informed the Committee that, on the basis of the Views, he had filed an administrative claim for compensation on behalf of the authors in connection with the victim's death in prison. On 29 April 2010, the Council of State issued a Decision indicating, <i>inter alia</i>, that the National Court ("Audiencia Nacional"), the Supreme Court and the Constitutional Court had dealt with the case at the time and found no misconduct by the prison authorities. Since there were no new facts, the administrative claim was submitted outside the deadline prescribed by law. The Council also indicated that, according to the jurisprudence of the highest courts in the country, the Views of the Committee were not binding and that the existence of moral damage caused to the authors by the prison authorities had not been proven. As a result, the claim was considered inadmissible. This decision can be appealed to the National Court. Counsel does not indicate whether an appeal has been filed.</p>	
Further action taken/required	
<p>On 30 September 2010, the author's submission was sent to the State party with a reminder for information on the follow-up to the Views.</p>	
Proposed decision of the Committee	The follow-up dialogue is ongoing.

State party	TAJIKISTAN
Case	Kirpo, 1401/2005
Views adopted on	27 October 2009
Issues and violations found	Ill-treatment for purposes of a confession, arbitrary arrest and detention, informed at time of arrest of reasons for arrest - article 7, article 9, paragraphs 1-3; and 14, paragraph 3 (g).
Remedy recommended	An effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for ill-treatment of the author's son, appropriate reparation including compensation, and to consider his retrial in conformity with all the guarantees enshrined in the Covenant or his release.
Due date for State party response	24 May 2010

Date of State party's response 21 April 2010

Date of author's comments Pending

State party's response

In its submission of 21 April 2010, the State party disputes the view that it has violated the author's rights under the Covenant. It disputes the Committee's decision on admissibility and merits, and claims that it had no official contact with the Committee. It claims that it had not received any of the notes verbales referred to in the Committee's Views.

It disputes the admissibility of the communication on the grounds of non-exhaustion and non-substantiation and with regard to the latter highlights the lack of medical certificates confirming the allegations that the author was ill-treated. On the merits, with respect to the allegation that the author was arbitrarily detained, the State party submits that the detention was aimed at establishing who the members of the criminal group were in which he participated, as well as to ensure his personal safety. According to the State party, he had expressed fear for his life and for the lives of his relatives. However, the court, upon review of his case, established that there had been a violation of the criminal procedure in relation to his detention and notified the Prosecutor's Office, after which the officers responsible were subjected to disciplinary proceedings and subsequently dismissed. The court also included this period of pre-trial detention when calculating the duration of the prison sentence. It further established that the illegal detention did not influence the objective investigation of the author's son's guilt.

According to the State party, the criminal case against the author's son was initiated on 20 May 2000 and on 22 May 2000 he was provided with a lawyer. Regarding torture allegations, neither the author's son nor his lawyer submitted any complaints during the investigation or during the trial. On 8 May 2000, he freely confessed to the crime. The State party questions why the Committee did not seek the opinion of the United Nations representative who allegedly met with the author's son (Views, para. 2.3).

On the violation of article 9, paragraph 3, the State party submits that, according to the domestic law at the time, the official body responsible for reviewing the legality of the detention was the Prosecutor's Office. However, with the adoption of the new Criminal Procedure Code on 1 April 2010, the review of detentions is now in the jurisdiction of the court.

Further action taken/required

The State party's submission was sent to the author on 24 September 2010 for comments within two months.

Proposed decision of the Committee The follow-up dialogue is ongoing.

Case	Khostikoev, 1519/2006
Views adopted on	22 October 2009
Issues and violations found	Unfair trial - article 14, paragraph 1
Remedy recommended	Effective remedy, including the payment of appropriate compensation.
Due date for State party response	5 July 2010

Date of State party's response 16 April 2010

Date of author's comments Pending

State party's response

The State party contests the Views and submits that they do not take into account the State party's observations of 20 March 2007. It refers to the Committee's statement that the State party "did not refute these specific allegations, but limited itself to contending that all court decisions in the case were substantiated and that no procedural violations had occurred" and, that "the facts as presented, and not refuted by the State party, tend to reveal that the author's trial suffered from a number of irregularities". However, the State party argues that, as set out in paragraphs 4.2, 4.3 and 4.4 of the Views, the State party justified the lawfulness of the court process.

No other evidence was submitted during the preparation of the court hearing and the parties were given equal rights, which were explained to them. The State party argues that the statement in paragraph 7.2 of the Committee's Views that the author was not allowed to present additional evidence is false and unfounded. In its Views, the Committee stated that despite the Prosecutor's request to annul 48 per cent of the shares the court annulled all 100 per cent of the company's shares. It claims that such a statement is false as the General Prosecutor asked for 100 per cent annulment in three stages.

The State party argues that the author had one month to hire a lawyer prior to the hearing, but only did so on the second day of the hearing. The State party thus submits that it was the author's own fault that his lawyer was not able to study the case materials. It argues that the author did not deny receiving the copy of the lawsuit and the documents attached to it, which demonstrates that he had enough time prior to the court proceedings to study the case materials.

Further action taken/required

The State party's submission was sent to the author on 28 September 2010 with a deadline of two months for comments.

Proposed decision of the Committee The follow-up dialogue is ongoing.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]