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

This report compiles information received since the 100th session of the Human Rights Committee, which took place from 11 to 29 October 2010.

State party	ALGERIA
Case	Medjnoune Malik, 1297/2004
Views adopted on	14 July 2006
Issues and violations found	Arbitrary arrest, failure to inform of reasons for arrest and charges against him, torture, undue pre-trial delay - articles 7; 9, paragraphs 1, 2 and 3; and 14, paragraph 3 (a) and (c), of the Covenant.
Remedy recommended	An effective remedy, which includes bringing Mr. Medjnoune immediately before a judge to answer the charges against him or to release him; a full and thorough investigation into the incommunicado detention and treatment suffered by Mr. Medjnoune since 28 September 1999; and prosecution of those responsible, in particular for the ill-treatment. The State party is also required to provide appropriate compensation to Mr. Medjnoune for the violations.
Due date for State party's response	16 November 2006
Date of author's comments	9 April 2007, 27 February 2008, 12 February 2009, 28 September 2009, 24 January 2011

Author's comments

On 9 April 2007, the author informed the Committee that the State party had failed to implement its Views. Since the Committee's Views were adopted, the author's case was brought before the Cour de Tizi-Ouzou on two occasions without being heard. In addition, an individual living in Tizi-Ouzou claims to have been threatened by the judicial police to give false testimony against the author. This individual along with another (his son) claim to have been tortured in February and March 2002 for refusing to give evidence against the

author i.e. to say that they had seen him in the area where the victim was shot. The first individual was later sentenced to three years imprisonment on 21 March 2004 for belonging to a terrorist group and the other acquitted whereupon he fled to France where he was granted refugee status.

On 27 February 2008, the author submitted that the State party had not implemented the Views. In light of the fact that the author's case had still not been heard, he began a hunger strike on 25 February 2008. The *procureur général* visited him in prison to encourage him to end his strike and stated that although he could not fix a date for a hearing himself he would contact the "appropriate authorities". In the author's view, according to domestic law, the *procureur général* is the only person who can request the president of the criminal court to list a case for hearing.

On 12 February 2009, the author reiterates his allegation that the State party has not implemented the Views and states that since the Views were adopted nineteen other criminal cases have been heard by the court in Tizi-Ouzou. The author again went on hunger strike on 31 January 2009, and the following day the prosecutor of the Tribunal came to the prison to inform him that his case would be heard after the elections. A year ago, during his last hunger strike, the judicial authorities also made the same promise explaining that his case was "politically sensitive" and that they did not have the power to decide to hear his case.

On 28 September 2009, the author reiterates that he has still not been tried, that his case remains a political matter and that the government has given instructions to the judiciary not to take any action on this matter.

On 24 January 2011, the author reiterates his previous comments and recalls that the authorities have failed to implement the Committee's Views and the examination of his case with the Criminal Tribunal of Tizi-Ouzou remains pending since 2001. He requests the Committee to intervene again with the State party's authorities and seek a solution.

Further action taken or required

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 to 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 it did not take place.

The Committee decided that a further attempt to organise a follow-up meeting should be organised. The meeting should be scheduled for July 2011.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	AUSTRALIA
Case	Fardon, 1629/2007
Views adopted on	18 March 2010
Issues and violations found	Arbitrary detention, as the author continued to be detained, under the provisions of the Queensland Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA), at the conclusion of his term of imprisonment following a conviction in a criminal matter – violation of article 9, paragraph 1.

Remedy recommended An effective remedy, including termination of the author's detention under the DPSOA.

Due date for State party's response 12 October 2010

Date of State party's response 8 October 2010

State party's submission

The State party informed the Committee that it was unable to present its response within the requested timeframe and that it is currently giving careful consideration to the Committee's Views and would provide its reply at a future date.

Further action taken or required

The State party's information was sent to the author on 15 October 2010. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party AUSTRALIA

Case Tillman, 1635/2007

Views adopted on 18 March 2010

Issues and violations found Arbitrary detention, as the author continued to be detained, under the provisions of the Crimes (Serious Sex Offenders) Act 2006 (New South Wales) (CSSOA), at the conclusion of his term of imprisonment following a conviction in a criminal matter – violation of article 9, paragraph 1.

Remedy recommended An effective remedy, including termination of the author's detention under the CSSOA.

Due date for State party's response 12 October 2010

Date of State party's response 8 October 2010

State party's submission

The State party informed the Committee that it was unable to present its response within the requested timeframe and that it is currently giving careful consideration to the Committee's Views and would provide its reply at a future date.

Further action taken or required

The State party's information was sent to the author on 15 October 2010. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party BELARUS

Case Marinich, 1502/2006

Views adopted on	16 July 2010
Issues and violations found	Conditions of detention, in particular lack of provision of adequate medical care to the author when deprived of liberty – violation of articles 7 and 10; arbitrary detention – article 9; unfair trial and violation of the author’s right to be presumed innocent – article 14, paragraphs 1 and 2.
Remedy recommended	An effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for his ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party’s response	11 April 2011
Date of State party’s response	4 January 2011

State party’s submission

The State party contends that the author’s allegations of irregularities during the preliminary investigation do not correspond to the reality. All investigation and procedural acts have been carried out in strict conformity with the law. The author’s allegations on the alleged unfair trial, unlawful detention, conditions of detention, and right to privacy are, according to the State party, groundless.

The State party recalls the facts of the case: during a search in the car of the author, the police discovered 90 900 US dollars, out of which 490 were false. A criminal case was opened in this connection. During another search, the police discovered a fire arm in the author’s summer house, and he was accused of its illegal possession. The author was arrested as a suspect and placed in pre-trial detention. The restraint measure was chosen taking into account the fact that the author could abscond by leaving Belarus. Further, the author was also charged for having committed the theft of I.T. equipment.

The author had confirmed that he has been offered the services of a lawyer.

The court’s conclusion on the guilt of the author was based on the evidence contained in the criminal case file, which were assessed fully and objectively. The trial was public and in conformity with the criminal procedure legislation. A number of journalists and foreign diplomats were present during the trial. At some point, access to the court room had to be limited, but this was due to the lack of space.

The principle of equality of arms was fully respected in this case. All requests made by the author during the trial have been properly addressed, and requests to have questioned additional witnesses or to have written evidence adduced to the criminal case file were granted by the court. The court was not subjected to any form of pressure. The regularity of the trial and the objectivity of the conviction are confirmed by the material of the criminal case file, containing a multitude of corroborating evidence of the author’s guilt in the incriminated events.

The prosecutors have acted in a proper manner. At the end of the trial, neither the author nor his defence lawyers made objections to the content or accuracy of the trial transcript, or that unlawful or incorrect actions of the prosecutors were not reflected thereon.

The appeal court had concluded that the conviction of the author was grounded, that his acts were qualified correctly under the law, and that his guilt was fully established. In light of mitigating circumstances, the appeal court reduced the sentence from five to three and a

half years' imprisonment. The case was further examined by the Supreme Court and the sentence was confirmed. Following a general Amnesty Act of 2005, the author's sentence was further reduced by one year, and by decision of a court, he was released on bail.

The author's medical record shows that he had arrived at the penitentiary colony No. 8 on 3 March 2005, and had passed an entry medical check up there, on 4 March 2005. During the examination, he had complained about vertigo, pain in the thorax, and general weakness. The doctor's medical diagnosis was heart ischemia and cardio-arthrosclerosis with arrhythmia. The author has been administered adequate medication and is being monitored.

On 7 March 2005, Mr. Marinich was examined by a doctor of an Emergency service who found that he has a severe irregularity in the cerebral blood circulation. In light of his state, the author was taken to the Medical Unit of the Penitentiary Colony No.8 in Orsha, as it was decided that he was not fit to travel to Minsk in the circumstances. As his state did not improve, the author was examined by a group of high level medical doctors (names and titles provided). The group decided, in light of the stable situation of the author, to take him with a special ambulance accompanied by a reanimation medical doctor to the Republican Penitentiary Hospital in Minsk. On 15 March 2005, the author arrived in Minsk, with a diagnosis: cerebral infarction, acute phase; atherosclerosis, arrhythmia, etc. He was provided with adequate care and medication. On 18 March 2005, he was examined by a leading cardiologist, and on 21 March 2005, he underwent examinations in the National Institute of Cardiology. The major part of the medical products needed for his treatment was provided by the Penitentiary Hospital, and a smaller part was provided by the author's relatives as they were not available in the hospital.

A verification of the conditions of detention has been carried out by the General Prosecutor's Office during the author's stay in the Penitentiary Hospital, and no violations were revealed. On this occasion, the author was questioned by a Prosecutor, on 22 March 2005, and he had no complaints against the penitentiary personal there, and expressed satisfaction of the medical care provided.

The State party further notes that the author does not provide any explanation which might establish a casual link between his conditions of detention and his the state of his health. In addition, he suffered form heart ischemia and arrhythmia prior to his detention.

In reaction to Mr. Marincih's claims, the General Prosecutor's Office asked the Department of Execution of Penalties of the Ministry of Internal Affairs to inquire on the circumstances of his brain attack on 7 March 2005, and also to ensure that he is kept into the Penitentiary Hospital and that his health status is monitored. The conclusions of the verification carried out by the Department of Execution of Penalties revealed no irregularities in the acts of the medical personnel.

The State party further notes the author's claims of inhuman treatment and of his conditions of detention, as the cells were small, the food inadequate ("lack of fruits and vegetables"), the fact that the content of parcels was checked, the absence of smoking areas, or transportation in unheated train wagons. It contends that the conditions of detention of Mr. Marinich were equal to the ones of all other detainees and in strict compliance with the pertinent legislation and regulations.

In light of the above information, the State party considers that the author's allegations with regard to violations of his rights under the Covenant are unsubstantiated.

Further action taken or required

The State party's information was sent to the author on 10 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
State party	CANADA
Case	Dumont, 1467/2006
Views adopted on	16 March 2010
Issues and violations found	A violation of article 2, paragraph 3, read in conjunction with article 14, paragraph 6, of the Covenant.
Remedy recommended	An effective remedy in the form of adequate compensation. The State party is also required to ensure that similar violations do not occur in the future.
Due date for State party's response	17 November 2010
Date of State party's response	17 December 2010
Date of author's comments	8 February 2011

State party's submission

The State party, first, explains that an out-of-court settlement has been reached between the author and four of the defendants in the civil case (i.e. the City of Boisbriand and the author's insurers) initiated by the author before the Superior Court of Québec. Thus, the author received a monetary compensation, the exact amount constituting confidential information. Canada has inquired about the amount of the compensation paid, and it finds it to be appropriate and constituting an effective remedy in the present case. Canada is trying to convince the City and the insurers to renounce to the confidentiality clause in the agreement with the author, so as to provide the Committee with information in relation to the amount paid. The State party has requested the Committee to do the same with the author, if all parties agree to do so.

The State party further contends that during the trial before the Superior Court of Québec, the Prosecutor General of Québec has affirmed that the amount of the compensation paid compensates fully and entirely the damages allegedly caused to the author because of his conviction and deprivation of liberty.

Secondly, the State party recalls that on 17 July 2009, the Superior Court of Québec rejected the author's request for additional compensation against the Prosecutor Generals of Québec and Canada, respectively. An appeal against this decision was filed with the Appeal Court of Québec, and the case is to be examined in 2011. The State party informed the Committee that it will execute the final decision of the Court.

As to the measures taken to ensure that no similar violation would occur in the future, the State party explains that the 1998 Guidelines on compensation of wrongfully convicted and imprisoned persons are currently being revised by a Working Group composed of representatives of the Federal, Provincial, and Territorial authorities of Canada. The Committee's Views in the present case are dully being taken into account in the revision. As the Guidelines were adopted by the Federal Minister in charge of the criminal justice, and the competent Provincial and Territorial Ministers, any change in their provisions should first be accepted by the Federal, the Provincial, and the Territorial Governments.

Finally, on the publicity of the Committee's Views in the present case, the State party contends that the English and the French versions of the Views were placed on the Internet site of "Canadian Heritage" (Federal Ministry) at: <http://www.pch.gc.ca/pgm->

hrp/inter/decisions-fra.cfm, and are thus accessible to everyone.

Author's comments

On 8 February 2011, the author recalls that the Committee has concluded that the State party should provide him with an effective remedy including compensation, and to avoid similar violations in the future. He notes the State party's explanations that an extra judicial agreement has been reached with two of the four defendants in the civil suit initiated by him with the Supreme Court of Canada. According to him, however, the defendants are in fact five – the Prosecutor General of Québec, the Prosecutor General of Canada, the City of Boisbriand and the two Insurance companies. The out-of-court settlement was concluded between the author and three (not two) parties – the City of Boisbriand and its two Insurers. The confidentiality of the agreement is common in such cases. According to the author, the out-of-court settlement does not constitute, directly or indirectly, a measure aimed at providing him with an effective remedy in the form of compensation. To the contrary, the State party continues to challenge the judicial action initiated by him before the Appeal Court of Québec.

Further action taken or required

The author's comments have been transmitted to the State party on 10 February 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	CANADA
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Case	Hamida, 1544/2007
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Views adopted on	18 March 2010
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Issues and violations found	The forcible return of the author to Tunisia would amount to a violation of his rights under article 7 in conjunction with article 2, of the Covenant.
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Remedy recommended	An effective remedy, including a full reconsideration of the author's expulsion order, taking into account the State party's obligations under the Covenant. The State party is also under an obligation to avoid exposing others to similar risks of a violation.
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Due date for State party's response	3 January 2011
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Date of State party's response	29 October 2010
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State party's submission

The State party informs the Committee that following the adoption of the Committee's Views, its authorities have resumed the examination of the author's second request, introduced in December 2006, for a Pre-Removal Risk Assessment – PRRA - which was postponed because of the registration of the communication by the Committee. A new PRRA agent was designated and, on 6 August 2010, the author was invited in writing to provide the authorities, by 20 August 2010, with an authorisation for his lawyer to act on his behalf as well as to present additional evidence on the potential risks in case of his return to Tunisia. A copy of the letter was sent by fax to the lawyer in question. The letter to the author was returned by the postal service and the lawyer did not react. On 24 August

2010, the authorities have contacted the lawyer by telephone. The lawyer's office affirmed that a power of attorney would be sent by 27 August 2010, but this never happened.

The State party contends that, nevertheless, the author's request for a PRRA is under way, and the Committee would be informed of its outcome. The order to have the author removed to Tunisia has not been executed, and, to the authorities' knowledge, the author is still in Canada.

Finally, the State party informs that the Committee's Views would soon be placed on the website of "Canadian Heritage" (Federal Ministry) at: <http://www.pch.gc.ca/pgm/pdp-hrp/inter/decisions-fra.cfm#a1>.

Further action taken or required

The State party's submission was sent to the author on 2 November 2010. As the mail was returned since the lawyer has changed address, the submission was faxed to the author's lawyer's new office on 10 February 2011. The Committee may wish to await receipt of comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	The Czech Republic
Case	Kohoutek, 1448/2008
Views adopted on	17 July 2008
Issues and violations found	The application by the domestic courts of a citizenship requirement in a property restitution/compensation case violated the author's rights under article 26 of the Covenant.
Remedy recommended	An effective remedy, including compensation if the property cannot be returned. The State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.
Due date for State party's response	27 February 2009
Date of State party's response	16 February 2011
Date of author's comments	11 October 2010

Author's comments

By letter of 11 October 2010, the author's counsel informed the Committee that he had contacted the Ministry of Justice and asked when the State party intends to present a reply concerning the compensation of the author. He received a reply – a copy is provided – according to which the position of the Czech Republic, as already notified to the Committee on previous occasions, including during the presentation of the State party's second periodic report under the Covenant in 2007, remains unchanged. The Ministry of Justice contends that in light of this, it does not see the need to react to the Committee's Views.

Counsel requests the Committee to initiate United Nations sanctions mechanisms against the State party, as the breach of its international obligations, being a member State of the United Nations, should, according to him, not be tolerated. Counsel requests an explanation

on the steps the Committee intends to undertake in the matter, and states that at national level, it is useless to seek further compensation for the author.

State party's submission

By Note Verbale of 16 February 2011, the State party reiterated "its long-term position concerning conditions prescribed by law for submitting property restitution claims", as shared with the Committee during the consideration of the second periodic report of the Czech Republic. It ensures the Committee that it would inform it, if its position changes, of all changes in its legislation or practice.

Further action taken or required

The author's submission was transmitted to the State party on 16 December 2010. The State party's submission was sent to the author on 22 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party	D.R. of the Congo
Case	Adrien Mundy Bisso and al. (« 68 magistrates »), 933/2000
Views adopted on	31 July 2003
Issues and violations found	Dismissal of 68 judges, right to liberty, independence of the judiciary - article 25 (c), article 14, paragraph 1, article 9 and article 2, paragraph 1.
Remedy recommended	An appropriate remedy, which should include, inter alia: (a) in the absence of a properly established disciplinary procedure against the authors, reinstatement in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; and (b) compensation calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement. The State party is also under an obligation to ensure that similar violations do not occur in future and, in particular, that a dismissal measure can be taken only in accordance with the provisions of the Covenant.
Due date for State party's response	17 November 2003
Date of State party's response	The State party has not responded to any of the Committee's Views to date.
Date of author's comments	23 June 2009; 30 September 2010

Committee's consideration under the reporting procedure (Article 40 of the ICCPR).

During its eighty-sixth session in March-April 2006, the Committee considered the State party's third periodic report. In its Concluding Observations it considered that, "While welcoming the delegation's assertion that the judges who wrote Communication No. 933/2000 (*Busyo et al.*) can once again practice their profession freely and have been compensated for being arbitrarily suspended, the Committee remains concerned that the

State party failed to follow-up on its recommendations contained in many Views adopted under the Optional Protocol to the Covenant (such as the Views in cases Nos. 366/1989 (*Kanana*), 542/1993 (*N'Goya*), 641/1995 (*Gedumbe*) and 962/2001 (*Mulezi*). The State party should follow-up on the Committee's recommendations in the above-mentioned cases and submit a report thereon to the Committee as soon as possible. The State party should also accept a mission by the Committee's Special Rapporteur to follow up to the Views and discuss possible ways and means of implementing the Committee's recommendations, with a view to ensuring more effective cooperation with the Committee."

Author's comments

On 23 June 2009, Mr. Ntenda Didi Mutuala, one of the author's of the communication (there were 68 judges)¹, submitted that the original decree No. 144 of 6 November 1998, which had related to the authors' dismissal was denounced by a subsequent decree (following the Committee's decision), No. 03/37 of 23 November 2003. On the basis of this decree, the Minister of Justice took his decision of 12 February 2004, to reassign three judges, including the author of the letter, to their functions. The names of the other two judges are not provided by the author. The author submits however that he was reassigned to the same functions and grade, which he had been carrying out in 1998 at the time of the original decree, and which he had assumed in 1992. Thus, the author had around 12 years in total at the same grade by the time he was reassigned to his position by the Minister's decision of 12 February 2004. According to the author, a promotion is normally foreseen after three years in each grade, assuming his/her functions are carried out well. The author believes that he has so carried out his functions. In addition, he submits that despite the fact that he has requested compensation pursuant to the Committee's decision none has been forthcoming.

Additional information from the author

By letter of 30 September 2010, the author informed that no measures have been taken so far by the State party's authorities to give full effect to the Committee's Views since its 2009 letter. The author invites the Committee to find a solution in the matter.

Further action taken or required

The author's submission, together with a copy of his 2009 submission, was transmitted to the State party on 26 January 2011. The State party was invited to provide its reply by the 26 February 2011. If no reply is received, the Committee may envisage calling for a meeting with the Permanent Representatives of the State party during the July 2011 session.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	KYRGYZSTAN
Case	Latifulin, 1312/2004
Views adopted on	10 March 2010
Issues and violations found	Unlawful detention and failure to inform the author on the charges against him (article 9, paragraphs 1 and 2).

¹ According to the Views, "The authors are Adrien Mundy Busyo, Thomas Osthudi Wongodi and René Sibou Matubuka, citizens of the Democratic Republic of the Congo, acting on their own behalf and on behalf of 68 judges who were subjected to a dismissal measure."

Remedy recommended An effective remedy, in the form of appropriate compensation; the State party is also under an obligation to prevent similar violations in the future.

Due date for State party's response 22 October 2010

Date of State party's response 20 October 2010

State party's submission

The State party contends that the lawfulness and the grounds for the author's conviction were verified and confirmed by the appeal court as well as under the supervisory procedure. The law does not require the obligatory presence of a party during the examination of a case under the supervisory proceedings.

Pursuant to changes in the legislation in 2007, article 169 (theft of others' property in a particularly large amount) was excluded from the Criminal Code. On this basis, the author can request, under section 387 of the Criminal Procedure Code, to have his case re-examined in light of the new circumstances. Thus, the author has the right to request the Supreme Court to re-examine his criminal case, given the legislative changes.

Further action taken or required

The State party submission was transmitted to the author, for comments, on 20 October 2010. A reminder to the author was sent on 21 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party **KYRGYZSTAN**

Case **Kaldarov, 1338/2005**

Views adopted on 18 March 2010

Issues and violations found Lack of court control of the decision to have the author placed in custody – violation of article 9, paragraph 3, of the Covenant.

Remedy recommended An effective remedy, in the form of appropriate compensation, and to make such legislative changes as are necessary to avoid similar violations in the future.

Due date for State party's response 22 October 2010

Date of State party's response 5 October 2010

State party's submission

The State party recalls the facts of the case *in extenso*, repeating its previous submissions on the admissibility and the merits of the communication. The information submitted was prepared jointly by the Ministry of Internal Affairs and the Supreme Court of Kyrgyzstan.

The State party also contends that the 1998 Criminal Procedure Code provided no judicial control over decisions to arrest individuals, but that this was attributed the prosecutors. In order to align its legislation to the provisions of the Covenant, the State party has amended its legislation in 2004, 2007, and 2009.

Further action taken or required

The State party submission was transmitted to the author, for comments, on 18 October 2010. A reminder to the author was sent on 21 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	KYRGYZSTAN
Case	Kulov, 1369/2005
Views adopted on	26 July 2010
Issues and violations found	Cruel, inhuman, and degrading treatment (art. 7 of the Covenant); right to liberty/habeas corpus (art. 9, paragraphs (1), (3) and (4)); unfair trial, presumption of innocence (article 14, paragraphs 1, 2, 3 (b), (c), (d), and (e), of the Covenant.
Remedy recommended	An effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party's response	4 April 2011
Date of State party's response	15 November 2010

State party's submission

The State party contends that on 11 April 2005, on the basis of a submission from the General Prosecutor's Office, the Supreme Court of Kyrgyzstan annulled the author's sentences pronounced by the Pervomai District Court of Bishkek of 8 May 2002, by the Bishkek City Court of 11 October 2002, and the Ruling of the Supreme Court of Kyrgyzstan of 15 August 2003, based on the absence of the elements of corpus delicti in the author's acts. This, according to the State party, means that the author is innocent, and entitles him to be granted full rehabilitation and includes a right to compensation for the damages resulting from his criminal prosecution.

The State party further explains that pursuant to article 378 of the Criminal Procedure Code, courts are entitled to decide whether they need to invite a party to be present when a supervisory review of a case is conducted, but there is no obligation for the presence of the parties.

The State party also contends that the 1998 Criminal Procedure Code provided no judicial control over decisions to arrest individuals, but that this was attributed the prosecutors. In order to align its legislation to the provisions of the Covenant, the State party has amended its legislation in 2004, 2007, and 2009.

Further action taken or required

The State party submission was transmitted to the author, for comments, on 24 November 2010. A reminder to the author was sent on 21 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
State party	KOREA (Republic of)
Cases	Jung et al., 1593-1603/2007
Views adopted on	23 March 2010
Issues and violations found	Criminal prosecution and imprisonment of conscientious objectors, due to the lack, in the State party, of an alternative to the compulsory military service (art. 18, paragraph 1, of the Covenant).
Remedy recommended	An effective remedy, including compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future.
Due date for State party's response	15 October 2010
Date of State party's response	9 December 2010
State party's submission	<p>The State party explains, first, that it has published the Committee's Views including their Korean translation in the Official Gazette on 4 October 2010. In addition, outlines of the Views were disseminated via newspapers and broadcasting networks.</p> <p>On the issue of the authors' compensation, the State party submits that the authors have been irrevocably convicted by courts. In addition, no illegal acts were committed against them by State agents during their investigation or trials. According to the State party, the establishment of illegal acts or torts by State agents is a prerequisite for the provision of State compensation. In the absence of such prerequisite in the present case, the State party affirms it unconceivable to recognize the legal grounds for providing the convicted authors with compensations or reparations.</p> <p>On the issue of introducing an alternative to the compulsory military service, the State party explains that the security situation on the Korean peninsula differs from the one in countries which have introduced alternatives to compulsory military service. In addition, there is no consensus on the issue – a poll by the Ministry of National Defence showed that the rate of those who object to the introduction of alternative service for conscientious objectors grew from 60.7 per cent in 2006, to 68.1 per cent in 2008.</p> <p>Finally, the State party informs the Committee that in consideration of the Committee's Views in the domestic context, the Government transmitted, in September 2010, the Views to the "National Human Rights Policy Council" composed of fifteen ministries. The Council decided to continue to review the matter and consider the possibility of establishing an alternative service for conscientious objectors.</p>
Further action taken or required	<p>The State party submission was transmitted to the author, for comments, on 26 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.</p>
Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.

State party	NEPAL
Case	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	27 April 2009, 28 July 2010
Date of author's comments	30 June 2009, 11 March 2010, and 30 November 2010.
State party's comments	<p>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 Euro) 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.</p>
Author's comments	<p>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</p>

guarantee that a prosecution process would be initiated 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 Prime Minister's Secretary that the army officials were objecting (no specific names provided) 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 any legal proceedings within the existing legal system as outlined 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 appropriate action to be taken 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 existing law, against individuals found guilty after the investigations of the two future 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.

The State party's submission of 28 July 2010 was sent to the author on 9 August 2010.

Additional information from the authors

On 30 November 2010, the author reacted to the State party's additional comments. She notes first, that even if the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament, there is no indication as to when the Bills would be adopted, in particular in light of the current political situation. Thus, the Committee's recommendation to establish an investigative body to carry out prompt investigations and prosecutions of human rights violations, in particular enforced disappearances and acts of torture, was not implemented by the State party. In addition, the two Commissions, as they are envisaged in the Bills, are not judicial bodies, and they could not impose appropriate penalties to perpetrators of human rights violations. The process thus would not guarantee the promptness required by the Committee. In addition, Nepalese law does not contain crimes such as torture, enforced disappearance, incommunicado detention, or ill-treatment.

The author recalls that she has received a total of NRs 200 000, as "immediate relief". According to her, the amount in question, as pointed out by the State party itself, cannot be seen as commensurate to the pain and anguish befallen upon the family, nor can it, according to the author, compensate the pecuniary and non-pecuniary damages inflicted upon her and her children by the enforced disappearance of her husband.

Even if the State party has committed itself to provide her with an additional relief package in light of the conclusions of the transitional justice system to be established, the author contends that neither the immediate relief nor any future additional relief could absolve the State party of its obligation to provide an effective remedy and full and adequate reparation – including compensation – for the violations suffered.

On the State party's denial 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, the author reiterates her previous statements, but regrets that she has no material evidence to refute the State party's affirmation. As to the State party's contention that 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, the author explains that she has not asked to have a specific commission to deal with her case, but she expects to have her case dealt within the existing criminal law framework.

Finally, the author regrets that the authorities have not contacted her to inform her on the developments in her case.

The author's submission was sent to the State party on 2 December 2010.

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 equity, 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.

A new meeting with the Permanent Mission could be envisaged in July 2011.

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

State party	NEPAL
Case	Sobhraj, 1870/2009
Views adopted on	27 July 2010
Issues and violations found	Conditions of detention (article 10, paragraph 1); lack of defence lawyer and interpreter (violation of article 14, paragraph 3 (a), (b), (d), (e), and (f), of the Covenant); failure to prove charges beyond reasonable doubts; shift of the burden of proof to the author (art. 14, paragraph 2); excessive length of court trial (art. 14, paragraph 3 (c)); lack of impartiality of tribunals; impossibility to have the author's sentence reviewed by a higher tribunal due to the length of the proceedings (articles 14, paragraphs 1 and 5); conviction for acts which did not constitute a crime when they were committed (articles 15, paragraph 1, and 14, paragraph 7).
Remedy recommended	An effective remedy, including the speedy conclusion of the proceedings and compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party's response	31 January 2011
Date of State party's response	19 January 2011
Date of author's comments	5 January 2011, 23 February 2011

Author's comments

The author's counsel (based in France) informed the Committee, on 5 January 2011, that following the adoption of the Committee's Views, the author has been placed in isolation, for an undetermined period of time, in isolated and insalubrious premises, with clay floor and slits on the brick walls with no protection from the winter cold. The author has been prohibited to communicate with visitors, he is prevented from making phone calls and cannot communicate with his lawyer. The lawyer also informs the Committee that the author's Nepalese lawyers do not represent her client any longer, pursuant to an action undertaken by the Supreme Court, and thus, as a result of this, he faces a situation where he no longer has legal representation.

Finally, the lawyer reports that the Chief of the detention facility in question has prevented the author from signing his review petition to the Supreme Court, which he had to prepare on his own, so as to hand it to a representative of the French Embassy in Nepal. Counsel

provides a copy of the unsigned review petition. The Committee's support is sought.

The lawyer's submission was transmitted to the State party on 7 January 2011.

State party's submission

The State party presented its comments on 19 January 2011. Preliminary, it regrets that the Committee's Views have "undermined the independence, impartiality and competence of the Judiciary" of Nepal, and that the Committee has "failed to recognize that an administration of justice has its own procedures which need to be recognized and respected".

The State party recalls that it has submitted its observations, on 29 July 2010, challenging both the admissibility and the merits of the author's allegations, but, as it subsequently transpired, the Committee's Views had already been adopted, on 27 July 2010.

It informs also that the Supreme Court of Nepal has already rendered its verdict in the case of Mr. Sobhraj, "almost concurrent in timing with the adoption of the Views by the Committee".

On the issue of independence and competence of the judiciary, the State party notes that the Interim Constitution of Nepal (2007) enshrines the principle of the separation of power. The executive, the legislative and the judiciary, have been established in the Constitution and their jurisdictions have been clearly defined so as to maintain the spirit of the separation of power, and they act independently, avoiding the interference of one organ into the function of another. The Constitution encompasses the concept of independent judiciary and the prevailing law has ensured the respect of the same in the administration of justice. It is explicit in the Constitution that people's right to justice is to be served, in accordance with the prevailing provisions of the Constitution and the fundamental principles of law and justice, through competent courts and other relevant judicial institutions. The Constitution has established the Supreme Court, the Appellate Court and the District Court for independent and fair administration of justice at three levels. The prerogative of the final interpretation of laws and constitutional provisions remains with the Supreme Court. The supremacy of the Supreme Court has been asserted by the constitutional provisions that all mechanisms of the government and the public are required to respect the verdict and decisions of the court; the government machineries have to assist in the smooth functioning of the courts; and they have to respect and abide by the interpretation of law and establishment of the principles of law and justice by the courts.

The State party explains that the courts in Nepal are competent and independent in reaching a decision, on the basis of facts and evidences before them and the relevant provisions of prevailing law, on the cases brought to their attention and are immune, in doing so, from external pressure, influence, threat and interference of any kind. Every individual has been guaranteed the right to fair trial in a case against him in the competent court of law and this universal right has been fully respected in Nepal. Established judiciary procedures have been impartially observed in rendering of justice and rights of the defendant and the plaintiff have been duly honoured. The Nepalese judiciary has been commended for its contribution to promotion and protection of justice, human rights and fundamental freedom of people even in adverse time.

As per the stipulation of Administration of Justice Act (1991) that the preliminary hearing of the cases related to murder and fake passports should begin at a district court level, the hearing of the case of Mr. Shobhraj was initiated in the District Court of Kathmandu. As required by law, reviews of verdicts are undertaken by higher courts, and the first verdict of the district court was reviewed by the Appellate Court and the review of the decision of the latter has now been concluded by the Supreme Court reaffirming the decision of the lower courts.

The State party continues by contending that Nepal is a democracy, and as a party to the Covenant, the Government takes the Covenant solemnly and it is committed to abide by all its provisions. The Constitution and the laws have accordingly incorporated the fundamental rights guaranteed by the Covenant. Thus, anyone accused of a crime is entitled to the rights of fair trial, a trial at an independent and impartial court, presumption of innocence until proved guilty and punishment only as decided by the competent court. According to the State party, these fundamental rights have been fully honoured in the case related to Mr. Shobhraj.

Mr. Sobhraj's conditions of detention do not undermine 'the inherent dignity of human persons'. Every provision of Prison Act (1962) and Prison Regulations (1963) applies to him without distinction and discrimination. He has been provided with healthy food, appropriate medication and has been allowed to receive visits and to communicate as per the terms of the Prison Act and Regulations. The allegation that Mr. Sobhraj has been placed in 'solitary confinement' is, according to the State party, untrue.

The peremptory norm of international law vests unquestionably upon a sovereign State an authority to investigate and sanction offenders as determined by the competent court of law. This is not simply a State prerogative, but also an indispensable task expected of the State for the general well being of the public and protection of their life and property from criminal behaviour. Mr. Sobhraj has been serving incarceration as per the verdict of two lower courts on the charges of murder and the use of fake passport and his appeal for the review of the verdict has been repealed by the Supreme Court.

The State party explains that it rejects the author's claim that the documents submitted by the police authority to the court are "fake" and the Appellate Court reached its decision in the absence of strong "material evidence". It is the competent and independent court, not the parties in the case that is mandated to decide whether evidence is admissible. In the case of Mr. Sobhraj, the Appellate Court issued the verdict on the basis of the factual report prepared by the relevant experts who examined thoroughly the documents and evidence to verify their reliability and authenticity. All the processes observed during investigation of the case have been in full compliance with general principles of law and existing laws.

The State party adds that every legal case follows certain procedure and every hearing in the court is regulated by relevant rules. In Nepal, the hearing procedures in the Supreme Court, the Appellate Court and the District Court have been regulated by Supreme Court Regulations (1992); Appellate Court Regulations (1991); and District Court Regulations (1995), respectively. The hearing of every case is conducted as guided by these instruments and this was the situation in Mr. Sobhraj's case. He has been incarcerated as he was found guilty by the two lower courts and finally by the Supreme Court on the basis of substantive evidences. The case of Mr. Sobhraj was accorded priority and all hearings were held in his presence. The State party further draws the Committee's attention to the fact that the Mr. Sobhraj's lawyers have expressed gratitude to the Court for according priority to the case of their client.

The State party contends that the Supreme Court has full authority to decide on the admissibility of all evidences submitted, in accordance with law, at the time of prosecution. In the case of Mr. Sobhraj, the Supreme Court reached its decision on the basis of standard values of universally recognized evidence law, upon examination of relevant decisions of courts of other countries and as provided in the criminal law and the Evidence Act of Nepal 2031 BS. The Court admitted only evidence that did not go against the principle of fair trial and all investigations with respect to the case were carried out in accordance with the standard principles of law and relevant national law. No retroactive application of law and no application of controversial procedures have occurred in this case. The State party also notes that the Act Related to Foreigners 2015 BS and its Regulations 2031 BS deemed the use of a fake passport as a crime punishable by law and the Immigration Act 2049 BS that

annulled the 2015 Act incorporated those offences. Mr. Sobhraj used a fake passport to enter into Nepal in 1975 and he has been convicted for this as per the Act Related to Foreigners 2015 BS and its Regulations 2032 BS and no penalty in excess of that prescribed by the law has been applied to him.

According to the State party, the allegation that the burden of proof has been shifted to the “detriment of the author” is a complete misrepresentation of facts. The evidence law of Nepal places on the prosecution the responsibility to provide evidences to prove the claim. The principle of burden of proof assumes that while it is the responsibility of the prosecutor to substantiate his claim, the responsibility to substantiate a special plea made with a view to reduce the penalty for an acquittal from the charge falls upon the party that makes the plea. Clause 27 (1) of Nepal Evidence Act 2031 BS states that if the defendant makes a counter claim regarding remission from the penalty or acquittal from the charge (penalty) pursuant to exiting law, the burden of proof of proving such a fact shall lie with the defendant him/herself. Pursuant to clause 28 of the same Act, the burden of proof as to any particular fact falls on the person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other particular person. This is a universal law of evidence. In the case of Mr. Sobhraj, while the prosecutor submitted with evidences that Mr. Sobhraj was in Nepal at the time when the crime was committed, the latter submitted a plea of alibi and consequently was asked to substantiate his claim, which he could not do.

The State party explains further that under the Constitution, every individual arrested retains the right to consult a lawyer of his choice right from the time of the arrest and Mr. Sobhraj was no exception to this provision. At the time he testified in the Court, Mr. Sobhraj was assisted by a lawyer (name provided), who also served as his interpreter. Mr. Sobhraj was allowed to speak in English which he did and the questions in Nepali were translated to him by his lawyer. A French lawyer (name provided) also took part in the process as Mr. Sobhraj’s legal counsel.

The State party explains that it has taken note of the concerns expressed by the Committee over the alleged infringement of human rights that Mr. Sobhraj’s is entitled to under the national law and the international human rights commitments. It expresses assurances to the Committee that it is committed to ensure that even convicted prisoners enjoy the rights that are accorded to them by national and international law.

Finally, the State party reiterates its wish to remain constructively engaged with the Human Rights Committee and other UN international human rights mechanisms.

Additional comments from the author

On 23 February 2011, the counsel provided further comments. She refers to her previous correspondence and affirms that no change had occurred in the situation of Mr. Sobhraj. The counsel also notes that the State party has not made any proposal in its submission as to the measures it intends to take in order to comply with the Committee’s Views. On the contrary, the State party denies having breached the author’s rights under the Covenant, thus disregarding the Covenant’s and the Optional Protocol’s provisions, the Committee’s rules of procedure, and the Committee’s Views. The lawyer recalls that the author is entitled to an effective remedy, including compensation, for the violations he had suffered and is still suffering.

As to the independence of the judiciary in Nepal, the counsel contends that the conduct of numerous enquiries about corruption and different reports from human rights organisations show that the State party’s arguments are incorrect.

The counsel requests the Committee to intervene and ensure that the author receives an effective remedy.

Further action taken or required

The counsel's latest comments were transmitted to the State party on 23 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party **PARAGUAY**

Case **Asensi, 1407/2005**

Views adopted on 27 March 2009

Issues and violations found Protection of the family including minor children – violation of articles 23 and 24, paragraph 1.

Remedy recommended Effective remedy, including the facilitation of contact between the author and his daughters.

Due date for State party's response 6 October 2009

Date of State party's response 2 October 2009, 21 May 2010, 11 January 2011

Date of author's comments 30 November 2009, 16 August 2010, 18 February 2011

State party's comments

The Committee will recall that on 2 October 2009, the State party denied that it had violated the Covenant. It submitted that the dismissal of three international mandates from Spain, requiring the children to be returned to their father, was done in accordance with Paraguayan legal provisions, which comply with international law. The conclusion has always been that the girls should remain in Paraguay with their mother. In light of the complex situation faced by illegal immigrants in Europe, including the refusal to grant a Spanish visa to Ms Mendoza, Paraguayan authorities consider it logical for the girls to remain in Paraguay.

The State party submits that the girls were born in Asuncion, have Paraguayan citizenship and have lived most of their lives in Paraguay. Thus, their transfer to Spain would mean uprooting them from their natural environment. Regarding the pending trial in Spain against Ms. Mendoza for fleeing the country, due process guarantees have not been respected.

Regarding the Committee's observations on access, the State party submits that Mr. Asensi has not filed a complaint under the Paraguayan jurisdiction yet, which would constitute the only legal way to establish direct contact with his daughters. Thus, it is inferred that legal remedies have not been exhausted. The author's claims on the poverty conditions in which the girls live have to be understood in the context of Paraguay's history and its place in the region. Comparing Spain and Paraguay's living standards would be an unfair exercise. Economic conditions cannot constitute obstacles to the girls remaining in the State party. The State party submitted that following Mr. Asensi failure to comply with maintenance/alimony for his daughters, an arrest mandate has been issued against him. The girls are currently attending school. Following several assessments from local social workers, it's reported that the girls live in good conditions and have expressed their wish to remain with their mother, as several of the documents attached will prove.

Author's comments

The Committee will also recall that the author refuted the information provided by the State party in its response to the Committee's Views. He claimed that it was untrue that his ex-wife was denied a visa and residence permit in Spain. Being his wife, she was entitled to live in Spain legally. However, due to her lack of interest, and even if it was a mere formality, she never completed the necessary paperwork in order to obtain such a permit.

His ex-wife had always refused to participate in any proceedings regarding the divorce and custody conducted in Spain. She also refused to comply with the decision of 27 March 2002 issued by a Paraguayan judge ordering that the children spend some time with their father. Furthermore, in 2002, the author and his ex-wife came before Judge J. Augusto Saldivar to agree on visiting arrangements. The author proposed to provide his daughters with all the necessary material support in kind and to be allowed to maintain regular contact with them. However, this proposal was rejected by his ex-wife.

As to the State party's claim that the author was summoned to appear before a Paraguayan judge as a result of the proceedings initiated by his ex-wife for not paying alimony/maintenance, he claims that he never received any notification and that no letters in that respect were sent to his domicile in Spain, where he lives permanently.

The Paraguayan authorities have constantly refused to implement the decisions of the Spanish courts regarding custody of the children. On the question of alimony raised in the State party's response, the divorce decision does not oblige the author to pay any, in view of the fact that he obtained the custody of his daughters. Despite that, he regularly sends money and parcels to them through his ex-wife's family or the Spanish Embassy in Paraguay. Medical and school fees were paid by the Spanish Consulate, in view of the fact that they have Spanish nationality and are affiliated to the Spanish social security scheme.

State party's supplementary submission

The Committee will further recall that on 21 May 2010, the State party provided new updated information to the Committee, following a note verbale from the Committee (see report from 98th session) requesting it to respond to the following, "Since the State party claims that its legislation allows the author to obtain visiting rights, the Committee requests the State party to provide detailed information on effective remedies still available to the author under such legislation".

Regarding the obligation to provide effective remedies to the author that could allow him to see his daughters, the State party reiterates that nothing stops the author from exhausting the legal avenues available in cases of this nature. However, it claims that the author's proceedings have been slowed up due to his unwillingness to pursue the procedure. As a result of his inaction (more than six months and in accordance with article 172 of the Code of legal procedure), the legal processes initially undertaken have now expired. The State party then summarizes the proceedings initiated by the author in Paraguay (see Committee's Decision) and reiterates that the lack of rulings and decisions on the issues raised by Mr. Asensi have been due to his own negligence throughout the proceedings. Following the sentence n. 120 by the Supreme Court confirming the decision not to grant Mr. Asensi custody, there is no record of further legal proceedings, petitions or appeals having taken place.

The State party reiterates its suggestion of the establishment of a regime under which the author will have access to his daughters. In accordance with national legislation (Law 1680/2001) art. 95: legal arrangements will enforce the right of the child to remain in contact and see the members of his family with whom he does not live. Thus, the State party suggests that:

It acts as a mediator between the parties, in concordance with national legislation. Indeed,

the Office of Mediation of the Judiciary Branch is available at no cost for the parties to resolve their dispute.

Upon reaching an agreement, it can be confirmed by the Children's Judge. The State party notes that preliminary talks have already begun with Mrs. Mendoza's lawyer, who will make this suggestion to his client.

In the event one of the parties fails to show up at the mediation meetings, there is still the possibility of Mr. Asensi requesting the initiation of new proceedings, for which he could be represented by someone of his choice from the Paraguayan consulate in Madrid or Barcelona.

The State party also notes that the author has all the legal remedies available to him, such as those concerning his visitation rights (art. 95), or the proceedings to suspend home custody (art. 70 to 81), among others.

The State party clarifies its position on several issues:

- Although it is committed to addressing the violations established by the Committee in regard to articles 23 and 24, it claims that Mr. Asensi's lawyer's lacks the will to find a compromise that would allow the complainant to see his daughters as prescribed by law.
- Regarding the legal proceedings against Mrs. Mendoza in Spain, on the grounds of removal of minors, it notes that there is an extradition request from Spain against her. In this regard, the Supreme Court ruled on 7 April 2010 that, "having not complied with the pre-requisite of "double incrimination"² according to both Spanish and Paraguayan Law, and in accordance with the extradition treaty, the request was denied." The most likely equivalent piece of Paraguayan legislation that would allow for the Spanish request to be considered is not acceptable³ because Mrs. Mendoza is the mother and has custody over the girls.
- Regarding custody claims, the State party asserts that the decision has been made and that the complainant should understand that the Committee is not a fourth instance of appeal nor is it within its mandate to review the facts and evidences.
- As to the claim for compensation, the State party refuses to comply with his demands, as there was never any mention of financial reparation in the Committee's Views.

Finally, the State party confirms its commitment to raise awareness in workshops organized by the Supreme Court to future judges on the importance of abiding by the Committee's rulings.

Author's response

The Committee will also recall that in a letter dated 16 August 2010, the author rejected the arguments of the State party and reiterated that he did everything he could in Paraguay to obtain visiting rights, but to no avail. He recalls that there is a judgment of the Spanish courts on the matter and that this judgment has never been implemented by Paraguay. In these circumstances, he is not willing to engage in any new procedure that might be

² For the extradition request to be acceptable, alleged punishable actions have to exist in both legal regimes. The State party maintains that under Paraguayan law, there is no equivalent to what the Spanish authorities are accusing Mrs. Mendoza of.

³ There is a law in Paraguay that punishes the one person who removes the children of a parent who has custody over them. But in this case, as Mrs. Medoza is actually the mother, and according to the State party had custody over them, "double incrimination" is unfounded.

proposed by Paraguay. He insists that he should be paid compensation.

State party's additional submission

On 11 January 2011, the State party reiterates that in order to provide the author with an effective remedy which would grant him visiting rights, as requested in the Committee's Views, he should follow the procedure defined in article 95 of the Code of Childhood. It also reiterates that, instead of initiating legal proceedings, both parties can come to an agreement through a mediation process. If Mr. Asensi refuses to follow any of these remedies, there would be nothing the State party could do in order to implement the Views and the Committee would have to declare the case closed. Concerning the payment of compensation and the implementation of the judgments of the Spanish Courts, the State party indicates that these issues were not included among the Committee's recommendations and, therefore, Mr. Asensi's requests in that regard are unfounded.

Additional information from the author

In a letter dated 18 February 2011, the author reiterates his previous claims, states that at the time he tried all possible legal remedies and insists that the State party should provide him with compensation.

Further action taken or required

The author's most recent submission was sent to the State party on 24 February 2011. The Committee may wish to await receipt of comments prior to making a decision on this matter.

Proposed Committee's Decision The Committee considers the follow-up dialogue ongoing.

State party	PHILIPPINES
Case	Pimentel et al, 1320/2004
Views adopted on	19 March 2007
Issues and violations found	Unreasonable length of time in civil proceedings, equality before the Courts – article 14, paragraph 1 in conjunction with article 2, paragraph 3.
Remedy recommended	Adequate remedy, including compensation and a prompt resolution of their case on the enforcement of the US judgment in the State party.
Due date for State party response	3 July 2007
Date of State party's response	24 July 2008
Date of author's comments	1 October 2007, 22 August 2008, 21 August 2009, 4 February 2011

Authors' comments

The Committee will recall that on 1 October 2007, the authors informed the Committee that the State party had failed to provide them with compensation and that the action to enforce the class judgement remained in the Regional Trial Court of Makati following remittal of the case in March 2005. It was not until September 2007, that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. The authors requested the Committee to demand of the State party prompt

resolution of the enforcement action and compensation. Following the jurisprudence of the ECHR (inter alia *Triggiani v. Italy*, (1991) 197 Eur.Ct.H.R. (ser.A) and other reasoning, including the fact that the class action is made up of 7,504 individuals they suggest a figure of 413, 512,296 dollars in compensation.

State party response

The Committee will also recall that on 24 July 2008, the State party informed the Committee that on 26 February 2008, the presiding judge of the Regional Trial Court issued an order setting the case for Judicial Dispute Resolution (JDR). Three JDR conferences have already taken place, however due to the confidentiality of the process no further information on the status of the process may be divulged.

Authors' further comments

The Committee may also recall that on 22 August 2008, the authors responded to the State party's submission of 24 July 2008. They confirmed that they met with the presiding judge on several occasions to discuss settlement and that although they made earnest proposals the Marcos Estate showed no interest in doing so. By order of 4 August 2008, the JDR phase was terminated. According to the authors, the State party's delay in the enforcement proceedings, at the time of their submission extending 11 years, is part of a pattern and practice by the State party to ensure that the class never realizes any collection on its US judgement, and provides other examples of this practice. The authors required the Committee to quantify the amount of compensation (and other relief), to which they claim the Committee has already held the class to be entitled. (The Order of 4 August 2008 states, "Considering that this case has been pending in the courts for 11 years already, it is imperative that trial on the merits commence without further delay." The records of the case have been sent back to the Regional Trial Court for "proper disposition"). On 21 August 2009, the authors renew their plea to the Committee to quantify the amount of compensation (and other relief) to which the Committee held that they were entitled. They highlight their views, *inter alia*, that: the State party has done nothing to advance this case; it has collected tens of millions of dollars in Marcos assets but has failed to distribute any to the victims; the provision of compensation is consistent with the UN Resolution 60/147 on "Basic principles and guidelines on the Right to a remedy and reparation for victims of gross violations of international law....."; delay in rendering relief to the 9,539 victims who benefit from the Committee's decision encourages the State party to continue to violate human rights.

On 4 February 2011, the author reiterated that the State party has not taken any measures to implement the Committee's Views.

Further action taken/required

The authors' most recent submission was sent to the State party on 21 February 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Committee's Decision	The Committee considers the follow-up dialogue ongoing.
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State party	RUSSIAN FEDERATION
Case	Pustovalov, 1232/2003
Views adopted on	23 March 2010
Issues and violations found	Forced confessions obtained under duress – violation of articles 7 and 14, paragraph 3 (g); absence of the

author's lawyer during investigation acts, refusal of the trial court to allow the author to retain a new lawyer as well as his requests to invite additional experts and witnesses – violation of article 14, paragraph 3 (b), (d), and (e), of the Covenant.

Remedy recommended	An effective remedy including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for Mr. Pustovalov's ill-treatment, and a retrial with the guarantees enshrined in the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party's response	28 January 2011
Date of State party's response	20 October 2010
Date of author's comments	21 September 2010

Author's comments

By letter of 21 September 2010, the author explains that no measures have been taken so far by the State party's authorities to implement the Committee's Views.

State party's submission

By Note Verbale of 20 October 2010, the State party contended that it finds the Committee's conclusions of a violation of the author's rights under articles 7 and 14, paragraph 3 (b), (d), (e), and (g), of the Covenant, groundless. The author's contention that he was subjected to violence by the police and was forced to confess guilt have been examined on several occasions by the investigation organs and by the courts but were not confirmed, and therefore no criminal case in this connection could be opened. The courts have established that the author has injured one policeman with a firearm during his arrest and also violently opposed his apprehension. Because of this, the police used physical force to arrest him. The courts thus concluded that the author's injuries have resulted from the lawful use of force by the police during the arrest. In the circumstances, the State party's authorities have no lawful grounds to initiate a criminal case against the police officers in question, as recommend in the Committee's Views.

As to the alleged violation of the author's rights under article 14 of the Covenant, the State party explains that the author's allegations that he had an alibi which could be confirmed by numerous witnesses were duly examined and verified by the courts but they were accurately refuted and this was reflected in the courts' rulings and decisions. The court decisions (copy is provided), reflect the grounds for refuting the author's allegations about procedural violations. In light of the above, the State party sees no reason to initiate a retrial, as recommended in the Committee's Views.

The State party further explains that copies of the Committee's Views in the present case were sent to the different courts of the Russian Federation (Supreme Courts, regional courts, appeal courts, etc.), for information and in order to be used in the courts' practical activities.

Further action taken or required

The State party submission was transmitted to the author on 16 November 2010. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	RUSSIAN FEDERATION
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Case	Babkin, 1310/2004
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Views adopted on	3 April 2008
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Issues and violations found	Tried and punished twice for the same crime, unfair trial – violation of article 14, paragraph 1, read in conjunction with article 14, paragraph 7, of the Covenant.
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Remedy recommended	Such appropriate forms of remedy as compensation and a retrial in relation to the author's murder charges.
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Due date for State party response	17 October 2008
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Date of State party's response	29 January 2009
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Date of author's comments	1 March 2009, 6 September 2010
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State party's submission

The Committee will recall the information provided by the State party in October 2008 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

The Committee will recall further that 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.

Additional information from the author

On 6 September 2010, the author explained that he is still in prison, servicing a sentence for a crime he did not commit. He requests the Committee to take action in the matter.

On 29 January 2011, the author reiterated his previous explanations and provided the Committee with a copy of a reply to his claim to the Supreme Court of the Russian Federation to have his criminal case re-examined on the basis of new circumstances, i.e. the Committee's Views. The Supreme Court has rejected his claim, stating that the legislation does not provide for re-examination of cases on the basis of treaty bodies' decisions⁴. He requests the Committee to ask for assistance in the matter.

⁴ The Supreme Court, through one of its Judges, has explained in a letter of 24 December 2010, that according to article 415 of the Criminal Procedure Code, the Chairperson of the Supreme Court proposes to Presidium of the Supreme Court to have a criminal case re-opened (a) if the Constitutional Court has declared unconstitutional the law under which the individual was sentenced in a particular case, or (b) if there was a judgement of the European Court for Human Rights in the

Further action taken/required

The author's most recent submissions were sent to the State party on 19 November 2010 and 23 February 2011, respectively. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	RUSSIAN FEDERATION
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Case	Amirov, 1447/2006
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Views adopted on	2 April 2009
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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.
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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.
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Due date for State party response	19 November 2009
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Date of State party's response	10 September 2009, 20 May 2010
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Date of author's comments	24 November 2009, 26 November 2010
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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 to determine how the victim had died had not been carried out. 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 thus he is critical about the investigative attempts to establish the exact cause of death. The author

case finding violations of the rights of the individual under the ECHR. In the absence of such circumstances in the present case, the Supreme Court rejected the author's request.

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 verifications 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

The Committee will recall that 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.

Additional submission from the author

On 26 November 2010, the author commented on the State party's submission of 20 May 2010. Preliminary, the author requests the Committee to invite the State party to provide evidence and detailed information on any action taken to implement the Committee's Views.

With regard to the State party's contention that the criminal investigation into Mrs. Amirova's death was resumed, the author deplores the State party's failure to submit any documentary evidence, in particular a copy of the decision of the Chechen Prosecutor's Office thereon of 29 April 2010. The author explains that he never received an official written notification on the above decision, even if, under article 42 of the Criminal Procedure Code, he is entitled to be acquainted with all records and investigation acts and to make comments thereon, or to receive a copy of the decision to initiate a criminal case. On 22 November 2010, the author introduced a motion requesting access to all case materials in the criminal case with the Investigation Directorate of the Chechen Republic; he will inform the Committee of the response in due course.

On the investigation actions into Mrs. Amirova's death, the author deplores that the Chechen Prosecutor's Office has only asked for a forensic medical examination to be performed on his wife's body. He expresses doubts about the extent to which the exhumation of his wife's body would be of relevance, as the cause of her death has already been established and a death certificate was issued already in 2001. According to him, the

State party's authorities have enough information to proceed with an investigation into the exact circumstances of his wife's death. In the circumstances, the author invites the Committee to call upon the State party that the investigation in question goes beyond the exhumation of the body of his wife.

The author further deplores the State party's failure to refer to the allegations of torture and ill-treatment Mrs. Amirova has been subjected prior to her killing. He invites the Committee to request the State party to also investigate these allegations, as ruled in the Committee's Views, to bring to justice those responsible, to pay compensation to the surviving family, and to ensure that no similar violations occur in the future.

On the investigation into the misconduct and omissions committed during the preliminary investigation, the author regrets that the State party has not submitted a copy of the decision of 4 May 2010, and informs the Committee that he had not received any notification of such investigations. He further expresses doubts about the extent to which any measures have been taken to prevent similar violations in the future by the Head of Police of the Department Of Internal Affairs No.4 in Grozny. The author also regrets that the State party has not addressed a number of concerns expressed in the Committee's Views, such as the "failure of the State party even to secure the testimony of the agents of the Ministry of Emergency Situations and of the Staropromyslovsky Temporary Department of Internal Affairs in Grozny who were present at the crime scene on 7 May 2000".

The author further deplores that the State party has not addressed the allegations on his own ill-treatment in 2004. He informs the Committee that he had received no information on the Prosecutor's inquiries into his ill-treatment case, nor was he ever questioned in this respect. He invites the Committee to intervene with the State party on this matter too.

In conclusion, the author reiterates that he has not been provided with an effective remedy, because of the State party's "continued refusal" to carry out a proper and effective investigation in his wife's death and ill-treatment, to punish those responsible, or to pay compensation.

Further action taken/required

The author's latest comments were transmitted to the State party on 1 December 2010. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	TAJIKISTAN
Case	Dunaev, 1195/2003
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	6 October 2009
Date of author's comments	22 October 2010

Author's comments

On 22 October 2010, the author inquired whether the State party has provided any information on the measures taken to give effect to the Committee's Views, and invited the Committee to remind the State party about its international obligations under the Covenant.

Further action taken/required

The author's submission was sent to the State party for comments on 22 November 2010. The State party was also reminded to present its comments on the Committee's Views. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	TAJIKISTAN
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	12 November 2010

State party's response

The Committee will recall that in April 2010, the State party contested 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.

Author's comments

The author presented his comments on 12 November 2010. He contests the State party's submission as incomplete, and reiterates that his trial suffered from numerous procedural irregularities; the court ignored the violation, by the Prosecutor's Office, of the regulations on statutory delays; the presiding judge acted in a biased manner; the author's lawyer was not given the necessary time to study the case file; the author was prevented from submitting additional evidence.

Further action taken/required

The author's comments were transmitted to the State party on 25 November 2010. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party

UZBEKSITAN

Case

Eshonov, 1225/2003

Views adopted on

22 July 2010

Issues and violations found

Violation of article 6, paragraph 1, and article 7, read in conjunction with article 2, as the author's son died in custody, allegedly as a result of torture acts, and the authorities failed to conduct an adequate investigation thereon. Article 7, and article 7 read together with article 2, of the Covenant, concerning the author himself, because of the authorities' acts/omissions.

Remedy recommended

Effective remedy in the form, inter alia, of an impartial investigation into the circumstances of the author's son's death, prosecution of those responsible, and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

Due date for State party's response

28 January 2011

Date of State party's response

21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that his son has died as a consequence of the tortures inflicted by the law-enforcement authorities, and on the inadequate inquiry conducted by the authorities, to conceal these crimes, are groundless.

The State party recalls that the author's son and four other individuals were arrested by the Ministry of Security on 6 May 2003, when they were distributing forbidden extremist religious literature calling to overthrow the existing constitutional system. The author's son

was examined by a medical doctor immediately after his arrest, and no injuries were revealed on his body. The author's son was placed in the Temporary Detention Centre of the Ministry of Interior, and was never subjected to unlawful acts by the authorities there. On 9 May, the author's son was placed in custody. The author's allegations on the ill-treatment of his son are groundless because: (a) from the moment of his arrest, he was represented by a lawyer, and this lawyer never complained about unlawful acts of the officials; (b) the author son's accomplices also confirmed that the law-enforcement authorities did not commit unlawful acts during their arrest; (c) during an interrogation, on 9 May 2003, in the presence of his lawyer, the author's son also confirmed that he has not been subjected to unlawful acts; (d) the cell-mates of the author's son have also confirmed, in writing, that no such acts were inflicted to Mr. Eshonov.

The State party further rejects the author's allegation that he was not informed about the arrest of his son during twenty-four hours, as the case file contains evidence to the effect that the author has been notified by mail of the arrest of his son by the regional head of the Ministry of Security, as required by law.

On the author's claim that his son died on 10 May 2003 and that his son was not kept for four days in a Medical Centre, the State party contends that it was established, including through the depositions of one of Mr. Eshonov's cellmates who confirmed that they were detained together from 6 to 13 May 2003. The cellmate has also affirmed that on 11 May 2003, Mr. Eshonov was the victim of a crisis similar to the ones of individuals suffering from epilepsy. The cellmate called the officer on duty, who contacted the medical service. Mr. Eshonov was brought to the medical service. Upon return, on 12 May 2003, he explained to his cellmate that he had received medical assistance and was feeling better. However, the following day he had another crisis, and was hospitalised. All this was confirmed by the officials of the detention centre, as well as by other detainees. The detention centre's registry contains a record of the call for emergency medical assistance of 11 May 2003. Two other officers have confirmed that they accompanied the ambulance transporting Mr. Eshonov to the medical centre on 11 May 2003, to be treated in the reanimation ward, and he had spent the night there.

Four medical doctors have confirmed having provided care to Mr. Eshonov at the medical centre. The author's son has high blood pressure and complained about headache. His body disclosed no injuries whatsoever. His diagnosis was hypertonic disease of second degree and hypertonic crisis. He was administered the necessary treatment. Mr. Eshonov's medical examinations took place in the absence of the law-enforcement officials, and he did not complain about ill-treatment.

Mr. Eshonov's medical record established in the Kashkadara Filial of the Republic Centre for Emergency Medical Assistance confirms his presence there on 11 May 2003. In addition, Mr. Eshonov has undergone a number of tests, and an X-Ray examination of his thorax. The X-Rays confirm, according to the State party, not only Mr. Eshonov's presence in the medical centre on this date, but also show that he did not suffer from broken ribs in this point of time. The State party notes also that no diagnosis on a fear of water has been recorded on Mr. Eshonov's record, contrary to the author's allegations.

According to the State party, the state of the author's son deteriorated on 15 May 2003, and he suffered a heart attack. The medical doctor in the reanimation ward reacted by performing a cardiac chest-massage. As a result, some of Mr. Eshonov's ribs were broken, without causing other injuries. This was confirmed by three other medical doctors present. Mr. Eshonov could not be reanimated.

An official medical-forensic examination on 15 May 2003 (no.45) did not reveal corporal injuries on Mr. Eshonov's body. The conclusion of experts' examination was that Mr. Eshonov's death was due to a brain haemorrhage as a consequence of a hypertonic

crisis. The medical assistance provided was adequate, but Mr. Eshonov's life could not be saved. This was also confirmed in a medical experts' examination (no.17), carried out by several high qualified experts, who examined thoroughly and exhaustively Mr. Eshonov's medical history and conducted laboratory tests, who concluded the absence of a need for an exhumation. In this connection, the State party explains that an exhumation can only be ordered if a criminal case is opened.

The State party further refutes as groundless the allegations that its authorities have failed, for a long time, to proceed with an inquiry on the circumstances of Mr. Eshonov's death. The Department of National Security and the Department of Internal Affairs of Kashkadarynsk Region had conducted internal inquiries, and the Prosecutor's Office has carried out an independent preliminary inquiry under art. 329 of the Criminal Procedure Code. According to the law, the Prosecutor's Office had ten days to conduct an examination, to order expert examinations, to collect explanations and to request to be provided with additional documents. The case file material was examined on 11 June 2003 by the Prosecutor's Office of the Kashkadarynsk Region, and, on 3 September 2003, by the General Prosecutor's Office of Uzbekistan. On 30 September 2003, the Karshi Prosecutor's Office refused to open a criminal case in connection with Mr. Eshonov's death.

The State party concludes by stating that the above elements demonstrate that Uzbekistan has not violated the author's and Mr. Eshonov's rights under articles 2; 6; and 7, of the Covenant.

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	UZBEKSITAN
Case	Batyrov, 1585/2007
Views adopted on	30 July 2009
Issues and violations found	Violation of article 12, paragraphs 2 and 3 of the Covenant: unjustified restriction of the right to freedom of movement of the father of the author.
Remedy recommended	Effective remedy, including compensation, as well as to amend its legislation concerning exit from the country to comply with the provisions of the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party's response	29 March 2010
Date of State party's response	21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her father's freedom of movement was unreasonably restricted

were groundless.

The State party recalls that in September 2006, the District Court of the Khorzems Region convicted Mr. Batyrov for abuse of official situation as the Head of the firm "Uztransgaz", and for illegal crossing of the State border with Turkmenistan in 2006, and sentenced him to a term of five years of prison term and a fine equal to 400 minimal monthly wages. The case was reviewed by the appeal body of the Court of the Khorzems Region and the sentence confirmed. In addition, on 20 August 2007, the Tashkent City Court convicted Mr. Batyrov, Head of the firm "Uztransgaz", for having entered into a criminal association, and having created a criminal group composed of high level officials in the firm, and having committed embezzlement/ misappropriation and losses of public funds and goods, having bought low quality products at higher prices, taking bribes, forgery of documents, signature of agreements to the detriment of the firm, what resulted in gross damages to the State and the public firm. The court sentenced him to 12 years and 6 months of imprisonment. The State party submits that by linking and combining the sentence, issued on 25 December 2006 and 20 August 2007, the author was sentenced to 13 years' imprisonment. According to a General Amnesty Act of 30 November 2006, the length of the sentence was reduced by one fourth.

As to the Committee's conclusion of the violation of Mr. Batyrov's right to freedom of movement, the State party explains that pursuant a Ruling of the Cabinet of Ministers of 6 January 1995 on the exit of Uzbek citizens and diplomatic passports, Uzbek citizens wishing to travel abroad must fill in a special application form with the relevant departments of the Ministry of Internal Affairs at their place of residence, and to bring their passport. The Ministry of Internal Affairs' officials examine such applications, and insert a special authorisation (sticker) in the passport, valid for two years, allowing the concerned individuals to travel abroad. The above mentioned Ruling also lists certain categories of officials who must in addition request the explicit authorisation prior to any official travel from the local (municipal) authorities. Given that Mr. Batyrov was a member of the Council of people's deputies in the Khorezmsk region, he had thus to coordinate his travel, prior to his official trip to Turkmenistan in 2006, with the local Council of the Khorezmsk region, but he failed to do so, as he failed to fill in the special application with the local representatives of the Ministry of Internal Affairs.

According to the State party, the courts have qualified Mr. Batyrov's acts correctly under the criminal law, and the sanction determined corresponded to the gravity of the crimes committed. In addition, according to the State party, Mr. Batyrov has not exhausted the available domestic remedies in connection to his conviction of 25 September 2006.

In light of the above, the State party concludes that, in the present case, its authorities have not violated Mr. Batyrov's rights under article 12 of the Covenant.

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	UZBEKSITAN
Case	Lyashkevich, 1552/2007
Views adopted on	23 March 2010
Issues and violations found	Denial of access of the author's son to the legal counsel

of his choice for one day and conducting investigation acts with him during that time – violation of article 14, paragraph 3 (b) of the Covenant.

Remedy recommended

Effective remedy, in the form of an appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

Due date for State party's response

28 January 2011

Date of State party's response

21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence have been violated were groundless.

The State party recalls that Mr. Lyashkevich has been convicted for serious crimes, including murder. He was sentenced to a 20 years of prison term, by the Tashkent City Court on 2 March 2004. The case was examined on appeal, on 29 June 2004, and the sentence was confirmed. Mr. Lyashkevich's guilt has been established on the basis not only of his own confessions, but also on the basis of a multitude of other corroborating evidence, including the confessions of his accomplice, witnesses' depositions, material evidence, etc.

The State party contests the author's allegations in her communication to the Committee. It explains that the criminal case file material has permitted to establish that Mr. Lyashkevich was apprehended on 10 August 2003. He was interrogated upon arrest as a suspect, in the presence of a lawyer, what is certified both by the lawyer's official order contained in the case file, but also by the signatures of the lawyer in question on all documents prepared that day. Mr. Layshkevich was officially arrested on 11 August 2003. A confrontation of Mr. Layshkevich and his accomplice on that day was held in the presence of a lawyer, as duly recorded in the case file, and the author's son was interrogated, again in the lawyer's presence.

On 12 August 2003, Mr. Lyashkevich's depositions were verified at the crime-scene, in the presence of a new lawyer, retained privately that same day by Mr. Lyashkevich to represent him. Thus, Mr. Lyashkevich was always represented by a lawyer when he was questioned as a suspect or interrogated as an accused, as well when investigation acts have been carried out. He had confessed guilt and provided information freely, and on the basis of this information, the authorities discovered the body of the victim of the murder. The author's son never complained in court about limitations on his access to his lawyers.

The State party further explains that the author's allegations that on 11 August 2003, her son could not be represented by his privately retained lawyer have been verified. It transpired that on 11 August 2003, during the conduct of investigation acts, Mr. Lyashkevich was represented by his ex officio lawyer. The existence of a record in the criminal case file concerning the privately retained lawyer signed on 11 August 2003 does not permit to establish when exactly the agreement for Mr. Layshkevich's representation was signed with this lawyer. Thus, it cannot be established whether this agreement was made prior to the conduct of the investigation acts carried on that day. The Law on Advocacy does not require indicating the hour of the day when agreements for representation between a client and his/her lawyer is made. The State party concludes by informing that the courts have correctly assessed the circumstances of the criminal case, have correctly found Mr. Lyashkevich guilty, and have determined a sanction which is

proportionate to the gravity of the crimes committed. No violations of his procedural rights occurred, including no violation of his rights under the Covenant.

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

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

State party	UZBEKSITAN
Case	Tolipkhudzaev, 1280/2004
Views adopted on	22 July 2009
Issues and violations found	Imposition of a death penalty following an unfair trial, with use of confessions obtained under duress - violation of article 6; article 7; and article 14, paragraphs 1 and 3 (g), of the Covenant.
Remedy recommended	Effective remedy, including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for Mr. Tolipkhuzhaev's ill-treatment. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party's response	28 January 2011
Date of State party's response	21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence have been violated were groundless.

The State party informs the Committee, first, that Mr. Tolipkhudzaev's death penalty had in fact already been carried out when the Supreme Court of Uzbekistan was notified of the Committee's request for a stay of execution.

The State party further contends that neither during the preliminary investigation, nor at the initial stage of the court trial, had Mr. Tolipkhudzaev or his four lawyers ever claimed to have been subjected to torture or unlawful methods of investigation. To the contrary, Mr. Tolipkhudzaev was replying to the questions voluntarily, in the presence of his lawyers. The claims formulated at the latest stage of the court trial were found by the court to constitute a defence strategy and an attempt to avoid the engagement of his criminal liability.

During the examination of the appeal, on 29 October 2004, the officials conducting the investigation were questioned, and they confirmed that all investigation acts in the case were conducted systematically in the presence of Mr. Tolipkhudzaev's lawyers. The medical personnel of the detention centre when the author's son was kept also confirmed in court that his body disclosed no marks of beatings. According to the information of his medical records, he had contacted the medical centre on a number of occasions, but never

in connection to corporal injuries.

Two of Mr. Tolipkhudzaev's lawyers were also questioned in court, and they confirmed that during the preliminary investigation, their client had not complained about torture or of unlawful methods of investigation whatsoever, and that he had confessed guilt freely. According to these lawyers, later on, Mr. Tolipkhudzaev retracted his initial confessions without consulting them and at the same time, he had asked to be represented by other lawyers.

According to the State party, the courts' decisions were correct in the present case, the guilt of the author's son was fully established by the existing evidence, and the sanction determined was adequate to the gravity of the crimes committed.

In light of this information, the State party concludes that no violation of the author's son's rights under articles 6, 7, and 14, of the Covenant, have occurred in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by any other evidence

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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State party	UZBEKSITAN
Case	Gapirjanov, 1589/2007
Views adopted on	18 March 2010
Issues and violations found	Failure of the authorities to address adequately the author's son's complaints about torture and ill-treatment - article 7 of the Covenant; violation of article 9, paragraph 3, of the Covenant, as the author's son was never brought to court or other officer authorized by law to exercise judicial power to verify the lawfulness of his detention and placement in custody.
Remedy recommended	Effective remedy, including appropriate compensation and initiation and pursuit of criminal proceedings to establish responsibility for Mr. Gapirjanov's ill-treatment. The State party is also under an obligation to avoid similar violations in the future.
Due date for State party's response	28 January 2011
Date of State party's response	21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence have been violated were groundless.

The State party recalls that on 10 February 2005, Mr. Gapirjanov was convicted, by the

Khamzinsk District Court of Tashkent for illegal sale of drugs, being a particularly dangerous recidivist, and was sentenced to a 10 years prison term. The sentence was confirmed by the appeal body of the same court, on 19 April 2005. Given that the examination of his appeal took place in the absence of Mr. Gapirjanov, the Supreme Court ordered a new appeal examination of the case. On 11 March 2008, the appeal body of the Tashkent City Court re-examined the appeal of Mr. Gapirjanov, in his presence. The sentence was confirmed.

The State party contends that the author's allegations to the effect that her son's trial was unfair and his sentence unfounded as her son was not arrested in the process of committing a crime and that the court took into consideration depositions of interested witnesses are groundless. Thus, on 11 August 2004, the son of the author was arrested in possession of heroin. During a search in his home, carried out in the absence of order by the Prosecutor's Office in light of the urgent circumstances but as permitted by law, the investigators discovered another 0.11 grams of heroin.

These investigation acts were carried out in the presence of official witnesses, who confirmed that no procedural violation had taken place on these occasions. On 12 August 2004, Mr. Gapirjanov was interrogated in the presence of his lawyer, the author's son did not complain about unlawful treatment. The author's son has been represented by a number of different lawyers during the preliminary investigation, but they were changed as per his own requests, and it did not result in a violation of his rights to defence.

According to the State party, neither the author nor his son have ever complained during the preliminary investigation or in court about pain in Mr. Gapirjanov's left ear, allegedly resulting from beatings. According to a diagnosis of 7 October 2004, Mr. Gapirjanov suffered from chronic otitis.

The author's allegations that a police officer had requested a bribe in order to put an end to the preliminary investigation were duly verified, were not confirmed, and the opening of a criminal case thereon was refused on 6 November 2004.

Mr. Gapirjanov's guilt was established not only on the basis of witnesses and accomplices depositions, but also on the basis of a several other corroborating evidence.

As to the finding of a violation of article 9, paragraph 3, of the Covenant, the State party recalls that the Prosecutor's Office was in charge of decisions on arrests and remand into custody until 1 January 2008. Prosecutors took such decisions after examination of the materials contained in the case files and the lawfulness of the evidence collected. This was the process followed in Mr. Gapirjanov's case, and a Prosecutor authorised his placement in pre-trial detention on the basis of the materials against the author's son on file.

The State party informs that until 1 January 2008, decisions to arrest individuals and place them in custody could not be challenged in court but before a higher prosecutor. Court control was possible only after the beginning of a court trial, pursuant to article 240 of the Criminal Procedure Code.

In light of this information, the State party concludes that no violation of the author's son's rights under articles 7, and 9, paragraph 3, of the Covenant, took place in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by other documented evidence.

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the The Committee considers the follow-up dialogue

Committee	ongoing.
State party	UZBEKSITAN
Case	Kodirov, 1284/2004
Views adopted on	20 October 2009
Issues and violations found	Torture and ill-treatment to obtain confessions - article 7, read together with article 14, paragraph 3 (g); failure to ensure effective investigation thereon – article 7 of the Covenant.
Remedy recommended	Effective remedy, which should include a new trial that would comply with fair trial guarantees of article 14 of the Covenant, impartial investigation of the author's claims falling under article 7, prosecution of those responsible and full reparation, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future
Due date for State party's response	31 May 2010
Date of State party's response	21 January 2011

State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case have been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence have been violated were groundless.

The State party repeats its observations on the merits of the communication. It recalls that Mr. Kodirov has been found guilty of robberies and assaults against sixteen women, and of the murder, committed with grave violence, of five of his victims.

The State party rejects as groundless the author's allegations on the use of unlawful methods of investigation against her son. It declares that a pre-investigation verification established that on 13 June 2003, Mr. Kodirov was placed in the medical unit of the penitentiary centre UYa – 64/IZ-1. This was due to the fact that the author's son had inflicted a wound on himself. No other injuries were discovered on his body. The same day the author's son underwent an examination by a psychiatric doctor and his wound was treated by a nurse – he had to have stitches. Once the wound healed, the stitches were removed, on 23 June 2003, and Mr. Kodirov was released from the medical unit. The author's allegations that her son had had a broken arm or injuries on the head do not correspond to the reality and do not appear in his medical records, and they would also have required a longer stay in the medical unit. In addition, Mr. Kodirov met his lawyer after his release from the medical service but neither he nor his lawyer complained about unlawful treatment.

As to the Committee's contention that the State party has not provided information on whether any inquiries into the author's son's ill-treatment allegations in the present case have been conducted, the State party explains that such verifications had taken place and they did not confirm any such treatment by the officials or cellmates of the author's son. Thus, on 28 June 2003, the Prosecutor's Office of the Yunusabadsk District of Tashkent decided not to open a criminal case in respect of these allegations, due to the absence of a

crime. Therefore, the author's allegations on torture/rape and violations of her son's criminal procedure rights are unsubstantiated and are false. The criminal case file does not contain any information on Mr. Kodirov's physical or psychical violence during the preliminary investigation or the court trial. There is also no information on medical treatment administered by the author's son as a consequence of such treatments.

In addition, Mr. Kodirov was systematically represented by a lawyer, including during his first interrogation. At the end of the pre-trial investigation, he and his lawyer were given the opportunity to acquaint themselves with the content of the criminal case file, from 5 to 11 September 2003. As per the lawyer's request, the court trial was scheduled on the 3 October 2003 instead of 2 October, in order to give him additional time to study the case file. Neither at this point nor during the examination of the case in court did Mr. Kodirov or his lawyer complain about cruel treatment against the author's son. Mr. Kodirov's lawyer never raised the issue, orally or in writing, of the alleged ill-treatment of the author's son when the case was examined on appeal, by the Tashkent City Court, on 6 February 2004.

According to the State party, the author's allegations to the effect that a judge resorted to pressure against her during the trial are imaginary. The author was also present in the court room, and she never formulated any claims, including in this respect, either orally or in writing.

The State party also explains that the pre-trial investigation and the court trial have been carried out in strict conformity to the criminal procedure law. All charges and evidence were examined thoroughly in court, and Mr. Kodirov's guilt has been fully established. In determining the sentence, the court took into account the past three convictions of the author's son, and the fact that he constituted a danger for the society and the gravity of the crimes committed which included five murders.

In light of this information, the State party concludes that no violation of the author's son's rights under articles 2, 7, and 14, of the Covenant, took place in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by other documented evidence.

Further action taken or required

The State party's information was sent to the author on 31 January 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

Proposed decision of the Committee	The Committee considers the follow-up dialogue ongoing.
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[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.]
