United Nations CCPR/C/131/R.3

International Covenant on Civil and Political Rights

Distr.: General
24 March 2021

Original: English

Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session (9 July-27 July 1990), the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the Covenant. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 106, paragraph 3, of the Committee's rules of procedure. In the light of the high number of Views on which follow-up is required and the limited resources that the secretariat can devote to follow-up on Views, it has been and continues to be impossible to ensure systematic, timely and comprehensive follow-up on all cases, particularly given the applicable word limitations. The present report is therefore based exclusively on the information available, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. At the end of the 130th session, in November 2020, the Committee concluded that there had been a violation of the Covenant in 1,231 (83.4 per cent) of the 1,476 Views that it had adopted since 1979.

3. At its 109th session (14 October–1 November 2013), the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.

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

Assessment criteria (as revised during the 118th session)

Assessment of replies:[1]

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

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

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

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

* Adopted by the Committee at its 131th session (1–26 March 2021).

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

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

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

Decisions taken:

- Grading will no longer be applied in cases where the Views have been merely published and/or circulated.
- Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views.
- The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply by the State party and information provided by the author.

6. At its 127th session (14 October–8 November 2019), the Committee decided to adjust the methodology for preparing the reports on follow-up to Views and the status of cases by establishing a list of priorities based on objective criteria. Specifically, the Committee decided in principle to: (a) close cases in which it has determined that implementation has been satisfactory or partially satisfactory; (b) retain active those cases on which it needs to maintain dialogue; and (c) suspend cases for which no further information has been provided in the past five years either by the State party concerned or by the author(s) and/or counsel, moving them to a separate category of "cases without sufficient information on satisfactory implementation". The Committee is not expected to ensure any proactive follow-up on these cases that have been suspended for lack of information, unless one of the parties submits an update. Priority and focus will be given to recent cases and cases on which one or both parties are regularly providing the Committee with information.

B. Follow-up information received and processed up until January 2021

1. Denmark

Communication No. 2770/2016, *O.A.*

Views adopted:	7 November 2017
Violation:	Articles 7 and 24, read alone and in conjunction with each other
Remedy:	(a) Review the author's asylum claim, taking into account the State party's obligations under the Covenant and the Committee's Views; and (b) refrain from expelling the author to Greece while his request for asylum is being reconsidered.
Subject matter:	Age assessment and procedural protections afforded to asylum seekers claiming to be minors

Previous follow-up information: None

Submission from the State party: 25 May 2018[2]

After receiving the Committee's Views, the Danish Refugee Appeals Board decided to reopen the author's case and remitted it to the Danish Immigration Service on 22 December 2017, in order to carry out a new assessment of the author's age. The Danish Immigration Service made a new age assessment decision on 9 May 2018 and found no basis for revising the author's age. Thus, the Immigration Service upheld the finding that the author was 22 years old and that his registered date of birth would continue to be 1 June 1995. The Danish Refugee Council, which represented the author in the case, received the decision of the Danish Immigration Service and stated that it would appeal the decision before the

[2] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 10 April 2019.

Refugee Appeals Board. The State party indicated that it would await the outcome of that process.

Submission from the State party: 23 May 2019[3]

The State party quoted the decision of the Danish Immigrations Service of 9 May 2018, as follows:

Based on an overall assessment of all relevant information provided in your case, it still cannot be accepted as a fact that you were born on 1 June 2000 for the following reasons: During the asylum proceedings in both Denmark and Greece, you stated that you were born on 1 June 1995. You presented a Syrian ID card from which it appears that you were born on 1 June 1995. During asylum proceedings in Denmark, you never stated that you were born on 1 June 2000 until the refusal by the Danish Immigration Service on 29 March 2016. Moreover, you stated at your asylum screening interview on 28 September 2015 that you had left Syria because, in June 2013 when you turned 18, you had been called for military service, which you had had postponed against the payment of 75,000 Syrian pounds. After the application was denied, you stated you were born in 2000 and produced copies of pages from a family book and a copy of a civil registration certificate, showing that you were born on 1 June 2000. However, it appears from background information available on the issuance of Syrian documents that the system in Syria is no longer functioning, controls have been weakened and documents are increasingly issued under false pretences, without approval from the central administration or on payment of bribes and states that 'Syrians often manipulate the family books, including by entering newborns' names themselves as they cannot register children in the usual way.' Further, it appears from the family book that you are the second-born sibling in your family. This does not accord with your information that you are the youngest, nor with the entries in the family book showing you were born in 2000 and your brothers in 1999 and 1992, respectively. You referred to your brother [M.A.] as your younger brother during the proceedings and it was only at the interview on 30 May 2016 that you corrected this information, stating that [M.A.] was your older brother. Furthermore, the background report states that national numbers should appear in family books. However, your national number does not appear from the copies you have submitted. You have produced a civil registration certificate showing that you were born on 1 June 2000 but you stated that this was issued based on the family book, which we established contains contradictory information. Referring to the background information available and your inconsistent statements on your date of birth and your documents, we cannot accept as a fact your statement that you were born on 1 June 2000. We also find that your credibility has been weakened to such an extent that there is no reason to request an age assessment test … or a verification of the authenticity of the documents produced in the case, considering that, according to the background information, it is possible to issue false documents. Finally, prior to the communication from the Danish Refugee Council, your asylum case file contained no information on your physical appearance, which indicated that you are younger than the age stated by you to the Danish police and the Danish Immigration Service in 2015 and 2016.

The State party explains that, on 20 September 2018, the Refugee Appeals Board requested information from the police on the whereabouts of the author. On 25 September 2018, the police informed the Board that they were not aware of the whereabouts of the author who, having failed to appear at the accommodation centre, had been listed by the police as a wanted person. On 25 September 2018, the Danish Refugee Council confirmed that the author had returned to Greece. On 12 April 2019, the police informed the Board that the author was deemed to have left Denmark.

The Views of the Committee are available on the website of both the Refugee Appeals Board (www.fln.dk) and the Ministry of Foreign Affairs (www.um.dk). In the light of the prevalence of English language skills in Denmark, the State party sees no reason for a full translation of the Committee's Views into Danish. The State party is of the opinion that full effect has been given to the Committee's Views.

[3] The submission was acknowledged to the State party and transmitted to the author's counsel for information on 4 February 2021.

Submission from the author's counsel: 7 June 2019[4]

Counsel informs the Committee that the author left Denmark after having received the May 2018 decision from the Immigration Service in which his date of birth was maintained as 1 June 1995. He gave up and returned to Greece while his Greek residence permit was still valid, having lost all hope of a future in Denmark.

Committee's assessment:

(a) Review of the author's asylum claim: A;

(b) Stay of deportation order: A.

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

2. Italy

Communication No. 2656/2015, *Staderini and De Lucia*

Views adopted:	6 November 2019
Violation:	Article 25 (a), read alone and in conjunction with article 2 (3)
Remedy:	(a) Review the State party's legislation with a view to ensuring that the legislative requirements do not impose unreasonable restrictions on any of the modes of direct participation by citizens provided for in the Constitution. In particular, the State party should provide for avenues for promoters of referendum initiatives to have signatures authenticated, to collect signatures in spaces where citizens can be reached, and to ensure that the population is sufficiently informed about those processes and the possibility of taking part; and (b) take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Unreasonable restrictions on the right to call for a popular referendum initiative

Previous follow-up information: None

Submission from the authors' counsel: 24 January 2020[5]

Counsel recalls the Committee's conclusions and, in particular, the State party's obligation to make full reparation to individuals whose Covenant rights have been violated. In this regard, counsel expresses willingness to enter into discussion with the State party's authorities on measures to be taken with a view to making reparation, and to provide assistance to the State party in ensuring compliance with its international human rights obligations.

Submission from the State party: 11 August 2020[6]

The State party informs the Committee that the Interministerial Committee for Human Rights at the Ministry of Foreign Affairs and International Cooperation duly published the Committee's Views on its website and translated them into Italian. The Views will also be attached to the 2020 annual report to be presented by the Interministerial Committee for Human Rights to Parliament.

[4] Acknowledged to the author's counsel and transmitted to the State party for information on 4 February 2021.

[5] Acknowledged to the authors' counsel and transmitted to the State party for comments on 4 March 2020.

[6] Acknowledged to the State party and transmitted to the authors' counsel for comments on 18 September 2020.

With regard to the authentication of signatures in the presence of a public official, the State party reiterates that, among the mechanisms for citizens' participation in the political life of the country, the Constitution provides for referendums, which can result in repealing laws and acts having the force of law, and for popular initiatives in the formation of laws. In particular, article 75 of the Constitution stipulates that in order to hold an abrogative referendum, a request must be made by 500,000 voters or, alternatively, by five regional councils. The State party notes that, under domestic legislation, the authentication of signatures constitutes an essential element, in the absence of which a signature is regarded as null and void, which might affect the legitimacy of the request of a referendum, if the required number of valid signatures has not been reached. The State party also submits that the absence of a public official at the time of the voter's expression of political will would equally entail the risk of an illegitimate referendum. However, the State party underlines that the recent amendments to the relevant legislation have facilitated the process of collecting signatures, providing for a wide range of legal entities authorized to authenticate signatures.

With regard to introducing electronic voting, the State party acknowledges the need to carry out careful evaluation of technical aspects of the e-voting process and to consider the results of the experimental voting processes conducted in the past both in the State party and in other European countries. It also points out that the Government has committed to adopting guidelines on the introduction of e-voting on an experimental basis and, in this regard, reiterates the need to ensure compliance with the respective procedural guarantees.

Submission from the authors' counsel: 15 January 2021[7]

Counsel points out that the State party's follow-up observations repeat facts of which the authors and the Committee were already aware. Counsel submits that, apart from publishing the Views online, the State party has not taken any of the substantive measures recommended by the Committee.

Counsel recalls that the Committee requested the State party to provide the authors with an effective remedy and to make full reparation for the violation of their rights. On 30 January and 8 September 2020, the authors wrote to the State party's senior officials with a view to bringing the Committee's Views to their attention, but have not received any response.

With regard to the State party's obligation to publish the Views and disseminate them widely, in the official languages of the State party, the authors' counsel doubts that the publication of the Views and their translation into Italian on the website of the Ministry of Foreign Affairs and International Cooperation can be regarded as "wide" dissemination. Moreover, counsel indicates that the State party officially recognizes 12 minority languages. Counsel submits that there is no indication of the State party's intention to make the Views available in those languages.

As for measures to ensure non-repetition, counsel recalls that the Committee recommended that the State party review its legislation in order to ensure that the legislative requirements do not impose unreasonable restrictions on citizens' direct participation in political life. Counsel submits that the State party continues to violate article 25 (a) of the Covenant, read alone and in conjunction with article 2 (3). Counsel argues in particular that the State party continues to hinder campaigns to collect signatures to hold both abrogative referenda and popular legislative initiatives. In December 2019, one of the authors, together with other citizens, started two campaigns to collect signatures for two popular legislative initiatives. However, in 2020, **the promoters failed to collect the required number of signatures due to the arbitrary and burdensome procedures for the collection of signatures, which became impossible to comply with during the COVID-19 pandemic**. On 2 November and 23 December 2020, the promoters attempted to reach out to the competent authorities in that regard, to no avail.

Counsel also recalls the State party's obligation to provide for avenues for promoters of referendum initiatives to have signatures authenticated and to collect signatures in spaces where citizens can be reached, and acknowledges that, in September 2020, Parliament approved an amendment that extends the groups of people who can authenticate signatures.

[7] Acknowledged to the authors' counsel and transmitted to the State party for information on 26 January 2021.

However, counsel expresses doubt that this measure will prove effective. In their letter of 8 September 2020, the authors suggested two steps that the State party could take to remove some of the obstacles to full enjoyment of the rights guaranteed under article 25 of the Covenant. While the first – adopting the legislation that would ease the signature authentication process – is unlikely to happen, the second – allowing promoters of referendums to collect signatures electronically – is currently in progress. In particular, counsel acknowledges that, on 30 December 2020, Parliament approved an amendment to the 2021 budget and declared that, as of 1 January 2022, referendum promoters will be able to collect signatures electronically.

As for the obligation to ensure that the population is sufficiently informed about those processes and the possibility of taking part, Counsel notes that the obstacles described by the authors in their communication are still in place, and that there has been no indication that the State party is likely to take any measures to that effect.

Counsel concludes that the State party has taken only one substantive measure with a view to implementing the Committee's Views, namely the publication of the Views on the website of the Ministry of Foreign Affairs and International Cooperation. No remedy or reparation has been provided to the authors, including any formal apology or the acknowledgement of responsibility. Counsel also submits that it remains to be seen whether the legislative measures taken to date will make it less burdensome to collect signatures to call for a referendum.

Counsel reiterates willingness to enter into discussion with the State party's authorities concerning the possible measures of reparation and to provide assistance in finding ways to ensure the State party's compliance with its international obligations.

Committee's assessment:

(a) Review the State party's legislation: A;
(b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

3. Kazakhstan

Communication No. 2920/2016, *Mukhortova*

Views adopted:	28 October 2019
Violation:	Articles 7 and 9
Remedy:	(a) Provide the author with adequate compensation; and (b) take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Unlawful and arbitrary detention; inhuman and degrading treatment; freedom of expression

Previous follow-up information: None

Submission from the State party: 4 November 2020[8]

The State party's follow-up observations are based primarily on the information that the Ministry of Foreign Affairs provided to the Office of the Procurator General and is already reflected in the Views, as part of the State party's submission of 3 July 2017. In its follow-up observations, the State party reiterates the facts of the criminal prosecution against the author and recalls the course of events that led to the author's three forced hospitalizations and compulsory psychiatric treatment (which began on 12 January 2011, 12 December 2011 and 9 August 2013 respectively). The State party notes that the legality and medical necessity of the author's internment at the psychiatric facility was duly reviewed by the Ministry of Health Medical and Pharmaceutical Oversight Committee for Karaganda province and by the State party's courts on numerous occasions. The State party also notes that article 94 of the

[8] The submission was acknowledged to the State party and transmitted to the author for comments on 13 November 2020.

Public Health and Health-care Code, on the provision of medical care without consent, provides for medical care to be provided without consent, inter alia, when a person suffers from a severe mental disorder or from a mental disorder and has committed a socially dangerous act. It submits that, according to the assessment made by the State party's relevant authorities and courts, the state of the author's mental health justified her forced internment in a psychiatric facility.

As for the author's forced hospitalization on 9 August 2013, the State party submits that, as a rule, forced internment in a psychiatric facility should be authorized by a court and that forced internment prior to a court decision is possible only in the case of persons with severe mental disorders. In such cases, the psychiatric facility is required to inform a procurator within 48 hours from the moment of the person's forced internment. In the author's case, this requirement was fully respected and the request of the psychiatric facility for her forced hospitalization was subsequently approved by the relevant procurator and the first instance court. The State party also recalls that the author's appeals against her forced internment in a psychiatric facility were rejected by the regional procurator's office and by the Office of the Procurator General.

Submission from the author: 1 December 2020[9]

The author submits that, in violation of articles 7 and 9 of the Covenant, the State party continues to use punitive methods against those citizens who have freely expressed their opinions on any matter.

The author challenges the State party's contention that she has committed a socially dangerous act and should therefore be isolated from society. In this regard, the author recalls the Supreme Court's supervisory review decision of 31 January 2012, in which it acknowledged that the author had not committed violent acts and did not constitute a threat to herself or to others. The author submits that the State party's reference to the Public Health and Health-care Code, which stipulates that medical care can be provided without consent whenever a person suffers from a severe mental disorder, lacks substantiation. The author explains that the diagnosis of a severe mental disorder incurs a compulsory determination of a person's disability; the author does not have a disability; as for the alleged diagnosis of a "chronic delusional disorder", this type of disorder does not appear in the list of severe mental disorders.[10]

The author argues that the information contained in the explanatory statement written by Ms. K. (a participant in a collective complaint procedure against Mr. Nigmatulin in which the author also participated, prior to the facts described in the communication) is the only evidence corroborating the author's guilt on charges of false denunciation. The author submits that the charges brought against her with regard to the first episode are thus in violation of article 30 of the Criminal Code, which precludes the criminal liability of other accomplices in the case of the commission of a criminal offence by one of the accomplices without the intention of the others.

The author also challenges the charges against her with regard to the second episode, namely her accusation of a State official of the commission of a crime of corruption, notably the illicit registration of the property rights on a house basement. The author points out that, under the Criminal Code, illicit registration of the title to real estate is not covered by the notion of a "crime of corruption". In the light of the above, the author argues that no crime of false denunciation (in the form of accusation of the commission of a crime of corruption) occurred.

The author submits that the forensic experts declined to analyse her real mental health condition and reached an erroneous conclusion about her guilt and mental disorder on the basis of the criminal case file materials only. According to the author, the forensic experts actually established her guilt out of court, in breach of the constitutional provisions. Moreover, the author points out that the court decision of 6 December 2011, which was later quashed by the higher court, could not form the legal basis for diagnosing her with a mental disorder, despite the State party's contention to the contrary.

[9] The submission was acknowledged to the author and transmitted to the State party for information on 1 December 2020.

[10] Annexed to the author's submission.

Addressing the State party's arguments concerning the participation of the author's sister in the criminal proceedings as her legal representative, the author indicates that the appointment of her sister as her representative by the criminal court does not corroborate in any way the allegations of her mental disability or her legal incapacity. That issue must be subject to a separate judicial review by the civil court involving the participation of a tutorship and guardianship agency.

The author submits that the State party has no right to refer to the conclusions of the forensic experts, recalling the decision of the Balkhash city court dated 26 July 2012, whereby the court issued two specific rulings against the forensic experts and the Ministry of Health.

Committee's assessment:

(a) Provide adequate compensation: C;

(b) Non-repetition: C.

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

4. Kyrgyzstan

Communication No. 2312/2013, *Bekmanov and Egemberdiev*

Views adopted:	29 March 2019
Violation:	Articles 18 (1) and (3) and 26
Remedy:	(a) Review the refusal by the State Commission on Religious Affairs of the registration application by the local religious organization of Jehovah's Witnesses of Batken oblast; (b) provide the authors with adequate compensation; and (c) take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Refusal to register religious organization
Previous follow-up information:	None

Submission from the State party: 7 August 2020[11]

The State party submits that, on the basis of the Committee's Views, the Religious Center of Jehovah's Witnesses in the Kyrgyz Republic filed an application with the Inter-District Court of Bishkek requesting a review of that Court's decision of 15 July 2015 in the light of the new circumstances. That decision concerned the authors' claim, challenging the actions and/or inaction of the competent authorities in refusing to register the local religious organization of Jehovah's Witnesses of Batken oblast.

The State party thus submits that the respective court proceedings have been resumed and that it is therefore taking all the measures necessary to ensure the rule of law. It also points out that, once a decision has been rendered by the court, the State Commission on Religious Affairs will adopt a decision regarding the review of the refusal to register the local religious organization of Jehovah's Witnesses of Batken oblast.

As for providing the authors with adequate compensation, the State party explains that, in accordance with paragraph 31 of the regulations on order of interaction of State bodies on consideration of communications and decisions of United Nations human rights treaty bodies, the amount of compensation shall be established by the courts. Therefore, those seeking compensation for alleged violations of their rights are entitled to file a lawsuit with a court in this regard.

As for steps taken to prevent similar violations from occurring in the future, the State party indicates that a bill containing amendments to the Freedom of Religion and Religious Organizations Act has been drafted, with a view to improving and systematizing the domestic

[11] Acknowledged to the State party and transmitted to the authors' counsel for comments on 2 September 2020.

legislation in the area of freedom of religion. The bill is currently under consideration by the Government.

Submission from the authors' counsel: 28 December 2020[12]

Counsel submits that the State party has not taken any steps to implement the Committee's Views. On 26 August 2019, the authors filed a claim with Bishkek Administrative Court requesting that it reopen the 2015 judicial proceedings in the light of the new circumstances, namely, the adoption of the Committee's Views. In this regard, the authors relied on the specific wording of article 269 (2) (3) of the Code of Administrative Procedure, which provides that one of the grounds for reviewing a case in the light of new circumstances is the decision of an international authority created on the basis of a treaty in relation to a specific case considered by the courts of the State party, which suggests that administrative proceedings should be reopened.

However, on 3 October 2019, the State Commission on Religious Affairs filed an objection with Bishkek Administrative Court regarding the authors' claim. The State Commission argued that, since the Committee's Views were rendered more than three years after the 15 July 2015 decision of the Bishkek Administrative Court, the request to reopen the proceedings should be rejected. Bishkek Administrative Court rejected that objection on 3 October 2019, as did Bishkek City Court on 21 November 2019 and the Supreme Court on 26 March 2020. The case was referred back to Bishkek Administrative Court for a decision on the merits. On 16 September 2020, Bishkek Administrative Court rejected the authors' claim. It concluded, in defiance of article 269 (2) (3) of the Code of Administrative Procedure, that it did not have the authority to reopen and review the case on the basis of the Committee's Views, and that only the State Commission on Religious Affairs had the authority to do so. On 14 October 2020, the authors appealed that decision before Bishkek City Court, which dismissed their appeal on 24 November 2020, stating that the Committee's Views did not constitute a basis for review of the judicial decision in the light of new circumstances, since the remedies listed in the Committee's Views did not include an obligation for a court to reopen administrative proceedings. The authors' counsel explains that the Bishkek City Court's decision is final. At the time of counsel's submission, the authors were filing a supervisory review appeal with the Supreme Court.

Counsel notes that, on 29 July 2019, the authors submitted a new application to the State Commission on Religious Affairs for registration of the local religious organization of Jehovah's Witnesses of Batken oblast. On 30 September 2019, they filed another application with the State Commission for registration of the local religious organization of Jehovah's Witnesses in the city of Osh and Osh oblast. The applications were rejected twice owing to alleged procedural irregularities, which the authors duly addressed and corrected.

On 30 December 2019, the State Commission on Religious Affairs rejected both applications because they did not include the Batken and Osh city authorities' approval of the list of the 200 founding members of each local religious organization. Counsel points out that that requirement had already been declared unconstitutional by the Constitutional Chamber of the Supreme Court and was addressed by the Committee in its Views.

The authors therefore resubmitted their applications to register both local religious organizations. On 10 February 2020, the State Commission on Religious Affairs rejected the applications, on the pretext that it was necessary in order to avoid posing a threat to social stability, interfaith harmony and public order, taking into account the particularities of the city of Kadamjay and Batken oblast. Counsel explains that the same pretext was used in 2011 to deny the first application for registration of the local religious organization of Jehovah's Witnesses of Batken oblast, which the Committee found to be unlawful.

On 7 May 2020, the authors appealed the decision of the State Commission on Religious Affairs before Bishkek Administrative Court. On 24 June 2020, that Court returned the claim without consideration, on the basis of the alleged non-exhaustion of the internal administrative appeal procedure. According to counsel, there is no procedure to appeal a decision of the State Commission on Religious Affairs to a higher administrative authority.

[12] Acknowledged to the authors' counsel and transmitted to the State party for information on 12 January 2021.

The authors appealed the 24 June 2020 decision to Bishkek City Court. On 2 September 2020, that Court rejected the appeal on the same grounds of non-exhaustion. The authors appealed to the Supreme Court, which, on 12 November 2020, upheld the lower courts' decisions. In the absence of any internal administrative appeal procedure to challenge a decision of the State Commission on Religious Affairs, the complainants filed two "appeal" applications with the State Commission on Religious Affairs, to no avail.

In view of the above, counsel submits that the State Commission on Religious Affairs continues to refuse to implement the Committee's Views. Counsel requests that the Committee call on the State party to take concrete steps to implement its Views.

Committee's assessment:

(a) Review the refusal of the registration application: C;

(b) Provide adequate compensation: C;

(c) Non-repetition: C.

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

5. Lithuania

Communication No. 2670/2015, ***Jagminas***

Views adopted:	24 July 2019
Violation:	Article 25 (c)
Remedy:	(a) Provide full reparation and adequate compensation to the author; and (b) take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Arbitrary dismissal of civil servant
Previous follow-up information:	None

Submission from the State party: 27 January 2020[13]

The State party informs the Committee that the Views, along with their translation into Lithuanian, have been published on the website of the Agent of the Government for the European Court of Human Rights, who is also authorized to represent the State party before the Committee. Furthermore, all relevant institutions, including the Ministry of the Interior, the State Border Guard Service under that Ministry and the Supreme Administrative Court, have been notified of the Committee's Views.

On 12 September 2019, the State party convened a meeting with the participation of various stakeholders at the Ministry of Justice. At the meeting, it was established that victims whose rights the Committee had found to have been violated may be awarded compensation by the Ministry of Justice within the framework of out-of-court settlements. It was further established that the author may request the reopening of his case before the domestic courts in the interest of *restitutio in integrum*. At a subsequent meeting, on 9 October 2019, it was observed that the Committee's Views finding a violation of an individual's rights by the State party do not constitute a ground for retrial pursuant to article 156 of the Law on Administrative Proceedings. Therefore, it is at the discretion of the courts whether to reopen a case on the ground of the Committee's finding of a violation .

Regarding general remedial measures, the State party recalls that the Constitutional Court found articles 16 (2) (13) and 18 (1) (4) of the Law on State Secrets and Official Secrets to be unconstitutional; those articles were amended in 20 July 2013.[14] In addition, article 17 of

[13] Acknowledged to the State party and transmitted to the author's counsel for comments on 13 February 2020.

[14] Article 20 (1) (4) now provides that authorization to have access to classified information will be withdrawn if any of the circumstances referred to in article 17 (2) of the Law are established upon conducting a repeat or additional screening of the person. Article 17 (2) has been supplemented with paragraph 5, which provides that a person is not trustworthy and loyal to the State of Lithuania and

the said Law has also been supplemented with an additional paragraph ensuring greater respect for proportionality. This provision sets a time limit of 120 working days for a person to be suspended or transferred to another position if their authorization to have access to classified information has been revoked and they cannot perform the functions assigned to them without accessing classified information.

Furthermore, article 5 of the Law on Criminal Intelligence explicitly provides that everyone's human rights and fundamental freedoms shall be respected while carrying out surveillance activities that fall within the scope of that Law. Should someone consider that there has been a violation of their human rights, the law specifies the legal remedies that are available to seek redress.

The State party notes that on 18 April 2019, the Constitutional Court found that using criminal intelligence information in order to investigate corruption relating to misconduct of officials does not constitute a breach of the Constitution. At the same time, the Constitutional Court set out the principles[15] that should be observed in such proceedings in order to ensure protection against abuse and arbitrariness; the non-respect of such principles would constitute a violation of human rights and fundamental freedoms.

With regard to individual remedial measures, the State party informs the Committee that, on 20 October 2019, the author submitted a request to reopen his case before the Supreme Administrative Court. On 11 December 2019, the Supreme Administrative Court suspended the examination of the admissibility of the author's request for retrial and referred to the Constitutional Court for its preliminary decision one question, namely whether the existing procedure under article 156 of the Law on Administrative Proceedings, which does not allow for the reopening of cases on the ground of the Committee's Views finding a violation, is in compliance with articles 29 and 138 of the Constitution. The Supreme Administrative Court argued in its referral that the existing procedure violated the cited provisions of the Constitution. The examination of this matter is currently pending before the Constitutional Court.

Submission from the author's counsel: 12 October 2020[16]

In his submission, counsel complains in general about the lack of willingness of the State party to acknowledge the binding nature of the Committee's Views and the State party's failure to execute them.

Furthermore, counsel notes that, should the Committee find a violation of the rights enshrined in the Covenant against the State party, it should be the responsibility of the Ministry of Justice to take the necessary steps in the interest of full execution of the Committee's Views. In contrast, in this case, the author had to file a request for his retrial before the Supreme Administrative Court and bear the costs of initiating such a procedure.

Counsel further notes that the initial translation of the Committee's Views was incorrect, as the requirement to provide "full reparation" was intentionally omitted from the Lithuanian version of the Views. Nevertheless, that was later amended at the author's request.

Counsel complains that the author was not asked to be accompanied by his counsel when meeting the representative of the State party in the matter of the enforcement of the Committee's Views.

The author is therefore not satisfied with the current state of the implementation process concerning the Committee's Views and requests the Committee to oblige the State

authorization to have access to classified information will not be issued to that person where he or she has been found guilty, by an effective judgment, of a serious or less serious crime or a criminal act related to the seizure of an official secret or other unauthorized acquisition or disclosure thereof or a criminal act against the civil service and the public interest and has an unexpired or non-expunged conviction or, in the case of a misdemeanour, less than three years have lapsed from the date when the judgment of conviction became effective.

[15] The principles listed are the right to effective defence, the right to a fair decision, access to evidence, the right to challenge the admissibility or lawfulness of evidence, due process guarantees, protection of family life and correspondence, the right to enter public service on equal terms, the right to be informed about an investigation relating to official misconduct and all fair trial guarantees.

[16] Acknowledged to the author's counsel and transmitted to the State party for information on 22 December 2020.

party to have his case reopened, in respect of which his request is still pending before the domestic courts, so that the decision dismissing him from his position in violation of the Covenant can be set aside. He also requests the Committee to oblige the State party to provide him with adequate compensation in the amount of the salary not disbursed to him due to his unlawful dismissal and to reimburse his legal costs. He further requests that compensation be provided to his counsel on the grounds of the reprisals and defamation to which he has been exposed by representatives of the State party.

Committee's assessment:

(a) Full reparation and adequate compensation: B;

(b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

6. Paraguay

Communication No. 2372/2014, *Giménez*

Views adopted:	25 July 2018
Violation:	Article 21
Remedy:	(a) Reimburse any legal costs incurred by the author in the context of the proceedings referred to in the communication, together with compensation; and (b) take steps to prevent similar violations in the future. In this regard, the State party must take the necessary measures to ensure that the rights enshrined in article 21 of the Covenant may be fully enjoyed in the State party and that the sentences handed down in the context of criminal proceedings do not entail a violation of the rights set out in article 21 of the Covenant.
Subject matter:	Due process; right of peaceful assembly
Previous follow-up information:	None

Submission from the State party: 17 April 2020[17]

The State party indicates that, within the framework of the Inter-Agency Commission responsible for implementing the actions required for compliance with international judgments, it undertook a detailed analysis of the Committee's Views with a view to reaching agreement with the author and his counsel on the most appropriate action to provide the author with an effective remedy.

On 22 March 2019, the General Human Rights Unit of the Ministry of Foreign Affairs held a meeting with the author, his counsel and the Paraguayan Human Rights Coordinating Committee to initiate consultations on potentially agreeable reparation measures for the author. The main points discussed at the meeting were: (a) reimbursement of legal costs; (b) compensation; (c) measures of non-repetition; and (d) publication of the Committee's Views. With regard to the first point, the author and his counsel undertook to submit their receipts in order to determine the amount to be reimbursed. On the second point, the author proposed that compensation take the form of either a public or public-private property to fulfil the right to health in his community. He proposed that land be acquired for the installation of a health facility or that improvements be made to the infrastructure of the regional hospital. Regarding the third point, the participants discussed the proposal to adopt reforms to the Code of Criminal Procedure and the adoption of resolutions by the Public Prosecutor's Office and the Supreme Court of Justice. A proposal was also made to include the right to peaceful assembly in the training provided at the judicial school and the training centre at the Public Prosecutor's Office. Concerning the fourth point, the suggestion was made that the dissemination of the Committee's Views should be carried out by public and commercial radio stations. The participants identified the Ministry of Finance, the Vice-

[17] Acknowledged to the State party and transmitted to the author's counsel for comments on 24 April 2020.

President of the Republic, the Public Prosecutor's Office, the judiciary, the Congress and the Ministry of Public Health and Social Welfare as the key stakeholders that would be involved in an eventual reparation agreement.

A second meeting was held on 9 May 2019 raising the four main issues mentioned above. Regarding the reimbursement of legal costs, counsel reiterated the author's commitment to provide the necessary documentation to quantify the amount corresponding to the procedural costs. Concerning compensation and in the light of the author's interest in compensation that involves a public good, the participants agreed to define a method to determine the amount of compensation. As for the measures of non-repetition, counsels proposed the creation of internal legal instruments, such as Supreme Court of Justice agreements referring to the right to peaceful assembly, and the inclusion of regulations on the right to peaceful assembly in the bill on the reform of criminal legislation currently before Congress. In addition, an ad hoc working group was established with representatives of the Public Prosecutor's Office and the Supreme Court of Justice to incorporate and disseminate the jurisprudence based on the communication.

The State party submits that, on 11 October 2019, counsel presented a draft agreement that included the interests and claims of the victim on the nature of reparation measures, based on the Committee's Views. The agreement contained eight clauses relating to the following: acknowledgment of international responsibility; moral reparation measures (public act, dissemination and criminal record); guarantees of non-repetition; economic reparation; rehabilitation and comprehensive health assistance; follow-up mechanism; interpretation; and publication.

On 3 March 2020, a third meeting was held among the same parties to discuss some of the clauses of the draft agreement. Concerning moral reparation, agreement was reached on conducting interviews on the case in the official media, Paraguay TV and Radio Nacional del Paraguay, and on community radio stations. To this end, at a meeting held on 12 March 2020, agreement was reached with the Ministry of Information and Communication Technologies to interview members of the Paraguayan Human Rights Coordinating Committee and the Director-General of Human Rights of the Ministry of Foreign Affairs at a meeting on 2 April 2020. However, that meeting was rescheduled due to the measures put in place by the Government to combat the spread of COVID-19 in the country. Regarding the guarantees of non-repetition, the representative of the Senate mentioned the possibility of proposing that the National Commission on Reform of the Criminal and Prison Systems examine possible amendments to the Code of Criminal Procedure.

The State party submits that the other clauses of the draft agreement are still under discussion among the author and the institutions involved. The State party notes that, on 19 February 2020, the request for observations was sent to those entities that have not submitted their comments. The State party also notes that the current discussion of the draft agreement has been affected by the COVID-19 pandemic.

Submission from the author's counsel: 21 August 2020[18]

Counsel submits that, in view of the State party's comments on the draft agreement proposed by the author, it seems that the State party intends to relax the requirements for comprehensive reparation, which would constitute a wasted opportunity to strengthen the standards of human rights protection.

Counsel submits that the State party commented on the first five clauses of the original draft agreement, relating to acknowledgment of international responsibility; moral reparation measures (public act, dissemination and criminal record); guarantees of non-repetition; economic reparation; and rehabilitation and comprehensive health assistance measures. With regard to the acknowledgment of international responsibility, counsel notes that the State party suggested replacing the title "Acknowledgement of international responsibility" with "Acceptance of the terms of the opinion" and replacing the phrase "accept the international responsibility established in the opinion" with "accepts the conclusions of the opinion". Counsel suggests that in order to clarify the intention of the State to acknowledge its responsibility, the original wording should be kept or a more specific text adopted.

[18] Acknowledged to the author's counsel and transmitted to the State party for information on 6 November 2020.

Concerning moral reparation measures, counsel refers to the author's petition to include a comment in his criminal record indicating that the case was reviewed by the Human Rights Committee, which found the State party responsible for the violation of his rights. However, the State party considered that this measure should not be part of the agreement, since the author's criminal record cannot be reviewed. Counsel indicates that, as a procedural solution, the Public Prosecutor's Office should file an appeal for review of the sentence, interpreting the Committee's decision as a "new fact". That would enable the authorities to revoke the sanction by declaring it incompatible with the rights enshrined in the Covenant and thus proceeding to erase the author's criminal record. The author could also do so directly, but the first option is preferable in order to avoid opposition from the Public Prosecutor's Office and costs for the victim.

Concerning guarantees of non-repetition, counsel submits that the author proposed reform of the Code of Criminal Procedure, circulation of guidelines by the Public Prosecutor's Office among prosecutors, and adoption of resolutions by the Supreme Court of Justice to guarantee the right of peaceful assembly. The State party accepted the author's proposals with some observations about the feasibility of the specific reform of article 245 of the Code of Criminal Procedure, and made some comments relating to training for justice professionals on the right to peaceful assembly. Counsel confirms that the changes suggested by the State party have been accepted by the author.

Regarding economic reparation, counsel indicates that the author requested an amount equivalent to 2,125 minimum daily wages, and that he agreed to waive the reimbursement of the procedural costs relating to the submission of his communication to the Committee. The State party, however, indicated that the criteria used to calculate the amount required by the author have not been specified, and suggested payment of 161,150,000 guaraníes as compensation, plus the amount the author proves he paid in legal costs. Counsel in turn submits that the State party has also not specified the criteria for offering the author that amount in compensation. Counsel therefore requests that the minimum daily wage criterion be maintained instead of the specific amount suggested by the State party. Counsel explains that in previous cases based on the Committee's Views, the amount agreed upon was the equivalent of 2,500 minimum daily wages, which is the amount requested in the present communication, including a reduction to account for other measures contained in the fifth clause of the draft agreement.

As for rehabilitation and comprehensive health assistance measures, counsel indicates that the author requested appropriate health treatment, which should be free of charge and provided through the health-care centres of the Ministry of Public Health and Social Welfare. Moreover, taking into account that the case originated in the author's protest against the closure of a hospital, the author requested that the State party: (a) provide a specific universal service fund with adequate infrastructure, including building renovations and constructions; (b) install a social pharmacy, at the State party's expense, to be operated as a non-profit retail pharmaceutical establishment; and (c) ensure the permanent staffing of health-care workers in the hospital. According to counsel, the State party indicated that while the author's freedom of assembly was indeed restricted, there is no evidence of any deterioration in his health or physical integrity attributable to the State party and the Committee's Views do not mention anything in that regard. Counsel recalls, however, that the origin of the judicial process that resulted in the author's conviction and the violation of his right to freedom of assembly also involved the cessation of the guarantee of the right to health of the entire population that benefited from the hospital while it was operational, the closure of which was the reason for the social protest led by the author. Counsel submits that with the definitive closure of the hospital and by not immediately replacing it with another health-care centre of the same size, the State party also failed to comply with its obligations under the International Covenant on Economic, Social, and Cultural Rights. Therefore, the draft agreement proposed by the author seeks to redress these violations. Furthermore, counsel indicates that the author is proposing to waive part of the compensation so that the State party can focus on repairing the collective rights of the community that even today, faced with the COVID-19 pandemic, is still fighting for its right to health.

Lastly, counsel requests that the State party arrange a meeting with the author and his counsel, as soon as possible, in order to agree on the terms of a comprehensive reparation agreement.

Committee's assessment:

(a) Reimburse legal costs and pay compensation: B;

(b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

7. Russian Federation

Communication No. 2367/2014, *Bryukhanov*

Views adopted:	12 March 2020
Violation:	Article 14 (3) (e)
Remedy:	The State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide adequate compensation and other measures of satisfaction for the violations occurred. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Detention and mistreatment of the author
Previous follow-up information:	None
Submission from the State party:	25 December 2020[19]

The State party reiterates that the basis of the Committee's finding of a violation of the author's rights under article 14 (3) (e) of the Covenant was unavailability for questioning or cross-examination by the defence of the main witnesses for the prosecution, namely the victim, her teacher L.M.A. and expert witnesses. It also notes that several Committee members in their joint dissenting opinion pointed out that the right of the accused to obtain the examination of witnesses on his or her own behalf is not absolute.

With regard to the obligation included in the Committee's Views to provide an author with an effective remedy, the State party submits that, in the circumstances, the criminal proceedings in Mr. Bryukhanov's case cannot be reopened on the basis of the finding by the Committee of a violation of his rights under article 14 (3) (e) of the Covenant. The State party refers in this respect to the ruling No. 1248-O of the Constitutional Court of the Russian Federation delivered on 28 June 2012. While in that ruling the Constitutional Court noted that the State party cannot abstain from providing an adequate response to the Committee's Views, including, as the case may be, a Committee's invitation to consider the author's retrial, it further stated that reopening of the proceedings pursuant to section 49 of the Code of Criminal Procedure with a view to have a criminal conviction reviewed is an extraordinary remedy which can be resorted to only where it is necessary to ensure the lawfulness of a criminal conviction which has taken effect and if the violation found by the Committee cannot be otherwise remedied. The State party argues that these conditions are not met with respect to the present communication.

The State party recalls that, according to the records of the Pravoberezhny District Court of Magnitogorsk, the victim, a minor at the time, was present at court hearings on five occasions. Her examination was interrupted at the request of her representative due to the victim's state of emotional distress. However, the testimony she had given during the pre-trial investigation was read into the record. The victim confirmed the accuracy of her statements and refused to answer further questions put by the presiding judge.

The State party points out that several Committee members have rightly noted in their joint dissenting opinion that in cases concerning minors subjected to rape, article 14 (3) (e) of the

[19] Acknowledged to the State party and transmitted to the author's counsel for comments on 6 January 2021.

Covenant cannot be interpreted as requiring in all cases that questions be put directly to the victim by the accused or his or her defence counsel through cross-examination or by other means. The State party maintains that this position is in line with article 31 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ratified by the State party on 7 May 2013 which provides for the obligation incumbent on it to ensure that contact between victims and perpetrators, including within court premises, is avoided.

With regard to the testimonies of the other witnesses, the State party submits that the testimony given by L.M.A., the victim's teacher, was not examined in court and was not the basis of the author's conviction. The State party reiterates that neither the author nor the defence counsel have asked that missing witnesses or the experts be called to court or the hearings be postponed when such witnesses were not present. The State party submits that the author has not argued before the cassation appeal court that his rights had been violated in that the testimonies of the witnesses had been read into the record.

Having regard to the foregoing and in light of the position of the Constitutional Court, the State party submits that review of the author's conviction for the sole purpose of providing response to the Committee's Views would not be justified. It notes that the author has not lodged any requests before the Supreme Court of the Russian Federation following the adoption of the Committee's Views.

The State party submits that the Committee's Views have been disseminated to the general and military courts in the State party and have been made publicly available on the website of the Supreme Court of the Russian Federation. It also notes that the judges and the registry of that court had been informed of the Committee's Views and the summary had been published in the Review of the jurisprudence of the inter-State human rights bodies, issue no. 9 dated 2020.

Submission from the author: 9 March 2021[20]

The author submits that the State party has failed to give due regard to the Committee's Views. He reiterates in detail his arguments concerning unjustified restriction of his defence rights and submits that interrogation of witnesses in his case has been flawed by procedural irregularities and, therefore, the testimony given by them should not have been admitted as evidence. He points out to the inconsistencies in the case-file materials. He submits, in particular, that, according to the records available in his criminal file, the victim was present during examination of the crime scene and the seizure by the investigators of certain items of evidence, whereas these two investigative measures were carried out one immediately after another in different parts of the city. The author further points out that, as attested by a certificate provided by the head of a school attended by the victim, both the victim and her teacher, L.M.A., were at school at the time when, according to the case-file records, they were questioned by the police.

As regards the expert witnesses, the author reiterates that his motion for questioning those witnesses was dismissed by the Pravoberezhny District Court of Magnitogorsk and he was given no opportunity to put questions to them in court.

Having regard to the inconsistencies in the investigation, the author argues that his retrial and eventual discontinuance of the criminal proceedings against him would be the most appropriate measure of reparation.

Regarding the State party's reference to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the author argues that it shall not be accepted by the Committee, as the author's trial took place in 2010 – 2011, i.e. before that Convention was ratified by the State party.

The author refers to the State party's submission regarding the dissemination of the Committee's Views and maintains that, while this measure is aimed at preventing similar violations from occurring in the future, it provides no immediate redress to the author himself. He also submits that, considering the objections raised by the State party in its submission, it will not take any steps to provide him with adequate compensation, contrary to the Committee's Views.

[20] Acknowledged to the author and transmitted to the State party for information on 19 March 2021.

The author also informs the Committee that, on 14 October 2020, while in detention, he filed with the Ministry of Justice of the Russian Federation a request seeking information on the procedure and the measures taken by the State party to implement the Committee's Views concerning the present communication, but received no response. The author's representative filed another request on 13 December 2020 and, by letter of 17 February 2021, the Ministry of Justice informed him that it had not been provided with a copy of the Committee's Views referred to by the author.

Lastly, the author notes that, on 25 January 2021, he lodged an application with the Supreme Court of the Russian Federation requesting reopening of the proceedings in his case in the light of the new circumstances on the basis of the Committee's finding of a violation of his rights under article 14 (3) (e) of the Covenant. He has not yet received any response.

In light of the above, the author requests the Committee to adopt a separate decision on account of the State party's refusal to implement its Views concerning the present communication.

Committee's assessment:

(a) Providing adequate compensation and other measures of satisfaction: C

(b) Non-repetition: C

Committee's decision: Follow-up dialogue ongoing**.**