

KYRGYZSTAN

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR, A/63/40 vol. I (2008)

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance

with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

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Kyrgyzstan (4)	1461, 1462, 1476 and 1477/2006, <i>Maksudov,</i> <i>Rahimov, Tashbaev,</i> <i>Pirmatov</i> A/63/40	Not due				
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VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

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Kyrgyzstan (5)	1461, 1462, 1476 and 1477/2006, <i>Maksudov,</i> <i>Rahimov, Tashbaev,</i> <i>Pirmatov</i> A/63/40 1275/2004, <i>Umetaliev</i> A/64/40	Not due			X	
...						

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

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Follow-up on views under the Optional Protocol

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2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

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5. In case No. 1482/2006 (***Gerlach v. Germany***), she welcomed the State party's decision to make known to all German courts the Committee's Views on the right to take part in a hearing and proposed that the Committee should discontinue consideration of the matter under the follow-up procedure, given that the author appeared to suffer from a mental disability and had made a large number of unintelligible submissions to the Committee since the Views had been adopted. With respect to case No. 1275/2004 (***Umetaliev et al v. Kyrgyz Republic***), the Committee should await a response from the author as to whether he deemed the ongoing criminal proceedings following the death of his son to be adequate. Turning to case No. 1512/2006 (***Dean v. New Zealand***), she noted that the author's decision to participate in a rehabilitation programme suggested by the State party, a decision taken since the most recent hearing on the case in September 2009, might render his prior complaints moot, and suggested that the Committee wait for his response to the State party's submission of 23 October 2009.

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17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

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Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

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State party	Kyrgyzstan
Case	<i>Umetaliev and Tashtanbekova, 1275/2004</i>
Views adopted on	30 October 2008
Issues and violations found	Responsibility of State party for death of the victim and lack of a remedy - Eldiyar Umetaliev's rights under article 6, paragraph 1, and of the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.
Remedy recommended	An effective remedy in the form, inter alia, of an impartial investigation in the circumstances of their son's death, prosecution of those responsible and adequate compensation.
Due date for State party response	14 May 2009
Date of State party response	28 April and 11 September 2009
State party response	The State party provides information from the General Prosecutor's Office, the Ministry of Finance, of Internal Affairs and the Supreme Court. All of the information provided relates to events and decisions which occurred prior to the Committee's Views but to which the Committee were not made aware.

The following information was provided:

Mr. A. Umetaliev brought an action before the Aksyisk District Court against the State party for damages of 3,780,000 som and moral damages of 2,000,000 som for the death of his son, Mr. E.

Umetaliev. On 13 July 2005, the Aksyisk District Court refused

to satisfy the sum of 3,780,000 som but provided 1,000,000 som for moral damages.

The author's claim before the Supreme Court under the supervisory review procedure was dismissed on 26 November 2004.

The authors currently receive social allowances under the Law on State Allowances in the Kyrgyz Republic, which provides for social assistance to families who lost individuals who were their main source of income. Moreover, according to the law, such individuals receive additional social allowances that amount to triple the size of the "guaranteed minimal monthly consumption standard". Under the Law of the Kyrgyz Republic on State social aid for the family members of the descendants and victims of the events of 17-18 March 2002 in Aksyisk District of Zhalalabadsk Region of Kyrgyz Republic, which was adopted on 16 October 2002 (No. 143), additional social support is provided to the author's family.

On 29 March 2008, the criminal case of Mr. E. Umetaliev was registered as a separate proceeding by the investigator and was forwarded to the Chief Investigation Department of the Ministry of Internal Affairs of Kyrgyzstan. On 22 April 2008, the case was forwarded to the Department of Internal Affairs in the Zhalalabadsk Region for further investigation. On 15 April 2009, the South Department of the Prosecutor General's Office entrusted this case to the Interregional Department of Ministry of Internal Affairs. The investigation is ongoing.

Proceedings were instituted against a number of officials of the republic. Mr. Dubanaev was tried by the Court Martial of the Bishkek Garrison, under article 304, part 4, 30-315, of the Criminal Code, but on 23 October 2007 was acquitted due to failure of evidence. In the same verdict, Kudaibergenov Z. was found guilty, under article 305, part 2, paragraph 5, of the Criminal Code, and Tokobaev K. under article 305, part 2, paragraph 5, and article 315 of the Criminal Code, and each of them were sentenced to five years of a suspended sentence with a probation period of two years. Moreover, Kudaibergenov was deprived from taking an executive position in the Prosecutor General's Office for the subsequent five years. On 20 May 2008,

the Court reviewed the sentences of both Kudaibergenov Z. and Tokobaev K., reducing them to four years and the probation period to one year. (The State party does not provide an

explanation of the reasons behind the convictions - articles only - but it would appear that article 304, part 4 relates to Abuse of Office that caused grave consequences, article 305, part 2 (5) - Excess of authority or official powers that caused grave consequences, and article 315 - Forgery in Office.)

Author's comments	None
Committee's Decision	The follow-up dialogue is ongoing.
Case	<i>Maksudov, Rahimov, Tashbacv and Piratov, 1461, 1462, 1476 and 1477/2006</i>
Views adopted on	16 July 2008
Issues and violations found	Arbitrary arrest and detention, failure to bring promptly before a judge, non-refoulement, assurances, death penalty and torture – article 9, paragraph 1; article 6, paragraph 2, and article 7, read alone and together with article 2.
Remedy recommended	An effective remedy, including adequate compensation. The State is requested to put in place effective measures for the monitoring of the situation of the authors of the communication. The State party is urged to provide the Committee with updated information, on a regular basis, of the authors' current situation.
Due date for State party response	23 March 2009
Date of State party response	12 January 2009
State party response	<p>The State party did not respond on the admissibility and merits of this communication. The State party responds on the Views as follows. It submits that none of the individuals extradited were sentenced to death and that the Committee's fear in this regard was unfounded. The fact that the warrant for Mr. Maksudov's detention was issued by Andijan provincial court on 29 May 2005 and that the lawfulness of his remand in custody was not reviewed by a court or a procurator, is explained as follows: Mr. Maksudov was taken into custody on 16 June 2005 and was handed over to the law enforcement authorities on 9 August 2006; however, questions relating to the lawfulness of detention</p>

in custody only had to be referred to the courts according to Kyrgyz legislation after 3 July 2007. Pursuant to the Minsk Convention on judicial assistance and legal relations in civil, family and criminal cases of 22 January 1993, it was possible to take a person into custody on the basis of a decision by a competent body of the requesting State; at that time, Kyrgyz criminal procedure law did not require detention orders by the competent bodies of a requesting State to be reviewed by a procurator. Thus, according to the State party, there were no breaches of the law in connection with the detention of the authors.

As for the Committee's doubts about the Kyrgyz authorities' ability to guarantee the safety in Uzbekistan of the authors after extradited, it should be noted that the provision of such guarantees would be regarded as an encroachment on Uzbekistan's sovereignty. Should the Committee desire further information about the health of the persons extradited, it should address an appropriate enquiry to the Office of the Procurator-General of the Republic of Uzbekistan. According to the State party, in extraditing the four authors to Uzbekistan, the Office of the Procurator-General of the Kyrgyz Republic strictly complied with its obligations under international treaties. Moreover, it should be noted that since the extradition of the authors, the Office has taken no further extraditions in connection with the Andijan events.

The administrative and financial division of the Supreme Court upheld (no date provided) the rulings of Bishkek inter-district court and the administrative and financial division of Bishkek municipal court on the appeals lodged by Messrs. Maksudov, Rakhimov, Tashbaev and Pirmatov against the decision of 26 July 2005 by the Migration Service Department of the Kyrgyz Ministry of Foreign Affairs to deny them refugee status. After considering the Migration Service Department's grounds for refusing the aforementioned Uzbek citizens refugee status, the administrative and financial division of the Supreme Court concluded that article 1, F. (b), of the 1951 Convention relating to

the Status of Refugees had been lawfully and validly applied when considering their petitions. Under Kyrgyz civil procedural law, the decisions of the Supreme Court enter into force as soon as they are adopted, are final and are not subject to appeal.

Author's comments None

Committee's Decision The dialogue is ongoing.

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