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International Covenant on Civil and Political Rights

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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session (9–27 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 Rapporteurs for follow-up on Views prepared the present report in accordance with rule 106 (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 not been possible to ensure systematic, timely and comprehensive follow-up on all cases, particularly given the applicable word limitations of the present report. The present report is based on the information available on the cases presented below, reflecting at least one round of exchanges with the State party and the author(s) and/or counsel.

2. At the end of the 135th session, in July 2022, the Committee had concluded that there had been a violation of the Covenant in 1,357 (83.8 per cent) of the 1,619 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 on State party reports.

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:

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 136th session (10 October–4 November 2022).

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

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

(b) 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;

(c) 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 from 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 September 2022[1]

1. Czechia

Communication No. 2839/2016, *Malinovsky et al.*

Views adopted:	6 November 2020
Violation:	Article 26
Remedy:	Effective remedy, including by: (a) providing adequate compensation, if the property cannot be returned; and (b) taking all steps necessary to prevent similar violations from occurring in the future. In particular, the State party should ensure that its laws and policies concerning the restitution of property are applied without discrimination of any kind, especially without discrimination on the grounds of nationality.
Subject matter:	Discrimination on the basis of citizenship with respect to restitution of property

Previous follow-up information: None

Submission from the State party: 20 October 2021[2]

The State party indicates that the Views were summarized, translated into Czech and published on the official website of the Ministry of Justice. The Views were brought to the attention of the Department for the Execution of Judgments of the European Court of Human

[1] See CCPR/C/SR.3950.

[2] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 16 December 2021.

Rights, which is also competent in the area of the implementation of decisions of international human rights bodies.

The State party emphasizes its long-term reserved position on similar cases submitted to the Committee relating to the requirement for citizenship as a necessary condition for restitution of property. The State party concludes that it does not envisage further general or individual measures at the current time.

Submission from the authors: 14 February 2022[3]

The authors submit that the State party has a long-standing policy of failing to acknowledge the binding character of the Committee's Views relating to restitution cases. The State party's declaration that further measures are not envisaged beyond publication of the Views amounts to a direct rejection of the Committee's recommendation to provide them with an effective remedy. The authors propose that the Committee, during its dialogues with the State party on its periodic reports, continue to remind the State party of its obligation to provide an effective remedy to all individuals whose Covenant rights have been violated. They also propose that the Committee continue to raise the issue of its Views on this subject during formal and informal meetings with the State party. Furthermore, they request the right, for themselves and potentially for their heirs, to periodically address the Committee in relation to the status of their case. In addition, they propose that the Committee consider compiling statistics on similar restitution cases in which it has recommended an effective remedy and transmitting the statistics to the State party, as a reminder of its obligations.

The authors submit that this is likely to be the last case that the Committee will consider concerning the State party on the topic of discrimination on the basis of citizenship with respect to restitution of property, as the window for filing claims on this issue under the State party's legislation closed some 30 years ago. This indicates that the judgments are finite and possibly already known, which make the cost of reparation quantifiable. As such cases represent a liability to the State party's international reputation, the authors request that the Committee communicate its concerns to the State party and encourage it to implement the Committee's Views en masse.

Committee's assessment:

(a) Providing adequate compensation or return of property: E;

(b) Non-repetition: E.

Committee's decision: Follow-up dialogue ongoing.

2. Estonia

Communication No. 2040/2011, *Zeynalov*

Views adopted:	4 November 2015
Violation:	Article 14 (3) (d)
Remedy:	Effective remedy, including by: (a) providing the author with adequate compensation; and (b) preventing similar violations in the future.
Subject matter:	State party courts did not allow the alleged victim to be represented by counsel of his choice throughout criminal proceedings and did not allow adequate time or facilities for the preparation of his defence.
Previous follow-up information:	CCPR/C/117/3

[3] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 2 March 2022.

Submission from the State party: 11 May 2017[4]

The State party recalls that, pursuant to the Committee's Views, it has translated the Views into Estonian, published them on the website of the Ministry of Foreign Affairs and disseminated them among the Ministry of Justice, courts and the public prosecutor's office.

On 10 June 2016, the State party provided the Committee with information regarding the measures taken to give effect to the Committee's Views. It indicated that the author was able to use the Committee's Views as evidence in court proceedings relating to the proceedings reviewed by the Committee, including in initiating a review procedure in the Supreme Court. In his response to that submission, the author stated that the only adequate remedy for the violation found by the Committee was either the reversal of his sentence or the reopening of the case for retrial.

In response to that submission, the State party submits that, despite the Committee's finding that the State party failed to provide sufficiently convincing reasons for removing Mr. Suleymanov from the author's defence team, the Committee did not conclude in its Views that the criminal procedure had been illegal or that it had resulted in the author's conviction being unfounded. Furthermore, the judgment of 31 March 2010 of the Harju County Court, by which the author was convicted of the unlawful handling of large quantities of narcotic drugs, became final on 17 January 2011. Compliance with court judgments and rulings which have become final is mandatory pursuant to domestic law for all persons within the territory of Estonia. A judgment that has become final may be reviewed only by the Supreme Court, provided that legitimate grounds for such a review exist. A request for review may be accepted, provided that at least one justice of the Supreme Court finds that the information contained in the request gives reason to presume the existence of grounds for review. The author submitted a request for review to the Criminal Chamber of the Supreme Court with regard to the Harju County Court judgment of 31 March 2010. By a ruling of 28 June 2016, the Supreme Court decided not to accept the author's request for review, finding that no grounds for such a review existed. Hence, the measures outlined in the State party's submission of 10 June 2016 constitute an effective and appropriate remedy for the violation found.

Submission from the author: 16 August 2019[5]

The author finds the State party's submission inconsistent and contradictory and challenges its compliance with domestic law. The State party acknowledged the existence of a violation of his right to defence, which it had previously denied. Nevertheless, the author claims that nothing was done to restore his rights and that the violation found by the Committee constitutes a significant violation of criminal procedure law, pursuant to the Code of Criminal Procedure (art. 339). According to articles 338 and 362 of the Code of Criminal Procedure, significant violations of criminal procedural law constitute grounds for the annulment of a court decision in both appeal and cassation instances. The fact that the author was able to use the Committee's Views as evidence in the proceeding before the Supreme Court cannot be regarded as their implementation and restoration of the right to defence, considering that the Supreme Court did not accept the author's request to review the case on the basis of the Committee's Views. Moreover, after the removal of Mr. Suleymanov from his defence team, the author was assigned a different lawyer who was, however, soon dismissed from the Bar Association for abuse and gross violation of criminal procedure.

Submission from the State party: 5 March 2020[6]

The State party recalls that the author was found guilty by decision of Harju County Court of 31 March 2010 and sentenced to imprisonment for 14 years and 6 months, from 3 December 2007 to 3 June 2022. On 5 January 2018, Viru County Court decided to release the author on parole on 23 January 2018. On the same day, he was expelled to Azerbaijan.

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

[5] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 24 January 2020.

[6] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 29 November 2021.

The author did not contest the court ruling and agreed to leave for Azerbaijan, where he has relatives. The author's release on parole more than three years before the end of his sentence constitutes an appropriate and effective remedy for the violations found. The State party therefore asks the Committee to close the follow-up dialogue.

Submission from the author: 6 January 2022[7]

The author recalls that the Committee found in its Views that there were violations to both his right to a legal defence and his rights under criminal procedural law. The author notes that articles 338 and 362 of the Code of Criminal Procedure provide for the annulment of court decisions in case of significant violations of criminal procedural law. The author therefore submits that the State party has not complied with the Committee's Views by granting him parole. The State party is responsible for his unlawful 11-year imprisonment. The annulment of the judgment of 31 March 2010 of the Harju County Court would be the only outcome that would be lawful, fair and in full compliance with the Views.

Committee's assessment:

(a) Adequate compensation: C;

(b) Non-repetition: No information.

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

3. Italy

Communication No. 3042/2017, *A.S. et al.*

Views adopted:	4 November 2020
Violation:	Article 6, read alone and in conjunction with article 2 (3)
Remedy:	Effective remedy, including by: (a) taking appropriate steps to proceed with an independent and effective investigation in a prompt manner and, if found necessary, to prosecute and try those who are responsible for the death and disappearance of the authors' relatives; (b) taking all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Rescue operations at sea

Previous follow-up information: None

Submission from the State party: 16 July 2021[8]

The State party reaffirms its willingness to engage in constructive dialogue with the Committee. Nevertheless, it submits that the Committee's Views are untenable under both domestic and international law because the event occurred outside Italian territorial waters, outside of the Italian search and rescue area and in the Maltese search and rescue zone. Therefore, the shipwreck occurred outside of Italian jurisdiction.

The Committee erroneously considered that a special de facto dependent relationship existed between the migrants and the State party merely because the State party was the first recipient of the distress calls. A fortiori, a special relationship had already been established with the State in charge of the search and rescue area, which in this case was Malta. After having received the first distress calls, the State party was entitled only to the status of first rescue coordination centre.[9] Pursuant to the International Convention on Maritime Search

[7] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 8 February 2022.

[8] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 15 September 2021.

[9] International Maritime Organization (IMO) and International Civil Aviation Organization (ICAO), *International Aeronautical and Maritime Search and Rescue Manual: Volume II – Mission Coordination*. In that volume, it is indicated that: "Typically, an RCC [rescue coordination centre]

and Rescue, 1979,[10] and the International Aeronautical and Maritime Search and Rescue Manual,[11] the obligations of the first rescue coordination centre are to inform the nearest ship and the competent rescue coordination centre for the area. The State party considers that it actively and diligently complied with those obligations.

The facts as presented by the author in the Views misrepresent the way in which the events took place. In order to clarify the information presented in the Views, it notes that the first distress call was received at 12.26 p.m., not 11 a.m.; the vessel's position was ascertained only during a call made at 12.39 p.m.; Malta did not ascertain the position of the migrants long after Italy did; and around 4 p.m., the Maltese maritime patrol aircraft located the migrants' boat, but did not report the situation as constituting one of real distress and did not therefore take any action in its capacity as on-scene coordinator. The State party also submits that Italy was in charge of the search and rescue operation only between 12.27 p.m. and 1 p.m., for a total of 33 minutes, during which time it fulfilled all the obligations prescribed by the International Convention on Maritime Search and Rescue regarding the first rescue coordination centre. Malta took over the search and rescue at 1 p.m., when the Rome rescue coordination centre informed the Malta rescue coordination centre by telephone that the vessel was in distress.

Furthermore, the authors have not exhausted domestic remedies. They could have sued as civil parties in the trial and could have brought an action against the State party pursuant to article 2043 of the Italian Civil Code. As one of the authors, A.S., is currently a civil party in a trial, the communication should have been declared inadmissible, at least for him. Moreover, while the Committee indicates that the State party has not provided a clear explanation for the long duration of the ongoing domestic proceedings, other than a general reference to their complexity (para. 8.7 of the Views), the Committee has not considered the particular nature of the case and updates on the ongoing criminal proceedings were not taken into account. All questions of jurisdiction and competence have been clarified by the second Criminal Section of the Court of Rome, as the competent jurisdiction to decide on the case, and the preliminary investigations were concluded with the committal for trial of two officers of the Italian Navy and the Italian Coast Guard. The proceedings have thus entered the trial phase, which in the Italian judicial system is the final phase at the level of the first instance.

In declaring that the State party is to be held responsible for the shipwreck, the Committee has identified those responsible who acted on behalf of the State party, irremediably affecting the criminal trial under way before the Court of Rome against two defendants representing the Italian Navy (on which the Italian naval ship depended) and the Coast Guard (where the Rome rescue coordination centre is located). The Committee has thus anticipated and influenced the decision of a judge who, under the State party's system, is subject only to the law and not the decisions of the Committee. The State party considers that the Views were issued in violation of the Optional Protocol to the Covenant and of article 14 thereof.

The State party submits that the Committee's recommendation that it make full reparation to individuals, bearing in mind the potential responsibility of other States for the same incident (para. 10 of the Views) is inapplicable, as the extent to which the responsibility of other States should be considered has not been clarified. While on the one hand, the Committee has determined the responsibility of Italy, obliging it to provide the authors with an effective remedy, on the other hand, the Committee appears to have reached its decision

will receive a distress alert and assume responsibility for SAR [search and rescue] operations for that incident. However, there may be times when the first RCC to receive the distress alert will not be the responsible RCC, such as when the distress is in another SRR [search and rescue region]. When an RCC or RSC [rescue sub-centre] receives information indicating a distress outside of its SRR, it should immediately notify the appropriate RCC or RSC and take all necessary action to coordinate the response until the appropriate RCC or RSC has assumed responsibility … There should be no undue delay in initiating action while determining the responsible RCC" (para. 3.6).

[10] The Convention provides for the obligation to rescue and assist persons at sea, regardless of nationality or legal status, and the disembarkation of shipwrecked persons in a place of safety.

[11] IMO and ICAO, *International Aeronautical and Maritime Search and Rescue Manual: Volume II*, paras. 2.26–3.6.

based on the consideration that the State party did not clearly explain how the events unfolded (para. 8.5 of the Views).

The State party asks the Committee to revoke and/or review its Views, with suspensive effects on the follow-up proceedings, pending the conclusion of the trial in progress and the final decisions of the State party's courts (res judicata).

Submission from the authors' counsel: 17 January 2022[12]

The authors' counsel submits that the State party has not taken any steps to implement the Committee's Views, instead openly rejecting them. In particular, the Committee requested the State party to submit, within 180 days starting from the date of publication of the Views, information about the measures taken to give effect to the Committee's Views. The State party has failed to provide any such information. Furthermore, its observations do not comply with the Committee's requirements for follow-up reports submitted by States parties.[13]

The State party has challenged the ratio decidendi of the Committee's Views. It has opined that, as the Views were adopted before the end of the ongoing criminal proceedings against the officers who are accused of being responsible, the Views run contrary to the right to be presumed innocent until proven guilty according to law. Counsel disagree with the State party's approach as it tends to regard the follow-up procedure as a sort of appeal against the Committee's findings and overlooks the genuine role and function of the follow-up procedure.

The Committee also requested the State party to make full reparation to individuals whose Covenant rights have been violated. On 15 February 2021, the authors sent a letter to the Government of Italy by certified mail requesting compensation for the damages suffered. At the time of writing, their letter remains unanswered.

As to the Committee's recommendation to proceed with an independent and effective investigation in a prompt manner, counsel notes that the State party has effectively acknowledged that, despite the passage of eight years since the shipwreck, the criminal proceedings are still pending at the trial stage before the Court of Rome, the court of first instance.

Counsel submits that, as the State party has not provided any information on steps it has taken to prevent similar violations from occurring in the future, counsel is unable to provide any comments in that regard. The State party has also failed to publish the Committee's Views and to disseminate them widely in the official languages of the State party. Counsel therefore concludes that the State party has failed to implement the Committee's Views and has expressed its overall rejection of the Committee's recommendations. Accordingly, counsel urges the Committee to bring the matter to the attention of the State party's authorities with a view to receiving proper assurances that the victims will receive full reparation for their losses and that the other measures recommended by the Committee will be taken promptly.

Committee's assessment:

(a) Proceed with an independent and effective investigation and, if found necessary, prosecute and try those responsible for the death and disappearance of the authors' relatives: C;

(b) Non-repetition: No information.

[12] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 9 February 2022.

[13] CCPR/C/108/2.

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

4. Mexico

Communication No. 3259/2018, *Hidalgo Rea*

Views adopted:	25 March 2021
Violation:	Articles 6 (1), 7, 9 and 16, and article 2 (3) read in conjunction with articles 6, 7, 9 and 16, in respect of Mr. Rivera Hidalgo; and articles 7 and 17, and article 2 (3) read in conjunction with articles 7 and 17, in respect of the author of the communication
Remedy:	Effective remedy, including by: (a) conducting a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances of Mr. Rivera Hidalgo's disappearance; (b) ensuring the release of Mr. Rivera Hidalgo if he is still alive; (c) if Mr. Rivera Hidalgo is deceased, handing over his remains to his family under decent conditions; (d) investigating and, where appropriate, punishing any type of action that might have hindered the effectiveness of the search and tracking process; (e) providing the author with detailed information on the outcome of the investigation; (f) prosecuting and punishing the persons found responsible for the violations committed and making the results of those proceedings public; (g) granting the author, as well as Mr. Rivera Hidalgo if he is still alive, full reparation, including adequate compensation for the violations suffered and medical and psychological support; and (h) taking steps to prevent similar violations from occurring in the future by ensuring that any act of enforced disappearance is promptly, effectively and thoroughly investigated in an independent, impartial and transparent manner.
Subject matter:	Enforced disappearance

Previous follow-up information: None

Submission from the State party: 7 February 2022[14]

The State party submits that it considered the author's proposal to create a working group of independent experts aimed at representing her in the search and investigation of Mr. Rivera Hidalgo's disappearance and at lodging the criminal complaints on her behalf. Nevertheless, the State party presented a counterproposal to create a working group providing technical assistance to the authorities in charge of implementing the Committee's Views, which was rejected by the author.

Regarding the search for Mr. Rivera Hidalgo, the National Search Commission has a methodology and a multidisciplinary team to design an individualized search plan. Developing the search plan will require: (a) revising the available information from the investigation file; (b) designing a search strategy; and (c) conducting coordinated joint actions. The Executive Commission for Victim Support designated a contact person to facilitate all actions for the full reparation of the harm, in accordance with the Victims Act. While the author was informed of the procedure to be followed, she has not yet submitted a request to the Executive Commission for Victim Support for the intervention of independent

[14] The submission was acknowledged to the State party and transmitted to the author for comments on 14 February 2022.

experts, the cost of which would be covered by the State only in the absence of qualified national experts.

With regard to section (a) of the remedy, in agreement with the author, the Office of the Special Prosecutor for the Investigation of Enforced Disappearances met with the Office of the Assistant Attorney General for the Investigation of Organized Crime and requested the National Guard to draw up a comprehensive investigation plan. The Office of the Special Prosecutor also requested information from the investigation conducted by the Office of the State Attorney General of Nuevo León and the National Search Commission. Comparison with Mr. Rivera Hidalgo's genetic profile was requested from different authorities in the States of Coahuila, Nuevo León, San Luis Potosí, Tamaulipas and Zacatecas to confirm whether he had entered a medical institution or was detained in a prison. The current lines of investigation point to the participation of members of criminal organizations.

The Committee's Views were published on the website of the Official Gazette. Significant institutional efforts have been made to determine the victim's whereabouts, paying particular attention to the Views.

Submission from the author: 20 February 2022[15]

The author submits that the State party has not provided her with any of the remedies listed in the Committee's Views. In an attempt to attain a measure of satisfaction, given her distrust in the State, the author requested that a group of independent experts be entrusted with representing her and her family in the search, investigation and full reparation proceedings. The group of experts would also be entrusted with filing criminal complaints on her behalf. The State party rejected her request and she did not pursue the State party's counterproposal to establish a group of experts to provide technical assistance. The author also requested the creation of a special investigation and litigation unit within the Office of the Attorney General to conduct an exhaustive investigation, to search for Mr. Rivera Hidalgo and to attribute criminal and administrative responsibilities. The author argues that such a unit would not duplicate the functions of the Special Prosecutor, as the Special Prosecutor does not have the capacity to investigate criminal structures or to obtain the investigation files of other relevant cases to provide it with a deeper understanding of systematic patterns and chains of command, and does not have its own officials to conduct search activities.

The author is concerned that the Office of the State Attorney General of Nuevo León found that there were no elements in the investigation file to conclude that the facts amounted to an enforced disappearance. She is also concerned that only one National Guard agent has been assigned to the investigation instead of the three originally planned. She was informed that the prosecutors of the Office of the State Attorney General of Nuevo León and Office of the Special Prosecutor assigned to Mr. Rivera Hidalgo's case had been reassigned to other investigations. The National Search Commission has yet to present a search plan in Mr. Rivera Hidalgo's case. The author considers that the publication of the Committee's Views on the website of the Official Gazette is insufficient to constitute wide dissemination. On the provision of full reparation, the author provides a plan for the State party's consideration.

Submission from the State party: 6 September 2022[16]

The State party outlines a plan for the provision of full reparation to Mr. Rivera Hidalgo and the author. Regarding the measure of satisfaction proposed by the author, the State party reiterates that the creation of a special investigation and litigation unit would duplicate the functions of the Special Prosecutor. In order to provide additional measures of satisfaction, the State party will publish a summary of the Committee's Views, on a date chosen by the author, in a widely disseminated national newspaper. It will also disseminate on its official websites a public apology and acknowledgement of responsibility. It has considered renaming a public square in Nueva León Plaza de los Desaparecidos (Square of disappeared persons) and displaying a plaque dedicated to disappeared persons there. With

[15] The submission was acknowledged to the author and transmitted to the State party for information on 22 March 2022.

[16] The submission was acknowledged to the State party and transmitted to the author for comments on 20 September 2022.

regard to truth and justice, the State party proposes the creation of a group of three experts, appointed jointly with the author after an open call for applications, to provide expertise on investigations into and the search for disappeared persons and psychosocial assistance.

The State party proposes compensation for material harm (US$ 80,000 for Mr. Rivera Hidalgo and US$ 40,000 for the author) and immaterial harm suffered (1,470,339 Mexican pesos for Mr. Rivera Hidalgo and 945,020 Mexican pesos for the author), and to cover other expenses and costs (US$ 10,000 for the author). As a measure of reparation for the physical and psychological harm suffered by the author, the State party proposes that it provide her with a plan for medical care. As for non-repetition, the State party submits that it has worked towards searching for and identifying disappeared persons through the National Missing Persons System and the creation and implementation of the National Missing Persons Programme and the National Register of Disappeared Persons, among others. The State party submits that, if Mr. Hidalgo Rivera is deceased, it will hand over his remains to his family under decent conditions and cover the funeral costs.

Submission from the author: 27 September 2022[17]

The author regrets that the State party failed to refer to all the sections of the remedy in the Committee's Views. With regard to section (a), she again requested that the National Search Commission present its detailed search plan. After several meetings with the assigned officer of the Office of the State Attorney General of Nuevo León, she submits that there is no case theory, context analysis or sufficient human resources to expedite the investigation. With regard to sections (d) and (e), while she was informed that the Committee's Views had been shared with the Internal Control Unit of the Office of the Attorney General, she did not receive further information about any investigation or possible sanctions. With regard to section (f), she reiterates her comments on the Special Prosecutor's lack of capacity and her proposal to create an independent special investigation and litigation unit. She adds that investigations remain uncoordinated between different entities at the local, state and federal levels, and that prosecutors lack independence. She is concerned about the transfer of the National Guard, which is civilian in nature under the Constitution, to the Ministry of National Defence, which is run by military officers, and about the intervention of military officials in the investigation, as they have been involved in enforced disappearances in the context of the "war on drugs". With regard to section (g), specifically granting the author and Mr. Rivera Hidalgo if he is still alive, full reparation, she requests the Committee and the State party to recognize Mr. Rivera Hidalgo's younger brother, Mr. Ricardo Rivera Hidalgo, as a victim within the context of the Committee's Views. Turning to the measures of satisfaction proposed by the State party, the author is willing to accept a public apology once the whereabouts and fate of Mr. Rivera Hidalgo have been clarified and those responsible have been sanctioned. The plaque proposed by the State party in the future Plaza de los Desaparecidos should acknowledge the responsibility of the State of Nuevo León in the general context of disappearances.

The author notes that the State party has accepted her proposed amount of compensation for immaterial harm. She requests that her other son, Mr. Ricardo Rivera Hidalgo, also be taken into consideration. The author bases her calculations of the amount of compensation for material harm on the criterion of Mr. Rivera Hidalgo's life expectancy and requests 2,630,860 Mexican pesos. She also submits that compensation to cover expenses and costs should amount to US$ 25,000 in order to include the costs of the proceedings over the previous 12 years and not only since she submitted her communication to the Committee. The author argues that the measures of non-repetition presented by the State party are not sufficiently robust.

Committee's assessment:

(a) Conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances of Mr. Rivera Hidalgo's disappearance: C;

(b) Ensure his release if he is still alive: C;

[17] The submission was acknowledged to the author and transmitted to the State party for information on 2 October 2022.

(c) If he is deceased, hand over his remains to his family under decent conditions: B;

(d) Investigate and punish any action that might have hindered the effectiveness of the search and tracking process: C;

(e) Provide the author with detailed information on the outcome of the investigation: B;

(f) Prosecute and punish the persons responsible and make the results public: C;

(g) Grant the author and Mr. Rivera Hidalgo, if he is still alive, full reparation, including adequate compensation: B;

(h) Non-repetition: C.

Committee's decision: Follow-up dialogue ongoing.

5. New Zealand

Communication No. 3162/2018, *Thompson*

Views adopted:	2 July 2021
Violation:	Article 9 (1) and (5)
Remedy:	Effective remedy, including by: (a) providing the author with adequate compensation; and (b) taking all steps necessary to prevent similar violations from occurring in the future, including by reviewing domestic legislation, regulations and/or practices to ensure that individuals who have been unlawfully arrested or detained as a result of judicial acts or omissions may apply to receive adequate compensation, in accordance with the obligation set forth in the Covenant.
Subject matter:	Compensation for wrongful arrest and detention
Previous follow-up information:	None

Submission from the State party: 18 May 2022[18]

After receiving the Committee's Views, the State party obtained initial advice from officials as to the merits and challenges in making an ex gratia payment to the author. There is no right under domestic law for compensation when a judicial error results in a breach of article 9 (1) of the Covenant. However, this is due to a constitutional issue concerning the separation of powers of the executive and judiciary in the State. The Supreme Court has precedent suggesting that judicial errors cannot be compensated for fear of the executive power undermining the power of the judiciary.[19] The State party requests the Committee's assistance regarding whether it should take any steps to change the separation of powers. It also requests additional time to consult civil society, academics and practitioners about different options involved in changing the separation of powers to prevent future violations of article 9 (5) of the Covenant.

Submission from the author's counsel: 18 August 2022[20]

Counsel points out that the State party has given no concrete information on how it is implementing the Committee's Views. Counsel suggests that the impediments the State party claims to face in developing new legislation are unlikely to have prevented it from initiating reform of domestic law. Counsel notes that, while the State party has claimed that there are

[18] The submission was acknowledged to the State party and transmitted to the author's counsel for comments on 13 June 2022.

[19] Supreme Court, *Simpson v. Attorney-General* (Baigent's case) [1994] 3 NZLR 667 (see para. 3.4 of the Views).

[20] The submission was acknowledged to the author's counsel and transmitted to the State party for information on 15 September 2022.

constitutional issues in making ex gratia payments when judicial errors result in a breach of article 9 (1) of the Covenant, the Court of Appeal of New Zealand recommended ex gratia payments when the author's case came before it. Furthermore, the State party already has a procedure to distribute ex gratia payments under the operative rules relating to the spending of public funds. Thus, there is a procedure in place to pay the author's compensation and create a system to make ex gratia payments in the future. Counsel suggests that the ex gratia payment could be made to the author by the Secretary for Justice, the administrative head of the Ministry of Justice. Counsel also suggests that the State party could take legislative steps to institute procedures that will rectify the current laws that are in violation of article 9 (5) of the Covenant. The first step would be to discuss the different legislative options and ascertain what their consequences would be. Moreover, counsel points out that any constitutional issue could be resolved by a legislative measure, as legislation can override judicial precedent. Currently, judicial precedent is preventing the State party from remedying the violation or avoiding a future violation of article 9 (5) of the Covenant. Furthermore, given the current composition of Parliament, such legislation would be likely to be adopted.

Committee's assessment:

(a) Providing adequate compensation: E;

(b) Non-repetition: E.

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

6. Russian Federation

Communication No. 2339/2014, *Taysumov et al.*

Views adopted:	11 March 2020
Violation:	Article 7, read alone and in conjunction with articles 2 (3), 9 (2) and (3) and 14 (3) (g)
Remedy:	Effective remedy, including by: (a) conducting a thorough, prompt and impartial investigation into the authors' allegations of torture and, if confirmed, prosecuting those responsible; (b) providing full redress to the authors, including just compensation and other measures of satisfaction for the violations that have occurred; and (c) taking all steps necessary to prevent similar violations from occurring in the future.
Subject matter:	Unlawful detention, torture and mistreatment of the authors

Previous follow-up information: None

Submission from the authors' counsel: 13 November 2020[21]

Counsel submits that the Committee's Views have not been implemented and expresses concern about the pressure exerted on the authors and, in the case of Salman Temirbulatov, on his family. Counsel submits that, after the Committee had adopted its Views, he attempted to contact all the authors to obtain authorization to lodge a request on their behalf before the Supreme Court of the Russian Federation to reopen the proceedings in the authors' case on the basis of the Committee's Views. Mr. Temirbulatov and one other author authorized him to proceed with submitting requests to reopen the proceedings with a view to having their criminal convictions reviewed. He could not, however, establish contact with the remaining authors. Counsel also submits that, according to a media report dated 6 October 2020, the Ministry of the Interior of Chechnya requested Mr. Temirbulatov's transfer from a penitentiary institution in Vladimir region where he was serving his sentence

[21] The submission was acknowledged to the authors' counsel and transmitted to the State party for comments on 20 November 2020.

to a detention facility in Chechnya. Following his transfer, the authorities informed Mr. Temirbulatov's family of his death in custody which was, according to the authorities, caused by heart failure. As counsel is concerned about the fear expressed by Mr. Temirbulatov's family that the authorities would retaliate, he asserts that it is unlikely that they would request an investigation into the circumstances of Mr. Temirbulatov's death. Counsel refers to cases in which detainees who have lodged complaints about torture with the regional human rights mechanisms have subsequently died. He submits that the other author who initially authorized him to lodge a request to reopen the proceedings with a view to having his conviction reviewed subsequently withdrew his consent.

In the light of the foregoing, counsel calls upon the Committee to request the State party: (a) to disclose all the information in its possession regarding the death of Mr. Temirbulatov, including, but not limited to, the death certificate, the forensic and/or autopsy report and medical documents attesting to his state of health before the transfer to Chechnya; (b) to provide assurances that Mr. Temirbulatov's family will not be subjected to reprisals or intimidation; and (c) to provide information about the state of health of the other authors of the communication and, if they are still detained, on the conditions of their detention. Counsel also reiterates the request for payment of compensation to the authors for the violations that have occurred, which has not yet been received. He requests the Committee to award a "D" grade for the State party implementation of its Views concerning the communication.

Submission from the State party: 5 April 2021[22]

The State party informs the Committee that the judges and registry of the Supreme Court of the Russian Federation have been notified of the Committee's Views. It also notes that the summary of the Views has been published in the review of the jurisprudence of the inter-state human rights bodies.

As to the investigation of the authors' allegations of torture and the initiation of criminal proceedings against those responsible, the State party submits that an independent officer of the department for investigation of particularly important cases of the Prosecutor's Office of Chechnya had already examined the authors' claims of having been subjected to physical pressure during their trial. The investigator had, in particular, examined the records of the authors' medical examinations conducted upon their arrival in a temporary detention facility, as well as the reports of the authors' forensic medical examinations. No evidence suggesting that a crime of torture had been committed was found. The decision to refuse to open a criminal investigation was reviewed by a court and the authors' allegations were deemed to be unfounded. The State party concludes, therefore, that it had already taken all the required measures to respond to the authors' allegations of torture before the Committee adopted its Views.

Submission from the authors' counsel: 2 August 2022[23]

Counsel submits that the State party has not taken any effective steps to conduct a thorough, prompt and impartial investigation into the authors' allegations of torture and to prosecute those responsible. According to counsel, the information provided by the State party confirms that it has not conducted any new investigation following the adoption of the Committee's Views. In particular, the absence of a new investigation into the authors' torture allegations is attested by the State party's statement that those allegations had already been properly examined in accordance with the law. Counsel explains that the Committee's Views should be considered as legally binding under the State party's domestic law. Notably, the Committee's Views provide justification for reviewing the decision of a domestic court based on new circumstances, in accordance with the ruling of the Constitutional Court of the

[22] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 13 April 2021. A reminder was sent to the authors' counsel on 18 February 2022.

[23] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 6 September 2022.

Russian Federation.[24] Likewise, according to the Supreme Court of the Russian Federation, it is the duty of the State party's courts to consider the Committee's Views as sufficient basis for having a criminal conviction reviewed on the basis of a finding by the Committee of one or more violations of the Covenant only where it is necessary to ensure the lawfulness of a criminal conviction that has taken effect and if the violation found by the Committee cannot be otherwise remedied.

Counsel further notes that no effective criminal proceedings have been instituted by the State party following the adoption of the Committee's Views. Counsel explains that the criminal investigation was replaced by the so-called verification procedure (pre-investigative check), which imposes significant restrictions on the investigating authorities and prevents them from conducting a full investigation. The deficient nature of this practice has been noted by both the Committee against Torture[25] and the European Court of Human Rights.[26] Counsel also reiterates that any future investigation into the authors' allegations of torture would be conducted after a considerable lapse of time following the commission of the crimes against them, hence a continued delay may further hinder the documentation of the evidence. Counsel submits that the examination of the authors' allegations has never addressed the crime of torture as such. Instead, there has only been the pre-investigation check into the criminal offences provided for in article 286 (abuse of authority) and article 302 (coercion to testify) of the Criminal Code, which the State party's courts and investigative authorities have traditionally used as the basis for the accusation and conviction in criminal proceedings on allegations of torture. Counsel clarifies that, on 22 June 2022, the State Duma of the Russian Federation adopted amendments to the Criminal Code, notably article 286, which introduced the notion of torture as an aggravated form of abuse of authority. Counsel doubts, however, whether any new investigation into the authors' allegations of torture would ever prove effective. Counsel concludes, based on the observations of the Committee against Torture,[27] that the systemic problem of impunity in the State party's North Caucasus region is the main reason behind the failure to investigate the crimes committed against the authors.

Counsel also points out that the State party's authorities are reluctant to provide the authors with adequate compensation. On 17 August 2020, counsel requested the Ministry of Justice of the Russian Federation to provide clarification concerning the procedure for obtaining compensation. This request remains unanswered. For this reason, counsel is now raising the same questions with the State party's authorities in the framework of the follow-up procedure to Views. Namely, he wishes to know whether those responsible for subjecting the authors to torture have been effectively interrogated and, if not, what was the reason for the failure to conduct effective interrogation; and what is the procedure for calculating the amount of fair compensation for the authors under the State party's law.

Committee's assessment:

(a) Conducting an investigation and prosecuting the perpetrators: E;

(b) Providing just compensation and other measures of satisfaction: E;

(c) Non-repetition: No information.

Committee's decision: Follow-up dialogue ongoing.

7. Türkiye

Communication No. 2980/2017, *Özçelik et al.*

Views adopted: 26 March 2019

[24] Reference is made to the ruling of the Constitutional Court No. 1248-O on the complaint of Andrei Khoroshenko against violation of his constitutional rights under article 403 (5), article 413 (4) and article 415 (1) and (5) of the Code of Criminal Procedure of the Russian Federation, 28 June 2012.

[25] CAT/C/RUS/CO/6, para. 14.

[26] Reference is made to the European Court of Human Rights, *Lyapin v. Russia*, Application No. 46956/09, Judgment, 24 July 2014.

[27] CAT/C/RUS/CO/5, para. 13.

Violation: Article 9 (1)–(3)

Remedy: Effective remedy, including by: (a) releasing the authors; (b) providing them with adequate compensation for the violations suffered; and (c) taking all steps necessary to prevent the occurrence of similar violations in the future.

Subject matter: Arbitrary arrest and detention; access to justice

Previous follow-up information: None

Submission from the State party: 25 November 2019[28]

The State party indicates that the Committee's Views, along with their translation into Turkish, were distributed to the relevant authorities, namely the Ministry of Justice and the Constitutional Court. In its follow-up submission, the State party challenges the Committee's Views by pointing out the lack of trustworthy information upon which the Views were based. Accordingly, the State party brings to the Committee's attention updated information regarding the judicial proceedings and the authors' conditions of detention.

Regarding the detention of İsmet Özçelik, on 14 September 2018, the Ankara Nineteenth Assize Court accepted the indictment against him. Consequently, the author's defence lawyer was entitled to examine the contents of the criminal case file and the collected evidence. The State party submits that the author's detention was reviewed twice, contrary to the Committee's findings. The State party reiterates that there were no restrictions on the communication and visits in Denizli prison. Thus, by July 2019, the author had received 35 visits from his lawyer and 88 visits from his family members. In addition, the author had received 34 letters, sent 6 letters and made 67 phone calls to his relatives. Furthermore, he had undergone 24 medical examinations and had been provided with the necessary medical treatment.

Regarding the detention of Turgay Karaman, on 7 September 2018, the Ankara Fifteenth Assize Court accepted the indictment against him. As in the case of Mr. Özçelik, the State party argues that the author's detention was reviewed by two different jurisdictions. It submits that the author appealed against the decision of the Ankara Fifteenth Assize Court to extend his detention and his appeals were duly examined by the Ankara Sixteenth Assize Court and were rejected. Furthermore, by July 2019, the author had received 22 visits from his lawyer and 96 visits from his family members. In addition, he had received 33 letters, sent 30 letters and made 80 phone calls to his relatives. Furthermore, the author had undergone 11 medical examinations and had been provided with the necessary medical treatment.

With regard to the violation of article 9 of the Covenant, the State party argues that the Committee's conclusions are baseless, since the authors' detentions were reviewed regularly by competent and independent courts. The State party submits that the criteria of reasonableness and necessity were met by the decisions of its domestic courts regarding the extension of the authors' detention.

As for the lack of effectiveness of domestic remedies, the State party considers the Committee's findings to be unfounded. With reference to the decisions of the European Court of Human Rights,[29] the State party submits that the Constitutional Court has competence to review cases concerning pretrial detention following the declaration of the state of emergency in Türkiye. The State party argues that the authors are deliberately trying to misinform the Committee. In conclusion, the State party reiterates its position that the authors' communication should have been declared inadmissible due to the failure to exhaust domestic remedies. The State party therefore urges the Committee to revoke its Views in the light of the above-mentioned considerations.

[28] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 16 December 2019.

[29] Reference is made to European Court of Human Rights, *Mercan v. Turkey*, Application No. 56511/16, Decision, 8 November 2016, and *Zihni v. Turkey*, Application No. 59061/16, Decision, 29 November 2016.

Submission from the authors: 26 February 2021[30]

In their submission, the authors state that their situation has not improved since the adoption of the Committee's Views and that the State party has failed to give due regard to the Views. They express surprise at the State party's response and reiterate in detail the procedural failures that led to the Committee's finding of a violation of article 9 of the Covenant in their respective cases.

Concerning the exhaustion of domestic remedies, the authors note that in recent cases, the European Court of Human Rights has recognized that the Constitutional Court of Türkiye no longer constitutes an effective remedy.[31] With regard to the review of the decisions to extend their detention, the authors submit that the review in question took place in their absence and in the absence of their lawyers. Thus, the review constitutes nothing more than a mere formality. In that regard, the authors submit with reference to the position expressed by the European Court of Human Rights that the longer the detention was, the more elaborate the scrutiny needed to be with regard to the grounds to justify a further extension of detention.

With regard to the current situation of the authors, immediately after the adoption of the Committee's Views, they were brought before a judge and sentenced to long prison terms in the absence of any fair trial guarantees. On 25 June 2019, Mr. Özcelik was sentenced to a prison term of eight years and nine months, and Mr. Karaman to a term of six years, six months and 22 days, for being members of the "Fethullahist Terrorist Organization". Mr. Özcelik was sentenced to an additional prison term of one year, six months and 22 days for disseminating propaganda in favour of that organization.

The authors argue that they could not access their case files before the trial and that the charges brought against them had been formulated in overly general and abstract terms that could not justify either their detention or conviction. They explain that the following elements were used to justify their convictions: (a) their use of the ByLock application, an online communication platform similar to WhatsApp; (b) the fact that they had some money in Bank Asya, which was, for years, the largest participation bank in Türkiye; and (c) the statements of I.A. (initially the third author). The authors are not aware of the contents of those statements. Moreover, the authors state that the Committee's Views were disregarded by the judges during their trial, who considered them to be either false or inapplicable to the domestic courts. The authors conclude that the State party has not implemented the Committee's Views and urge the Committee to initiate a dialogue with the State party in order to find a way to implement them.

Submission from the State party: 31 August 2021[32]

In its additional submission, the State party provides updated information regarding Mr. Özçelik's and Mr. Karaman's judicial proceedings. On 26 September 2019, the Konya Regional Court of Appeals rejected Mr. Özçelik's appeal and, on 20 January 2020, the Ankara Regional Court of Appeals rejected Mr. Karaman's appeal, thus confirming the lawfulness of the decisions adopted by the respective first instance courts. Mr. Özçelik subsequently appealed to the Court of Cassation, which confirmed, on 22 June 2021, his conviction for being a member of an armed terrorist organization, but quashed the lower courts' decisions in part regarding the dissemination of propaganda for that organization. According to the Court, Mr. Özçelik's social media posts did not constitute a criminal offence. Mr. Özcelik's case was sent to the first instance court for retrial and the hearing was scheduled for 25 November 2021. Mr. Özçelik has lodged three individual applications to the Constitutional Court, on 22 February 2019, 28 December 2020 and 9 August 2021. The first application was declared inadmissible for non-exhaustion of domestic remedies and for being manifestly ill-founded. The second application concerned an alleged violation of the

[30] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 26 July 2021.

[31] European Court of Human Rights, *Wikimedia Foundation, Inc. v. Turkey*, Application No. 25479/19, Decision, 1 March 2022, and *Turan and others v. Turkey*, Applications Nos. 75805/16 and 426 others.

[32] The submission was acknowledged to the State party and transmitted to the authors' counsel for comments on 14 September 2021.

right to freedom of communication[33] and the third application concerned the alleged violations of the rights to life, liberty and security, a fair trial, respect for privacy and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association and the principles of no punishment without law, equality and prohibition of torture. Those applications are currently pending.

With regard to the legal proceedings of Mr. Karaman, the State party submits that his appeal to the Court of Cassation was rejected on 18 November 2020 and his sentence of imprisonment came into force. On 15 May 2019, Mr. Karaman lodged an application to the Constitutional Court, which was declared inadmissible on 6 January 2021 for being manifestly ill-founded. He lodged a second application to the Constitutional Court on 2 April 2021, claiming a violation of his rights to life, respect for privacy and family life, liberty and security, an effective remedy, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, freedom of movement, a fair trial, work and to enter public service and the principles of no punishment without law, prohibition of torture and presumption of innocence. That application is currently pending. The State party argues, therefore, that Mr. Özçelik and Mr. Karaman have an effective domestic remedy, which is yet to be exhausted, as their respective individual applications, invoking a violation of their rights to a fair trial and to liberty and security, are currently pending before the Constitutional Court.

Submission from the authors: 14 January 2022[34]

In their additional submission, the authors address the State party's argument that they have not exhausted domestic remedies because they did not file a complaint before the Constitutional Court. The authors cite the Committee's Views, in which the Committee found that they exhausted all domestic remedies and that they could not obtain an effective remedy by filing a complaint before the Constitutional Court. Moreover, the authors refer to the leaflet issued by the Office of the United Nations High Commissioner for Human Rights entitled "23 frequently asked questions about treaty body complaints procedures" and submit that the Committee cannot reverse or accept appeals against its Views, despite the State party's argument that it should do so.[35] The authors also submit that the State party has not complied with the Committee's Views. They note that the State party continues to commit the human rights violations that have been identified by the Committee in its Views and it has not submitted any evidence to prove otherwise. They also note that they have been unable to fully develop their defences in domestic courts. Additionally, they allege that State party courts have held the Committee's Views against the authors in their judicial proceedings. As part of the Committee's follow-up procedure to Views, the authors ask the Committee to interpret the State party's actions as a rejection of the Committee's recommendations. They urge the Committee to initiate a dialogue with the State party to affirm that it is rejecting the Committee's Views and to ensure that the State party's authorities comply with the recommendations. The authors submit that not doing so would set a precedent permitting State parties to ignore the Committee's Views without consequences.

Committee's assessment:

(a) Release the authors: E;

(b) Provide them with adequate compensation: E;

(c) Non-repetition: E.

Committee's decision: Follow-up dialogue ongoing.

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[33] The right to freedom of communication is a separate right recognized in article 22 of the Turkish Constitution, which is different from the right to freedom of expression recognized in article 26.

[34] The submission was acknowledged to the authors' counsel and transmitted to the State party for information on 7 February 2022.

[35] See www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx #whathappens.