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Committee on the Elimination of Discrimination against Women

Follow-up report on individual communications

 A. Introduction

1. The present periodic report is prepared with the aim of providing the Committee with an updated information regarding the follow-up activities since the Committee’s last session.

2. Table one below (part B) lists all cases where the follow up dialogue is ongoing as to date.

3. The present report sets out the information received by the Committee on individual cases where the follow up dialogue sis ongoing. The follow up situation is enumerated in in part C, in accordance with the following assessment criteria:

| *Assessment criteria* |
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| A | Measures taken satisfactory (implementation satisfactory) |
| B | Reply received but actions party implement the Views/recommendations (implementation partly satisfactory) |
| C | Reply received but no action taken to implement the views (implementation unsatisfactory)  |
| D | No reply received  |
| E | No measures taken or measures taken go against the Views/recommendations of the Committee |

**B. List of cases where the follow-up dialogue is ongoing**

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| Cases where the follow-up dialogue is currently ongoing: |
| 24/2009, *X. and Y. v. Georgia*, views adopted in July 2015 |
| 48/2013, *Stephen and Charles v. Tanzania*, views adopted in March 2015 |
| 60/2013, *Svetlana Medvedeva v. the Russian Federation*, views adopted in February 2016  |
| 66/2014, *D.S. v. Slovakia*, views adopted in November 2016 |
| 75/2014, *Reyes et al. v. Mexico*, views adopted in July 2017 |
| 95/2015*, O.G. v Russian Federation*, views adopted in November 2017 |
| 88/2015, *De Lourdes v. Timor-Leste*, views adopted in February 2018 |
| 103/2016, *J.I. v. Finland*, views adopted in March 2018  |
| 65/2014, *S.T. v. the Russian Federation*, views adopted in February 2019 |
| 86/2015, *R.S.A.A. v. Denmark*, views adopted in July 2019 |
| 87/2015, *Okasana Melnik v. Ukraine*, views adopted in July 2019 |
| 99/2016, *Lazarova v. Bulgaria*, views adopted in July 2019 |
| 100/2016, *Kopylova and Chetviorkina v. the Russian Federation*, views adopted in July 2019 |

1. Communication No. 91/2015, O.G. v. the Russian Federation

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| **Date of adoption of Views:** | **6 November 2017** |
| **Initial reply by the State party:** | **21 December 2018** |
| **Comments by the authors:** | **31 August 2019** |
| **Decision:** | **Reply received but no action taken to implement the views (implementation unsatisfactory). Category C.** **Follow up dialogue put to an end with a finding of non-satisfactory implementation of the Committee’s recommendations.** **Follow up dialogue put to an end.**  |

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| **Summary of the State party’s reply:**By Note verbale of 21 December 2018, the State party informed the Committee of the following. The views of the Committee were drawn to the attention of judges and officials of the Supreme court of the Russian Federation. The text of the views was placed on the website of the Supreme Court and is accessible to the lower courts’ officials and judges. The text of the views is included in the training programmes on professional development of the Supreme Court through the Russian State Judicial University. The text of the views will also be included in one of the following surveys on judicial practice of international human rights organs. Regarding the Committee’s recommendations contained in the views to have the criminal investigation on domestic violence reopened, including due to the absence of a notion of domestic violence or stalking in the legislation, the State party notes that the factual actions, composing these terms are nevertheless subject to criminal-judicial evaluation in Russia. Thus, the Criminal Code of the Russian Federation, CC, provides criminal liability for torture, threat to kill or causing of heavy harm to health. The Federal law of 3 July 2016 introduced article 6.1.1 in the Code of Administrative Offences providing the engagement of liability for beatings. Infliction of beatings or performing of other violent actions, causing physical harm, when these acts do not constitute a crime in the meaning of article 115 CC RF, are subjected to a fine from 5000 to 30 000 roubles or administrative arrest form 10 to 15 days, or 60 to 120 hours of compulsory labour. Regarding the author’s claim that article 116 CC proscribes the responsibility for beatings performed on relatives, it should be noted that under the Federal law of 7 February 2017 modifying article 166 CC, beatings against relatives were excluded among the crimes and listed as administrative offences in order to have an uniform approach to the protection of the rights of all concerned victims. The Russian law englobes sufficient legal mechanisms for the prosecution of individuals who have carried out domestic violence. Concretely, the acts of the perpetrator of domestic violence against the author, Mr. K., for which he had been sentenced on 21 February 2013, have been decriminalised, i.e. do not constitute a corpus delicti. As a result, there is no basis for the review of court decisions which have been adopted more than five years ago. Regarding the Committee’s recommendation to put in place a protocol for handling domestic violence complaints in a gender-sensitive manner at the level of police stations, the State party notes that claims of domestic violence are examined in accordance with the provisions of the Criminal Procedure Code, CPC, and the Instruction on the acceptance, registration and examination of communications or claims of crimes, administrative offences or incidents in the territorial organs of the Ministry of Internal Affairs (as approved by the Ministry of Internal Affairs on 29 August 2014). On the recommendation to renounce private prosecution in cases of domestic violence, given that the process unduly puts the burden of proof entirely on victims of domestic violence, in order to ensure equality between the parties in judicial proceedings, the State party notes that only cases regarding crimes proscribed in article 116.1 of the Criminal Code can relate to private prosecution. Criminal cases under article 116.1 CC can only be opened based on the claim of the victim of beatings or his/her representative when the person cannot protect his/her rights him/herself, and can be annulled in case of reconciliation between the victim and the perpetrator.The Constitutional Court has examined the approach included in the Criminal Procedure Code regarding the criminal prosecution depending on the nature and the weight of the crime – private, private-public or public order. By ruling of 27 June 2005, the Constitutional Court noted that by introducing the rules on private prosecution, the legislator reasoned that such crimes do not constitute significant social importance and their elucidation is not problematic, and thus the victim can her/himself assure the prosecution of the perpetrator in the framework of the private prosecution – ask for the protection of his/her rights and interests directly in court and prove the occurrence of the crime and the guilt of the concrete individual.The system of private prosecution constitutes thus a complementary guarantee of the rights and interest of the victims and not a factor for limitations. It does not eliminate the obligation for the State to protect against criminal attempts on the rights and interests of the citizens and guaranteeing State and court protection, and permit access of the victims to justice and compensation. Crimes proscribed in articles 117 and 119 of the Criminal Code are subject to public prosecution. On 25 August 2014, the Federal Government adopted a Conception of the State family police in the Russian Federation up to 2025. The Conception recognises the need to assure the social protection of families and children and the family failure, children’s lack of control or errant children. The Conception provides for the establishment of crisis centres for women and men including with children, development of programmes on the work with individuals subject to physical or psychological violence by members of the family, awareness raising campaigns among the youth on the prevention of violence, information campaigns on the resources, possibilities and services, accessible to victims of violence, and the continuation of the national campaign on prevention of offences against children. On 8 March 2017, the Federal Government adopted a national Strategy on actions in the interests of women 2017-2022. One of its aspects, prophylaxis and prevention of social adversity of women and violence against women, supposes the amelioration of the legislation on prevention of domestic violence. In addition, work in connection with the preparation of a draft federal law on the prevention of domestic violence is being carried out. The law will include a notion of domestic violence and will introduce a number of legislative changes. As to the Committee’s recommendation to ratify the Istanbul Convention on domestic violence, the State party notes that the Russian Federation is already a party to the Universal Declaration of Human Rights, the Convention on trafficking 1949, the Convention on human rights and fundamental freedoms (1950), the Convention on slavery (1926) and its Optional Protocol (1953), the Additional Convention on Slavery (1956), CERD (1965), ICCPR (1966), CERD (1979), OP CEDAW (1979), the Convention on the Community of the Independent States on human rights and fundamental freedoms (1995), the Convention on transnational organised crime (2000), the Protocol on illegal travel of migrants by land, sea and air (2000), and the Protocol on putting an end to the trafficking in human beings in particular women and children (2000). **Author’s comments:**On 31 August 2019, the author provided her comments to the State party’s reply.The author emphasises that the Russian legislation is not in line with international standards and fails to provide effective protection for survivors of domestic violence. The State party failed to show that it has complied with the Committee’s recommendations i), ii), iv) and v). No specific means of protection, such as restraining or protection orders exist. On 1 November 2016, after a preliminary consideration, the draft law on the prevention of domestic violence has been returned to the members of Parliament who had introduced it to the State Duma. On 11 July 2018, after a second reading, the draft law on gender equality was rejected by the State Duma. At present, a group of experts is working on the draft law on the prevention of domestic violence. However, it remains unclear whether the law will guarantee the rights to victims of domestic violence to apply for a protective order or other means of immediate protection. The author points out that the ECtHR in a recent judgement in *Volodina v. the Russian Federation* noted that the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities’ actions in the case constituted not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women (application no. 41261/17, 9 July 2019, para 132. As to the State party’s contention that the domestic legislation provides for adequate protection against domestic violence and stalking, the author notes that some forms of domestic violence, such as stalking, some forms of threats (excluding death threats or threats to inflict heavily bodily injuries), or certain forms of economic violence are still not punishable under domestic legislation. As to the existing criminal sanctions for repeated battery and infliction of bodily harm, the author refers to the findings of the ECtHR in *Volodina v. the Russian Federation*: the Court could not agree with the Government’s claim that the existing criminal law provisions adequately capture the offence of domestic violence. The Court found that the Russian legal framework – which does not define domestic violence whether as a separate offence or an aggravating element of other offences and establishes a minimum threshold of gravity of injuries required for launching public prosecution – falls short of the requirements inherent in the State’s positive obligation to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for victims. The author notes that despite the Committee’s persistent recommendations to have the criminal prosecution of domestic violence[[1]](#footnote-2) reinstated, the legislation remains unchanged. In *Volodina v. the Russian Federation*, the ECtHR noted that recent amendments to national legislation (art.116 of the criminal Code) that decriminalised battery, under which many domestic violence cases are prosecuted, owing to the absence of a definition of domestic violence in Russian law go in the wrong direction and leads to impunity for perpetrators of these acts of domestic violence. The author regrets further that despite of the Committee’s recommendation to renounce to private prosecution in cases of domestic violence, the State party insists on the effectiveness of this legal remedy. In *X. and Y. v. the Russian Federation* and in *Volodina v. the Russian Federation*, the Committee and the ECtHR have noted that private prosecution was inadequate or insufficient remedy. The author further notes that along Azerbaijan, the Russian Federation remains the last of the Council of Europe’s Member States which hasn’t signed the Istanbul Convention. The author also notes that the State party has observed that all domestic violence complaints are dealt by under the general instruction of the Ministry of Internal Affairs approved by order of 29 August 2014. The author notes however that this instruction contains no specific provisions on dealing with complaints of domestic violence or other forms of gender-based violence. The text provides no guidance on immediate protection and risk assessment. The author notes that in its reply, the State party provided no information on the mandatory training of lawyers and law-enforcement personnel, including prosecutors, on the Convention, its Optional Protocol and the Committee’s general recommendations. The author notes that the State party provides no rehabilitation programmes to offenders of domestic violence and programmes on non-violent conflict resolution methods.The author, finally, observes that she has not been provided with a financial compensation, as requested by the Committee in its views.In light of the above, the author notes that the State party is not taking sufficient measures to give effect to the Committee’s views. The State party has been found responsible for similar violations in two other cases – *S.T. v. the Russian Federation* and *X. and Y. v. the Russian Federation*. These three cases reveal, in the author’s opinion, a pattern of grave and systemic violation of women’s rights in the State party. The author request the Committee to invite the State party to consider taking additional steps in the follow-up procedure, possibly in a meeting with the State party’s representative of the Permanent Mission of the Russian federation to the United Nations Office at Geneva. **B. Communication No 75/2014, Reyes et al. v. Mexico**

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| **Views adopted on:**  | **21 July 2017** |
| **Initial reply by the State party:**  | **8 February 2018** |
| **Deadline for the authors’ comments:** | **8 November 2019 (not yet due)** |
| **Decision:** | **Reply received but actions party implement the Committee’s Views/recommendations (implementation partly satisfactory).** **Follow-up dialogue ongoing.** |

On 20 June 2019, the State party provided its follow up reply, dated 19 June 2019. The State party informs that it the Investigating Prosecutor of Huatuso, Veracruz has ordered the reopening of the judicial investigation number 11/2012. In this sense, the diligences practiced by the Coordinating Prosecutor Specialized in investigation of Crimes of Violence against the Family, Women, Girls, and Human Trafficking in the investigation were resumed, like the questioning made to the experts that offered their expertise within the investigation process. Additionally, the Unit of Analysis and Context (Unidad de Análisis y Contexto) was ordered to do an anthropologic study in the city of Coscomatepec, Veracruz, with the purpose to provide the following information: * 1. Interpersonal relations of Pilar Argüello Trujillo between 2011 and 2012.
	2. Describe the family structure of Pilar Argüello.
	3. Investigate and settle the level of studies of Pilar, as well as the level of studies of her siblings.
	4. Investigate and settled the labor environment of Pilar.
	5. Investigate and described the places that Pilar visited regularly and her form of social behavior between the years 2011 and 2012.

The State party informs that specific personnel of the Ministerial Police was designated to investigate the facts of the case with a gender perspective, requiring a detailed investigation of the social environment of A.R.M., Heriberto Nolasco Flores, Dulce Kareli Olguín Vill, correct name and address of Carri and Henry. These persons are the ones that Mr. Heriberto Nolasco mentioned as the ones with whom he was on the day of the events. In the same sense, it was required to investigate the address and identity of the persons known as “Javier” and “Omar”, who apparently were boyfriends of Pilar Argüello; and “Toya” who could provide additional data of the circumstances of the facts. The Mexican government explains that with the purpose of exhausting all the avenues of investigation, the General Direction of Expert Services (Dirección General de Servicios de Expertos) was required to create an interdisciplinary group, with two forensic criminal experts and two forensic medical experts, to work with the prosecutors in charge of the improvement of the investigation of the case. On 9 May 2019, the statement of Dr. Ramiro González Huerta, medical expert of the General Direction of Expert Services was obtained. The doctor provided details regarding the neurosurgery made to Pilar Argüello, which includes the analysis of injuries *ante* and *post mortem*. On the same day, the declaration of the psychologist Mayra García Vargas was obtained; the psychologist provided details on the expert evaluation made to A.R.M. The declaration of the expert Faride Chávez Galán was also obtained, who provided details about the report of the removal of the body (levantamiento del cadaver) of Pilar Argüello, specifying aspects of the surface area in which the body of the victim was found. Additionally, an expert was designated in order to have an expert opinion about the necropsy made to Pilar Argüello. The opinion was required to have gender perspective and to be according with the Protocol of Basic Diligences of the Public Prosecutor’s Office. Consequently, the State party reports the prosecutor in charge strengthen the investigation and for this reason the following actions are going to be taken: * 1. Report of planimetry by an expert on forensic criminology.
	2. Report of the photos of the necropsy of Pilar Argüello.
	3. A fact-mechanical opinion carried out by the interdisciplinary group set up for this purpose, based on the ministerial investigation.
	4. Procedure in the Registry of Victims on behalf of Reyna Trujillo Reyes and Pedro Argüello Morales.
	5. Hearing at the Juvenile Liability Trial Court of an unspecified incident, on the return of the material and biological evidence made available within the trial RJ/2015/2012.

The General Prosecutor of Veracruz published in the Official Gazette on 18 December 2018, the rules of procedure of the Organic Law of the General Prosecutor, which lists the powers and functions of the General Prosecutor of Veracruz. According to the mentioned rules of procedure, this service is in charge of the investigation of feminicides. The State party argues that standard and effective methodological tool to investigate feminicidal violence exist in three specialize levels, ministerial, police and experts. Additionally, the Mexican government explains that they created the Unit of Analysis and Context to help the investigation and reparation of the victims of crimes such as feminicides and other crimes involving crimes against women. The State party informs that the Unit of Analysis and Context will make reports every four months, which would allow to identify characteristics and patterns of systematic gender violence against women and girls, considering also the possible special effects against indigenous women. The rules of procedures of the Organic Law of the General Prosecutor created the Committee for the Integration of Context Analysis. This Committee is in charge of the selection of the specialized personnel required by the Unit of Analysis and Context, and is constituted by persons linked to the institution, and professional and social academics outside the institution. The State party explains that the Committee is composed by members designated by the General Prosecutor, the President, the Coordinating Prosecutor Specialized in investigation of Crimes of Violence against the Family, Women, Girls, and Human Trafficking as Vice-president, the Specialized Prosecutor in Indigenous Issues and Human Rights, the National Commissioner to Prevent and Eradicate Violence against Women, the University of Veracruz, the Veracruz Institute of Women and two representatives of organizations or groups of gender victims or indigenous women and girls. The Committee already had two sessions and its members are in training by the vocational training institute since 26 March 2019.The State reports that the Protocol of Basic Diligences for prosecutors in the investigations of some crimes, such as feminicides and gender violence, was published in the Official Gazette of Veracruz. Additionally, the State of Veracruz created a Project for the attention of the Declaration of Alert of Gender Violence against Women in Veracruz. This project will be an instrument of support to the actions of security, prevention, justice and reparations in Veracruz in cases of gender violence. The State party also informs about training courses on human rights for the personnel of the Prosecutor Office, Expert Services and Ministerial Police, with the purpose to sensitize the staff of these institutions about crimes of violence against women. Finally, the State party informs that the parents of the Pilar Argüello have been receiving attention from the State. The Mexican government informs about the request that was made to the Coscomatepec police to appoint personnel to monitor and take care of the parents of Pilar Argüello.1. **Communication No 24/2009, X. and Y. v. Georgia**

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| **Views adopted on:**  | **13 July 2015** |
| **Initial reply by the State party:**  | **31 March 2016 and 10 February 2017** |
| **Decision:** | **Measures taken satisfactory (implementation satisfactory).** **Follow-up dialogue put to a close with a finding of a satisfactory implementation of the Committee’s recommendations.**  |

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Summary of the State party’s submission:

On 11 October 2019, the State party informed the Committee that it had amended its legislation and created a national mechanism for the effective implementation off the UN treaty bodies’ decisions, adopted by the Parliament on 27 April 2016 and 22 December 2016. These amendments incorporated procedural mechanism for the reopening of res judicata cases of domestic courts and granting adequate financial compensations to victims, when a relevant decision was adopted by any of the treat bodies, including CEDAW. According to the amendments in the Criminal Procedure Code and the Civil Procedure Code, the mechanism is introduced to reopen judgments on grounds of newly revealed circumstances if a treaty body has concluded to a violation of the relevant Convention and the domestic judgment was based on that violation. In criminal cases, people are entitled to refer to domestic courts with a request to reopen the judgment within 1 year after the adoption of the treaty body decision, and within 6 months in civil cases.

Regarding adequate compensation, under the new chapter of the Administrative Procedure Code the victim can apply to administrative court for a compensation of pecuniary and non-pecuniary damages on the grounds of the violation found by the treaty bodies. Such claims must be submitted within 6 months form the adoption of the views. The administrative courts would determine the amount of the compensation on the grounds of the gravity of the human rights violations and other factors.

The authors of the present communication, based on the legislative amendments, on 12 August 2916, applied to court seeking compensation. On 29 December 2016, the Tbilisi City Court granted them each a compensation of 20,000 lari (equal to some 7,692.30 US dollars each). This decision was upheld on appeal by the Tbilisi Court of Appeals. Subsequently, the compensation was paid to the authors.

In addition, based on the Committee’s views, the authors were granted appropriate assistance form the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking.

1. See *O.G. v the Russian Federation*, CEDAW/C/68/D/91/2015, views of 6 November 2017, and the Committee’s concluding observations regarding the examination of the sixth periodic report of the Russian Federation, CEDAW/C/RUS/CO/8, 20 November 2015. [↑](#footnote-ref-2)