

AUSTRIA

Follow-up - Jurisprudence Action by Treaty Body

CCPR A/51/40, vol. I (1996)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

...

Austria: One decision finding violations; unsatisfactory follow-up reply, dated 11 August 1992, received from the State Party.

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432. The Committee is equally aware that the absence of specific enabling legislation is a crucial factor which often stands in the way of monetary compensation to victims of violations of the Covenant, or the granting of other remedies based on the Committee's views. That argument was, for example, adduced by the Government of Austria in its follow-up reply on the views in case No. 415/1990 (Pauger v. Austria) and by the Government of Senegal in its first follow-up reply on the views in case No. 386/1989 (Koné v. Senegal). The Committee commends those States parties which have compensated victims of violations of the Covenant; it urges States parties to consider the adoption of specific enabling legislation and, pending that, to make ex gratia payments by way of compensation.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

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Austria: One decision finding violations: 415/1990 - Pauer (1992 Report);^{4/} State party follow-up reply dated 11 August 1992, unpublished, indicates that no compensation can be paid to author for lack of specific enabling legislation.

^{4/} Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40).

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

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Austria: One decision finding violations: see 1997 Report (A/52/40), para. 524.

VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

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Austria: One decision finding violations: see A/52/40, para. 524.

CCPR A/55/40, vol. I (2000)

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

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Austria: Two views finding violations: 415/1990 - Pauger (A/47/40); for follow-up reply, see A/52/40, para. 524; 716/1996 - Pauger (A/54/40); for follow-up reply see below.

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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Austria. By submission of 23 February 2000, the State party challenged the Committee's Views in case No. 716/1996 - Pauger and maintained that its pension measures were not discriminatory. It informed the Committee therefore that it was not in a position to comply with the Committee's Views. After receiving this reply, the Committee decided to organize a meeting with the State party's representative. A meeting between the Special Rapporteur for the follow-up on Views and a representative of Austria took place on 25 July 2000. A reference to this meeting will be included in the follow-up progress report, to be presented to the Committee in March 2001.

CCPR A/56/40, vol. I (2001)

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Austria: Two Views finding violations: 415/1990 - Pauger (A/47/40), for follow-up reply, see A/52/40, paragraph 524; 716/1996 - Pauger (A/54/40); for follow-up reply, see A/55/40, paragraph 606.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

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184. Austria: With regard to case No. 716/1996 - Pauger (A/54/40), the Special Rapporteur met with a representative of Austria on 25 July 2000 and stated that the State party could not invoke domestic legislation in order to justify a Covenant violation. The Mission would report to Vienna.

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Austria: Views in three cases with findings of violations:

415/1990 - Pauger (A/47/40), for follow-up reply, see A/52/40, paragraph 524;

716/1996 - Pauger (A/54/40); for follow-up reply, see A/55/40, paragraph 606, and paragraph [233] below;

965/2001 - Karakurt (annex IX): follow-up reply not yet due.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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233. Austria: With regard to case No. 716/1996 - Pauger (A/54/40), the author informed the Committee by letter of 18 December 2001 that he had not been provided with an effective remedy, in particular, lump sum payment on the basis of full pension benefits, nor had the State party discontinued the discrimination. By a note verbale of 21 January 2002, the State party informed the Committee that its law on survivors' pensions fully respects the principle of equal treatment since 1995. For budgetary reasons, however, the modified pension law could not apply retroactively. There was no legal possibility to effect an ex gratia payment to the author, which would also constitute an unjustified unequal treatment of the author with other widowers in the same position and even more compared to recent widows/widowers. Accordingly, the State party could not implement the Committee's Views.

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CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Austria: Views in four cases with findings of violations:

415/1990 - *Pauger* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

716/1996 - *Pauger* (A/54/40); for follow-up reply, see A/55/40, paragraph 606, A/57/40, paragraph 233, and paragraph 226 below;

965/2001 - *Karakurt* (A/57/40); for follow-up reply, see paragraph 227 below;

1086/2002 - *Weiss* (annex VI); for follow-up reply, see paragraph 228 below.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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226. **Austria:** case No. 716/1996 - *Pauger* (A/54/40): counsel reiterated, by letter of 25 November 2002, that the author has still not been provided with an effective remedy.

227. Case No. 965/2001 - *Karakurt* (A/57/40): the State party informed the Committee on 21 September 2002 that the original version of the Views was published on the homepage of the Constitutional Law Department of the Federal Chancellery and that a German translation was being prepared; the Views became known to the general public through reports in major newspapers and press conferences given by the workers' representative body. The State party stated, however, that as two cases raising similar issues were currently pending before the European Court of Human Rights and before the European Court of Justice, it would await their outcome before deciding what steps to take.

228. Case No. 1086/2002 - *Weiss* (annex VI): on 27 May 2003, counsel submitted a copy of a motion addressed, on the author's behalf, to the Minister of Justice. Counsel recalled that under the Committee's Views, Austrian authorities were obliged to address the competent United States authorities. Counsel sought the Committee's assistance in securing the State party's timely compliance with this recommendation.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40(A/57/40)*, vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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AUSTRIA:

Karakurt v. Austria, Case no. 965/2001, Views adopted on 4 April 2002

Violations found: Article 26

Issues of case: Racial discrimination in employment field

Remedy recommended: To modify the applicable law so that no improper differentiation is made between persons in the author's situation and EEA nationals.

Deadline for State party follow-up information: 21 August 2002

Follow-up information received from State party: By letter of 21 September 2002, the State party informed the Committee, that the original version of the Views was published on the homepage of the Constitutional Law Department of the Federal Chancellery, and that a German translation is being prepared; the Views became known to the general public through reports in major newspapers and press conferences given by the workers' representative body. It also submits, however, that as two cases raising similar issues are currently pending before the European Court of Human Rights and the European Court of Justice, it will await their outcome before deciding what steps to undertake. By letter of 6 August 2003, the State party reiterated its previous response.

Follow-up information received from author: None

Special Rapporteur's recommendations: Reminder to be addressed to the State party

Weiss v. Austria, Case no: 1086/2002, Views adopted on 3 April 2003

Violations found: Article 14, paragraph 1 read together with article 2, paragraph 3.

Issues of case: Extradition of complainant to the United States despite the request for interim protection

Remedy recommended: To make such representations to the United States' authorities as may be required to ensure that the author does not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party's extradition of the author in violation of its obligations under the Covenant and the Optional Protocol. To take appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.

Deadline for State party follow-up information: 8 August 2003

Follow-up information received from State party: By letter of 6 August 2003, the State party informed the Committee of its efforts made to publish the Committee's Views. On 9 August 2003, the State party provided extensive follow-up submissions. It referred to current proceedings before the Supreme Court, judgment expected in September 2003, on the exclusion of remedies with respect to the author. It argues "further cases of this sort may in all likelihood be excluded". Legislative amendments to the extradition law resulting from the Views are under consideration. The US Department of Justice was informed of the Views, and asked to notify all procedural steps taken in the US after the surrender. In addition, as the US is a State party, there is "no indication", in its view, that the US "will not meet their international obligations under the Covenant."

Follow-up information received from author: By letter of 27 May 2003, counsel submitted a copy of a motion addressed, on the author's behalf, to the Minister of Justice. Counsel recalled that under the Committee's Views, Austrian authorities were obliged to address the competent U.S. authorities. Counsel seeks the Committee's assistance in securing the State party's timely compliance with this recommendation.

Special Rapporteur's recommendations: An update on the proceedings before the Supreme Court and any reaction from the US judicial authorities might be requested of the State party.

Pauger v. Austria, Case no. 716/1996, Views adopted on 25 March 1999

Violations found: Article 26

Issues of case: Discrimination in lump sum entitlement under the pension act

Remedy recommended: To provide him with a lump-sum payment calculated on the basis of full pension benefits, without discrimination.

Deadline for State party follow-up information: 25 June 1999

Follow-up information received from State party: See previous Follow-up Report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol.1, paragraph 233). By note verbale of 21 January 2002, the State party informed the Committee that, since 1995, its law on survivors' pensions fully respects the principle of equal treatment since 1995. For budgetary reasons, however, the modified pension law could not apply retroactively. There was no legal possibility to effect an ex gratia payment to the author, which would also constitute unequal treatment of the author with other widowers in the same position. Accordingly, the State party could not implement the Committee's Views.

Follow-up information received from author: See previous Follow-up Report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol.1, paragraph 233). By letter of 18 December 2001, the author informed the Committee that he had not been provided with an effective remedy, in particular, a lump sum payment on the basis of full pension benefits. He also stated that the State party has not discontinued this type of discrimination.

Special Rapporteur's recommendations: Although welcoming the State party's decision to amend its legislation, the State party should re-consider its decision not to implement the Committee's decision in this particular case and look into other possibilities of providing the author with a remedy.

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CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York,
on Friday, 2 April 2004, at 10 a.m.

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Follow-up on Views under the Optional Protocol

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2. **Mr. Ando**, speaking as a Special Rapporteur for follow-up on Views under the Optional Protocol, noted that his report covered the period from 1 March 2001 to 26 March 2004. As a result of the Committee's Views, death sentences had in some cases been reduced to life imprisonment or to a sentence of 20 years, indicating the success of the Committee's work regarding individual communications. There had been many cases in which States had provided no response to the Committee's Views, and those cases, in turn, came under several headings. Those in which it had been necessary simply to send a reminder were not problematical. Wherever the Committee required a further update on the situation, he had tried to meet with representatives of State parties. Very often they would send a request to their home Government, but that did not necessarily mean that the response would be forthcoming in time for the Committee's following session. At times State parties disagreed with the Committee's Views and requested a reconsideration. Since the Committee had never reconsidered its Views, he always told the State party that there was no precedent for reconsideration unless the author contacted the Committee with new information. He would welcome guidance from Committee members concerning how to deal appropriately with such cases. State parties had complied with the Committee's Views in roughly one-third of cases. In some cases, State parties had clearly indicated that they had no intention of implementing the Committee's Views, sometimes stating that the Views had the force of recommendations only. In that regard, too, he would welcome guidance from Committee members.

3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

5. The two cases in the progress report in which the State parties had given a clear indication of their intention not to comply, case No. 716/1996 (*Pauger v. Austria*) and case No. 852/1999 (*Borisenko v. Hungary*), should be the subject of further follow-up and should be published in the Committee's next report...

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Austria: Views in six cases with findings of violations:

415/1990 - *Pauger* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

716/1996 - *Pauger* (A/54/40); for follow-up reply, see A/55/40, paragraph 606, A/57/40, paragraph 233, and A/58/40, paragraph 226; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that while he welcomed the State party's decision to amend its legislation, the State party should reconsider its decision not to implement the Committee's Views and look into other possibilities of providing the author with a remedy;

965/2001 - *Karakurt* (A/57/40); for follow-up reply, see A/58/40, paragraph 227; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for a follow-up reply be sent to the State party;

998/2001 - *Althammer et al.* (A/58/40); follow-up reply not yet received;

1086/2002 - *Weiss* (A/58/40); for follow-up reply, see A/58/40, paragraph 228 and paragraph 232 below. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that an update on the proceedings before the Supreme Court and any reaction from the United States judicial authorities be requested of the State party. The State party submission of 4 August 2004 provides the update requested;

1015/2001 - *Perterer* (annex IX); follow-up not yet due.

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OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD,
SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER
DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

235. Austria: with regard to case No. 1086/2002, *Weiss* (A/58/40): on 6 August 2003, the State party informed the Committee of its efforts to publish the Committee's Views. On 9 August 2003, the State party provided extensive follow-up submissions. It referred to current proceedings before the Supreme Court, judgement expected in September 2003, on the exclusion of remedies with respect to the author. It argues, "further cases of this sort may in all likelihood be excluded". Legislative amendments to the extradition law resulting from the Views are under consideration. The United States Department of Justice was informed of the Views and asked to notify all procedural steps taken in the United States after the surrender. In addition, as the United States is a State party, there is "no indication", in its view, that the United States "will not meet [its] international obligations under the Covenant". On 7 May 2004, the State party supplemented its initial reply, in stating that on 9 September 2003, the Supreme Court granted Mr. Weiss restitution to the previous state in respect of his failure to observe a time limit for raising objections and dismissed the complaint of Mr. Weiss against the decision of the Vienna Court of Appeal of 8 May 2002, by which his extradition had been declared admissible. According to the 2004 Criminal Law Amendment Act, which entered into force on 1 May 2004, an investigating judge shall decide on the admissibility of the extradition, against which both the public prosecutor and the persons to be extradited may file an application to the court of second instance.

Notes

1/ *Ibid.*, *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

CCPR, A/60/40 vol. I (2005)

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. 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 the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. 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 has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, 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 complying 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.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Austria (5)	415/1990, <i>Pauger</i> A/57/40	X A/47/40, A/52/40		X		X
	716/1996, <i>Pauger</i> A/54/40	X A/54/40, A/55/40, A/57/40, CCPR/C/80/FU1		X*		X
*Note: Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy.						
	965/2001, <i>Karakurt</i> A/57/40	X A/58/40, CCPR/C/80/FU1				X
	1086/2002, <i>Weiss</i> A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU1, A/60/40				X
	1015/2001, <i>Perterer</i> A/59/40	X A/60/40				X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, A/60/40 vol. II (2005)

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/59/40).

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State party	AUSTRIA
Case	Perterer, Paul, 1015/2001
Views adopted on	20 July 2004
Issues and violations found	Procedural improprieties in civil servant's disciplinary proceedings - article 14, paragraph 1.
Remedy recommended	An effective remedy, including payment of adequate compensation.
Due date for State party response	28 October 2004
Date of reply	29 October 2004
State party response	The State party submits that the office of the State Attorney and the Government of the Province of Salzburg are currently examining the author's claims for damage/just satisfaction, under the Austrian Official Liability Act. It also confirms that the Views have been published.
Author's response	<p>On 5 January 2005, the author sent a newspaper article to the effect that he intended to file a claim for compensation but alleges that he is being denied information on his hypothetical salary.</p> <p>On 2 February 2005, the author stated that in a letter of 8 January 2004, he was informed that he had been refused compensation as "the officers of the Republic of Austria acted correctly and did</p>

nothing wrong”.

Further action taken	Action taken: On 2 November 2004, the State party was requested to clarify the outcome of the author’s claim for compensation.
Further information from author	<p>By letter dated 23 June 2005 the author informed the Committee that, on 28 January 2005, the Office of state counsel (<i>Finanzprokuratur</i>) rejected his claims for compensation, in view of the fact that no State agency had acted against the law and intentionally.</p> <p>The author also addressed himself to the Federal Ombudsman's Office, which in early 2005 invited the Office of the Federal Chancellor to offer compensation to the author and indicated that, in its report to Parliament, it would include critical remarks about the author’s case and the legislative framework governing disciplinary proceedings against civil servants.</p> <p>On 12 February 2005 the author proposed a “friendly settlement” to the federal and provincial governments, asking in particular for financial compensation. The provincial government did not respond and the Federal government referred him to the provincial government.</p> <p>In May 2005, the author applied for legal aid to initiate a State liability action (<i>Staatshaftungsklage</i>). On 20 June 2005 the Office of the provincial government informed the author that, in its opinion, his claims would have to be determined in judicial proceedings.</p>
State party	AUSTRIA
Case	Weiss, 1086/2002
Views adopted on	3 April 2003
Issues and violations found	Extradition to the United States - article 14, paragraph 1 read together with article 2, paragraph 3.
Remedy recommended	To make such representations to the United States’ authorities as may be required to ensure that the author does not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party’s extradition of the author in violation of its obligations under the Covenant and the Optional Protocol. To take appropriate steps to ensure that the Committee’s requests for interim measures of protection will be respected.

Due date for State party response 8 August 2003

Date of reply 4 August 2004 (the State party had previously replied on 6 August 2003)

State party response The State party provides a copy of the Supreme Court judgement of 9 September 2003. The Supreme Court accepts the author's application to file the petition out of time but then proceeds to dismiss it on the merits, concluding in the last sentence that, "The Supreme Court accordingly sees no reasons to doubt the constitutionality, of the application of the extradition treaty between the Austrian and United States governments."

The State party also notes that according to the United States Department of Justice, litigation for a ruling that will give effect to the rule of speciality limitation with respect to the extradition from Austria to the United States is ongoing.

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CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. 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).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has 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.

229. 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 only relate 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.

230. 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 Views.

231. 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.

232. 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 2006, 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.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Austria (5)	415/1990, <i>Pauger</i> A/57/40	X A/47/40, A/52/40		X		X
	716/1996, <i>Pauger</i> A/54/40	X A/54/40, A/55/40, A/57/40 CCPR/C/80/FU1		X*		X
	* <i>Note:</i> Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy.					
	965/2001, <i>Karakurt</i> A/57/40	X A/58/40, CCPR/C/80/FU1, A/61/40				X
	1086/2002, <i>Weiss</i> A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU1, A/60/40, A/61/40				X
1015/2991, <i>Perterer</i> A/59/40	X A/60/40, A/61/40				X	
...						

CCPR, A/61/40 vol. II (2006)

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Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

State party	AUSTRIA
Case	Karakurt, 965/2001
Views adopted on	4 April 2002
Issues and violations found	Racial discrimination in field of employment
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, consisting of modifying the applicable law so that no improper differentiation is made between persons in the author's situation and EEA nationals.
Due date for State party response	19 September 2002
Date of State party's response	21 February 2006 (The State party had previously replied on 21 September 2002)
State party response	<p>The Committee will recall that as set out in A/58/40, the State party had previously responded on 21 September 2002 and 6 August 2003. It had informed the Committee, that the Views had been widely published and that it was awaiting the outcome of two cases raising similar issues before the European Court of Human Rights and the European Court of Justice.</p> <p>On 21 February 2006, the State party submitted that the Austrian legal system has been amended in accordance with the Committee's Views. The 1992 Chamber of Labour Act (<i>Arbeiterkammergesetz</i>) and the Industrial Relations Act (<i>Arbeitsverfassungsgesetz</i>) have been</p>

amended by Federal Law, Federal Law Gazette Vol. I, No. 4/2006 to the effect that - irrespective of their nationality - all workers are now entitled to stand for election to a chamber of labour and to a works council in Austria (see also the individual members' bill 607/A BlgNR XXII. GP).

Author's response	None
Case	Weiss, 1086/2002
Views adopted on	3 April 2003
Issues and violations found	Extradition to the United States - Article 14, paragraph 1, read together with article 2, paragraph 3.
Remedy recommended	To make such representations to the United States' authorities as may be required to ensure that the author does not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party's extradition of the author in violation of its obligations under the Covenant and the Optional Protocol. To take appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.
Due date for State party response	8 August 2003
Date of State party's response	23 January 2006 (the State party had previously replied on 6 August 2003 and 4 August 2004)
State party response	<p>The Committee will recall that, as set out in the interim report of the eighty-fourth session, the State party provided a copy of the Supreme Court judgement of 9 September 2003, which saw "no reasons to doubt the constitutionality, of the application of the extradition treaty between the Austrian and US governments". It has also stated that the litigation in the United States was ongoing.</p> <p>On 23 January 2006, the State party confirmed that the proceedings before the United States' courts were still pending. The author applied for habeas corpus by the court in Florida on the basis of his illegal extradition from Austria. This request was rejected by the court. An appeal is pending.</p> <p>The extradition of the author to the United States was rejected "on one count of indictment". He has, thus, the right to a corresponding reduction of sentence. However, the author is not applying for such a penalty reduction, but instead claims immediate release and</p>

re-initialization of the process. The United States Department of Justice as well as the court in Florida have explicitly recognized that, on the basis of the specificity of the extradition, there would have to be a reduction of the sentence but have not yet made a final decision on the author's claim. The State party will continue to supervise the course of the process in the United States.

Case	Perterer, 1015/2001
Views adopted on	20 July 2004
Issues and violations found	Equality before the courts - Article 14, paragraph 1
Remedy recommended	In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including payment of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	
Date of State party's response	8 March 2006
State party response	<p>The State party submits that the Views were published by the Federal Chancellery in English and in a non-official German version. The author made specific claims in a letter of 1 September 2004 vis-à-vis the Attorney-General's Department and after, his claims were dismissed, he brought a liability action and a "State liability action" against the federal authorities and the State of Salzburg in the Summer of 2005 with the Salzburg Regional Court. The federal authorities and the State of Salzburg submitted comments, rejecting his claims. His request for legal aid was granted at the second instance. Moreover, he also laid "an information" against the Senate of the Administrative Court determining his case, on which as far as the State party is aware no decision has yet been taken.</p> <p>It submits that the Ombudsman's Office, to which the author turned to in the early autumn of 2004, was trying to reach a consensus in the form of a settlement between the State of Salzburg (as the Austrian authority responsible for the violations) and the author thus acting in conformity with the case-law of the European Court of Human Rights. Against the background of the claims raised by the author, the Ombudsman's Office decided to make no further efforts for the time</p>

being.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. 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).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. 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 only relate 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.

216. 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 Views.

217. In many cases, the Committee 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.

218. 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 2007, 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.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Austria (6)	415/1990, <i>Pauger</i> A/57/40	X A/47/40, A/52/40		X		X
	716/1996, <i>Pauger</i> A/54/40	X A/54/40, A/55/40, A/57/40 CCPR/C/80/FU1		X*		X
*Note: Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy.						
	965/2001, <i>Karakurt</i> A/57/40	X A/58/40, CCPR/C/80/FU1, A/61/40				X
	1086/2002, <i>Weiss</i> A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU1, A/60/40, A/61/40				X
	1015/2991, <i>Perterer</i> A/59/40	X A/60/40, A/61/40				X
	1454/2006, <i>Lederbauer</i> A/62/40	Not yet due				
...						

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.

...						
Austria (6)	415/1990, <i>Pauger</i> A/57/40	X A/47/40, A/52/40		X		X
	716/1996, <i>Pauger</i> A/54/40	X A/54/40, A/55/40, A/57/40 CCPR/C/80/FU/1		X*		X
	*Note: Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy.					
Austria (<i>cont'd</i>)	965/2001, <i>Karakurt</i> A/57/40	X A/58/40, CCPR/C/80/FU/1, A/61/40				X
	1086/2002, <i>Weiss</i> A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU/1, A/60/40, A/61/40				X
	1015/2001, <i>Pertterer</i> A/59/40	X A/60/40, A/61/40				X
	1454/2006, <i>Lederbauer</i> A/62/40	X A/63/40				X
...						

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

State party	AUSTRIA
Case	Lederbauer, 1454/2006
Views adopted on	23 July 2007
Issues and violations found	Delay in proceedings relating to disciplinary complaint - article 14, paragraph 1.
Remedy recommended	An effective remedy, including appropriate compensation.
Due date for State party response	11 December 2007
Date of reply	3 December 2007
State party response	The State party states that the Views were published in the original English version as well as in an unofficial German translation on the website of the Austrian Federal Chancellery. Subsequent to an exchange of views held with all authorities involved in the case, it was decided to invite the complainant to a meeting with Austrian Government representatives. The meeting was to take place before the end of 2007 and the State party states that it will inform the Committee of any new developments in due course.
Committee's Decision	The Committee considers the dialogue ongoing.

...

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.

...						
Austria (6)	415/1990, <i>Pauger</i> A/57/40	X A/47/40, A/52/40		X		X
	716/1996, <i>Pauger</i> A/54/40	X A/54/40, A/55/40, A/57/40 CCPR/C/80/FU/1		X*		X
	*Note: Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy.					
	965/2001, <i>Karakurt</i> A/57/40	X A/58/40, CCPR/C/80/FU/1, A/61/40				X
	1086/2002, <i>Weiss</i> A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU/1, A/60/40, A/61/40				X
	1015/2001, <i>Perterer</i> A/59/40	X A/60/40, A/61/40				X
	1454/2006, <i>Lederbauer</i> A/62/40	X A/63/40				X
...						

A/64/40 vol. II (2009)

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Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

State party	Austria
Case	<i>Perterer, 1015/2001</i>
Views adopted on	20 July 2004
Issues and violations found	Equality before the courts - Article 14, paragraph 1
Remedy recommended	In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including payment of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	23 October 2004
Date of State party response	28 July 2008 (the State party had responded on 29 October 2004 and 8 March 2006)
State party response	<p>On October 2004, the State party had submitted that the office of the State Attorney and the Government of the Province of Salzburg were examining the author's claims for damages under the Austrian Official Liability Act. It also confirmed that the Views have been published.</p> <p>On 8 March 2006, the State party had submitted that the Views were published by the Federal Chancellery in English and in a non-official German version. The author made specific claims in a letter of 1 September 2004 vis-à-vis the Attorney General's</p>

Department and, after his claims were dismissed, he brought a liability action and a "State liability action" against the federal authorities and the State of Salzburg in the summer of 2005 with the Salzburg Regional Court. The federal authorities and the State of Salzburg submitted comments, rejecting his claims. His request for legal aid was granted at the second instance. Moreover, he also laid "an information" against the Senate of the Administrative Court determining his case, on which as far as the State party is aware no decision has yet been taken.

The State party submits that the Ombudsman's Office, to which the author turned in the early autumn of 2004, was trying to reach a consensus in the form of a settlement between the State of Salzburg (as the Austrian authority responsible for the violations) and the author thus acting in conformity with the case-law of the European Court of Human Rights (ECHR). Against the background of the claims raised by the author, the Ombudsman's Office decided to make no further efforts for the time being.

In its response dated 28 July 2008, the State party informed the Committee, as it had done in earlier responses that the Ombudsman Board, which is an independent body responsible to Parliament only, tried to mediate a settlement - on the basis of the case law on compensation of the ECHR - between the Province of Salzburg and the author. The State party would have welcomed such an agreement. However, his claims went far beyond the amount of compensation which would have been granted under the case law of the ECHR and, thus, for this reason the Ombudsman decided to discontinue its efforts to mediate in the case. The Board elaborated extensively on the case and explained why it considered further activities to be futile. The author is in regular contact with various Austrian authorities involved in the case and regularly publishes his views on several websites. The State party is of the view that the author is not interested in reaching an agreement with it. For this

reason, the State party requests the Committee to discontinue this case under the follow-up procedure. In the Ombudsman's report, it highlighted its view that while the Committee's Views are not legally binding it would be unconscionable not to implement them. Thus, it considered the Views on the same level as decisions of the ECHR. In light of the violation found and for the purposes of providing a remedy it was decided that the case should be considered as if there had been a violation of ECHR. For this reason a figure of damages of 700 euros per year of court proceedings undergone plus an award of court costs of 3,500 euros would be

appropriate compensation.

Author's comments

On 23 August 2008, the author provided what he refers to as a, "Legal statement" on follow-up to his case. According to this submission, the author has attempted to speak to the Chancellor, who it is believed is the competent representative of the State party. In his view, the Ombudsman does not represent the Government and is thus not competent to negotiate for it. As to the State party's reference to ECHR, the author states that apart from the fact that compensation from this court can amount to very large payments and *restitutio ad integrum*, this case does not concern a judgement of ECHR but the Committee, and thus it is irrelevant what ECHR would offer in such instances. In his view, the State party is under an obligation to ensure that he is put in the same position as he would have been had the decision which violated his rights not been made and that if this is not possible the payment of adequate damages. If his position had not been terminated he would have received his monthly salary and pension entitlements.

Committee's Decision

In light of the State party's response and despite the author's dissatisfaction with the quantum of compensation proposed by the Ombudsman, the Committee considers the State party's offer of compensation as a satisfactory response and does not intend to consider this matter any further under the follow-up procedure.

...