

GERMANY

Follow-up - Jurisprudence Action by Treaty Bodies

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

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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

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Germany (1)	1482/2006, <i>Gerlach</i> A/63/40	Not due				
...						

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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

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

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

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

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

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

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

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Germany (1)	1482/2006, <i>Gerlach</i> A/63/40	X A/64/40				X
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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).

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State party	Germany
Case	<i>M.G., 1482/2006</i>
Views adopted on	23 July 2008
Issues and violations found	Interference to privacy honour and reputation disproportionate and thus arbitrary - article 17, in conjunction with article 14, paragraph 1
Remedy recommended	An effective remedy including compensation.
Due date for State party response	27 February 2009
Date of State party response	13 February 2009
State party response	The State party submits that the legal proceedings giving rise to the communication are still pending before the Ellwangen Regional Court (Landgericht). The course of the proceedings up to May 2008 was summarized in the Views (A/63/40, Vol. II, annex V, communication No. 1482/2006, paragraphs 8.1 to 8.12). The President of the Ellwangen Regional Court has informed the Ministry of Justice that the third Chamber of the Court plans to schedule an oral hearing for March 2009, to which both parties will be summoned to attend in person. No experts will be invited to attend the hearing. The Chamber intends to give both parties the opportunity to state their views regarding the Views of the Committee. The hearing is meant to provide the author with an opportunity to state her case regarding the matters raised in the

communication, and to remedy the lack of a personal hearing before the order of November 2005.

The State party mentions that the composition of the Chamber has completely changed since November 2005. In the State party's view, these measures provide adequate reparation as set out in the Committee's general comment No. 31(2004) on the nature of general legal obligations imposed on State parties to the Covenant (para. 16).

On the issue of compensation, to date the author has not filed any claims for compensation with the Federal Government. There has been a note requesting the payment of a clearly exaggerated sum for unsubstantiated costs from Jürgen Hass who claims to have acted on behalf of the author. Mr. Hass has not produced any power of attorney. Mr. Hass has an extensive criminal record in Germany and is currently residing in Paraguay. He has been sentenced in Germany for a variety of offences, including fraud and fraudulent use of professional titles. There are no indications that he has in any way materially contributed to the case in question. His note has therefore been disregarded.

According to the State party, as the Views of the Committee refer only to the question of issuing an order for medical examination by the court without previously hearing the author in person, they have no bearing on the distribution of costs in the legal proceedings giving rise to the communication, which will depend on the eventual outcome of these proceedings.

The State party submits that the Views of the Committee have been translated into German. The Federal Ministry of Justice has sent the translated Views together with a legal analysis - to the effect that the Views require the courts generally to issue orders for an examination of someone's capacity to take part in the proceedings only after an oral hearing - to the Ministries of Justice of the Länder, requesting them to inform the courts.

The Länder have informed the Federal Ministry of Justice that the Views have been made known to all the Higher Regional Courts, who in turn will distribute them to the lower courts. The Federal Courts of Justice have been informed likewise. In addition, the Views of the Committee have been published in German on the Website of the Federal Ministry of Justice.

Author's comments

Awaiting author's comments

Committee's Decision

The follow-up dialogue is ongoing.

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

Human Rights Committee
Ninety-eighth session

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

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Follow-up on views under the Optional Protocol

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

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

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

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

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

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

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State party	Germany
Case	<i>M.G., 1482/2006</i>
Views adopted on	23 July 2008
Issues and violations found	Interference to privacy, honour and reputation disproportionate and thus arbitrary - article 17, in conjunction with article 14, paragraph 1.
Remedy recommended	An effective remedy including compensation
Due date for State party response	27 February 2009
Date of State party response	13 February 2009 and 2 October 2009
Author's comments	Numerous submissions (incomprehensible and often offensive) prior to that of 4 February 2010.
State party response	On 13 February 2009, the State party had provided an update on this case before the Ellwangen Regional Court (Landgericht) and stated that the composition of the Chamber has completely changed since November 2005. On the issue of compensation, it submitted that the author had not filed any claims for compensation with the federal Government. There had been a note requesting the payment of a clearly exaggerated sum for unsubstantiated costs from Jürgen Hass, who claimed to have been acting on the author's behalf, but who had not produced any power of attorney, has an extensive criminal record in Germany and is currently residing in Paraguay. His note was therefore

disregarded. The Views of the Committee have been translated into German. The Federal Ministry of Justice has sent the translated Views together with a legal analysis - to the effect that the Views require the courts generally to issue orders for an examination of someone's capacity to take part in the proceedings only after an oral hearing - to the Ministries of Justice of the Länder, requesting them to inform the courts.

The Länder have informed the Federal Ministry of Justice that the Views have been made known to all the Higher Regional Courts, who in turn will distribute them to the lower courts. The Federal Courts of Justice have been informed likewise. In addition, the Views of the Committee have been published in German on the Website of the Federal Ministry of Justice.

On 2 October 2009, the State party stated that the Ellwangen Regional Court had scheduled an oral hearing on 5 March 2009, to which both parties were summoned. The Committee's Views were distributed and the parties were asked whether the disputed expert opinion which had been given without hearing the author could be used in the proceedings. The author applied for the appointment of a duty lawyer to represent her. Having been asked in accordance with article 78 (b) of the Code of Civil Procedure to show that she was unable to find a lawyer by herself she once again challenged all members of the Court for suspected bias. Thus, the hearing was cancelled. The challenges for bias were rejected by the competent chamber of the Court on 30 June 2009. The author filed a complaint against this decision to the Higher Regional Court who rejected the complaint on 16 September 2009. The files are now being sent back to the Ellwangen Regional Court for the scheduling of a new hearing.

Several other proceedings are pending and the judges concerned have declared that given the Committee's Views they regard it necessary to hear the author in person before deciding on the question of her capacity to take part in proceedings. Due to the fact that she is currently living in Paraguay and has on several instances refused to accept service of legal documents, these cases cannot proceed and have thus been suspended. In the State party's view it has thus implemented the Views.

Author's Comments

On 4 February 2010, the author wrote to the Committee confirming that she is now living in Paraguay and included further unintelligible/incomprehensible information.

Committee's Decision

The follow-up dialogue is ongoing.

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