

GREECE

Follow-up: Jurisprudence Action by treaty bodies

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
SUMMARY RECORD OF THE 2392nd MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

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26. [Mr. ANDO said]... Since the reply of the State party in Alexandros Kouidis v. Greece (communication No. 1070/2002) had only been received in early July 2006 and then transmitted to the author, the Committee should await the author's response before proceeding.

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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
...						
Greece (1)	1070/2002, <i>Kouldis</i> A/61/40	X 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).

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State party	GREECE
Case	Alexandros Koudis, 1070/2002
Views adopted on	28 March 2006
Issues and violations found	Evidence given under duress - Article 14, paragraph 3 (g).
Remedy recommended	The State party is under an obligation to provide the author with an effective and appropriate remedy, including the investigation of his claims of ill-treatment, and compensation.
Due date for State party response	4 July 2006
Date of State party's response	3 July 2006
State party response	The State party submits that it has been translated and will be disseminated to the competent judicial authorities and posted on the website of the Legal Council of State. As to the remedy the State party refers to the possibility of recourse in article 105 of the Introductory Law to the Civil Code, to which the author is entitled in order to seek compensation to any damage incurred.

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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
... Greece (1)	1070/2002, <i>Kouldis</i> A/61/40	X A/61/40				X
...						

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.

...						
Greece (2)	1070/2002, <i>Kouldis</i> A/61/40	X A/61/40				X
	1486/2006, <i>Kalamiotis</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.

...						
Greece (2)	1070/2002, <i>Kouldis</i> A/61/40	X A/61/40				X
	1486/2006, <i>Kalamiotis</i> A/63/40	X A/64/40				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).

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State party	Greece
Case	<i>Kalamiotis, 1486/2006</i>
Views adopted on	24 July 2008
Issues and violations found	Torture, or cruel, inhuman or degrading treatment and punishment, obligation to investigate complaints maltreatment, effective remedy - Article 2, paragraph 3, read together with article 7 of the Covenant
Remedy recommended	Effective remedy and appropriate reparation
Due date for State party response	30 January 2009
Date of State party response	19 January 2009
State party response	<p>The State party submitted that the author may institute an action for compensation under article 105 of the Introductory Law to the Civil Code for damages suffered due to his ill-treatment. According to article 105, "The State shall be liable for compensation for illegal acts or omissions of organs of the State in the exercise of the public power entrusted to them, unless such acts or omissions violated a provision of general interest ..."</p> <p>The State party submitted that its courts often award large amounts of compensation for such violations. In addition, the effectiveness and appropriateness of this type of remedy has been</p>

confirmed in the context of judgements of the European Court of Human Rights (ECHR), in respect of which the State party's Court of Cassation considered that the victim/s in question could institute a claim under articles 104 and 105 of this law for compensation pursuant to a finding in their favour by the ECHR. According to the State party, in this regard the decisions of the Human Rights Committee are analogous to that of the ECHR, and the only question to be considered by the courts with respect to such a claim would be the amount of compensation to be paid.

The State party also submitted that the Views would be published on the website of the Legal State Council and transmitted to the President, the Public Prosecutor of the Court of Cassation, and the Hellenic Police.

Author's comments

On 30 March 2009, the authors submit that despite what was promised by the State party, the Views have not yet been published on the website of the Legal Council of State. In the author's view, the State party has in effect rejected the Committee's Views and refers to the response on 22 September 2008 by the Minister of Justice to a question on the follow-up to this case in which the Minister refuted the Committee's decision. The author informs the Committee that there is no indication that any domestic investigation will be re-opened to ensure punishment of the police officers involved. In this context, he attaches information sent from the State party to the Committee of Ministers of the Council of Europe concerning the execution of judgements of the ECHR, in which it refers to the State party's intention to have the competent prosecutor re-examine the files of certain cases. In the author's view, the same procedure should be applied in his case.

As to the State party's claim that the author can seek compensation by filing a lawsuit, the author submits that the limitation period for such claims is five years and thus expired on 31 December 2006; the courts are extremely slow at considering these type of cases for which ECHR have found many cases against the State party; and in addition this is not the most appropriate procedure, as this administrative court is normally seized of cases which first demand a finding of liability of the State and then as to quantum of compensation. In the current case, it is merely a question of the amount of compensation to be awarded with the Legal Council of State has the authority

to approve. As the State party has acknowledged that the Views

are equivalent to the judgements of ECHR and constitute *res judicata* leaving only the question of the amount of compensation to be decided, the author submits that the amounts awarded in similar Greek cases by ECHR can serve as a fair basis for his compensation through a similar decision of the Legal Council of State and the Minister of Economy and Finance.

Committee's Decision

The follow-up dialogue is ongoing

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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).

...

State party	Greece
Case	<i>Kalamiotis, 1486/2006</i>
Views adopted on	24 July 2008
Issues and violations found	Torture, or cruel, inhuman or degrading treatment and punishment, obligation to investigate complaints maltreatment, effective remedy - article 2, paragraph 3, read together with article 7 of the Covenant.
Remedy recommended	Effective remedy and appropriate reparation.
Due date for State party response	30 January 2009
Date of State party response	19 January 2009 and 24 August 2009
State party response	<p>The State party submitted that the author may institute an action for compensation under article 105 of the Introductory Law to the Civil Code for damages suffered due to his ill-treatment. According to article 105, "The State shall be liable for compensation for illegal acts or omissions of organs of the State in the exercise of the public power entrusted to them, unless such acts or omissions violated a provision of general interest ..."</p> <p>The State party submitted that its courts often award large amounts of compensation for such violations. In addition, the effectiveness and appropriateness of this type of remedy has been confirmed in the context of judgements of the European Court of Human Rights (ECHR), in respect of which the State party's Court of Cassation considered that the victim/s in question could</p>

institute a claim under articles 104 and 105 of this law for compensation pursuant to a finding in their favour by ECHR. According to the State party, in this regard the decisions of the Human Rights Committee are analogous to that of ECHR, and the only question to be considered by the courts with respect to such a claim would be the amount of compensation to be paid.

The State party also submitted that the Views would be published on the website of the Legal State Council and transmitted to the President, the Public Prosecutor of the Court of Cassation, and the Hellenic Police.

On 24 August 2009, the State party clarified that the delay in the publication of the Views was due to technical problems, as well as the updating of the website of the Legal Council of State. However, the Views were translated and disseminated to every competent authority of the State party before 2009. As to the suggested remedy by the State party to file a suit for civil damages, the State party notes that the Views did not hold that the author had been ill-treated but that there were deficiencies in the procedure of the ongoing inquiry. Thus, the civil liability of the State can only be founded on the judgement of a court, the latter of which will also consider the issue of the limitation period of the author's claim. Any time limit for a claim against the State only starts running from the time it can be pursued. The State party argues that no one can foresee the outcome of a domestic remedy or question its efficiency without giving the domestic courts the chance to consider a claim for compensation after the adoption of the Views.

Author's comments

On 30 March 2009, the authors submitted that despite what was promised by the State party, the Views have not yet been published. In the author's view, the State party has in effect rejected the Committee's Views and refers to the response on 22 September 2008 by the Minister of Justice to a question on the follow-up to this case in which she refuted the Committee's decision. He informed the Committee that there is no indication that any domestic investigation will be re-opened to ensure punishment of the police officers involved. In this context, he attached information sent from the State party to the Committee of Ministers of the Council of Europe concerning the execution

of judgements of ECHR, in which it refers to the State party's intention to have the competent prosecutor re-examine the files of certain cases. In the author's view, the same procedure should

be applied in his case.

As to the State party's claim that the author can seek compensation by filing a lawsuit, the author submitted that the limitation period for such claims is five years and thus expired on 31 December 2006; the courts are extremely slow at considering these type of cases, for which ECHR has found many cases against the State party; and in addition this is not the most appropriate procedure, as this administrative court is normally seized of cases which first demand a finding of liability of the State and then as to quantum of compensation. In the current case, it is merely a question of the amount of compensation to be awarded which the Legal Council of State has the authority to approve. As the State party has acknowledged that the Views are equivalent to the judgements of ECHR and constitute *res judicata* leaving only the question of the amount of compensation to be decided, the author submitted that the amounts awarded in similar Greek cases by ECHR can serve as a fair basis for his compensation through a similar decision of the Legal Council of State and the Minister of Economy and Finance.

Committee's Decision

The follow-up dialogue is ongoing.

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