

HUNGARY

Follow-up - Jurisprudence Action by Treaty Bodies

CEDAW, A/64/38 (2009)

Annex XII Report of the Committee under the Optional Protocol on follow-up to views of the Committee on individual communications

1. Under paragraphs 4 and 5 of article 7 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 54/4, annex), States parties are obliged to give due consideration to the views and recommendations of the Committee, if any, and to submit follow-up information within six months. Further information may also be sought from the State party, including in its subsequent reports. Rule 73 of the Committee's rules of procedure relates to the procedure for follow-up on its views, in particular the designation and functions of the rapporteur or working group on follow-up. Rule 74^a states that information on follow-up, including the decisions of the Committee on follow-up, shall not be confidential unless otherwise decided by the Committee.

2. During its eighth session, held from 2 to 4 August 2006, prior to the thirty-sixth session of the Committee, the Working Group on Communications under the Optional Protocol discussed the first ad hoc mechanism established by the Committee in the area of follow-up to views, namely the designation of two rapporteurs on follow-up to the Committee's views on *A.T. v. Hungary* (communication No. 2/2003). The Working Group recommended that the Committee (a) refrain from setting up a permanent follow-up mechanism for the time being and instead, in conformity with rule 73 of its rules of procedure, continue to undertake follow-up on an ad hoc basis; (b) entrust the Working Group with follow-up activities for the time being; (c) continue to appoint two rapporteurs on follow-up to views, preferably the case rapporteur, when feasible, and a member of the Working Group; and (d) once it had deemed that satisfactory follow-up information had been received from the State party concerned, and in accordance with article 7, paragraph 5, of the Optional Protocol, invite that State party to submit further information about any measures taken in its subsequent reports under article 18 of the Convention, and relieve the follow-up rapporteurs of their duties and reflect such action in its annual report.

3. During its ninth session, held from 5 to 7 February 2007, prior to the thirty-seventh session of the Committee, the Working Group recommended that the Committee appoint Anamah Tan and Pramila Patten as rapporteurs on follow-up to the views of the Committee on *A.S. v. Hungary* (communication No. 4/2004). During its tenth session, held from 18 to 20 July 2007, the Follow-up Rapporteurs briefed the Working Group on the latest submission of the State party submitted in response to the Committee's request for further information. During the eleventh session, held from 9 to 11 January 2008, the Follow-up Rapporteurs briefed the Committee on the follow-up to the Committee's views on communication No. 4/2004, and requested the Secretariat to facilitate a meeting between them and a representative of the Permanent Mission of Hungary to the United Nations (Geneva).

4. During its twelfth session, held from 21 to 23 July 2008, as part of the harmonization

process and for the purposes of ensuring consistency with other treaty bodies, which all now implement follow-up procedures and issue follow-up reports, the Working Group recommended to the Committee that it adopt follow-up reports on views at each session. Such an approach was considered even more relevant for the Committee in the light of the fact that it is the first committee to have, as mentioned above, codified States parties' obligations in the treaty itself (rather than simply in the rules of procedure) to give due consideration to the Committee's views and provide information thereon. The publication of these reports in the annual report, which would include summaries of follow-up responses, would highlight the importance of this part of the Committee's work and allow other stakeholders access to information on follow-up. The Working Group recalled that, as mentioned above, under its rules of procedure information on follow-up shall not be confidential unless otherwise decided by the Committee. This is also the approach taken by other treaty bodies.

5. The Working Group recommended that a follow-up report containing information received from the States parties and/or authors since the previous session should be prepared under the direction of the rapporteur(s) on follow-up or the Working Group for each session of the Committee. The three interim follow-up reports would then be compiled and published in the Committee's annual report. The reports should adopt a format similar to that adopted by the other treaty bodies, providing, inter alia, a summary of the information provided by the State party, any information provided by the author and a "decision" of the Committee. In situations where the Committee does not make a final decision on the nature of a State party's response, it should state that "the dialogue is ongoing". Where a satisfactory response has been received, the case should be closed, as the Committee has already done in the case of *A.T. v. Hungary* (communication No. 2/2003). The Committee agreed to the Working Group's recommendations and adopted, at its forty-second session, a follow-up report submitted to it by the Working Group and, at its forty-third session, an oral follow-up report.

6. The contents of those two reports are set out below and consist of a summary of all information received by the Committee on follow-up to its views from the authors and States parties up to the end of the forty-third session. Each subsequent annual report will contain a section compiling information from the follow-up reports.

a/ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38 (A/56/38)*, annex I.

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State party	Hungary
Case	A.S., 4/2004
Views adopted on	14 August 2006
	Failure to provide information and advice on family

Issues and violations found	planning, to ensure that full informed consent was received for sterilization and permanent deprivation of the reproductive cycle: articles 10 (h), 12 and 16, paragraph 1 (e), of the Convention
Remedy recommended	<p>(a) Provide appropriate compensation to A.S. commensurate with the gravity of the violations of her rights;</p> <p>(b) Take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19, 21 and 24 in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics;</p> <p>(c) Review domestic legislation on the principle of informed consent in cases of sterilization and ensure that it is in conformity with international human rights and medical standards, including the Convention of the Council of Europe on Human Rights and Biomedicine ("the Oviedo Convention") and World Health Organization guidelines. In that connection, consider amending the provision in the Public Health Act whereby a physician is allowed to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances;</p> <p>(d) Monitor public and private health centres, including hospitals and clinics, that perform sterilization procedures so as to ensure that fully informed consent is given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.</p>
Due date for State party response	22 February 2007
Date of reply	12 April and 17 July 2007
State party response	On 12 April 2007, the State party informed the Committee that, on 22 September 2006, an interdepartmental working group had been set up by the Ministry of Labour and Social Affairs in collaboration with the Ministry of Foreign Affairs and Ministry of Health to consider how to implement the Committee's views.

On the issue of compensation, the Ministry of Labour and Social Affairs requested the Public Foundation for the Rights of Patients Welfare Recipients and Children, a body established by the Government, to advise on the amount of compensation to be given and to meet the requirements as set out in the Committee's recommendation.

The Ministry of Labour and Social Affairs and the Ministry of Health would organize a joint seminar on drafting a methodology circular. A package of informational documents, including on the Committee and its general recommendations, would be delivered to the gynaecological wards in all county hospitals. As to the request to amend its legislation, the State party argued that its domestic statutes were in conformity with its international commitments and that no amendment was required.

On the recommendation to monitor health centres, the State party submitted that inspection of sterilization procedures would henceforth be arranged and included in the annual workplan; the Health Department and Health Authority would elaborate and issue a common guideline; the National Professional Oversight Methodological Centre would also integrate in its 2007 workplan for the professional monitoring of health-care institutions the inspection of occurrences relating to discrimination against women; and the Health Department would elaborate a recommendation emphasizing women's human rights and target future employees of health-care institutions.

On 17 July 2007, the State party responded to the Committee's note verbale of 6 June 2007 (see below), providing detailed responses to the Committee's questions. It submitted that the issue of compensation fell outside the scope of the work of the Public Foundation for the Rights of Patients, Welfare Recipients and Children, as the case had already gone through the court system. It also stated, *inter alia* that the national seminar, which was to be held in October-November 2007, would be the basis for the drafting of the methodological letter and a recommendation to physicians on the human rights of women; the information packages had been distributed to all county hospitals; health documentation, including that relating to sterilizations, would be kept for at least 30 years; and medical education included courses connected with the health of women. It also provided

detailed information on the role of national medical supervisors and the operation of institutions representing patients' rights. Finally, the State party reiterated that there was no need to amend its legislation arguing, inter alia, that the general provisions on information were also applicable for sterilizations performed for health reasons and that, therefore, special information was not necessary. As to the discretionary powers of physicians, the State party argued that the conditions must be concurrent, i.e., that there would be a direct threat to the life or physical soundness of the mother or a high probability of a serious deficiency in the child to be born and that no other method of contraception was possible or recommended. For the State party, the discretionary powers were thus very limited.

Author's response

On 31 July 2007, the author provided a detailed commentary on the State party's submission, maintaining that the measures outlined by the State party were not sufficient for the implementation of the Committee's views. The author argued, inter alia, that the compensation provided should be commensurate with the violation suffered and suggested a figure of 3 million Hungarian forints (approximately 12,000 euros); the measures taken by the State party to ensure that the relevant provisions of the Convention and the Committee's views were known and adhered to by all relevant personnel were vague and inadequate and that they had not reached many important stakeholders; the Ethical Code should be amended; the text of the Convention and recommendations of the Committee were not easily accessible and should be distributed more widely; medical ethics and reproductive rights should have a higher priority in the medical curriculum; existing mechanisms for redress should be strengthened; standard rules on counselling should be laid down; there should be appropriate sanctions in cases of forced sterilization; and the Public Health Act should be amended in line with the Committee's recommendation on informed consent. The author provided suggestions for several amendments to the Public Health Act, including information on the permanent nature of the operation. She denied that sterilization ever has a "life-saving" function, as argued by the State party, and was concerned that the special information procedure and waiting period were not required when the sterilization had a "medical indication" based on the opinion of the doctor. The State party's view that it was obvious that it was not necessary to inform the applicant on other alternatives of contraception, as the medical indication

presupposed that the patient could not use other methods of contraception for health reasons, disregarded the contraceptive options of the male partner. She recommended that the compulsory waiting period for sterilization for family planning reasons should be reduced; the chance of withdrawing the request for sterilization at any time should once again be part of national law; and the concept of medical indications for sterilization should be reconsidered, as such a justification had often been abused and thus removed from the legal provisions of many countries. It was never appropriate for a doctor to make this decision for another person. She also requested a public apology from the State party.

Further action taken or required

On 5 June 2007, the Rapporteurs met with a representative of the State party at United Nations Headquarters.

Following that meeting, the Rapporteurs sent a note verbale, dated 6 June 2007, on behalf of the Committee to the State party requesting further information, including whether advice had been given on the amount of compensation to be given to the author and whether she had received it; the proposed date for the seminar; the timetable for the drafting of the methodology circular; and the development of the recommendation to introduce a component on women's health issues into medical training; the timeline for the issuance of the common protocol by the Health Department and the Health Authority as well as for the elaboration of the recommendation on women's human rights; and whether the package of documents would be distributed to public and private institutions, including hospitals and clinics.

The Committee reiterated its recommendation that consideration be given to amending paragraph 187 (a) of the Public Health Act, whereby, according to the Committee, a physician is allowed to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances; and recommended that records of all sterilization procedures conducted in both public and private health institutions be kept on a regular basis. It commended the State party on the efforts made to better monitor sterilization procedures.

On 25 January 2008, the Rapporteurs met with a representative of the State party at the United Nations Office at Geneva, during which the Rapporteurs were informed that the Ministry of Labour and Social Affairs and the Ministry of Health were actively consulting on the provision of compensation for the author of the communication.

Following that meeting, a note verbale, dated 31 January 2008, was sent to the State party requesting it to ensure that the compensation be commensurate with the gravity of the violations of the author's rights. On 16 June, the Secretariat contacted the Permanent Representative of Hungary to the United Nations (Geneva) with a view to following up on the note verbale. The Permanent Representative stated that she would contact her capital to see if any updated information could be provided to the Committee before its session in July.

On 15 October 2008, the Rapporteurs met again with the State party representative, during the forty-second session of the Committee. The representative provided the Rapporteurs with oral information on the follow-up to this case, in particular on further amendments to legislation arising from the Committee's decision, as well as information on the development of a legal framework to enable the State party inter alia to provide compensation to complainants following violations of their rights under the Covenant. He also informed the Rapporteurs about the provision of psychiatric support for the author.

During that meeting, the Rapporteurs indicated that the State party had already paid compensation following judgements of the European Court of Human Rights apparently without the necessity of a legal framework; the State party representative requested copies of such decisions.

Those decisions were subsequently forwarded to the Permanent Mission with a request for a written update on the follow-up to this case.

Committee's decision

The Committee considers the dialogue ongoing.

State party	Hungary
Case	A.T., 2/2003
Views adopted on	26 January 2005
Issues and violations found	Domestic violence: article 2 (a), (b) and (e) and article 5 (a), in conjunction with article 16 of the Convention

Due date for State party response	3 August 2005
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Date of reply	5 August 2005
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State party response	<p>The State party submitted that the question of the ownership of the dwelling in which the author resided and owned jointly with F.L. would be settled by the court and that the review of such a court decision could not be undertaken by any other branch of the State. The author was offered a public rented flat, which she refused, in the State party's view, for unacceptable reasons, including the fact that it was not suitable for her disabled son. According to the State party, the author's current residence, which was on the third floor, was not fully accessible to her son either. It submitted that the author was in receipt of all of the services and benefits she was entitled to in view of her income and financial position. As to compensation, this was an issue of private law to be dealt with by the court, i.e. whether the author's rights had been breached by F.L. The State party informed the Committee that restraining orders were being introduced into its national law and that the bill should enter into force on 1 January 2006. Since January 2004, crisis service centres had been set up to provide assistance to women victims of violence who had suffered or were threatened with domestic family violence. In December 2004, a 24-hour crisis telephone service was set up, as well as a child protection system, accommodation for victims of violation without children and a secret closed shelter.</p>
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On 10 July 2006, the State party responded to the Committee's note verbale of 6 June 2006. It reiterated the information previously provided and informed the Committee of its understanding that the author's housing problems had

been solved. Her flat had been sold and the sum received divided between herself and L.F. She currently lived in a rented flat with her children and L.F. was obliged to pay maintenance. After entry into force of Act LXXX of 2003, the author had the right to free legal aid although the State party was unaware of whether she had applied for it. The State party also referred to the adoption of new legislation, including the Equal Treatment Act CXXV of 2003, adopted on 22 December 2003, which prohibits discrimination based on sex, marital status and pregnancy; Act CXXXII of 2004, which amended the Criminal Procedures Act XIX of 1998 and introduced the urgency procedure that also concerns the subject of domestic violence; Act XCI of 2005 amending Act IV of 1978 on the Criminal Code, which introduced the restraining order as a rule of conduct under the supervision of the probation officer; an amendment to Act XIX of 1998 on criminal procedure, adopted on 13 February 2006, which includes the restraining order as a new coercive measure; and Act CXXXVI of 2004, which amended Act XXXI of 1997, on the protection of children by which the prohibition of child abuse has been incorporated into the Hungarian legal system. The State party stated that as the amendment to the Criminal Procedure Act concerning restraining orders had only entered into force on 1 July 2006, it had no available data on the application of the legislation at that stage. The State party also provided further information on the measures relating to shelters, the training of professionals and the implementation of the national strategy on prevention and effective treatment of domestic violence.

Author's response

On 9 January 2006, the author commented on the State party's submission, stating that she had refused public housing since, because it was only being offered as a temporary placement until the ownership of her own flat was resolved, there would have been no possibility of returning to her own flat if she had left and the public flat was not accessible for her disabled son, unlike her current flat which had a ramp and a lift. The author claimed that this had been agreed at the meeting with the Ministry; that, furthermore, she had not been provided with any legal aid; that, other than a free ride once a week to his institution, her son's situation had not been resolved; and that she had not been paid any compensation. She also claimed that the restraining order was limited, and not linked with domestic violence, and that there was no legislation defining domestic violence and stalking. The existing services for battered women were limited and

the establishment of one crisis centre and a Government-operated hotline service was inadequate for 10 million inhabitants. The State party did not consider domestic violence as a gender-based problem, and had limited collaboration with expert non-governmental organizations in the field.

Further action taken or required

On 31 May 2006, the Rapporteurs met with a representative of the State party at United Nations Headquarters.

Following the meeting, the Rapporteurs sent a note verbale, dated 6 June 2006, on behalf of the Committee to the State party requesting further information, including information on the measures that had been put in place to guarantee the safety of the author and her children; whether the author had been or would be compensated for the violations of her rights; whether restraining orders had been issued under Act XVI of 2005 vis-à-vis convicted perpetrators of domestic violence against women; and the specific circumstances in which such restraining and protection orders could be issued against non-convicted perpetrators of domestic violence against women and whether such orders had even been issued.

Committee's decision

At its thirty-sixth session, the Committee decided to bring the consideration of the follow-up to its views on this case to a close and that any further information on follow-up to the views on this communication would be requested under the reporting procedure of the Convention.

State party

Hungary

Case

A.T., 2/2003

Views adopted on

26 January 2005

Issues and violations found

Domestic violence: article 2 (a), (b) and (e) and article 5 (a), in conjunction with article 16 of the Convention

Due date for State party response

3 August 2005

Date of reply

5 August 2005

State party response

The State party submitted that the question of the ownership of the dwelling in which the author resided and owned jointly with F.L. would be settled by the court and that the review of such a court decision could not be undertaken by any other branch of the State. The author was offered a public rented flat, which she refused, in the State party's view, for unacceptable reasons, including the fact that it was not suitable for her disabled son. According to the State party, the author's current residence, which was on the third floor, was not fully accessible to her son either. It submitted that the author was in receipt of all of the services and benefits she was entitled to in view of her income and financial position. As to compensation, this was an issue of private law to be dealt with by the court, i.e. whether the author's rights had been breached by F.L. The State party informed the Committee that restraining orders were being introduced into its national law and that the bill should enter into force on 1 January 2006. Since January 2004, crisis service centres had been set up to provide assistance to women victims of violence who had suffered or were threatened with domestic family violence. In December 2004, a 24-hour crisis telephone service was set up, as well as a child protection system, accommodation for victims of violation without children and a secret closed shelter.

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the probation officer; an amendment to Act XIX of 1998 on criminal procedure, adopted on 13 February 2006, which includes the restraining order as a new coercive measure; and Act CXXXVI of 2004, which amended Act XXXI of 1997, on the protection of children by which the prohibition of child abuse has been incorporated into the Hungarian legal system. The State party stated that as the amendment to the Criminal Procedure Act concerning restraining orders had only entered into force on 1 July 2006, it had no available data on the application of the legislation at that stage. The State party also provided further information on the measures relating to shelters, the training of professionals and the implementation of the national strategy on prevention and effective treatment of domestic violence.

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Further action taken or required

On 31 May 2006, the Rapporteurs met with a representative of the State party at United Nations Headquarters.

Following the meeting, the Rapporteurs sent a note verbale, dated 6 June 2006, on behalf of the Committee to the State party requesting further information, including

information on the measures that had been put in place to guarantee the safety of the author and her children; whether the author had been or would be compensated for the violations of her rights; whether restraining orders had been issued under Act XVI of 2005 vis-à-vis convicted perpetrators of domestic violence against women; and the specific circumstances in which such restraining and protection orders could be issued against non-convicted perpetrators of domestic violence against women and whether such orders had even been issued.

Committee's decision

At its thirty-sixth session, the Committee decided to bring the consideration of the follow-up to its views on this case to a close and that any further information on follow-up to the views on this communication would be requested under the reporting procedure of the Convention.

CEDAW, A/65/38 part 1 (2010)

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Annex II

Report of the Committee under the Optional Protocol on follow-up to views of the Committee on individual communications

1. Under paragraphs 4 and 5 of article 7 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (see General Assembly resolution 54/4, annex), States parties are obliged to give due consideration to the views and recommendations of the Committee, if any, and to submit follow-up information within six months. Further information may also be sought from the State party, including in its subsequent reports. Rule 73 of the Committee's rules of procedure¹ relates to the procedure for follow-up on its views, in particular the designation and functions of the rapporteur or working group on follow-up. Rule 74^a states that information on follow-up, including the decisions of the Committee on follow-up, shall not be confidential unless otherwise decided by the Committee.

2. During its eighth session, held from 2 to 4 August 2006, prior to the thirty-sixth session of the Committee, the Working Group on Communications under the Optional Protocol discussed the first ad hoc mechanism established by the Committee in the area of follow-up to views, namely the designation of two rapporteurs on follow-up to the Committee's views on *A. T. v. Hungary* (communication No. 2/2003). The Working Group recommended that the Committee: (a) refrain from setting up a permanent follow-up mechanism for the time being and instead, in conformity with rule 73 of its rules of procedure, continue to undertake follow-up on an ad hoc basis; (b) entrust the Working Group with follow-up activities for the time being; (c) continue to appoint two rapporteurs on follow-up to views, preferably the Case Rapporteur, when feasible, and a member of the Working Group; and (d) once it has deemed that satisfactory follow-up information has been received from the State party concerned, and in accordance with article 7, paragraph 5, of the Optional Protocol, invite that State party to submit further information about any measures taken in its subsequent reports under article 18 of the Convention, and relieve the follow-up rapporteurs of their duties and reflect such action in its annual report.

3. During its ninth session, held from 5 to 7 February 2007, prior to the thirty-seventh session of the Committee, the Working Group recommended that the Committee appoint Anamah Tan and Pramila Patten as rapporteurs on follow-up to the views of the Committee on *A. S. v. Hungary* (communication No. 4/2004). During its tenth session, held from 18 to 20 July 2007, Ms. Tan and Ms. Patten briefed the Working Group on the latest submission of the State party submitted in response to the Committee's request for further information. During the eleventh session, held from 9 to 11 January 2008, the Follow-up Rapporteurs briefed the Committee on the follow-up to the Committee's views on communication No. 4/2004, and requested the secretariat to facilitate a meeting between them and a representative of the Permanent Mission of Hungary to the United Nations Office at Geneva.

4. During its twelfth session (21 to 23 July 2008), as part of the harmonization process, and for

the purposes of ensuring consistency with other treaty bodies, which all now implement follow-up procedures and issue follow-up reports, the Working Group recommended to the Committee that it adopt follow-up reports on views at each session. Such an approach was considered even more relevant for the Committee on the Elimination of Discrimination against Women, in the light of the fact that it is the first committee to have, as mentioned above, codified States parties' obligations in the treaty itself (rather than simply in the rules of procedure) to give due consideration to the Committee's views and provide information thereon. The publication of these reports in the annual report, which would include summaries of follow-up responses, would highlight the importance of this part of the Committee's work and allow other stakeholders access to information on follow-up. The Working Group recalled that, as mentioned above, under its rules of procedure information on follow-up shall not be confidential unless otherwise decided by the Committee. This is also the approach taken by other treaty bodies.

5. The Working Group recommended that a follow-up report containing information received from the States parties and/or authors since the previous session should be prepared under the direction of the rapporteur(s) on follow-up or the Working Group for each session of the Committee. The three interim follow-up reports would then be compiled and published in the Committee's annual report. The reports should adopt a format similar to that adopted by the other treaty bodies, providing, inter alia, a summary of the information provided by the State party, any information provided by the author and a "decision" of the Committee. In situations where the Committee does not make a final decision on the nature of a State party's response, it should state that "the dialogue is ongoing". Where a satisfactory response has been received, the case should be closed, as the Committee has already done in the case of *A. T. v. Hungary* (communication No. 2/2003). The Committee agreed to the Working Group's recommendations and adopted, at its forty-second session, a follow-up report submitted to it by the Working Group and, at its forty-third session, an oral follow-up report.

6. The contents of both reports from the forty-fourth and forty-fifth sessions are set out below and consist of a summary of all information received by the Committee on the Elimination of Discrimination against Women on follow-up to the Committee's views from the authors and States parties up until the end of the forty-fifth session. Each subsequent annual report will contain a section compiling information from the follow-up reports.

¹ Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 38 (A/56/38), annex I.

State party	Hungary
Case	A.S., 4/2004
Views adopted on	38942
Issues and violations found	Failure to provide information and advice on family planning, to ensure that full informed consent was received for sterilization and permanent deprivation of the reproductive cycle: articles 10 (h), 12

and 16, paragraph 1 (e), of the Convention

**Remedy
recommended**

(a) Provide appropriate compensation to A. S. commensurate with the gravity of the violations of her rights;

(b) Take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19, 21 and 24 in relation to women's reproductive health and rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics;

(c) Review domestic legislation on the principle of informed consent in cases of sterilization and ensure that it is in conformity with international human rights and medical standards, including the Convention of the Council of Europe on Human Rights and Biomedicine ("the Oviedo Convention") and World Health Organization guidelines. In that connection, consider amending the provision in the Public Health Act whereby a physician is allowed to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances;

(d) Monitor public and private health centres, including hospitals and clinics, that perform sterilization procedures so as to ensure that fully informed consent is given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.

**Due date for State
party response**

39134

**Date of State party
response**

11 April and 17 July 2007

State party response

On 12 April 2007, the State party informed the Committee that, on 22 September 2006, an interdepartmental working group had been set up by the Ministry of Labour and Social Affairs in collaboration with the Ministry of Foreign Affairs and Ministry of Health to consider how to implement the Committee's views.

On the issue of compensation, the Ministry of Labour and Social Affairs requested the Public Foundation for the Rights of Patients

Welfare Recipients and Children, a body established by the Government, to advise on the amount of compensation to be given

and to meet the requirements as set out in the Committee's recommendation.

The Ministry of Labour and Social Affairs and the Ministry of Health would organize a joint seminar on drafting a methodology circular. A package of informational documents, including on the Committee and its general recommendations, would be delivered to the gynaecological wards in all county hospitals. As to the request to amend its legislation, the State party argued that its domestic statutes were in conformity with its international commitments and that no amendment was required.

On the recommendation to monitor health centres, the State party submitted that inspection of sterilization procedures would henceforth be arranged and included in the annual workplan; the Health Department and Health Authority would elaborate and issue a common guideline; the National Professional Oversight Methodological Centre would also integrate in its 2007 workplan for the professional monitoring of health-care institutions the inspection of occurrences relating to discrimination against women; and the Health Department would elaborate a recommendation emphasizing women's human rights and target future employees of health-care institutions.

On 17 July 2007, the State party responded to the Committee's note verbale of 6 June 2007 (see below), providing detailed responses to the Committee's questions. It submitted that the issue of compensation fell outside the scope of the work of the Public Foundation for the Rights of Patients, Welfare Recipients and Children, as the case had already gone through the court system. It also stated, *inter alia*, that: the national seminar, which was to be held in October-November 2007, would be the basis for the drafting of the methodological letter and a recommendation to physicians on the human rights of women; the information packages had been distributed to all county hospitals; health documentation, including that relating to sterilizations, would be kept for at least 30 years; and medical education included courses connected with the health of women. It also provided detailed information on the role of national medical supervisors and the operation of institutions representing patients' rights. Finally, the State party reiterated that there was no need to amend its legislation arguing, *inter alia*, that the general

provisions on information were also applicable for sterilizations performed for health reasons and that, therefore, special information was not necessary. As to the discretionary powers of physicians, the State party argued that the conditions must be concurrent, *i.e.*, that

there would be a direct threat to the life or physical soundness of the mother or a high probability of any serious deficiency of the child to be born **and** that no other method of contraception was possible or recommended. For the State party, the discretionary powers were thus very limited.

On 20 July 2009, the State party informed the Committee that it had paid the sum of 5.4 million Hungarian forints (approximately \$28,000) to the author by way of compensation.

Author's response

On 31 July 2007, the author provided a detailed commentary on the State party's submission, maintaining that the measures outlined by the State party were not sufficient for the implementation of the Committee's views. The author argued, *inter alia*, that the compensation provided should be commensurate with the violation suffered and suggested a figure of 3 million Hungarian forints (approximately 12,000 euros); the measures taken by the State party to ensure that the relevant provisions of the Convention and the Committee's views were known and adhered to by all relevant personnel were vague and inadequate and that they had not reached many important stakeholders; the Ethical Code should be amended; the text of the Convention and recommendations of the Committee were not easily accessible and should be distributed more widely; medical ethics and reproductive rights should have a higher priority in the medical curriculum; existing mechanisms for redress should be strengthened; standard rules on counselling should be laid down; there should be appropriate sanctions in cases of forced sterilization; and the Public Health Act should be amended in line with the Committee's recommendation on informed consent. The author provided suggestions for several amendments to the Public Health Act, including information on the permanent nature of the operation. She denied that sterilization ever has a "life-saving" function, as argued by the State party, and was concerned that the special information procedure and waiting period were not required when the sterilization had a "medical indication" based on the opinion of the doctor. The State party's view that it was obvious that it was not necessary to inform the applicant on other alternatives of contraception, as the medical indication presupposed that the patient could not use other methods of contraception for health reasons,

disregarded the contraceptive options of the male partner. She recommended that the compulsory waiting period for sterilization for family planning reasons should be reduced; the chance of withdrawing the request for sterilization at any time should once again be part of national law; and the concept of medical indications

for sterilization should be reconsidered, as such a justification had often been abused and thus removed from the legal provisions of many countries. It was never appropriate for a doctor to make this decision for another person. She also requested a public apology from the State party.

On 20 November 2009, the author confirmed and welcomed the fact that the State party had provided compensation. She also welcomed the fact that important steps had been taken to ensure the compatibility of Hungarian laws with international law. However, according to the author, their recommendations have not been fully implemented to date and failure to do so posed a continuing threat to the well-being of women in the State party.

She recommended that article 187 (7) of the Hungarian Public Health Act should be amended. Currently, it suggests that sterilization can be a life-saving intervention. However, the author argues that this is never the case and that risk of pregnancy can always be averted by contraception. It should never be for a doctor to make this decision for his/her patient.

She also recommended that as part of informed consent a patient should be advised about the permanent consequences of sterilization. In addition, the yearly workplan of the National Centre for Healthcare Audit and Inspection should include monitoring sterilization in its yearly workplan, as currently inspections were only based on specific complaints.

This submission was sent to the State party with a request for comments by 29 June 2009.

**Further Action
Taken or Required**

On 5 June 2007, the Rapporteurs met with a representative of the State party at United Nations Headquarters.

Following that meeting, the Rapporteurs sent a note verbale, dated 6 June 2007, on behalf of the Committee to the State party requesting further information, including whether advice had

been given on the amount of compensation to be given to the author and whether she had received it; the proposed date for the seminar; the timetable for the drafting of the methodology circular; and the development of the recommendation to introduce a component on women's health issues into medical training; the timeline for the issuance of the common protocol by the Health Department and the Health Authority as well as for

the elaboration of the recommendation on women's human rights; and whether the package of documents would be distributed to public and private institutions, including hospitals and clinics.

The Committee reiterated its recommendation that consideration be given to amending paragraph 187 (a) of the Public Health Act, whereby, according to the Committee, a physician is allowed to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances; and recommended that records of all sterilization procedures conducted in both public and private health institutions be kept on a regular basis. It commended the State party on the efforts made to better monitor sterilization procedures.

On 25 January 2008, the Rapporteurs met with a representative of the State party at the United Nations Office at Geneva, during which the Rapporteurs were informed that the Ministry of Labour and Social Affairs and the Ministry of Health were actively consulting on the provision of compensation for the author of the communication.

Following that meeting, a note verbale, dated 31 January 2008, was sent to the State party requesting it to ensure that the compensation be commensurate with the gravity of the violations of the author's rights. On 16 June, the Secretariat contacted the Permanent Representative of Hungary to the United Nations (Geneva) with a view to following up on the note verbale. The Permanent Representative stated that she would contact her capital to see if any updated information could be provided to the Committee before its session in July.

On 15 October 2008, the Rapporteurs met again with the State party representative during the forty-second session of the Committee. The representative provided the Rapporteurs with oral information on the follow-up to this case, in particular on further amendments to legislation arising from the Committee's decision, as well as information on the development of a legal framework to enable the State party inter alia to provide compensation to complainants following violations of their rights under the Covenant. He also informed the Rapporteurs about the provision of psychiatric support for the author.

During that meeting, the Rapporteurs indicated that the State

party had already paid compensation following judgements of the European Court of Human Rights, apparently without the necessity of a legal framework; the State party representative requested copies of such decisions.

Those decisions were subsequently forwarded to the Permanent Mission with a request for a written update on the follow-up to this case.

**Committee's
Decision**

The Committee considers the dialogue ongoing.

State party

Hungary

Case

A.T., 2/2003

Views adopted on

38377

**Issues and violations
found**

Domestic violence: article 2 (a), (b) and (e) and article 5 (a), in conjunction with article 16 of the Convention

**Remedy
recommended**

Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family; ensure that A. T. is given a safe home in which to live with her children, including appropriate child support and legal assistance, and that she receives reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights; respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence; assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women; take all necessary measures

to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated; take all necessary measures to provide regular training on the provisions of the Convention and the Optional Protocol thereto for judges, lawyers and law enforcement officials; implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women that would provide for protection and exclusion orders as well as support

services, including shelters; investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards; provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, to ensure them available, effective and sufficient remedies and rehabilitation; and provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.

Due date for State party response 3 August 2005

Date of State party response 5 August 2005

State party response The State party submitted that the question of the ownership of the dwelling in which the author resided and owned jointly with F. L. would be settled by the court and that the review of such a court decision could not be undertaken by any other branch of the State. The author was offered a public rented flat, which she refused, in the State party's view, for unacceptable reasons, including the fact that it was not suitable for her disabled son. According to the State party, the author's current residence, which was on the third floor, is not fully accessible to her son either. It submitted that the author was in receipt of all of the services and benefits she was entitled to in view of her income and financial position. As to compensation, this was an issue of private law to be dealt with by the court, i.e., whether the author's rights had been breached by F. L. The State party informed the Committee that restraining orders were being introduced into its national law and that the bill should enter into force on 1 January 2006. Since January 2004, crisis service centres had been set up to provide assistance to women victims of violence who had suffered or were threatened with domestic family violence. In December 2004, a 24-hour crisis telephone service was set up, as well as a child protection system, accommodation for victims of violation without children and a secret closed shelter.

On 10 July 2006, the State party responded to the Committee's note verbale of 6 June 2006. It reiterated the information previously provided and informed the Committee of its understanding that the author's housing problems had been solved. Her flat had been sold and the sum received divided between herself and L. F. She currently lived in a rented flat with her children and L. F. was obliged to pay maintenance. After entry into force of Act LXXX of 2003, the author had the right to free legal aid although the State party was unaware

of whether she had applied for it. The State party also referred to the adoption of new legislation, including the Equal Treatment Act CXXV of 2003, adopted on 22 December 2003, which prohibits discrimination based on sex, marital status and pregnancy; Act CXXXII of 2004, which amended the Criminal Procedures Act XIX of 1998 and introduced the urgency procedure that also concerns the subject of domestic violence; Act XCI of 2005 amending Act IV of 1978 on the Criminal Code, which introduced the restraining order as a rule of conduct under the supervision of the probation officer; an amendment to Act XIX of 1998 on criminal procedure adopted on 13 February 2006, which includes the restraining order as a new coercive measure; and Act CXXXVI of 2004, which amended Act XXXI of 1997, on the protection of children by which the prohibition of child abuse has been incorporated into the Hungarian legal system. The State party stated that as the amendment to the Criminal Procedure Act concerning restraining orders had only entered into force on 1 July 2006, it had no available data on the application of the legislation at that stage. The State party also provided further information on the measures relating to shelters, the training of professionals and the implementation of the national strategy on prevention and effective treatment of domestic violence.

Author's response

On 9 January 2006, the author commented on the State party's submission, stating that she had refused public housing since, because it was only being offered as a temporary placement until the ownership of her own flat was resolved, there would have been no possibility of returning to her own flat if she had left and the public flat was not accessible for her disabled son, unlike her current flat which had a ramp and a lift. The author claimed that this had been agreed at the meeting with the Ministry, that, furthermore, she had not been provided with any legal aid, that, other than a free ride once a week to his institution, her son's situation had not been resolved and she had not been paid any compensation. She also claimed that the restraining order was limited, and not linked with domestic violence, and that there was no legislation defining domestic violence and stalking. The existing services for battered women were limited and the establishment of one crisis centre and a Government-operated hotline service was inadequate for 10 million inhabitants. The State party did not consider domestic violence as a gender-based problem, and had limited collaboration with expert non-governmental organizations in the field.

Further action taken or required

On 31 May 2006, the Rapporteurs met with a representative of the State party at United Nations Headquarters.

Following this meeting, the Rapporteurs sent a note verbale, dated 6 June 2006, on behalf of the Committee to the State party requesting further information, including information on the measures that have been put in place to guarantee the safety of the author and her children; whether the author had been or would be compensated for the violations of her rights; whether restraining orders had been issued under Act XVI of 2005 vis-à-vis convicted perpetrators of domestic violence against women; and the specific circumstances in which such restraining and protection orders could be issued against non-convicted perpetrators of domestic violence against women and whether such orders had ever been issued.

**Committee's
Decision**

At its thirty-sixth session, the Committee decided to bring the consideration of the follow-up to its views on this case to a close and that any further information on follow-up to the views on this communication would be requested under the reporting procedure of the Convention.