

PARAGUAY

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR, A/64/40, vol. I (2009)

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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Paraguay (1)	1407/2005, <i>Asensi</i> A/64/40				X	
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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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7. With regard to case No. 1407/2005 (*Asensi v. Paraguay*), it would be reasonable for the Committee to request the State party, which claimed that its legislation allowed the author to obtain the right to visit his children, who were living with their mother in Paraguay, to provide the author with detailed information on effective remedies available to him. Turning to case No. 1457/2006 (*Poma v. Peru*), she proposed that the Committee should ask the author whether measures taken by the State party to guarantee access to water resources even in times of shortage, including soliciting and taking into account feedback from the indigenous communities, were sufficient.

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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.

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

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Follow-up to concluding observations on State reports and to Views under the Optional Protocol

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Follow-up progress report on individual communications (CCPR/C/99/R.3)

74. **Mr. Iwasawa** introduced the progress report on individual communications on behalf of Ms. Wedgwood, Special Rapporteur for Follow-up on Views, who was absent.

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89. **Mr. Iwasawa** introduced case No. 1,407/2005 concerning Paraguay. The issue raised was protection of the family, including minor children.

90. In its response to the Committee's Views submitted in October 2009, the State party had rejected the finding of a violation of the Covenant. It submitted that it was logical for the author's daughters to remain in Paraguay with their mother. With regard to the author's access to his daughters, the State party submitted that he had not filed a complaint under Paraguayan law.

91. The author, in comments submitted in November 2009, claimed that it was untrue that his former wife had been denied a visa to enter Spain.

92. In May 2010, the State party had reiterated its contention that there was nothing to prevent the author from exhausting the legal remedies available in Paraguay. It had proposed the establishment of a regime whereby the author would have access to his daughters. It had also listed a number of suggestions, inter alia, that the State party would act as mediator between the parties. With regard to the legal proceedings against the author's former wife in Spain on the ground of removal of minors, the State party noted that an extradition request had been filed by Spain against her. The Supreme Court of Paraguay had ruled in April 2010 that the request should be dismissed on the ground that the requirement of dual criminal liability had not been met. The State party refused to comply with the author's demand for compensation since the Committee had made no mention of financial redress in its Views.

93. The State party's most recent submission had been sent to the author. As the Committee might wish to await comments from the State party, the Special Rapporteur proposed that it should consider that the dialogue was ongoing.

94. *It was so decided.*

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102. *The follow-up progress report on individual communications as a whole, as amended, was approved.*

The meeting rose at 1 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	Paraguay
Case	<i>Asensi, 1407/2005</i>
Views adopted on	27 March 2009
Issues and violations found	Protection of the family including minor children - articles 23 and 24, paragraph 1.
Remedy recommended	Effective remedy, including the facilitation of contact between the author and his daughters.
Due date for State party response	6 October 2009
Date of State party response	2 October 2009 and 21 May 2010
State party response	<p>On 2 October 2009, the State party denied that it had violated the Covenant. It submitted that the dismissal of three international mandates from Spain, requiring the children to be returned to their father, was done in accordance with Paraguayan legal provisions, which comply with international law. The conclusion has always been that the girls should remain in Paraguay with their mother. In the light of the complex situation faced by illegal immigrants in Europe, including the refusal to grant a Spanish visa to Ms. Mendoza, Paraguayan authorities consider it logical for the girls to remain in Paraguay.</p> <p>The State party submits that the girls were born in Asunción, have Paraguayan citizenship and have lived most of their lives in Paraguay. Thus, their transfer to Spain would mean uprooting them from their natural environment. Regarding the pending trial</p>

in Spain against Ms. Mendoza for fleeing the country, due process guarantees have not been granted.

Regarding the Committee's observations on access, the State party submits that Mr. Asensi has not filed a complaint under the Paraguayan jurisdiction yet, which would constitute the only legal way to establish direct contact with his daughters. Thus, it is inferred that legal remedies have not been exhausted. The author's claims on the poverty conditions in which the girls live have to be understood in the context of Paraguay's history and its place in the region. Comparing Spain and Paraguay's living standards would be an unfair exercise. Economic conditions cannot constitute obstacles to the girls remaining in the State party. The State party submitted that following Mr. Asensi's failure to comply with maintenance/alimony for his daughters, an arrest mandate has been issued against him. The girls are currently attending school. Following several assessments from local social agents, it's reported that the girls live in good conditions and have expressed their wish to remain with their mother, as several documents attached will prove.

On 21 May 2010, the State party provided new updated information to the Committee, following a note verbale from the Committee (see the follow-up progress report of the Human Rights Committee on individual communications, CCPR/C/98/3) requesting it to respond to the following, "Since the State party claims that its legislation allows the author to obtain visiting rights, the Committee requests the State party to provide detailed information on effective remedies still available to the author under such legislation."

Regarding the obligation to provide effective remedies to the author that could allow him to see his daughters, the State party reiterates that nothing stops the author from exhausting the legal avenues available in cases of this nature. However, it claims that the author's proceedings have slowed up due to his unwillingness to pursue the procedure. As a result of his inaction (more than six months) and in accordance with article 172 of the Code of Legal Procedure, the legal processes initially undertaken have now expired. The State party then summarizes the proceedings initiated by the author in Paraguay (see Committee's decision) and reiterates that the lack of rulings and decisions on the issues raised by Mr. Asensi have been due to his own negligence

throughout the proceedings. Following the sentence No. 120 by the Supreme Court confirming the decision not to grant Mr.

Asensi custody, there is no record of further legal proceedings, petitions or appeals having taken place.

The State party reiterates its suggestion of the establishment of a regime under which the author will have access to his daughters, in accordance with national legislation (Law 1680/2001, art. 95): legal arrangements will enforce the right of the child to remain in contact and see the members of his family with whom he does not live. Thus, the State party suggests that:

(a) It act as a mediator between the parties, in concordance with national legislation. Indeed, the Office of Mediation of the Judiciary Branch is available at no cost for the parties to resolve their dispute;

(b) Upon reaching an agreement, it can be confirmed by the Children's Judge. The State party notes that preliminary talks have already begun with Ms. Mendoza's lawyer, who will make this suggestion to his client;

(c) In the event one of the parties fails to show up at the mediation meetings, there is still the possibility of Mr. Asensi requesting the initiation of new proceedings, for which he could be represented by someone of his choice from the Paraguayan consulate in Madrid or Barcelona, preventing him from having to come to Paraguay himself;

(d) It also notes that he has all the legal recourses available to him, such as the visitation rights (art. 95), proceedings to suspend home custody (art. 70 to 81), among others.

The State party clarifies its position on several issues:

(a) Although it is committed to addressing the violations established by the Committee in regard to articles 23 and 24, it claims that Mr. Asensi's lawyer has a lack of will in finding a compromise that would allow the complainant to see his daughters under a legal regime;

(b) Regarding the legal proceedings against Ms. Mendoza in Spain, on the grounds of removal of minors, it notes that there is an extradition request from Spain against her. In this regard, the

Supreme Court ruled on 7 April 2010 that, "having not complied with the pre-requisite of "double incrimination" according to both Spanish and Paraguayan Law, and in accordance with the

extradition treaty, the request was denied". The most likely equivalent piece of Paraguayan legislation that would allow for the Spanish request to be considered is not acceptable because Ms. Mendoza is the mother and has custody over the girls;

(c) Regarding custody claims, the State party asserts that the decision has been made and that the complainant should understand that the Committee is not a fourth instance of appeal nor is it within its mandate to review the facts and evidences;

(d) As to the claim for compensation, the State party refuses to comply with his demands, as there was never any mention of financial reparation in the Committee's ruling.

The State party confirms its commitment to raise awareness in workshops organized by the Supreme Court to future judges on the importance of abiding by the Committee's rulings.

Author's comments

The Committee will also recall that the author refuted the information provided by the State party in its response to the Committee's Views. He claimed that it was untrue that his ex-wife was denied a visa and residence permit in Spain. Being his wife, she was entitled to live in Spain legally. However, due to her lack of interest, and even if it was a mere formality, she never completed the necessary paperwork in order to obtain such a permit.

His ex-wife had always refused to participate in any proceedings regarding the divorce and custody conducted in Spain. She also refused to comply with the decision of 27 March 2002 issued by a Paraguayan judge ordering that the children spend some time with their father. Furthermore, in 2002, the author and his ex-wife came before Judge J. Augusto Saldivar to agree on visiting arrangements. The author proposed to provide his daughters with all the necessary material support in kind and to be allowed to maintain regular contact with them. However, this proposal was rejected by his ex-wife.

As to the State party's claim that the author was summoned to appear before a Paraguayan judge as a result of the proceedings initiated by his ex-wife for not paying alimony/maintenance, he claimed that he never received any notification and that no letters in that respect were sent to his domicile in Spain, where he lives permanently.

The Paraguayan authorities have constantly refused to implement the decisions of the Spanish courts regarding custody of the children. On the question of alimony raised in the State party's response, the divorce decision does not oblige the author to pay any, in view of the fact that he obtained the custody of his daughters. Despite that, he regularly sends money and parcels to them through his ex-wife's family or the Spanish Embassy in Paraguay. Medical and school fees were paid by the Spanish Consulate, in view of the fact that they have Spanish nationality and are affiliated to the Spanish social security scheme.

Committee's Decision

The Committee considers the dialogue ongoing.

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