

## PORTUGAL

### Follow-up - Jurisprudence Action by Treaty Bodies

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

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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**

<b>State party and number of cases with violation</b>	<b>Communication number, author and location</b>	<b>Follow-up response received from State party and location</b>	<b>Satisfactory response</b>	<b>Unsatisfactory response</b>	<b>No follow-up response received</b>	<b>Follow-up dialogue ongoing</b>
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Portugal (1)	1123/2002, <i>Correia de Matos</i> A/61/40				X	X
...						

## CCPR, CCPR/C/SR.2450 (2007)

Human Rights Committee

Eighty-ninth session

Summary record of the 2450th meeting

Held at Headquarters, New York, on Thursday, 29 March 2007, at 10 a.m.

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

*Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/89/R.5)*

1. **Mr. Shearer** (Special Rapporteur for follow-up on Views) introduced his report, which compiled information received during the eighty-eighth and eighty-ninth sessions of the Committee...

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15. Turning to the case of *Correia de Matos v. Portugal* (communication No. 1123/2002), he recalled that the Committee had found a violation of article 14, paragraph 3 (d), of the Covenant because the author, a lawyer who had been suspended from the bar, had been denied the right to represent himself during legal proceedings. In its response, however, the State party concerned had refused to accept the Committee's Views on the ground that the text of article 14, paragraph 3 (d), of the Covenant seemed to indicate that everyone charged with a criminal offence had either the right to defend himself in person or through legal assistance of his own choosing. He felt that the follow-up process had reached an impasse.

16. **Ms. Chanet**, supported by **the Chairperson**, drew attention to the disrespectful tone adopted by both the State party and the author. However, the Committee should maintain its position and transmit the author's comments to the State party.

17. **Mr. Shearer** agreed with Ms. Chanet, but wondered how useful it would be to enter into further correspondence with the State party.

18. **Mr. Schmidt** (Team Leader, Petitions Unit) said that he would check whether the author's response of 23 November 2006 had already been transmitted to the State party. It was abundantly clear from the correspondence relating to the case that relations between the parties to the dispute had turned sour, and he understood that the author was now calling for payment of €1,000 per day as interest on the compensation due.

19. **The Chairperson** said that the Committee would re-contact the State party.

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## CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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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-belayed 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.

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