

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

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
...						
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

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
...						
Portugal (1)	1123/2002, <i>Correia de Matos</i> A/61/40				X	X A/62/40
...						

CCPR, A/62/40 vol. II (2007)

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/61/40).

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State party	PORTUGAL
Case	Correia de Matos, 1123/2002
Views adopted on	28 March 2006
Issues and violations found	Right to defend oneself - Article 14, 3 (d).
Remedy recommended	The Committee considers that the author is entitled to an effective remedy under article 2, paragraph 3 (a), of the Covenant. The State party should amend its laws to ensure their conformity with article 14, paragraph 3 (d), of the Covenant.
Due date for State party response	4 July 2006
Date of reply	Had replied on 12 July 2006
State party response	The State party submitted that Portuguese laws assign great importance to guaranteeing an equitable procedural system, particularly in criminal procedures. It provided a detailed description of its legislation, its history and existing procedural guarantees, referring to the relevant provisions of the Constitution and the Code of Criminal Procedure, which establish that only a lawyer who is a full member of the bar can assist those accused in criminal procedures.

The State party explained that in light of Portuguese law, as the author had been suspended from the bar and refused to appoint a lawyer to assist him, the judge in his case had no choice but to appoint one. Had he not done so, the procedure would have been declared null and void. The State party highlighted that under

Portuguese law the accused has the right throughout the whole criminal procedure and independently of the arguments made by their legal counsel, to express themselves and to be heard, which is not to be confused with the right to defend oneself.

The State party further submitted that the text of article 14, paragraph 3 (d) of the Covenant contains the word “or” which would seem to indicate that the right to defend oneself and the right to legal assistance of one’s choosing are alternative options. Additionally, the State party referred to the jurisprudence of the European Court of Human Rights on this issue.

It concluded that its legislation is already in compliance with article 14, paragraph 3 (d), that it is therefore not necessary to amend it, and that it is not necessary to extend any new rights to the author in addition to those he has already exercised or to allow him to appeal a decision that has already been appealed in the domestic courts. It would make no sense to take such action, which is unrelated to the merits of the case, to establish whether Mr. Carlos Matos had insulted a judge.

Author’s response

On 23 November 2006, the author commented that the State party in refusing to implement the Committee’s Views displays (1) its lack of respect for the ICCPR and the OP, in particular article 2, paragraph 2 of the former and (2) a lack of respect for the author’s civil rights and failure to comply with article 2, paragraph 3 of the ICCPR. He is of the view that he should be compensated by inter alia at least 500,000 euros as well as recognition that he should have the right to defend himself at any stage of a criminal procedure.

**Committee’s
Decision**

The Committee regrets the State party’s refusal to accept the Committee’s Views and considers the dialogue ongoing.

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VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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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.

State party and number of cases with violation	Communication number, author and relevant Committee report	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No response	Follow-up dialogue ongoing
...						
Portugal (1)	1123/2002, <i>Correia de Matos</i> A/61/40	X A/62/40			X	X A/62/40
...						

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.

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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.

State party and number of cases with violation	Communication number, author and relevant Committee report	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No response	Follow-up dialogue ongoing
...						
Portugal (1)	1123/2002, <i>Correia de Matos</i> A/61/40	X A/62/40			X	X A/62/40
...						