

AUSTRALIA

Follow-up - Jurisprudence Action by Treaty Bodies

CERD A/59/18 (2004)

CHAPTER VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

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461. Following the Committee's opinion on communication No. 26/2002 (*Stephen Hagan v. Australia*),¹ the Government of Australia transmitted observations on 28 January 2004, noting that the Committee, in its views, had not identified any violation by Australia of its obligations under the Convention. The Government of Australia accordingly informed the Committee that it did not propose to take measures to implement the Committee's recommendation calling for the removal of an offending term of racial content from a public sign. The Government considered that the term in question was used in circumstances in which there was no basis for concluding that it purported to promote or incite hatred or discrimination in breach of the Convention. In a letter dated 7 April 2004, the Committee responded to the Government and observed that, while it had not found a violation of the Convention in connection with communication No. 26/2002, it had decided to make use of the faculty laid down in rule 95, paragraph 3, of its rules of procedure, which provides that "the opinion of the Committee shall be forwarded...together with any suggestions and recommendations the Committee may wish to make". The Committee noted with regret that the Government of Australia had not implemented its recommendation, expressing the hope that it would reconsider its position.

¹ See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 18 (A/58/18)*, para. 575 and annex III, sect. A.

CERD, A/61/18 (2006)

Chapter VII. Follow-up to Individual Communications

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487. The table below shows a complete picture of follow-up replies from States parties received up to 18 August 2006, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

488. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many 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 an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

489. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 22 complaints and found violations of the Convention in 9 cases. In 8 cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	28 January 2004				X

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Annex V

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Cases in which the Committee found no violation of the Convention but made recommendations

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State party	Australia
Case and No.	Z.U.B.S., 6/1995
Views adopted on	26 August 1999
Issues	Discrimination on racial grounds in the terms of appointment
Recommendation	Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee suggests that the State party simplify the procedures to deal with complaints of racial discrimination, in particular those in which more than one recourse measure is available, and avoid any delay in the consideration of such complaints.
Date of examination of report(s) since adoption	Tenth, eleventh and twelfth on 1 and 2 March 2000 Thirteenth and fourteenth on 1 and 2 March 2005
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action/Committee's recommendation	No action required
State party	Australia

Case and No.	B.M.S., 8/1996
Opinion adopted on	12 March 1999
Issues	Right to work without distinction based on race, nationality, ethnic origin, etc.
Remedy recommended	Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee recommends that the State party take all necessary measures and give transparency to the procedure and curriculum established and conducted by the Australian Medical Council so that the system is in no way discriminatory towards foreign candidates, irrespective of their race or national or ethnic origin. After considering several complaints concerning Australia under article 14 of the Convention, the Committee also recommends to the State party that every effort be made to avoid any delay in the consideration of all complaints by the Human Rights and Equal Opportunity Commission.
Date of examination of report(s) since adoption	Tenth, eleventh and twelfth on 1 and 2 March 2000 Thirteenth and fourteenth on 1 and 2 March 2005
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required

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State party	Australia
Case and No.	Stephen Hagan, 26/2002
Opinion adopted on	20 March 2003
Issues	Use of offending term on grandstand fills within article 1
Remedy recommended	The Committee recommends that the State party take the

	necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of the action it takes in this respect.
Due date for State party response	None
Date of reply	28 January 2004
State party response	The State party submitted that the petitioner had had the opportunity to bring an action in relation to the display of the sign on the grandstand before the Federal Court of Australia, claiming a violation of the Racial Discrimination Act and the Human Rights and Equal Opportunity Commission Act of 1986. It noted that the Committee had not found any violation by Australia of any obligations under the Convention and in light of this fact it does not propose to take measures to secure the removal of the term in question from the sign.
Author's response	None - response from third party expressing dissatisfaction with the opinion.
Further action/Committee's recommendation	On 7 April 2004, the Committee sent a response to the State party in which it stated, inter alia, the following: "While the Committee did not find a violation of the Convention in connection with communication No. 26/2002, it decided to make use of the faculty laid down in rule 95, paragraph 3, of its rules of procedure, which provides that 'the opinion of the Committee shall be forwarded ... together with any suggestions and recommendations the Committee may wish to make'. Accordingly, the Committee felt compelled to recall the increased sensitivities appertaining today in respect of words such as the offending term which was the object of the communication, and recommended that Australia take measures to secure the removal of the offending term from the sign in question." The Committee also noted with regret that, after having given careful consideration to its views, as stated in the State party's reply, the latter does not propose to take measures to secure the removal of the term in question from the sign, as recommended by the Committee. The Committee expressed its hope that the State party would reconsider its position in the larger context of dealing with factors contributing to racial discrimination. No further action to be taken.

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CERD, A/62/18 (2007)

VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

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523. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

524. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many 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 an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

525. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 23 complaints and found violations of the Convention in 10 cases. In eight cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	28 January 2004				X
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CHAPTER VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

536. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experiences of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session,¹ to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

537. Also at its sixty-seventh session, the Committee decided to add two new paragraphs to its rules of procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Linos-Alexandre Sicilianos was appointed Rapporteur for follow-up to opinions. He presented a report to the Committee with recommendations on further action to be taken. This report, which was adopted by the Committee at its sixty-ninth session, has been updated (see annex V) and reflects all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention. During the seventy-second session Mr. Régis de Gouttes was appointed Rapporteur for follow-up to opinions.

538. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

539. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many 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 an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

540. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 25 complaints and found violations of the Convention in 10 cases. In eight cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

1/ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

2/ Ibid., annex IV, sect. II.

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Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S. 8/1996, B.M.S. 26/2002, Hagan	28 January 2004			X (never requested by the Committee) X (never requested by the Committee)	X
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CERD, A/64/18 (2009)

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Chapter VII Follow-up to Individual Communications

64. At its sixty-seventh session,¹ following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

65. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

66. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

67. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 27 complaints and found violations of the Convention in 10 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

¹ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I

² *Ibid.*, annex IV, sect. II.

Petitions in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S. 8/1996, B.M.S. 26/2002, Hagan	X 28 January 2004			X (never requested by the Committee) X (never requested by the Committee)	X
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CERD, A/65/18 (2010)

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Chapter VII Follow-up to Individual Communications

68. At its sixty-seventh session,¹ following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

69. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.² On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

70. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

71. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 28 complaints and found violations of the Convention in 11 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

¹ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

² *Ibid.*, annex IV, sect. II.

Petitions in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S. 8/1996, B.M.S. 26/2002, Hagan	X 28 January 2004			X (never requested by the Committee) X (never requested by the Committee)	X
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