

AUSTRIA

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.

State party	Austria
Case	Sahide Goekce (deceased), 5/2005
Views adopted on	6 August 2007
Issues and violations found	Right to life and physical and mental integrity: article 2 (a) and (c) through (f), and article 3 of the Convention, in

conjunction with article 1

Remedy recommended

(a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so;

(b) Vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence; ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;

(c) Ensure enhanced coordination among law enforcement and judicial officers and also ensure that all levels of the criminal justice system (police, public prosecutors and judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence;

(d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention, the Optional Protocol thereto and general recommendation No. 19 of the Committee.

Due date for State party response

20 February 2008

Date of reply

27 January 2009 (the State party had responded on 14 March 2008)

State party response

On 14 March 2008, the State party informed the Committee of the establishment of intervention centres that must be informed of any police action in cases of

domestic violence. The role of the centres is to establish contact with the victim to whom they offer support. The State party has increased the financial resources allocated to these centres from €3,368,324.97 in 2006 to €5,459,208 in 2007 and €5,630,740 in 2008. These centres, in conjunction with the University of Vienna, are conducting a study on domestic violence.

The State party submitted that, in the area of criminal justice, amendments had been made to the Code of Criminal Procedure and came into effect on 1 January 2008; victims exposed to violence had the right to free psychosocial and legal expertise throughout criminal proceedings; the obligation to interrogate victims of violence in a way that minimizes their distress had been extended to include the trial itself; instead of arresting a perpetrator pending further investigation, “more lenient means” might be employed, such as pledges and orders to refrain from contacting the victim or returning to the family home; pretrial detention might be imposed if the offender contravened the order or pledge; victims had the right to be informed of the release of the defendant from pretrial detention; the requirement that a victim had to give her authorization for criminal prosecution was eliminated as of 1 July 2006 to relieve victims of the pressure exerted by their families to withdraw their authorization for criminal prosecution; and there was a requirement that criminal proceedings be speeded up. In addition, specifically trained public prosecutors would process cases on domestic violence; the heads of all prosecutor’s offices and public prosecution directorates were informed in detail of the Committee’s views; and a working group and round-table discussions had been set up in line with the Committee’s recommendation on improving cooperation between the public prosecution authorities and non-governmental organizations. The State party reminded the Committee of various articles of the Police Act relating to barring and protection orders and the options open to the public prosecutor on how to deal with an alleged abuser prior to trial. Improvements relating to the intervention of public prosecution authorities and the courts in domestic violence cases included broadening of the decision-making basis in order to gain a more comprehensive understanding of each case of domestic violence and establishing the facts and past histories so that the public prosecutor had a complete

picture of all the known facts, including whether any other authority had reacted to the incident. With regard to further training, the particular relevance of the right to protection against violence was emphasized during the preparatory period for bar exams and further training was planned for members of the legal profession, as were seminars and workshops for training police officers, many of which were carried out with the cooperation of non-governmental organizations, and initiatives to raise awareness among boys and youths of the importance of combating violence. In addition, an attempt was being made to hire individuals with a migrant background for the police service and to create awareness among the public about the helpline for victims of violence. An unofficial German translation of the views had been published, including on the home page of the Federal Chancellery and the Ministry of Justice.

On 27 January 2009, the State party responded to the Committee's questions and the authors' arguments as follows: it informed the Committee of a federal bill on a Second Act for the Protection against Violence within the Family currently being considered by the Austrian National Council. The aim of the bill was to eliminate gaps left by the first Act (in particular with respect to injunctions) but notably to grant victims the same rights in civil proceedings as they already had in criminal proceedings including the same psychosocial and legal support throughout civil proceedings, the right to be questioned separately and the right not to disclose their domicile. The bill also stipulated that repeated acts of violence be defined as a separate offence under the heading "continued use of violence" pursuant to Section 107(b) of the Penal Code.

On the issue of more lenient means, the State party referred to the principle of the presumption of innocence and submitted that the advantage of more lenient means as compared to other measures of law enforcement or temporary injunctions lay in the fact that non-compliance with obligations imposed on the perpetrator could be sanctioned by his immediate pretrial detention. The request that such detention should be automatically ordered if the perpetrator failed to meet the conditions imposed on him would not be appropriate and should be decided upon on a case-by-case basis taking into account

inter alia the principle of proportionality.

On the issue of data and statistical recording, the State party agreed with many of the author's points and submitted that the transfer of personal data to suitable victim protection facilities, such as intervention centres, was permissible provided that it was necessary to protect the individuals at risk and that all police interventions in the cases of domestic violence were registered in the official statistics on protection against violence. The State party acknowledged that it was not currently possible to have an accurate statistical record of crimes against women in their immediate social surroundings. In the light of this, a working party was set up by the Federal Ministry in May 2007 and entrusted with the task of improving data collection and processing for the criminal justice system.

The State party also stated that special units of specially trained public prosecutors had been set up in 10 locations by 1 June 2008 and that 90 more were due to be set up. The State party then described various training courses that had taken place since then. In addition, an advanced training course to judges and public prosecutors had been held in 2008 on victim protection and domestic violence and another such programme would be held in 2009. Training courses for police officers had also been held, and the goal had been set to post at least one male and one female law enforcement officer with a migration background in each of the 98 Vienna police inspectorates by the end of 2012. The State party also described several conferences and exhibitions that had been organized on the issue of domestic violence.

Author's response

The State party's response was sent to the author's counsel on 28 March 2008, with a deadline for comment of 28 May 2008. The author's counsel subsequently stated that it would not be able to provide its comments until 18 June.

On 17 June 2008, the counsel provided very detailed comments on the State party's response, welcoming all the efforts made by the State party to implement the decision, including the amendments to the Criminal Code, except the measure of "more lenient means" for the accused perpetrator. The counsel was concerned about the effectiveness of that measure in protecting women victims

of violence from violent acts and referred to the facts of the two cases in point as examples of situations where such measures had resulted in the death of the victims. The counsel made several recommendations in this regard, including the following: if there are legal grounds for pretrial detention, they should be applied to guarantee the safety of the victim; if "more lenient means" are applied, a swift information exchange between all agencies should be guaranteed; detention should be imposed immediately in the event that the more lenient measure is breached; and a breach of civil law protection orders should be made a criminal offence.

The counsel also stressed the urgent need for the systematic collection of data and the yearly publication of statistics as the only means of evaluating the implementation level and effectiveness of legal measures to prevent violence and protect victims. While recognizing the steps taken by the State party to increase the financial resources of the intervention centres, further resources would be needed in the next few years to improve support for high-risk victims who needed intensive help and assistance, especially when trying to leave the perpetrator. The police should be obliged to report all cases of police intervention in domestic violence to the regional intervention centres so as to prevent gaps in effective victim protection. The counsel suggested that the study planned by the Ministry of the Interior should be researched by independent research institutions with expertise in the area of violence against women. While welcoming the regulation issued by the Ministry of Justice stipulating that the public prosecutor's offices must assign cases of violence in the immediate social environs to one (or more) specialized prosecutor, that regulation had not yet been implemented. The counsel also noted that the meetings of the working group and the "round table" had not yet taken place; that, in any event, they needed to have clear goals and structures to make them efficient; and that meetings of the proposed working group should take place two or three times a year and they should be evaluated after three years. The counsel regretted that the working group had not focused on violence against women but rather on domestic violence and recommended the setting up of a regular inter-ministerial and interdisciplinary working group focusing on violence against women, to be coordinated by the Minister for Women, with the goal of

developing and implementing a coordinated policy on the elimination of violence against women. The counsel appreciated the efforts made to introduce training on the issue of violence against women for actors in the criminal justice system and suggested a standard number of hours of training necessary per profession. The author's counsel also recommended that specialized police officers rather than prevention officers deal with domestic violence cases and considered that it was unfortunate that the magistrates, judges, police and other relevant State agencies had not been informed of the Committee's decisions should be published.

Committee's decision

The Committee considers the dialogue ongoing

State party

Austria

Case

Fatma Yildirim (deceased), 6/2005

Views adopted on

6 August 2007

Issues and violations found

Right to life and physical and mental integrity: article 2 (a) and (c) through (f), and article 3 of the Convention, read in conjunction with article 1

Remedy recommended

(a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so;

(b) Vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence; ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;

(c) Ensure enhanced coordination among law

enforcement and judicial officers, and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence;

(d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention, the Optional Protocol thereto and general recommendation No. 19 of the Committee.

Due date for State party response

20 February 2008

Date of reply

14 March 2008

State party response

See State party response to Sahide Goekce (5/2005)

Author's comments

The State party's response was sent to the author's counsel on 28 March 2008 with a deadline for comments of 28 May 2008. The author's counsel subsequently stated that it would not be able to provide its comments until 18 June.

On 17 June 2008, the counsel provided very detailed comments on the State party's response, welcoming all the efforts made by the State party to implement the decision, including the amendments to the Criminal Code, except the measure of "more lenient means" for the accused perpetrator. The counsel was concerned about the effectiveness of that measure in protecting women victims of violence from violent acts and referred to the facts of the two cases in point as examples of situations where such measures had resulted in the death of the victims. The counsel made several recommendations in this regard, including the following: if there are legal grounds for pretrial detention, they should be applied to guarantee the safety of the victim; if "more lenient means" are applied, a swift information exchange between all agencies should be guaranteed; detention should be imposed immediately in the event that the more lenient measure is breached; and a breach of civil law protection orders should be made a criminal offence.

The counsel also stressed the urgent need for the systematic collection of data and the yearly publication of statistics as

the only means of evaluating the implementation level and effectiveness of legal measures to prevent violence and protect victims. While recognizing the steps taken by the State party to increase the financial resources of the intervention centres, further resources would be needed in the next few years to improve support for high-risk victims who needed intensive help and assistance, especially when trying to leave the perpetrator. The police should be obliged to report all cases of police intervention in domestic violence to the regional intervention centres so as to prevent gaps in effective victim protection. The counsel suggested that the study planned by the Ministry of the Interior should be researched by independent research institutions with expertise in the area of violence against women. While welcoming the regulation issued by the Ministry of Justice stipulating that the public prosecutor's offices must assign cases of violence in the immediate social environs to one (or more) specialized prosecutor, that regulation had not yet been implemented. The counsel also noted that the meetings of the working group and the "round table" had not yet taken place; that, in any event, they needed to have clear goals and structures to make them efficient; and that meetings of the proposed working group should take place two or three times a year and they should be evaluated after three years. The counsel regretted that the working group had not focused on violence against women but rather on domestic violence and recommended the setting up of a regular inter-ministerial and interdisciplinary working group focusing on violence against women, to be coordinated by the Minister for Women, with the goal of developing and implementing a coordinated policy on the elimination of violence against women. The counsel appreciated the efforts made to introduce training on the issue of violence against women for actors in the criminal justice system and suggested a standard number of hours of training necessary per profession. The author's counsel also recommended that specialized police officers rather than prevention officers deal with domestic violence cases and considered that it was unfortunate that the magistrates, judges, police and other relevant State agencies had not been informed of the Committee's recommendations and suggested other places where the Committee's decisions should be published.

Committee's decision

The Committee considers the dialogue ongoing.

...

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

...

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	Austria
Case	Şahide Goekce (deceased), 5/2005
Views adopted on	6 August 2007

Issues and violations found	Right to life and physical and mental integrity: article 2 (a) and (c) through (f), and article 3 of the Convention, in conjunction with article 1
Remedy recommended	<p>(a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so;</p> <p>(b) Vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence; ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;</p> <p>(c) Ensure enhanced coordination among law enforcement and judicial officers and also ensure that all levels of the criminal justice system (police, public prosecutors and judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence;</p> <p>(d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention, the Optional Protocol thereto and general recommendation No. 19 of the Committee.</p>
Due date for State party response	20 February 2008
Date of State party response	27 January 2009 (the State party had responded on 14 March 2008)
State party response	On 14 March 2008, the State party informed the Committee of the establishment of intervention centres that must be informed of any police action in cases of domestic violence. The role of the centres is to establish contact with the victim to whom they offer support. The State party has increased the financial resources allocated to these centres from 3,368,324.97 euros (€) in 2006 to €5,459,208 in 2007

and €5,630,740 in 2008. These centres, in conjunction with the University of Vienna, are conducting a study on domestic violence.

The State party submitted that, in the area of criminal justice, amendments had been made to the Code of Criminal Procedure and came into effect on 1 January 2008; victims exposed to violence had the right to free psychosocial and legal expertise throughout criminal proceedings; the obligation to interrogate victims of violence in a way that minimizes their distress had been extended to include the trial itself; instead of arresting a perpetrator pending further investigation, “more lenient means” might be employed, such as pledges and orders to refrain from contacting the victim or returning to the family home; pretrial detention might be imposed if the offender contravenes the order or pledge; victims had the right to be informed of the release of the defendant from pretrial detention; the requirement that a victim had to give her authorization for criminal prosecution was eliminated as of 1 July 2006 to relieve victims of the pressure exerted by their families to withdraw their authorization for criminal prosecution; and there was a requirement that criminal proceedings be speeded up. In addition, specifically trained public prosecutors would process cases on domestic violence; the heads of all prosecutor’s offices and public prosecution directorates were informed in detail of the Committee’s views; and a working group and round-table discussions had been set up in line with the Committee’s recommendation on improving cooperation between the public prosecution authorities and non-governmental organizations. The State party reminded the Committee of various articles of the Police Act relating to barring and protection orders and the options open to the public prosecutor on how to deal with an alleged abuser prior to trial. Improvements relating to the intervention of public prosecution authorities and the courts in domestic violence cases included broadening of the decision-making basis in order to gain a more comprehensive understanding of each case of domestic violence and establishing the facts and past histories so that the public prosecutor had a complete picture of all the known facts, including whether any other authority had reacted to the incident. With regard to further training, the particular relevance of the right to protection against violence was emphasized during the preparatory period for bar exams and further training was planned for members of the legal profession, as were seminars and workshops for training police officers, many of which were carried out with the cooperation of non-governmental organizations, and initiatives to raise awareness among boys and youths of the importance of combating violence. In addition, an attempt was being made to hire individuals with a migrant background for the police service and to create awareness

among the public about the helpline for victims of violence. An unofficial German translation of the views had been published, including on the home page of the Federal Chancellery and the Ministry of Justice.

On 27 January 2009, the State party responded to the Committee's questions and the authors' arguments as follows: it informed Committee of a federal bill on a Second Act for the Protection against Violence within the Family currently being considered by the Austrian National Council. The aim of the bill was to eliminate gaps left by the first Act (in particular with respect to injunctions) but notably to grant victims the same rights in civil proceedings as they already had in criminal proceedings, including the same psychosocial and legal support throughout civil proceedings, the right to be questioned separately, and the right not to disclose their domicile. The bill also stipulated that repeated acts of violence be defined as a separate offence under the heading "continued use of violence" pursuant to Section 107(b) of the Penal Code.

On the issue of more lenient means, the State party referred to the principle the presumption of innocence and submitted that the advantage of more lenient means as compared to other measures of law enforcement or temporary injunctions lay in the fact that non-compliance with obligations imposed on the perpetrator could be sanctioned by his immediate pretrial detention. The request that such detention should be automatically ordered if the perpetrator failed to meet the conditions imposed on him would not be appropriate and should be decided upon on a case-by-case basis taking into account inter alia the principle of proportionality.

On the issue of data and statistical recording, the State party agreed with many of the authors' points and submitted that the transfer of personal data to suitable victim protection facilities, such as intervention centres, was permissible provided that it was necessary to protect the individuals at risk and that all police interventions in the cases of domestic violence were registered in the official statistics on the protection against violence. The State party acknowledged that it was not currently possible to have an accurate statistical record of crimes against women in their immediate social surroundings. In the light of this, a working party was set up by the Federal Ministry in May 2007 and entrusted with the task of improving data collection and processing for the criminal justice system.

The State party also stated that special units of specially trained public prosecutors had been set up in 10 locations from 1 June 2008 and that 90 more were due to be

set up. The State party then described various training courses that had taken place since then. In addition, an advanced training course to judges and public prosecutors had been held in 2008 on victim protection and domestic violence and another such programme would be held in 2009. Training courses for police officers had also been held and a goal had been set to establish at least one male and female law enforcement officer with a migration background in each of the 98 Vienna police inspectorates by the end of 2012. The State party also described several conferences and exhibitions on the issue of domestic violence.

Author's response

The State party's response was sent to the author's counsel on 28 March 2008, with a deadline for comment of 28 May 2008. The author's counsel subsequently stated that it would not be able to provide its comments until 18 June.

On 17 June 2008, the counsel provided very detailed comments on the State party's response, welcoming all the efforts made by the State party to implement the decision, including the amendments to the Criminal Code, except the measure of "more lenient means" for the accused perpetrator. The counsel was concerned about the effectiveness of that measure in protecting women victims of violence from violent acts and referred to the facts of the two cases in point as examples of situations where such measures had resulted in the death of the victims. The counsel made several recommendations in this regard, including the following: if there are legal grounds for pretrial detention they should be applied to guarantee the safety of the victim; if "more lenient means" are applied, a swift information exchange between all agencies should be guaranteed; detention should be imposed immediately in the event that the more lenient measure is breached; and a breach of civil law protection orders should be made a criminal offence.

The counsel also stressed the urgent need for the systematic collection of data and the yearly publication of statistics as the only means of evaluating the implementation level and effectiveness of legal measures to prevent violence and protect victims. While recognizing the steps taken by the State party to increase the financial resources of the intervention centres, further resources would be needed in the next few years to improve support for high-risk victims who needed intensive help and assistance, especially when trying to leave the perpetrator. The police should be obliged to report all cases of police intervention in domestic violence to the regional intervention centres so as to prevent gaps in effective victim protection. The counsel suggested that the study planned by the Ministry of the Interior should be researched by independent research institutions with expertise in the area of violence against women. While welcoming the regulation issued by the Ministry of Justice stipulating that the public prosecutor's offices must assign

cases of violence in the immediate social environs to one (or more) specialized prosecutor, that regulation had not yet been implemented. The counsel also noted that the meetings of the working group and the “round table” had not yet taken place; that, in any event, they needed to have clear goals and structures to make them efficient; and

that meetings of the proposed working group should take place two or three times a year and they should be evaluated after three years. The counsel regretted that the working group had not focused on violence against women but rather on domestic violence and recommended the setting up of a regular inter-ministerial and interdisciplinary working group focusing on violence against women, to be coordinated by the Minister for Women, with the goal of developing and implementing a coordinated policy on the elimination of violence against women. The counsel appreciated the efforts made to introduce training on the issue of violence against women for actors in the criminal justice system and suggested a standard number of hours of training necessary per profession. The author’s counsel also recommended that specialized police officers rather than prevention officers deal with domestic violence cases and considered that it was unfortunate that the magistrates, judges, police and other relevant State agencies had not been informed of the Committee’s recommendations and suggested other places where the Committee’s decisions should be published.

**Committee’s
Decision**

During the forty-fifth session, in the light of the State party’s responses on follow-up to the Committee’s views in this case, and taking note of the fact that the author chose not to respond to the State party’s submission of January 2009, in which it addressed concerns previously raised by the author, the Committee decided to bring the consideration of the follow-up to its views on this case to a close.

State party

Austria

Case

Fatma Yildirim (deceased), 6/2005

Views adopted on

6 August 2007

**Issues and violations
found**

Right to life and physical and mental integrity: article 2 (a) and (c) through (f), and article 3 of the Convention, read in conjunction with article 1

**Remedy
recommended**

(a) Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions

for the failure to do so;

(b) Vigilantly and in a speedy manner prosecute perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence; ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;

(c) Ensure enhanced coordination among law enforcement and judicial officers, and also ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organizations that work to protect and support women victims of gender-based violence;

(d) Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on the Convention, the Optional Protocol thereto and general recommendation No. 19 of the Committee.

**Due date for State
party response**

20 February 2008

**Date of State party
response**

14 March 2008

State party response

See State party response to Sahide Goekce (5/2005)

Author's response

The State party's response was sent to the author's counsel of 28 March 2008 with a deadline for comments of 28 May 2008. The author's counsel subsequently stated that it would not be able to provide its comments until 18 June.

On 17 June 2008, the counsel provided very detailed comments on the State party's response, welcoming all the efforts made by the State party to implement the decision, including the amendments to the Criminal Code, except the measure of "more lenient means" for

the accused perpetrator. The counsel was concerned about the effectiveness of that measure in protecting women victims of violence from violent acts and referred to the facts of the two cases in

point as examples of situations where such measures had resulted in the death of the victims. The counsel made several recommendations in this regard, including the following: if there are legal grounds for pretrial detention, it should be applied to guarantee the safety of the victim; if “more lenient means” are applied, a swift information exchange between all agencies should be guaranteed; detention should be imposed immediately in the event that the more lenient measure is breached; and a breach of civil law protection orders should be made a criminal offence.

The counsel also stressed the urgent need for the systematic collection of data and the yearly publication of statistics as the only means of evaluating the implementation level and effectiveness of legal measures to prevent violence and protect victims. While recognizing the steps taken by the State party to increase the financial resources of the intervention centres, further resources would be needed in the next few years to improve support for high-risk victims who needed intensive help and assistance, especially when trying to leave the perpetrator. The police should be obliged to report all cases of police intervention in domestic violence to the regional intervention centres so as to prevent gaps in effective victim protection. The counsel suggested that the study planned by the Ministry of the Interior should be researched by independent research institutions with expertise in the area of violence against women. While welcoming the regulation issued by the Ministry of Justice stipulating that the public prosecutor’s offices must assign cases of violence in the immediate social environs to one (or more) specialized prosecutor, that regulation had not yet been implemented. The counsel also noted that the meetings of the working group and the “round table” had not yet taken place, that, in any event, they needed to have clear goals and structures to make them efficient, and that meetings of the proposed working group should take place two or three times a year and they should be evaluated after three years. The counsel regretted that the working group had not focused on violence against women but rather on domestic violence and recommended the setting up of a regular inter-ministerial and interdisciplinary working group focusing on violence against women, to be coordinated by the Minister for Women, with the goal of developing and implementing a coordinated policy on the elimination of violence against women. The counsel appreciated the efforts made to introduce training on the issue of violence against

women for actors in the criminal justice system and suggested a standard number of hours of training necessary per profession. The author's counsel also recommended that specialized police officers rather than

prevention officers deal with domestic violence cases and considered that it was unfortunate that the magistrates, judges, police and other relevant State agencies had not been informed of the Committee's recommendations and suggested other places where the Committee's decisions should be published.

**Committee's
Decision**

During the forty-fifth session, in the light of the State party's responses on follow-up to the Committee's views in this case, and taking note of the fact that the author chose not to respond to the State party's submission of January 2009 in which it addressed concerns previously raised by the author, the Committee decided to bring the consideration of the follow-up to its views on this case to a close.

...

A/65/38 Part II (2010)

...

Chapter V: Activities carried out under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

...

B. Follow-up to views of the Committee on individual communications

17. The Committee considered follow-up information to the views of the Committee. Upon recommendation of the Working Group, the Committee decided to close its follow-up procedure in relation to communication No. 5/2005 *Şahide Goekce (deceased) v. Austria*, and No. 6/2005 *Fatma Yildirim (deceased) v. Austria*. This information, as well as any decisions by the Committee on follow-up, is contained in annex XII to part one of the present report. [*Ed note: see above*]

...